



Paul R. LePage
GOVERNOR

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April 22, 2015

The Honorable Penny Pritzker
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Pritzker:

I write to express my sincere concern with the Commerce Department's recent respondent selection decision in its countervailing duty investigation of Supercalendered Paper from Canada. As you may know, there are only four Canadian producers of SC paper. However, in the Respondent Selection Memorandum that it issued on April 6, 2015, the Department declined to investigate two of the four producers, which are Irving Paper Limited and Catalyst Paper. Although these companies produce SC paper in New Brunswick and British Columbia, respectively, they also maintain very significant operations in Maine.

The Department is going to investigate the other two Canadian producers, which are Port Hawkesbury Paper and Resolute Forest Products. These two companies are located in different provinces, and the subsidies that those provinces provided are far different and, likely, far greater, than the subsidies that Irving and Catalyst received. Thus, the failure of the Department to individually investigate Irving and Catalyst will result in the imputation to those two companies of subsidy margins through the "all others" rate calculation that bear no relationship to the actual amount of subsidies, if any, that they have received.

The statute governing respondent selection states that the Department must calculate an individual subsidy margin for every known Canadian producer unless the total number of those producers is a "large number." See 19 U.S.C. §1677f-1(e). The Court of International Trade has ruled on three occasions that four individual respondents is not a large number. Thus, the Department should be calculating an individual margin for all four Canadian producers.

I also understand that the Department has declined to correct a very significant omission in the CBP data upon which it relied in determining the two largest Canadian producers. This



error led to the Department's failure to select Irving Paper as one of the two mandatory respondents. Irving has requested reconsideration of the Department's decision, and I urge you to give that request your fullest consideration.

Thank you for your attention to this extremely important matter.

Sincerely,


Governor Paul R. LePage

Cc: Stefan M. Selig, Under Secretary for International Trade
Paul Piquado, Assistant Secretary for Enforcement & Compliance

IRVING PAPER LIMITED AND CATALYST PAPER SEEK TO HAVE THE U.S. DEPARTMENT OF COMMERCE INVESTIGATE WHETHER THEY HAVE RECEIVED COUNTERAVAILABLE SUBSIDIES FROM EITHER THE GOVERNMENT OF CANADA OR THE GOVERNMENTS OF THE PROVINCES WHERE THEIR MILLS ARE LOCATED

On February 26, 2015, two U.S. producers of “supercalendered paper” filed a petition with the U.S. Department of Commerce seeking to impose additional import duties, known as “countervailing duties,” to offset subsidies allegedly provided to the only four Canadian producers of SC paper by the Government of Canada and by the governments of the provinces where the four mills are located.

Supercalendered (“SC”) paper is the type of paper used in magazines, advertising inserts and catalogs.

Irving Paper Limited was either the largest or the second largest exporter to the U.S. of the four Canadian mills in 2014. Irving’s mill is located in the province of New Brunswick. Catalyst’s mill is located in the province of British Columbia.

The petitioners stated in the petition that their primary target is Port Hawkesbury Paper (“PHP”). This company shut down in September 2011 and laid off all of its employees. However, it was bailed out of bankruptcy by the Government of Nova Scotia (“GNS”).

PHP has received well over \$100 million in financial assistance from the GNS. This assistance allowed it to emerge from bankruptcy with new ownership and resume production in the fall of 2012.

The enormous subsidies that PHP received from the GNS allowed it to reenter the U.S. market and price aggressively to regain the business that it had lost when it closed down. This caused both the two U.S. producers and the three other Canadian producers to lose sales and revenues. These adverse competitive effects led the two U.S. producers to file their countervailing duty petition.

The Commerce Department will now investigate the amount of subsidies that PHP and one other Canadian producer, Resolute Forest Products, received. However, it will not investigate the subsidies, if any, that Irving and Catalyst received.

This is because Commerce has claimed that it does not have the resources to individually investigate all four companies. As a result, Irving and Catalyst, at the conclusion of the investigation will be assigned a duty rate at least equal to the average rate that Commerce will calculate for PHP and Resolute.

Assume, as is likely, that PHP receives a subsidy margin of 25% and Resolute receives a subsidy margin of 5%. The average of these two margins is 15%. This 15% margin will then be assigned to both Irving and Catalyst even though the subsidies that they received could easily be in the 0%-2% range. As a result, they would have to pay additional countervailing duties equal to 15% of the value of their imports. So, on an importation of SC paper worth \$100,000, they

would owe an additional \$15,000 in countervailing duties rather than actually owing zero to \$2,000.

Irving sells hundreds of millions of dollars per year in paper that is used by Time, Sports Illustrated, Parade Magazine, TV Guide, Avon, Kohl's, and many other well-known publishers. Thus, the financial effect of the imputation of the duty rate of PHP will have a devastating impact on the company's financial condition.

This outcome is extremely unfair because Irving and Catalyst did not receive the enormous subsidies that PHP received. Irving and Catalyst were not bailed out by the Government of Nova Scotia and, indeed, do not benefit from any subsidy programs administered by that province because they are located in other provinces. Nevertheless, under Commerce's rules, the PHP subsidies will be imputed to Irving and Catalyst.

The only way to avoid this result is for Commerce to also investigate the subsidies, if any, that Irving and Catalyst received. However, when these companies asked Commerce to conduct this investigation, Commerce rejected their requests on the ground that it was too busy with other cases.

The problem with this rejection is that the U.S. law governing these types of investigations expressly states that every producer is entitled to its own, separately calculated subsidy margin, as long as the potential number of companies to be investigated is not a "large number."

The U.S. Court of International Trade has ruled on three occasions that four companies does not satisfy the meaning of the statutory term "large number."

In addition, Commerce picked PHP and Resolute to investigate based on its finding that those two companies accounted for the largest import volume during 2014.

However, this finding was based on erroneous data that Commerce obtained from U.S. Customs and Border Protection. But, when Irving brought the defects to Commerce's attention, Commerce refused to adjust the data.

Had the data been corrected, Irving would have been picked as one of the two largest importers. This is a second reason why Irving should be selected as a mandatory respondent.

Request of Irving and Catalyst for Assistance

We request that your office send the attached letter, or a letter to the same effect, to the Department of Commerce requesting that Irving and Catalyst be individually investigated, along with PHP and Resolute. This is the only way that Commerce can comply with its legal obligation and, at the same time, ensure that every Canadian producer obtains a duty rate that reflects its own situation.