



A-122-857, C-122-858
GOC – Cedar Shakes and Shingles
Scope Inquiry
Public Document
E&C/OIV: KJ

March 12, 2021

MEMORANDUM FOR: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia
Office Director
AD/CVD Operations, Office IV

FROM: Kristen Ju *KJ*
International Trade Compliance Analyst
AD/CVD Operations, Office IV

SUBJECT: Final Scope Ruling on the Antidumping and Countervailing Duty
Orders on Softwood Lumber from Canada: Government of
Canada

I. Summary

In accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend that the Department of Commerce (Commerce) determine that the cedar shakes and shingles (CSS) described in the Government of Canada's scope ruling request are not covered by the scope of the *Orders*.¹

II. Background

On December 30, 2020, Commerce received a scope ruling request from the Government of Canada (GOC) requesting that Commerce determine that CSS from Canada are not subject to the scope of the *Orders*.² Commerce found the GOC's Scope Ruling Request covering CSS to meet the regulatory criteria.

¹ See *Certain Softwood Lumber Products From Canada: Antidumping Duty Order and Partial Amended Final Determination*, 83 FR 350 (January 3, 2018) (*AD Order*) and *Certain Softwood Lumber Products From Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018) (*CVD Order*) (collectively, the *Orders*).

² See GOC's Letter, "Certain Softwood Lumber Products from Canada: Application for Scope Ruling as to Cedar Shakes and Shingles," dated December 30, 2020 (Scope Ruling Request).



On January 15, 2021, the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (the petitioner) filed comments³ in response to the GOC's Scope Ruling Request. On January 26, 2021, the GOC filed rebuttal comments⁴ in response to the petitioner's comments. On February 4, 2021, Commerce extended the deadline⁵ for issuing a final scope ruling or initiating a formal scope inquiry by an additional 45 days pursuant to 19 CFR 351.302(b).⁶

III. Scope of the *Orders*

The *Antidumping Duty Order* and *Countervailing Duty Order* have the same scope as follows:

The merchandise covered by this order is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this order. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to this order at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered "finished," for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

³ See Petitioner's Letter, "Certain Softwood Lumber Products from Canada: Response to the GOC's Application for Scope Ruling," dated January 15, 2021 (Petitioner's Comments).

⁴ See GOC's Letter, "Certain Softwood Lumber Products from Canada: Comments on Petitioner's Response to the Government of Canada's Application for Scope Ruling as to Cedar Shakes and Shingles," dated January 26, 2021 (GOC's Rebuttal Comments).

⁵ See Commerce's Letter, "Certain Softwood Lumber from Canada: Extension of the Government of Canada Cedar Shakes and Shingles Scope Inquiry," dated February 4, 2021.

⁶ Pursuant to 19 CFR 351.225 (c)(1)(ii)(C)(2), "{w}ithin 45 days of the date of receipt of an application for a scope ruling, the Secretary will issue a final ruling under paragraph (d) of this section or will initiate a scope inquiry under paragraph (e) of this section." However, according to 19 CFR 351.302(b), unless expressly precluded by the statute, the Secretary may, for good cause, extend any time limit.

The following items are excluded from the scope of this order:

- Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.
- U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to size board; or (3) sanding.
- Box-spring frame kits if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
- Radius-cut box-spring-frame components, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers “Wood and articles of wood.” Softwood lumber products that are subject to this order are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.99.10.00.

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.99.70.40; and 4421.99.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. Legal Framework

The Court of Appeals for the Federal Circuit (CAFC) has stated that “a predicate for the interpretative process {in a scope ruling} is language in the order that is subject to interpretation.”⁷ “{W}hile the petition, factual findings, legal conclusions, and preliminary orders can aid in the analysis, they cannot substitute for the language of the order itself, which remains the ‘cornerstone’ in any scope determination.”⁸ Therefore, when a request for a scope ruling is filed, Commerce examines the scope language of the order(s) at issue and the description of the product contained in the scope ruling request to determine whether the product is expressly covered by the language of the scope of the antidumping or countervailing duty order.⁹ Pursuant to Commerce’s regulations, Commerce may also examine other information, including the description of the merchandise contained in the petition, the records from the investigation, and prior scope determinations made for the same product.¹⁰ If Commerce determines that these sources are sufficient to decide the matter, it will issue a final scope ruling stating whether the merchandise is covered by the order.¹¹

Conversely, where the sources described in 19 CFR 351.225(k)(1) are not dispositive, Commerce will consider the five additional factors set forth in 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before Commerce.

