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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Review:

Notice of NAFTA Panel Decision

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of NAFTA Interim Panel Decision and Order in the matter of Softwood Lumber from Canada (Secretariat File Number: USA-CDA-2018-1904-03).

SUMMARY: On September 4, 2019, the Binational Panel issued its Interim Decision and Order in the matter of Softwood Lumber from Canada. The Binational Panel affirmed in part and remanded in part the Final Determination by the United States International Trade Commission (Commission).

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, D.C. 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules) and the NAFTA Panel Decision has been notified in accordance with Rule 70. For the complete Rules, please see

<https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904>.

PANEL DECISION: On September 4, 2019, the Binational Panel issued its Interim Decision and Order which affirmed in part and remanded in part the Final Determination by United States International Trade Commission. In accordance with NAFTA Article 1904.8, for reasons more fully set forth in within the Analysis section of the Decision (which shall be controlling in the event of conflict), and based upon the evidence in the administrative record, the applicable law, the written submissions of the Parties, and oral argument at the Panel's hearing, the Panel remands the Commission's determinations as follows:

With respect to the Business Cycle and Conditions of Competition, the Panel remands this issue to the Commission and directs the Commission to reconsider the record evidence in relation to the business cycle(s) distinctive to the U.S. lumber industry, and to apply its findings in its analysis of volume, price effects, impact, and causation.

With respect to the use of Post-Petition data, the Panel remands the Commission's decision to reduce the weight it accorded to interim 2017 data and directs the Commission to provide a reasoned determination on whether or not to reduce the weight accorded to interim 2017 data;

The Panel directs the Commission to clarify whether or not it is also reducing the weight accorded to third- and fourth-quarter 2017 data. If, upon reconsideration, the Commission decides to reduce the weight given to post-petition data, the Commission is further directed to

clarify what weight, if any, it is giving to post-petition data and the reasons for this determination.

With respect to the Substitutability conclusions, the Panel remands the matter to the Commission, and directs it to reconsider its calculation of substitution elasticity, explaining how it reached its conclusion and demonstrating how that conclusion was applied in the Commission's analysis of volume, price effects, impact, and causation; and demonstrate how, and to what extent, the limitations to substitutability implied in its conclusion that the goods were "at least moderately substitutable" factored into the Commission's analysis of volume, price effects, impact, and causation.

With respect to the Volume analysis, the Panel remands this determination to the Commission and directs the Commission to consider all record evidence to demonstrate how, and to what extent, the limitations to substitutability implied in its conclusion that the goods were "at least moderately substitutable" factored into its conclusion that subject imports experienced significant gains in market share directly at the expense of the domestic industry. The Panel directs the Commission to further reconsider its volume analysis as the Commission determines appropriate.

With respect to the Price Effects analysis, as to the Domestic Capacity aspect of the price suppression analysis, the Panel remands this determination to the Commission and directs the Commission to consider whether to take the more recent Forest Economic Advisors ("FEA") data into account in its domestic capacity analysis, explain its decision, and, if it decides to take

the updated FEA data into account, reconsider its price effects analysis as it determines is appropriate.

As to the Different Softwood Species aspect of the price suppression analysis, the Panel remands this determination to the Commission and directs the Commission to reconsider its conclusion that the prices of different species closely track each other to take into consideration that price movements of one species “affect” prices of other species, the existence of a “great difference in price movement” of one species compared to another, and that prices for different species “generally track” each other, as well as any other record evidence, and to determine what effect such reconsideration has on its price suppression analysis.

As to the Cost of Goods Sold (“COGS”) and Pricing Trends aspect of the price suppression issue, the Panel remands this determination to the Commission and directs the Commission to reconsider its COGS and price trends analysis to take into account the Commission’s finding that subject imports and domestic products are at least moderately substitutable, and determine what effect such reconsideration has on its finding that subject imports prevented price increases which otherwise would have occurred to a significant degree.

With respect to the Questionnaire Responses aspect of the price suppression analysis, the Panel remands this determination to the Commission and directs the Commission to reconsider the record evidence, its conclusion that purchasers confirmed purchasing subject imports rather than domestic product solely due to their lower prices, and to determine what effect such reconsideration has on its price suppression analysis.

With respect to the Impact issue, the Panel found that the Commission's finding of adverse impact is lawful and supported by substantial evidence in light of its determinations regarding post-petition data, substitutability, volume, price effects, and the business cycle, which have been remanded elsewhere in this decision. If, in any of these remands, the Commission reaches a different finding or conclusion on the particular issue, then the Panel directs the Commission to determine and explain what effect such reconsideration has on its impact analysis.

With respect to the Causation issue, the Panel found that the Commission's finding of causation is lawful and supported by substantial evidence in light of its determinations regarding volume, price effect, and impact. If, after reconsideration, the Commission reaches a different finding or conclusion on any of these issues, then the Panel directs the Commission to determine and explain what effect such reconsideration has on its causation analysis.

The Panel ordered the Commission to submit its redetermination on remand within 90 days from the issuance of the Interim Panel Decision and Order. For the full Interim Panel Decision and Order, please see <https://www.nafta-sec-alena.org/Home/Dispute-Settlement/Decisions-and-Reports>.

Dated: September 5, 2019.

Paul E. Morris,

U.S. Secretary,

NAFTA Secretariat.

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