



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-122-584
Investigation
Public Document

July 20, 2015

MEMORANDUM TO: The File

FROM: The Team

RE: Countervailing Duty Investigation of Supercalendered Paper from Canada

SUBJECT: Respondent Selection Material Received by the Department

On July 15, 2015, Enforcement & Compliance received an inquiry from within the Department as to how to respond to a request for information that had been received from the office of Representative Peter Welch of Vermont regarding the issue of respondent selection in the countervailing duty investigation of imports of supercalendered paper from Canada. The attached document was provided to the Department in association with this request. Consistent with 19 U.S.C. § 1516a(b)(2)(A), this material is being placed on the administrative record of this proceeding.

Attachment.

COMMERCE MUST CONDUCT A FULL INVESTIGATION IN ITS SUPERCALENDARED PAPER COUNTERVAILING DUTIES CASE, AS REQUIRED BY LAW

Catalyst Paper Corporation (“Catalyst”) and Irving Paper Limited (“Irving”) are international paper manufacturers with headquarters in Canada and substantial operations in the United States. Catalyst, based in British Columbia, has a U.S. headquarters in Ohio and operates mills in Wisconsin and Maine. Irving, based in New Brunswick, has forestry operations in Maine and New York and has other operations in North Dakota. Catalyst, Irving and workers who rely on jobs related to their U.S. investments need help to resolve risks from bureaucratic decisions by the U.S. Department of Commerce (“Commerce”) that ignore well-settled law and basic fairness. Commerce is poised to impose significantly punitive duties on Catalyst and Irving while refusing to investigate whether these companies actually received countervailable subsidies, as required by law.

Background

- On February 26, 2015, two U.S. producers of “supercalendered paper” filed a petition with Commerce, seeking to impose “countervailing duties” on imports of SC paper from Canada in order to offset subsidies (primarily provincial) allegedly provided to four Canadian producers.
- The **law expressly states** that Commerce “shall determine an individual countervailable subsidy rate for each known exporter or producer” unless “it is not practicable ... because of the large number of exporters or producer involved in the investigation”. 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.”
- Despite a clear statutory mandate, Commerce has limited its individual investigations to two companies – Port Hawkesbury Paper (“PHP”) of Nova Scotia and Resolute Forest Products (“Resolute”) of Quebec – and has refused to investigate individually Catalyst or Irving.
- Without individual investigations, Catalyst and Irving will be assigned the “all others” duty rate, equal to the average rate that Commerce will calculate for PHP and Resolute. This is *unfair* because Catalyst and Irving did **not** receive the enormous subsidies PHP and Resolute allegedly received from their respective home provinces of Nova Scotia and Québec. These subsidies are not available to SC paper producers located in New Brunswick and British Columbia.
- Applying unwarranted countervailing duties on imports from Catalyst and Irving would adversely impact their ability to continue their important investment in U.S. operations, which include facilities in Wisconsin, Maine and New York that have hundreds of high paying jobs.

Commerce’s Arguments Are Flawed

- **Commerce staff have repeatedly made 2 flawed arguments to defend their decision not to investigate 2 of the 4 producers:**
 - First, Commerce claims it **lacks the resources** to investigate all 4 producers of SC paper.
 - Second, it claims to always limit the number of respondents – and that changing this decision would set a **precedent** that would require Commerce to expand the number of respondents it investigates in the future and overburden the Department.
- Neither lack of resources nor precedent is a valid reason to ignore the law.
- Reassigning a few Commerce Department investigative staffers would cost the Department a nominal amount and likely take only a few weeks of the staffers’ time.

- Reversing Commerce's decision does not have to create any **precedent**. No public statement is required. Commerce can quietly assign staffers to handle this (small amount) of investigative work.
- **Even if Commerce did need to avoid setting a precedent, this case is unique** in ways the Department can justify its decision without overburdening its resources.
 - The main question relates to **provincial subsidies**.
 - **This case is about countervailing duties only**, while the vast majority of cases involve anti-dumping alone or antidumping with countervailing duties.
- Fairness requires individual investigations. This is the only way for Commerce to comply with its legal obligation and ensure that every producer obtains a duty rate that reflects its own situation.

Prior Activity

- During the past three months, efforts have included: direct outreach to Secretary Pritzker by members of the House and Senate; offering and withdrawing amendments to appropriations bills to send a message to Commerce about the significance of this issue; and seeking to pass legislation to mandate individual investigations in cases like Catalyst's and Irving's.

Requested Solution

- **Urge Commerce to reassign some staffers so it can resolve these investigations quickly and fairly.** It is already investigating two, including PHP, which is the focus of the investigation.
- It is not unreasonable to ask Commerce to assign the small amount of resources to individually investigate all four companies -- **especially when so many high paying jobs are at risk. Solving this problem is incredibly important to many local economies (see attached slides):**

Economic Impact of Catalyst & Irving Operations

	Direct Employment	Direct Payroll	Local Purchases	10 Year Capital Investment
Maine	1,230	\$74M	\$332M	\$105M*
Wisconsin	420	\$27M	\$165M	----*
North Dakota	210	\$10M	\$70M	\$45M
New York	310	\$21M	\$30M	\$200M
Total	2,170	\$132M	\$597M	\$350M

* Over the last 10 years, Irving has invested over \$350M in capital assets to ensure the future viability of its operations. Catalyst will invest \$17M in 2015, the year it took control of their US operations.

Alternative Legislative Option

- Enact S. 1702 (sponsored by Senators Angus King, Susan Collins, Joe Manchin and Pat Leahy) and H.R. 2945 (introduced by Rep. Welch), which address Commerce's arbitrary and unreasonable refusal to comply with the law by clarifying the Tariff Act of 1930 to expressly require Commerce to conduct individualized countervailing duty investigations where four or fewer exporters and producers are involved in cases initiated on or after March 1, 2015. This is a very limited number of cases.
- Include the language of S. 1702 in the customs bill (currently in conference between the House and Senate). Adding this short amendment would merely reinforce existing law.



US Operations in 2014



	ME	NY	ND
Direct Employees	500	310	210
Direct Payroll	\$23M	\$21M	\$10M
Local Purchases	\$112M	\$30M	\$54M
Capital Investment (10 years)	\$115M	\$200M	\$45M
In Business Since	1946	1996	2001



Catalyst Paper: US Operations in 2015

	ME	WI	OH & WA
Direct Employees	732	417	62
Direct Payroll	\$51M	\$27M	\$6M
Local Purchases	\$220M	\$165M	-
Capital Investment (2015)	\$15M	\$2M	-
In Business Since	1901	1892	2015

Catalyst Paper has sold its products to US customers for many years. In 2015, the Company acquired its Rumford, Maine and Biron, Wisconsin mills and established a corporate office in Dayton, Ohio in addition to an existing sales office in Seattle, Washington.