V. Product Description

The products subject to this scope ruling request are CSS produced and exported from Canada. The subject CSS are rectangular products made of Western Red Cedar, Alaskan Yellow Cedar, or Eastern White Cedar. CSS have a nominal length ranging from 15 to 24 inches and a minimum nominal width of 3 inches. CSS are tapered along the length of the product, such that one end (known as the “butt end”) of the product has a thickness ranging from 5/16 to 1 inch, and the other end of the product tapers to an edge with a thickness of 1/16 inch or less. CSS may be painted or stained, may have decorative shapes or designs cut into the butt end, or may be machine-grooved on the face of the shake or shingle. CSS may be treated with factory pressure-impregnated fire-retardant or preservative treatments. CSS may also be attached together prior to export in the form of hip-and-ridge caps or shake or shingle panels. CSS are generally classified under HTSUS subheading 4418.50.00, which provides for shingles and shakes. Hip-and-ridge caps are classified under subheading 4418.99.90.95, which provides for other builders’ joinery and carpentry and is included in the list of HTSUS subheadings subject to the scope of the *Orders*.

⁷ See *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002).

⁸ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁹ *Id.*

¹⁰ See 19 CFR 351.225(k)(1).

¹¹ See 19 CFR 351.225(d).

VI. Relevant Prior Scope Rulings

Final SSA Remand Results

On November 13, 2019, the U.S. Court of International Trade (CIT) issued a remand order¹² to Commerce for redetermination of its final scope ruling¹³ concerning certain CSS exported and produced by the Shake and Shingle Alliance (SSA) that Commerce found to be covered by the scope of the *Orders*.¹⁴ In the *SSA Remand Order*, the CIT found that Commerce had not adequately addressed how “prior lumber proceedings or prior scope determinations compared with or were distinguishable from the current scope determination in accordance with 19 CFR § 351.225(k)(1).”¹⁵ Accordingly, the CIT ordered Commerce to further consider “the record as it pertains to the determination of subject merchandise,” “the evidence in the investigation as it pertains to the determination of whether CSS are within the scope,” and in accordance with 19 CFR 351.225(k)(1), “prior determinations, including but not limited to scope rulings.”¹⁶

Pursuant to the CIT’s order, on February 13, 2020, Commerce issued its final results of the redetermination,¹⁷ in which Commerce reversed its Final SSA Scope Ruling and determined that SSA’s CSS are not covered by the scope of the *Orders*. In its analysis, Commerce addressed two points that supported a determination that CSS were out-of-scope merchandise. First, pursuant to the holding in *ArcelorMittal*,¹⁸ Commerce considered the similarities between the scope language of the *Lumber IV*¹⁹ and *Lumber V*²⁰ investigations and orders. In *ArcelorMittal*, the CAFC ruled that Commerce must consider previous interpretations of the identical scope language in other antidumping duty (AD) and countervailing duty (CVD) orders when issuing a scope ruling, otherwise, “it would ‘invite arbitrariness and uncertainty into the process by which Commerce administers its antidumping duty orders.’”²¹ On remand, Commerce found that the scope language in *Lumber IV* was “unquestionably similar” to the scope language of the *Orders*,

¹² See *Shake and Shingle Alliance and Government of Canada v. United States and Committee Overseeing Action For Lumber International Trade Investigations or Negotiations*, Slip Op. 19-140, Court No. 18-00228 (CIT 2019) (*SSA Remand Order*).

¹³ See Memorandum, “Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada: Final Scope Ruling – Cedar Shakes and Shingles,” dated September 10, 2018 (Final SSA Scope Ruling).

