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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-122-859

100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) preliminarily determines that 100- to 150-seat large civil aircraft (aircraft) from Canada is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Lilit Astvatsatrian, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4406 or (202) 482-6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on May 26, 2017.¹ For a complete description of the events that followed the

¹ See *100- to 150-Seat Large Civil Aircraft From Canada: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 24296 (May 26, 2017) (*Initiation Notice*).

initiation of this investigation, *see* the Preliminary Decision Memorandum.² A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is aircraft from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,³ in the *Initiation Notice*, the Department set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all scope comments timely received, *see* the Scope Comments

² *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less Than Fair Value Investigation of 100- To 150-Seat Large Civil Aircraft from Canada," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

³ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁴ *See Initiation Notice*.

Decision Memorandum for the Preliminary Determination.⁵ The Department is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. See the scope in Appendix I to this notice.

Adverse Facts Available

Bombardier Inc. (Bombardier) is the sole mandatory respondent in this investigation, and failed to provide information requested in the Department's questionnaire. Accordingly, we preliminarily determine to base Bombardier's dumping margin on adverse facts available (AFA), in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. As AFA, we applied the highest dumping margin calculated for Canadian exports of subject merchandise contained in the Petition, which is 79.82 percent.⁶ For further discussion, see the Preliminary Decision Memorandum.⁷

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, the Department has preliminarily relied upon facts otherwise available with adverse inferences for Bombardier. For a full description of the methodology underlying the preliminary determination, see the Preliminary Decision Memorandum.

⁵ See Memorandum, "100- To 150-Seat Large Civil Aircraft from Canada: Scope Comments Decision Memorandum for the Preliminary Determination" (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

⁶ See Letter to the Honorable Wilbur L. Ross, Jr., Secretary of Commerce, from the petitioner, concerning, "Petitions for the Imposition of Antidumping and Countervailing Duties On 100- To 150-Seat Large Civil Aircraft from Canada," dated April 27, 2017 (the Petition); see also Letter to the Honorable Wilbur L. Ross, Jr., Secretary of Commerce from the petitioner, concerning, "100-To 150-Seat Large Civil Aircraft from Canada — Petitioner's Response to AD Supplemental Questionnaire," dated May 2, 2017" (May 4, 2017) (Petition Supplement).

⁷ See also memorandum, "Application of Adverse Facts Available to Bombardier Inc.," dated October 4, 2017

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* dumping margins, and any dumping margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all-other producers or exporters.

The Department has preliminarily determined the estimated weighted-average dumping margin for the individually examined respondent entirely under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, the Department's normal practice under these circumstances has been to calculate the "all-others" rate as a simple average of the alleged dumping margins from the Petition.⁸ The Petition for this investigation included a single alleged dumping margin. Therefore, for purposes of determining the "all-others" rate and pursuant to section 735(c)(5)(B) of the Act, we are using the alleged dumping margin in the Petition as the estimated weighted-average dumping margin assigned to all other producers and exporters of

⁸ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; see also *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

subject merchandise. For a full description of the methodology underlying the Department's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/Producer	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Subsidy Offset(s)) (percent)
Bombardier, Inc.	79.82	Not Applicable
All-Others	79.82	Not Applicable

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for

all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. However, because the Department has not made a preliminary affirmative determination for countervailable export subsidies in the companion CVD proceeding, the Department has not adjusted the estimated weighted-average dumping margin to offset countervailable export subsidies.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied total AFA to the individually examined company, Bombardier, in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, there are no calculations to disclose.

Verification

Because the examined respondent in this investigation did not provide information requested by the Department, and the Department preliminarily determines the examined respondent to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 21 days after the date of publication of the

preliminary determination, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.⁹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that the Department will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, the Department intends to make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is

⁹ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

/S/ Carole Showers

Carole Showers
Executive Director, Office of Policy
performing the duties of the Deputy Assistant Secretary
for Enforcement and Compliance

October 4, 2017

Date

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range, as these terms are defined below.

“Standard 100- to 150-seat two-class seating capacity” refers to the capacity to accommodate 100 to 150 passengers, when eight passenger seats are configured for a 36-inch pitch, and the remaining passenger seats are configured for a 32-inch pitch. “Pitch” is the distance between a point on one seat and the same point on the seat in front of it.

“Standard 100- to 150-seat two-class seating capacity” does not delineate the number of seats actually in a subject aircraft or the actual seating configuration of a subject aircraft. Thus, the number of seats actually in a subject aircraft may be below 100 or exceed 150.

A “minimum 2,900 nautical mile range” means:

- (i) able to transport between 100 and 150 passengers and their luggage on routes equal to or longer than 2,900 nautical miles; or
- (ii) covered by a U.S. Federal Aviation Administration (FAA) type certificate or supplemental type certificate that also covers other aircraft with a minimum 2,900 nautical mile range.

The scope includes all aircraft covered by the description above, regardless of whether they enter the United States fully or partially assembled, and regardless of whether, at the time of entry into the United States, they are approved for use by the FAA.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040. The merchandise may alternatively be classifiable under HTSUS subheading 8802.40.0090. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Scope Comments
- VI. Application of Facts Available and Use of Adverse Inference
 - A. Application of Facts Available
 - B. Use of Adverse Inference
 - C. Preliminary Estimated Weighted-Average Dumping Margin Based on Adverse Facts Available
 - D. Corroboration of the AFA Rate
- VII. Conclusion