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January 25, 2005

Mr. James J. Jochum
Assistant Secretary For Import Administration
U.S. Department Of Commerce
Central Records Unit
Room 1870
Pennsylvania Avenue And 14th Street NW
Washington, D.C. 20230

Re: NFC And Sun's Comments On Combination Rates In Antidumping Proceedings Involving Non-Market Economy Countries

Dear Assistant Secretary:

Nation Ford Chemical Company ("NFC") is the sole U.S. producer of sulfanilic acid. NFC successfully petitioned for an antidumping order against sulfanilic acid from the People's Republic of China ("China") that currently is subject to annual administrative reviews (A-570-815). NFC also is the sole U.S. producer of crude carbazole violet pigment 23 ("Violet 23"). Sun Chemical Corporation ("Sun") is the largest U.S. producer of finished violet 23. NFC and Sun together recently petitioned for an antidumping order published December 29, 2004 against crude and finished violet 23 from China (A-570-892). *See* 69 Fed. Reg. 77987.

The U.S. Department of Commerce ("the Department") issued a *Federal Register* notice on December 28, 2004 seeking comments on the use of "combination rates" in antidumping investigations and annual administrative reviews regarding non-market economy countries. 69 Fed. Reg. 77722. NFC and Sun strongly support the use of "combination rates" in investigations and administrative reviews involving non-market economy countries (especially China) and offer the following comments for consideration (albeit a day after the Department's January 24, 2005 deadline).

The primary need and justification for combination rates is to make antidumping duty orders against China more effective and therefore capable of achieving their intended remedial effects. As it now stands, Chinese exporters receiving lower dumping margin rates are "funneling" subject merchandise subject to orders into the U.S. market. The use of the lower cash deposit rates takes at least two years and often more to be revised higher through the administrative review process. By that time, the U.S. industry has lost sales and continued to suffer the injury that the U.S. International Trade Commission determined warranted an antidumping order in the first place.

The best evidence of this manipulation of the orders in China cases is the FY 2004 Annual Report recently released by U.S. Customs & Border Protection ("CBP") for the Continued Dumping and Subsidy Act of 2000 ("CDSOA"). Uncollected duties owed on China antidumping orders for CDSOA distribution now stands at $224 million, or 86% of the total

uncollected amount from all countries. The purpose of the cash deposits is to protect against importers not paying the assessed duties. The large amount of uncollected duties from China proves both (1) that the cash deposit rates are much lower than the actual duties eventually assessed through the annual administrative review process; and (2) that U.S. importers (some innocent, some not) are not able or simply or refusing to pay the additional duties resulting from the higher rates. Insolvency and bankruptcy of these U.S. importers does not undo the injury caused by their initial importation of the subject merchandise at the lowest cash deposit rate available to Chinese exporters "funneling" product from various producers in China.

The injury to the U.S. industry is exacerbated during this interim period by the fact that the Chinese exporter, despite enjoying the lower dumping margin cash deposit, often undercuts its prices (and thus in effect absorbs the impact of the dumping duties). In some cases the Chinese exporter does this simply by also being the importer of record, but in other cases the Chinese exporter simply lowers its prices to a level acceptable to a U.S. importer for the dumping duty cash deposit to be paid. Both these types of import price manipulation allow the U.S. sales to be made in increasing quantities at prices that undersell and injure the U.S. industry. While combination rates will not alone eliminate these price manipulations, the higher cash deposit rates that result from combination rates should make such manipulation more difficult.

The Department should note that NFC and Sun's comments are focusing on the use of combination rates for those Chinese exporters that were fully investigated and received a

separate rate in the investigation or review. For those investigated companies, the current record already shows which Chinese producers supplied that exporter and thus for whom and what the combination rate should be with respect to that exporter. NFC and Sun worked hard and expended substantial financial resources to successfully petition for the antidumping duty order against violet 23 from China. That recent order will not be fully effective without the establishment of combination rates as soon as possible. As noted by the attached CBP instructions in the softwood lumber investigation, it is easy for CBP with the Department's guidance to quickly issue new combination rate rules for existing orders. NFC and Sun strongly urge the Department to move quickly in implementing the new combination rate policy for existing orders against China so that they may reap the full remedial benefit of the violet 23 antidumping duty order that they fought so hard to obtain.

Finally, in hopes of expediting application of a new policy for combination rates to existing non-market economy orders, NFC and Sun suggest a much more simplified version for applying combination rates to "voluntary" (uninvestigated) respondents receiving separate rates than that proposed in the Department's December 28, 2004 notice. Voluntary Chinese respondents that receive the average separate rate of the investigated respondents should be allowed to use that average rate for shipments of any other "voluntary" responding producer that was not fully investigated. Shipments by voluntary Chinese respondents of product produced by "fully investigated" Chinese producers should be subject to those producers' respective

individual rates. The "all others" rate would apply to a voluntary respondent's shipments of subject merchandise from a Chinese producer who failed to come forward in the review as a voluntary respondent and of course to shipments of subject merchandise by any Chinese producer that failed to respond as a mandatory respondent.