¹⁴ See Final SSA Scope Ruling; see also SSA’s Letter, “Certain Softwood Lumber from Canada (A-122-857/C-122-858) Request for Scope Determination for Certain Cedar Shakes and Shingles,” dated June 12, 2018 (SSA Scope Ruling Request).

¹⁵ See *SSA Remand Order* at 18-19.

¹⁶ *Id.* at 19.

¹⁷ See *Final Results of Redetermination Pursuant to Court Remand Order*, dated February 13, 2020 (*Final SSA Remand Results*).

¹⁸ See *ArcelorMittal Stainless Belgium N.V. v. United States*, 694 F.3d 82, 88-89 (Fed. Cir. 2012) (*ArcelorMittal*).

¹⁹ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36067 (May 22, 2002); *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36070 (May 22, 2002); and *Corrections to Notice of Amended Final Determination of Sales of Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products from Canada and Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 37775 (May 30, 2002) (collectively, *Lumber IV*).

²⁰ *Lumber V* refers to the underlying investigation and the resulting *Orders*.

²¹ See *Final SSA Remand Results* at 7 citing *ArcelorMittal* 694 F.3d at 88-90.

and in certain sections “virtually identical.”²² Accordingly, Commerce analyzed its treatment of CSS under the scope language from *Lumber IV* and recognized that CSS were not within the scope of the *Lumber IV* investigations. Specifically, in the *Lumber IV* Issues and Decision Memorandum, Commerce explicitly stated that “articles of shingles and shakes” were “not covered by the scope of these investigations.”²³ In addition, the scope of the orders for *Lumber IV* and *Lumber V* do not explicitly include CSS or list HTSUS 4418.50.00 in the list of HTSUS subheadings classified as subject merchandise.²⁴ Therefore, given the resemblance between the scopes of *Lumber IV* and *Lumber V*, Commerce’s prior interpretation that CSS were not covered by the scope of *Lumber IV* led Commerce to conclude that CSS were outside the scope of the *Orders*.

Second, in the *Final SSA Remand Results*, Commerce analyzed references in the Petition²⁵ that demonstrate the petitioner’s lack of intent to include CSS in the scope of the *Orders*, pursuant to 19 CFR 351.225(k)(1). Section 351.225(k)(1) of Commerce’s regulations mandates that Commerce consider “descriptions of the merchandise contained in the petition;” thus, Commerce examined the Petition on remand.²⁶ In the CVD section of the Petition, the petitioner stated that “shake and shingle” mills “generally produce merchandise not subject to this Petition.”²⁷ Further, the Petition included an exhibit that listed mills that produced non-subject merchandise and a list of certain shake and shingle mills was included in this exhibit.²⁸ Therefore, Commerce found in the *Final SSA Remand Results* that it was evident that the petitioner, at the time the Petition was filed, did not consider CSS to be covered by the scope of the investigations, and subsequently, the *Orders*.

In light of Commerce’s prior finding that CSS were excluded from the scope of *Lumber IV* and the fact that CSS were considered non-subject merchandise by the petitioner in the Petition, Commerce determined on remand that CSS were outside the scope of the *Orders* in the *Final SSA Remand Results*. On April 20, 2020, the CIT sustained Commerce’s *Final SSA Remand Results* with respect to the scope ruling on certain cedar shakes and shingles.²⁹

VII. Interested Party Comments

Government of Canada

In its Scope Ruling Request, the GOC contends that since the publication of the *Final SSA Remand Results*, Commerce has issued U.S. Customs and Border (CBP) liquidation instructions for CSS essentially limiting the ruling in the *Final SSA Remand Results* to specific grades of CSS

²² *Id.* at 8.

²³ *Id.* at 8 citing Memorandum, “Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada,” dated March 21, 2002, at Comment 57, B(17).

²⁴ *Id.* at 8

²⁵ See *Lumber V* Petition, “Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada,” dated November 25, 2016 (Petition).

²⁶ 19 CFR 351.225(k)(1).

²⁷ *Id.* at 9 citing Petition, Volume III at 10.

²⁸ *Id.* at 9 citing Petition at Exhibit 102.

²⁹ See *Shake and Shingle Alliance and Government of Canada v. United States and Committee Overseeing Action For Lumber International Trade Investigations Or Negotiations*, Slip Op. 20-52, Court No. 18-00228 (CIT 2020).

exported by members of the SSA, instead of all grades of CSS produced, exported, or imported by any company. The GOC argues that CSS from Canada are not within the scope of the *Orders*, regardless of the identity of the producer, exporter, or importer, as well as the product grade because of the plain language of the *Orders*, Commerce's prior determinations, the petitioner's intentions, and the International Trade Commission's (ITC) determination.

First, the GOC argues that the plain language of the *Orders* supports the conclusion that all CSS are not within the scope of the *Orders*. With respect to the claim that CSS regardless of producer, exporter, and importer are outside the scope, AD and CVD orders are created to cover subject merchandise, not subject producers, exporters, or importers. Section 771(25) of the Act mandates that Commerce "define scope in terms of the 'class or kind of merchandise' subject to an order, which {Commerce} has confirmed is the 'type of merchandise' at issue, not the producer, importer, or exporter of such merchandise."³⁰ Further, Commerce's regulations identify the criteria for considering whether a product is subject to the scope of an order, "but do not anywhere refer to the identity of the company that exports (or produces or imports) that product."³¹ Accordingly, the plain language of the *Orders* does not specify whether CSS is covered due to the identity of the exporter, producer, or importer. Therefore, any scope ruling made to interpret the scope of the *Orders* should be applied regardless of the identity of the company.

With respect to the claim that all CSS regardless of grade are outside the scope, the GOC argues that because the scope of the *Orders* omits the HTSUS subheading for CSS, 4418.50.00, in the list of HTSUS subheadings subject to the *Orders*, all CSS regardless of grade should be excluded from the *Orders*. Further, the GOC notes that the scope of the *Orders* includes "{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters," however, "CSS are tapered lengthwise to a point with a thickness of 1/16" or less."³² The GOC maintains that CSS' thickness does not exceed "six millimeters," which is evidence that CSS are not within the scope of the *Orders*.³³

Second, the GOC contends that Commerce's prior determination in *Lumber IV* that CSS are outside the scope of the investigations and orders supports the conclusion that CSS are not subject to the *Orders*. The GOC asserts that, in the *Final SSA Remand Results*, Commerce recognized that it must adhere to CAFC's holding in *ArcelorMittal* when preparing final scope rulings and thus, must "account for its prior interpretations of identical scope language."³⁴ Accordingly, the GOC argues that Commerce should reaffirm its ruling in the *Final SSA Remand Results* that the scope of the *Lumber IV* orders is "unquestionably similar" and in certain portions "virtually identical" to the scope of the *Orders*, and therefore, the scope determination from *Lumber IV* that CSS are not subject to the orders should be applied to the current *Orders*.³⁵ In support of the claim that CSS regardless of producer, exporter, and importer are outside the

³⁰ See Scope Ruling Request at 6 citing section 771(25) of the Act.

³¹ *Id.* referencing 19 CFR 351.225(k)(1).

³² *Id.* at 12 citing the *Orders*.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 8 citing the *Final SSA Remand Results* at 8.

scope, the filings on the record of *Lumber IV* do not mention specific producers and exporters of CSS and Commerce did not limit its determination regarding CSS in *Lumber IV* to CSS exported by specific SSA members.

With respect to the argument that all grades of CSS are not covered by the scope of the *Orders*, the GOC maintains that neither of the scopes of the *Lumber IV* or *Lumber V* orders make distinctions between grades of CSS. In addition, the *Final SSA Remand Results* and the CIT's *Remand Order* do not address grades of CSS as a factor in their determinations. Therefore, these prior determinations support the conclusion that all CSS are outside the scope regardless of product grade, producer, exporter, and importer.