This simplified approach is fair, would encourage all Chinese producers of subject merchandise to seek to be at least a voluntary respondent (and if they cannot qualify the "All Others" or China-wide rate is the most appropriate rate), would avoid the necessity of collecting information during the investigation or review as to which producers currently supply the voluntary respondent exporters and in what amounts, and would be much easier for CBP to administer and enforce. Such a policy could be implemented immediately based only on the Department providing CBP a list of which companies were voluntary respondent exporters and who the mandatory and voluntary producers were. The importer of record would be responsible at the time of entry of identifying to CBP the exporter in China and that exporter's producer/supplier. The applicable rate could then be easily determined by CBP from a simple list at time of entry, without the need of knowing who supplied whom during the period of investigation or review and also without some convoluted listing of every exporters' producer relationships.

NFC and Sun strongly support the use of combination rates in non-market economy cases, especially those involving China. They urge the Department to move quickly in

implementing the new combination rate policy for existing orders against China so that they may reap the full remedial benefit of the violet 23 antidumping duty order that they fought so hard recently to obtain.

Sincerely,

Gregory C. Dorris
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Counsel to NFC and Sun

cc: Mr. Lawrence Norton
Mr. Anthony Hill

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Clarification of Certain Scope ADCVD Guidelines

Background

The scope of the CVD case C-122-839 and the scope of the AD case A-122-838 use the following terms: "Producer/Exporter", "Produced", and "Manufacturer/Exporter". Although these terms appear not to be ambiguous, nevertheless, they have created difficulties in interpreting the scope within the context of their use.

In AD and CVD cases, the Department of Commerce (DOC) has the authority and responsibility to change, when necessary, the instructions issued to U.S. Customs and Border Protection (CBP). DOC was the architect of the scope. Nevertheless, Customs is in the foreground in implementing the scope instructions received from DOC. Thus, CBP needs to interpret DOC's instructions and apply them uniformly.

In the present softwood lumber AD/CVD cases, exemptions and duty rates are based on a number of criteria, i.e., location, companies, origin of the lumber products, and the condition of the lumber products as imported. The difficulties arise because the imported lumber products could be manufactured and remanufactured in Canada, sold and resold in Canada, shipped from one province to another province, and later sold to the U.S. After a number of transactions and processes have occurred in Canada, the meaning of the terms "producer", "manufacturer", and "exporter" as used in the scope becomes blurred.

Note 1: Before we discuss the terms in question, we need to clarify a possible confusion created by previous CVD cases (we mention CVD here since the original DOC investigation in 2001 related to CVD, not AD) and trade agreements. Terms used in past cases and trade agreements have no relevance in the present case. We note one particular concern regarding the terms "first mill" or "province of first manufacture". These terms should not be used in the present AD/CVD cases; they only serve to create more confusion.

The terms "manufacturer" and "producer" have subtle lexicographic differences. The question is how significant are these differences for the purpose of the AD/CVD cases. We maintain that DOC used these two terms interchangeably. We assert that the important question is to determine who produced the lumber products in the condition as imported. However, we could also say that the "manufacturer" is the mill that produced the lumber from the logs, and the "producer" is the mill that made the lumber product in the condition as imported. Thus, a company may be the manufacturer and the producer, or a company may be the manufacturer and a second company may be the producer. Either of the above interpretations creates the same result, as we will see below.

The meaning of the term "exporter" is not problematic, per se; however, it is used together with the term "producer" and with the term "manufacturer". Thus, we need to understand and clarify the combination.

We need to keep in mind that whatever the term used, the purpose of the particular term used is to determine the applicable duty rate or an exemption from the AD and/or CVD. Only companies that process the softwood lumber product can confer a duty rate or an exemption to the imported lumber product. Thus, a wholesaler does not change or confer a duty rate or exemption.

In addition, for Canadian origin lumber, we believe that only the last processing mill of the lumber products, i.e., the mill that does the processing which transforms the products into the final condition in which they are imported should confer a duty rate or exemption. If we were to attempt to apply duty

rates and exemptions based on other processing mills (two or three removed from the last processing mill), it would create fertile ground for circumvention. Moreover, customs could not verify or administer such a position. CBP would have to accept whatever the importer of record would claim. CBP is not in a position to verify any processing or transactions occurring in Canada.

Note 2: There is one important exception to the "last processing mill rule" we have described above. In the case of U.S. origin lumber further processed in Canada, DOC maintains that a rebuttable presumption exist that the country of origin is the United States provided that the lumber was first produced in the United States as a lumber product fitting the physical description of the scope. DOC has not yet identified any form of further processing that changes U.S.-origin lumber into subject Canadian-origin merchandise; therefore, for the present, all U.S. origin lumber further processed in Canada is not subject to the orders. Unlike lumber originally milled in Canada, the last processing mill does not change the dutiable status of lumber originally milled in the United States.