Third, the GOC argues that CSS are not within the scope of the *Orders* because the petitioner did not intend for the *Orders* to cover CSS. Pursuant to 19 CFR 351.225(k)(1), Commerce may consider the language in the petition when determining whether merchandise is within the scope of an order. There were not any substantive changes between the *Lumber IV* petition and the Petition, and within the Petition, the petitioner expressed that the scope of *Lumber IV* is "similar to the scope of these petitions."³⁶ Further, the petitioner requested that Commerce and the ITC "adhere to certain determinations" made in *Lumber III and IV* "with respect to the scope and domestic-like-product."³⁷ Given that CSS was excluded from the scope of *Lumber IV*, the petitioner's desire to maintain substantive scope determinations and language from *Lumber IV* indicates that the petitioner did not intend to cover CSS in the *Orders*. In addition, as recognized in the *Final SSA Remand Results*, there is evidence in the Petition demonstrating that CSS were not intended to be covered by the scope of the *Orders*, including a sentence in the narrative distinguishing shake and shingle mills as facilities that generally produce non-subject merchandise and an exhibit listing certain shake and shingle mills in a list of mills that produce non-subject merchandise. The GOC also notes that the list of non-subject shake and shingle mills includes mills that are not members of the SSA, which signals the petitioner's lack of intent to restrict the exclusion of CSS to specific exporters of an industry group. Moreover, these non-subject shake and shingle mills produce various grades of CSS, which is contrary to the argument that certain grades of CSS should remain within the scope of the *Orders*.

Fourth, the GOC argues that Commerce must account for the ITC's lack of inclusion of CSS in its import injury investigation. Pursuant to 19 CFR 351.225(k)(1), Commerce may consider the determinations of the ITC when preparing a scope ruling. In its investigation, the ITC did not discuss or analyze CSS or the CSS industry, nor collect any data on CSS imports, which the GOC contends is evidence in favor of a determination CSS are outside the scope of the *Orders*.

Petitioner Comments

The petitioner argues that Commerce should not expand its prior ruling with respect to SSA's CSS to include all grades of CSS, because an expansion of the prior scope ruling is impermissible and would increase evasion concerns. The petitioner contends that the SSA Scope Ruling Request limited the subject merchandise to four categories of CSS:

³⁶ See Scope Ruling Request at 9 citing Petition, Volume I at 19.

³⁷ *Id.* citing Petition, Volume I at 20, 30-31.

- a. Western red cedar/Alaskan yellow cedar (“WRC”) shingles, Grades 01, 02, and 03;
- b. WRC tapersplit and handsplit-and-resawn shakes Grade 01;
- c. WRC tapersawn shakes Grades 01, 02 and 03; and
- d. Eastern white cedar (“EWC”) shingles Grades A, B and C.³⁸

These four categories of CSS, which comprise of specific CSS grades, are “such high value that it would not be commercially advantageous to use them for any purpose other than as shakes and shingles.”³⁹ On the other hand, “Grade 4 or undercourse” shingles, which are valued at a lower price than other grades of CSS, are not subject to the SSA Scope Ruling Request.⁴⁰ In the *Final SSA Remand Results*, Commerce ruled that “*the CSS at issue*”⁴¹ are not subject to the *Orders* and based on this ruling, Commerce issued customs instructions to liquidate without regard to the *Orders* the four categories of CSS described in the SSA Scope Ruling Request. Thus, the GOC’s assertion that all grades of CSS should be excluded from the scope of the *Orders* ignores that the *Final SSA Remand Results* is based on the underlying SSA Scope Ruling Request and that the customs instructions demonstrate Commerce’s lack of intention to treat all grades of CSS as outside the scope of the *Orders*.

Further, the petitioner argues that because “low-grade and low-value CSS are virtually indistinguishable from wood shims,”⁴² a softwood lumber product found to be covered by the scope of the *Orders*, an exclusion of all grades of CSS from the scope of the *Orders* increases chances of evasion and circumvention; the similarities between wood shims and low-grade and low-value CSS may affect CBP’s ability to administer the *Orders*. The petitioner notes that the CSS described in the SSA Scope Ruling Request are easily distinguishable from wood shims, because wood shims are narrower and are of poorer quality than the SSA’s higher grade CSS. The petitioner also notes that the Scope Ruling Request fails to address how CBP would distinguish undercourse and ungraded CSS from wood shims with similar dimensions and packaging.