We will address various scenarios to clarify the application of the scope of the AD/CVD.

Various Scenarios:

A. SIMPLE CASES(cases that generally present no problems in the application of the scope)

1. Mill "A" manufactures lumber products in the condition as imported into the U.S. directly from logs. Mill "A" is also the exporter (shipper and importer of record). The duty rates and exemptions are applicable according to the status of mill "A".
2. The same scenario as #1, but the lumber products are exported by wholesaler "B" (shipper and importer of record). Again, the duty rates and exemptions are applicable according to the status of mill "A".

B. Complex Cases:

3. Mill "A" manufactures lumber directly from logs and sells them to mill "C". Mill "C" remanufactures the lumber into the lumber products in the condition as imported into the U.S. Mill "C" is the exporter (shipper and importer of record). The duty rates and exemptions are applicable according to the status of mill "C".
4. The same scenario as #3; however, mill "C" sells the lumber products to wholesaler "B" in Canada. The lumber products are exported to the U.S. by wholesaler "B" (shipper and importer of record). The duty rates and exemptions are applicable according to the status of mill "C".
5. Mill "A" manufactures lumber products directly from logs and sells them to company "D". Company "D" is a remanufacturer and also a wholesaler. Company "D" sells the lumber products to the U.S. Thus, company "D" is the exporter (shipper and importer of record). Which company establishes the duty rate and/or exemptions?

   This scenario demonstrates the difficulty of verifying certain actions occurring in Canada. Obviously, in this case the answer depends on what company "D" does with the lumber products purchased from mill "A". If company "D" remanufactures the lumber, it establishes the duty rate and exemptions. If company "D" acts as a wholesaler, mill "A" establishes the duty rate and exemptions.

   The complexity of this scenario lies in at least four areas: 1) the difficulty of verifying the claim made by the importer of record; 2) the potential for self-serving statements by the importer of record; 3) splitting a shipment -part to be processed and part to be exported to the U.S without any processing; and 4) commingling and/or substituting lumber products.

   There is no quick and elegant solution to the above dilemma. However, the importer of record has to establish to CBP satisfaction that their claim is true and correct. If the importer of record does not establish a credible claim, that is, we cannot determine exactly what has occurred at mill "D", the highest applicable duty rate should be used and/or no exemptions allowed.

The above five generic scenarios can be used to resolve any specific situations under the scope of the softwood lumber AD/CVD where the proper duty rate and/or exemption need to be determined. As an example, we will apply the above scenarios to reply to three questions that have been presented to us and discussed with DOC.

The questions and answers (Q & As) are as follows:

Q #1: A company, which is exempt form C-122-839, produces lumber. This lumber is subsequently remanufactured by a company that is NOT exempt from C-122-839. Upon importation into the US, is the merchandise subject or exempt from C-122-839?

A #1: Since the lumber has been remanufactured by another Canadian company, remanufacturer is the producer and probably the exporter (shipper and importer of record). The status of the producer sets the duty rate and/or exemption. Since the producer is not an exempt company under the CVD case, the lumber is subject to the CVD. (Application of scenario # 3 above.)

Q #2: A company, which is NOT exempt from C-122-839, produces lumber. This lumber is subsequently remanufactured by a company that IS exempt from C-122-839. Upon importation into the US, is this merchandise subject to, or exempt from, C-122-839?

A #2: This question is the reverse of question # 1. In this case, the remanufacturer, which is an exempt company under the CVD case, has obtained its lumber from a non-exempt Canadian mill. Again, the remanufacturer is the producer and is the company that sets the status of the duty rate and/or exemptions. Since the producer is exempt, its lumber is not subject to the CVD. (Application of scenario # 3 above.)

Q #3: A company in a Maritime Province is the "first mill". This lumber is subsequently remanufactured by a company that is exempt from C-122-839. Upon importation into the US, is an MLB certificate required for an exemption from CVD, or does the remanufacturing by the exempt company confer such exemption?

A #3: Question # 3 raises the possibility of certain Canadian lumber products being eligible for two exemptions. In such cases, which exemption should be used? (In this question, we assume that the remanufacturing mill is, of course, not located in the Maritime Provinces.) If there were a true choice, the choice of which exemption to use would be up to the importer of record. However, since the lumber is remanufactured outside the Maritime Provinces, it has lost the Maritime exemption. (See Q&A of 1/24/02, item 5.) In this scenario, the remanufacturer is the producer of the lumber products in the condition as imported into the U.S. Probably, the producing mill is also the exporter (shipper and importer of record). Thus, the producer sets the status of the duty rate and/or exemptions for the lumber products. Since in this case the producer is an exempt company under the CVD case, its lumber products are exempt from the CVD.