Government of Canada Rebuttal Comments

The GOC responded to the petitioner’s comments and notes that the petitioner does not challenge the GOC’s application of the *Final SSA Remand Results* to all exporters, importers, and producers. However, the GOC rejects the petitioner’s argument that Commerce’s ruling in the *Final SSA Remand Results* is limited to specific grades of CSS. Although the SSA Scope Ruling Request restricts the subject merchandise to particular grades of CSS, Commerce did not consider distinctions between grades of CSS in the *Final SSA Remand Results*. Rather, the basis for Commerce’s conclusion that CSS are outside the scope of the *Orders* is based on *Lumber IV*’s exclusion of CSS in the scope of its investigations and resulting orders, as well as the suggestions in the Petition that CSS are non-subject merchandise. The exclusion of CSS from the scope of *Lumber IV*’s investigations and orders was not restricted to particular grades of CSS

³⁸ See Petitioner’s Comments at 3 citing SSA Scope Ruling Request at Attachment 2.

³⁹ *Id.* at 4 citing SSA Scope Ruling Request at 37.

⁴⁰ *Id.* citing SSA Scope Ruling Request at 20.

⁴¹ *Id.* citing Final SSA Remand Results (emphasis added by the petitioner).

⁴² *Id.* at 8.

and the petitioner did not argue otherwise. Further, the Petition did not include any references to specific grades of CSS, but instead contained references that indicated that CSS in general were out-of-scope merchandise.

The GOC also contends that the petitioner's circumvention and evasion arguments with respect to wood shims are legally irrelevant and factually incorrect. Concerns about circumvention and evasion are not legally pertinent to scope rulings. When issuing a scope ruling, Commerce must clarify whether a product is within the scope of an order, while circumvention inquiries grant Commerce the ability to expand or modify a scope of an order to include products not formerly included. Hence, scope rulings are "not the proper mechanism for addressing circumvention concerns."⁴³

Further, the GOC argues that the petitioner's circumvention and evasion concerns are speculative, because in-scope wood shims could not be mistaken for CSS. Wood shims are not referred to as utility shingles or undercourse shingles as the petitioner claims; rather, the record shows that only one retailer refers to certain wood shims as "shim shingles", which does not constitute a risk of evasion.⁴⁴ The GOC states that the petitioner also fails to provide any evidence demonstrating that CBP would have challenges differentiating between wood shims and CSS. Both products have distinct HTSUS subheadings, CSS are classified as 4418.50.00 and wood shims are classified as 4421.99.9780. In addition, the petitioner's request that Commerce differentiate between grades of CSS conflicts with the petitioner's previous comments with respect to the SSA Scope Ruling. In its comments on the SSA Scope Request, the petitioner requested that Commerce not make any distinctions between grades of CSS because that may cause circumvention risks.⁴⁵ The petitioner's current position on distinguishing between CSS grades is a shift from its initial position concerning SSA's CSS.

VIII. Analysis

For this scope proceeding, Commerce examined relevant previous scope rulings, the scope language of the *Orders*, and the ITC's final import injury determination. The petitioner provided comments on the record regarding this scope ruling request and the GOC provided rebuttal comments to the petitioner's comments, both of which are summarized in the section above. We find that the factors examined are, together, dispositive as to whether the product at issue is subject merchandise, in accordance with 19 CFR 351.225(k)(1). Accordingly, for this determination, Commerce finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that cedar shakes and shingles exported from and produced in Canada, irrespective of grade, are not within the scope of the *Orders*.

In analyzing whether Canada's CSS are within the scope of the *Orders*, Commerce first considered the determination in the *Final SSA Remand Results* that CSS are excluded from the

⁴³ See GOC's Rebuttal Comments at 7 citing *E. Jordan Iron Works, Inc. v. United States*, 556 F.Supp.2d 1355, 1358 (CIT 2008).

⁴⁴ *Id.* at 8.

⁴⁵ *Id.* at 9 citing Petitioner's Letter, "Comments on Request for a Scope Ruling by the Shake and Shingle Alliance," dated June 28, 2018 at 10-11.

scope of the *Orders*. While made in the context of the SSA Scope Ruling Request, the *Final SSA Remand Results* provides evidence that supports a determination that the exclusion of CSS from the scope of the *Orders* is not limited to members of the SSA or specific grades of CSS.

First, as enumerated in the *Final SSA Remand Results*, the CAFC's holding in *ArcelorMittal* required Commerce to consider the exclusion of CSS from the scope of the *Lumber IV* orders and investigations based on identical language in both scopes. *Lumber IV*'s exclusion of CSS was not limited to certain grades or companies, and, in fact, Commerce explicitly excluded HTSUS 4418.50.00, which covers articles of shingles and shakes from the scope of the *Lumber IV* investigations.⁴⁶ The resulting *Lumber IV* orders, as well as the current *Orders*, do not expressly include CSS in their scopes and neither scopes "include HTSUS 4418.50.00 in list of HTSUS subheadings 'currently' classifying 'softwood lumber products subject to the Orders.'"⁴⁷

Second, Commerce concluded in the *Final SSA Remand Results* that the Petition reflected that the petitioner did not consider CSS to be subject to the underlying investigations of softwood lumber,⁴⁸ because the CVD section of the Petition referred to "shake and shingle" mills as mills that "generally produce merchandise not subject to this Petition" and included an attached exhibit that provided a list of mills that produce non-subject merchandise, which included a list of shake and shingle mills.⁴⁹

Finally, as pointed out by GOC in this segment, the list of non-subject shake and shingle mills included in the relevant Petition exhibit relied upon by Commerce in the *Final SSA Remand Results* included both members of the SSA, as well as mills that are not members of the SSA, and the list of mills did not segregate mills that produce specific grades of CSS from other mills that produce different grades of CSS. We, therefore, find that this additional analysis of the relevant Petition exhibit further demonstrates that the petitioner did not intend for CSS to be covered by the scope of the *Orders*, irrespective of grade and exporter, producer, and importer.

In addition to the criteria relied upon by Commerce in the *Final SSA Remand Results*, Commerce also considered the ITC's lack of discussion of CSS in its final import injury determination for the *Orders*. In its final determination, the ITC did not analyze CSS or the CSS industry, and did not rely on import data under HTSUS subheading 4418.50.00, covering articles of shingles and shakes, in its final determination for *Lumber V*.⁵⁰ Therefore, the absence of any substantive discussion of CSS in the ITC's final determination for the *Orders* further supports a conclusion that CSS were not intended to be covered by the scope of the *Orders*.

With respect to the petitioner's concerns of circumvention and evasion, Commerce finds that the petitioner's claim is speculative and that there is no record evidence that companies would

⁴⁶ See *Final SSA Remand Results* at 8 citing Memorandum, "Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada," dated March 21, 2002 at Comment 57, B(17).

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 9-11.

⁴⁹ *Id.* citing Petition, Volume III at 10 and Exhibit 102.

⁵⁰ See USITC Publication 4749, "Softwood Lumber Products from Canada: Investigation Nos. 701-TA-566 and 731-TA-1342 (Final)" (December 2017); see also *Softwood Lumber Products from Canada; Determinations*, 82 FR 61587 (December 22, 2017).

attempt to circumvent the *Orders* by importing a wood shim as a CSS. Additionally, given that CSS and wood shims are classified under two distinct HTSUS subheadings (CSS are classified under HTSUS 4418.50.00, which is not listed in the scope, whereas wood shims are classified under HTSUS 4421.99.97.80, which is listed in the scope), we do not believe that record evidence reflects that CBP would have significant difficulty discerning wood shims and CSS.

IX. Recommendation

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that cedar shakes and shingles from Canada as described in the GOC's Scope Ruling Request are not within the scope of the *Orders*.

Agree

Disagree

3/12/2021

X

James Maeder

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations