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November 7, 2003

Honorable James S. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Pennsylvania Avenue and 14th Street, N.W.
Washington, D.C. 20230

Re: ***Rebuttal Comments of Japan Iron & Steel Federation***
On the Appropriateness of Deducting Section 201 Duties
from the Export Price in Antidumping Margin Calculations

Dear Mr. Jochum:

On behalf of the Japan Iron & Steel Federation (JISF), enclosed please find JISF's Rebuttal Comments on the appropriateness of deducting Section 201 duties from the export price in antidumping margin calculations.

The enclosed rebuttal comments are submitted pursuant to the Department's Request for Public Comments that was published in the *Federal Register* on September 9, 2003, and amended on October 21, 2003.

The comments are provided in the attached paper. In accordance with the Department's request, we also enclose a 3.5" diskette containing JISF's comments.

Please do not hesitate to contact the undersigned should you have any questions concerning the enclosed comments.

Respectfully submitted,

Christopher Dunn
Daniel L. Porter

Counsel to JISF

Before the United States Commerce Department
International Trade Administration

Rebuttal Comments of Japan Iron and Steel Federation On the Propriety of Deducting Section 201 Duties in Antidumping Margin Calculations

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Introduction and Summary

This submission provides the rebuttal comments of the Japan Iron and Steel Federation ("JISF") on the appropriateness of deducting Section 201 duties in antidumping duty calculations. These rebuttal comments respond to the initial comments that were submitted pursuant to the Request for Public Comments issued by the Department of Commerce on September 3, 2003, and amended on October 21, 2003. Again, JISF appreciates the opportunity to provide the Department with its views on this issue.

The comments submitted in support of deducting Section 201 duties in antidumping duty calculations argue three basic points. First, the statute requires the deduction because Section 201 duties are "U.S. import duties." Second, prior precedent supports the deduction. And third, in their view, the policy considerations mitigate in favor of the deduction.[1]

JISF fundamentally disagrees with these arguments advanced by the domestic interests. As demonstrated in JISF's initial comments, the court-approved test for determining whether duties should be deducted as "U.S. import duties" within the meaning of the statute is whether such duties are "normal customs duties." Section 201 duties are not "normal customs duties." Instead, they are additional duties imposed for remedial purposes, analogous to antidumping duties. As result, the statute does not require that Section 201

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[1] In considering the viewpoint of the domestic interests, it is important to note that the likely effect of deducting Section 201 duties in antidumping duty calculations will be to sharply increase the antidumping duties that are assessed against imports and thereby increase the funds available to domestic producers under the Continued Dumping and Subsidy Offset Act ("CDSOA").

duties be deducted in calculating antidumping duties and policy considerations regarding the application of Section 201 dictate that such duties NOT be deducted.

The Department of Commerce cases that are cited as prior precedent supporting the deduction of Section 201 duties are readily distinguishable. Neither actually involves Section 201 duties or other import duties imposed specifically for a remedial purpose. Therefore, the cases cited in support of deduction are inapposite.

As to the policy issues, domestic interests have a clear motivation to have the Department deduct Section 201 duties. Nonetheless, even some of the domestic producers agree that deducting Section 201 duties will result in the double counting of duties. Any double counting of Section 201 duties would destroy the careful calibration and statutory intent of this remedial provision. Domestic interests also argue that, unless such duties are deducted, Section 201 duties could be "absorbed" by the exporter, which would have the effect of treating some importers "more favorably" than other importers. However, these arguments are based on an incorrect and unsupported view of Section 201.

Thus, JISF continues to urge the Department to adopt its preliminary recommendation in *Steel Wire Rod from Trinidad and Tobago*[2] that 201 duties should NOT be deducted in calculating antidumping duty margins.

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[2] See Memorandum to Bernard T. Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II, from Gary Taverman, Director, Office 5, AD/CVD Enforcement, in Case No. A-274-804 regarding Section 201 Duties and Dumping Margin Calculations in Antidumping Duty Investigation: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago dated August 13, 2002 (herein after "Recommendation Memorandum").

I. The Antidumping Statute Does Not Require the Deduction of Section 201 Duties

The antidumping statute plainly requires that certain costs and expenses be deducted from the U.S. sales price for imported merchandise in antidumping duty calculations. However, in this context, the statute only *requires* the deduction of "U.S. import duties" and other costs or expenses incident to international shipment. The domestic interests uniformly contend that Section 201 duties should be considered "U.S. import duties" within the meaning of the statute either based on the plain meaning of the statute, because such duties were not expressly excluded, or simply because of where they are listed or not listed in certain publications, and hence, the statute requires that such duties be deducted in antidumping calculations. However, the Department has determined that the term "U.S. import duties" should be limited to "normal customs duties," and Section 201 duties are not normal customs duties. As a result, the statute does not *require* that Section 201 duties be deducted.

The domestic interests also contend that there are prior cases in which duties and fees that are analogous to Section 201 duties have been deducted in the Department's antidumping duty calculations. These commenters contend these prior cases support treating Section 201 duties as "U.S. imports duties" for purposes of antidumping duty calculations. JISF believes the duties and fees involved in these prior cases are not analogous to Section 201 duties. Hence, these cases do not compel the Department to deduct Section 201 duties in antidumping duty calculations.

Because there is no statutory or precedential requirement that the Department deduct Section 201 duties, the real issue in this proceeding is whether

the policy considerations involved in both U.S. antidumping and Section 201 proceedings support the deduction of Section 201 duties in antidumping proceedings.

A. The Arguments That Section 201 Duties Are "U.S. Import Duties" As Defined By the Antidumping Statute Are Either Wrong, Misplaced, or Without Consequence.

The commenters in this proceeding uniformly recognize that Section 772(c) of the Trade Act of 1930 requires the Department to deduct certain costs and expenses when calculating the Export Price ("EP") or Constructed Export Price ("CEP") in a dumping calculation. The statute specifically requires deducting the amount, "if any, included in such price, attributable to any additional costs, charges, or expenses, and *United States import duties*, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States."[3]

In arguing that Section 201 duties are "U.S. import duties" within the meaning of the statute, some commenters contend that the plain language of the statute means that the term must include any import duties, including Section 201 duties, incident to the sales transaction.[4] Others contend this phrase cannot be limited to "normal" customs duties, but must include all duties not expressly excluded."[5] Still others assert that Section 201 duties are U.S. import

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3 19 U.S.C. § 1677a(c)(2)(emphasis added).

4 See Comments filed by Collier Shannon Scott on behalf of Carpenter Technology Corp., Crucible Specialty Metals (Crucible Materials Corp.) Electralloy Corp., Slater Steels Corp., and Fort Wayne Specialty Alloys at 3 and Comments filed by Schagrin Associates on behalf of Comm. On Pipe and Tube Imports at 3.

5 See Comments filed by Stewart and Stewart on behalf of International Steel Group (ISG)and United Steelworkers of America (USWA) at 8.

duties simply because they appear in the HTSUS or because they are not listed as "Special Duties" in the Customs regulations.[6]

Despite these arguments, it is universally conceded that the term "U.S. import duties" is not specifically defined either in the statute itself or in the legislative history. Moreover, it is well established that, where the statute does not define a term, the administering agency has discretion interpret the term so long as the agency's decision is based on a permissible construction of the statute.[7/8] In fact, the Department has long interpreted "United States import duties" to mean "normal import duties," which do not include special duties applied to offset particular trade situations.

Thus, those domestic interests that argue Section 201 duties are U.S. import duties within the plain meaning of the statute are simply wrong. The statute's meaning is not plain, and DOC has discretion to interpret this term so as to exclude Section 201 duties.

The Antidumping Act of 1912 first introduced the term "U.S. import duty." As the Department itself has noted, the Senate Report accompanying this legislation uniformly refers to antidumping duties as "special dumping duties," and uniformly refers to ordinary customs duties as "United States import duties."[9] As

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6 See Comments filed by Wiley Rein & Fielding on behalf of Long Producers Coalition, Nucor Corp., and Rebar Trade Coalition at 4-5 and Comments filed by Collier Shannon Scott at 7.

7 See Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984).

8 See Hoogovens Staal BV, 4. F. Supp. 2d at 1220; see also AK Steel Corp. v. United States, 21 C.I.T. 1265; 1279, 988 F. Supp. 594, 607 (Ct. Int'l Trade 1997).

9 See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 Fed. Reg. 18404 (April 15, 1997).

a result, the Department concluded the term "United States import duties" is to be interpreted as "normal import duties" or "normal customs duties,"[10] and the Courts have repeatedly upheld this interpretation.[11]

Therefore, those domestic interests that argue the Department cannot limit the term U.S. import duties to "normal customs duties" are also simply wrong. As a matter of law, in prior precedent, the Department has in fact limited "U.S. import duties" to "normal customs duties," and this interpretation has been upheld.

In fact, many of the commenters representing domestic interests and arguing in favor of deduction ignore the established court precedent interpreting the statutory term "U.S. import duty" with respect to antidumping duties. This precedent wholly supports the Department's limitation of that term to "normal" import duty. Instead, of acknowledging this prior precedent, several of commenters argue that *C.J. Tower & Sons v. United States*,[12] a decision issued by the Court of Customs and Patent Appeals ("CCPA") in 1934, indicates that the term "U.S. import duties" should include all import duties imposed by the United States for any and all purposes.[13]

However, the commenter's reliance on *C.J. Tower* in the 201 context is misplaced. The case simply does not support this proposition. The issue

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10 Id.

11 See, e.g., Federal Mogul Corporation v. United States, 17 C.I.T. 88; 813 F. Supp. 856, 872 (Ct. Int'l Trade 1993).

12 21 C.C.P.A. 41, 71 F.2d 438 (1934).

13 See Comments filed by Stewart and Stewart at 10-11; Dewey Ballantine LLP and Skadden, Arps on behalf of U.S. Steel Corporation at 21. These commenters both argue that this case simply by virtue of its proximity in time to the passage of the Antidumping Act of 1912 is supposed to be of greater weight than later court decisions.

addressed by the Court in *C.J. Tower* was whether the Antidumping Act of 1921 was unconstitutional because it authorized an agency to impose a penalty on the importer. The court held that antidumping duties are not penalties and therefore the statute was not unconstitutional. The statement cited in support of the proposition that the term "U.S. import duties" should include all import duties for any and all purposes is as follows:[14]

> We conclude, rather, that this language [the dumping duty should be considered as 'regular customs duties,' in drawback cases] indicates that the Congress desired and intended that the additional duties provided for in this act [(*i.e.*, dumping duties)] should be considered as duties for all purposes.

In fact, the Court in *C.J. Tower* does not specifically deal with the term "U.S. import duty." This case only deals with antidumping duties and is thus not relevant to a consideration of the deductibility of Section 201 duties.

The arguments that Section 201 duties should be considered "U.S. import duties" simply because they are set forth in the HTSUS are misplaced. Section 201 duties are in fact identified as additional duties to be assessed against the importation of specific types of merchandise in Chapter 99 of the HTSUS. In our view, this fact is not sufficient in and of itself to compel the conclusion that Section 201 duties are U.S. import duties for purposes of antidumping duty calculations. Quite the contrary, in our view, the fact that these duties are set forth in HTSUS Chapter 99 (rather than in the body of the tariff schedules dealing with regular import duties) indicates that they are NOT normal import duties and,

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[14] C.J. Tower, 21 C.C.P.A. at 428, 71 F.2d at 438.

as a result, they do NOT fall within the statute's mandatory deductions from U.S. price in the antidumping context.[15]

Finally, the fact that Section 201 duties are not mentioned in the section of the Customs regulations dealing with "Special Duties" is of no consequence. This part of the Customs regulations deals with the liquidation of duties, which is the final computation of the amounts owed. For each of the types of duties listed in Subpart D, Customs cannot determine the importer's final duty liability based on the entry documents alone. Additional information is required, either from another agency or from other Customs offices. Although both antidumping and countervailing duties are listed in this subpart of the Customs regulations, this subpart was not created with the intent of defining the universe of duties that should not be considered "U.S. import duties" under antidumping statute, nor does it in fact define this universe. Thus, the argument that Section 201 duties do not appear in this part is of no consequence in considering whether such duties should be deducted in antidumping duty calculations.

B. The Department of Commerce Cases Cited As Prior Precedent Supporting the Deduction of Section 201 Duties Are Inapposite.

Several commenters supporting the deduction of Section 201 duties claimed that there were prior cases in which the Department deducted duties that were similar in nature and effect to Section 201 duties in calculating antidumping duty

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[15] We also note that the Harmonized Commodity Description and Coding System, which constitutes a multilateral agreement regarding tariff classification and defines the basic provisions of the HTSUS, is comprised of only 97 chapters. Chapters 98 and 99 are reserved for "special" uses by the Contracting Parties (see Explanatory Notes, Third edition, Volume 1 at VII (2002)). Thus, it seems clear that the normal customs duties for individual commodities are set forth in Chapters 1-97, while duties imposed for various special purposes are set forth in Chapters 98 and 99.

margins. Specifically, several commenters claimed that *Softwood Lumber From Canada*[16] and *Fuel Ethanol from Brazil*,[17] constitute supportive precedent for the deduction of Section 201 duties.[18] However, neither of these cases actually involves Section 201 duties, and these duties and fees are readily distinguishable from Section 201 duties.

Under Article II, paragraph 2 of the Canada-United States Agreement on Softwood Lumber ("Softwood Lumber Agreement or SLA"), Canada was required to collect a fee on issuance of a permit for export to the United States for softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta for quantities above the established base in a given year.[19] In *Softwood Lumber,* the Department allocated the SLA fees of each respondent across all transactions in its U.S. sales file and treated them as an export tax in making adjustments to U.S. prices as part of the antidumping duty calculations.[20] These export fees were negotiated as part of a voluntary agreement with Canada. They are not import duties, and they were not imposed based on a Presidential

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16 See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada, 66 Fed. Reg. 56,062, 56,067 (Nov. 6, 2001); see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 Fed. Reg. 15539 (April 2, 2002) and the "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada" (Decision Memorandum), from Bernard Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated March 21, 2002, which was adopted in the Final Determination.

17 Antidumping; Fuel Ethanol from Brazil; Final Determination of Sales at Less than Fair Value, 51 Fed. Reg. 5,572 (February 14, 1986).

18 See, e.g., Comments filed by Collier Shannon Scott at 4.

19 Notice to Exporters: Export and Import Permits Act Issued by the Department of Foreign Affairs and International Trade of Revenue Canada, Serial No. 124, dated March 31, 2000.

20 See Softwood Lumber Prelim., 66 Fed. Reg. at 56067.

determination that such duties were necessary and appropriate to protect the domestic industry from serious injury. Thus, they are quite different than Section 201 duties. As a result, the Department's deduction of these export fees in calculating antidumping duties in the *Softwood Lumber from Canada* does not indicate that the Department should deduct Section 201 duties.

With respect to *Fuel Ethanol*, Congress passed legislation in 1980 imposing a special duty in addition to the existing *ad valorem* duties for ethyl alcohol imported for fuel use.[21] This special duty was imposed in order to offset a tax incentive provided to producers of gasoline-ethanol fuel blends.[22] Congress did not want the benefits of this tax incentive to flow to foreign ethanol producers, so they imposed the additional duty. In the 1986 antidumping investigation into *Fuel Ethanol from Brazil*, the Department deducted this additional duty in the margin calculation. [23]

Clearly, the additional duties imposed on ethanol are not Section 201 duties. Moreover, in our view, they do not resemble a Safeguard Measure. First, Congress, not the President, imposed the additional duties. Second, these duties were not specifically intended or gauged to prevent ongoing injury to a U.S. industry. Instead, it was intended to limit the benefits provided by U.S. tax incentives to domestic ethanol producers. Because the additional duties imposed on fuel ethanol are not similar to Section 201 duties, the *Fuel Ethanol* case does

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[21] See Section 1161, Omnibus Reconciliation Act, P.L. 96-499, 94 stat 2604.

[22] "Import Duty On Ethanol," The New York Times Saturday, Late City Final Edition, SECTION: Section 1; Page 41, Column 1; Financial Desk (August 3, 1985)

[23] See Fuel Ethanol From Brazil, 51 Fed. Reg. at ____.

not compel the Department to deduct Section 201 duties in antidumping calculations.

To conclude, Section 201 duties are not "U.S. import duties" within the meaning of the statute. And, neither the statue nor Department precedent require that Section 201 duties be deducted in calculating antidumping duty margins. Moreover, there are strong policy arguments against deducting Section 201 duties in an antidumping duty calculation.

II. Parties in Favor of Deducting Section 201 Duties in Antidumping Duty Calculations Admit Such Deductions Would Result in Double-Counting.

In our original comments filed in this proceeding, JISF argued that deducting Section 201 duties in antidumping duty calculations results in double-counting. At least one group of domestic producers agrees. The Comments filed by Schagrin Associates include the following statements:

> Treating the section 201 duty as a deduction from the gross price when the first unaffiliated U.S. purchaser is the U.S. importer, does, as the Department indicates, double the impact of the section 201. First, the importer must pay the section 201 duty itself to the U.S. government. Second, the importer must pay additional antidumping duties which would not have been imposed if section 201 duties did not apply to the subject merchandise. *Domestic producers recognize that the deduction of the section 201 duty from the EP/CEP is not appropriate, and is not required by statute, when the first unaffiliated U.S. purchaser is the U.S. importer.* because the section 201 duty is not included in the price to the unaffiliated U.S. purchaser.[24]

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[24] Comments of Schagrin Associates, at 5-6 (italics added).

The fact that at least one group of domestic producers concedes that Section 201 results in double counting of duties demonstrates the incontrovertibility of our position. Where the deduction of Section 201 duties would result in the double-counting of duties, it clearly should not be permitted.

Other comments by domestic interests in favor of deducting Section 201 duties are not so forthcoming. Some of these commenters seek to change the focus of the discussion by arguing that, unless Section 201 duties are deducted in antidumping duty calculations, the dumping will be "masked" because the Section 201 duties can be simply "absorbed" by the exporter. As we will discuss in the following section, this argument is fundamentally flawed.

Before we move on to the substance of this issue, however, it must be stated that those raising the duty absorption argument fail to answer the critical problem posed by the double-counting of Section 201 and antidumping duties. Such double-counting upsets the careful calculus performed by the President in imposing a Section 201 remedy. Both the authorizing statute and the various bi-lateral and multilateral agreements that recognize the legitimacy of Safeguard Measures contemplate trade remedies that are narrowly tailored. Double-counting Section 201 duties would automatically and incontrovertibly exceed those narrowly tailored restrictions.

For example, Section 201 duties are limited both in size (they can be no higher than 50 percent *ad valorem*) and in duration. If there is double counting of the Section 201 duty in an antidumping duty calculation, any Section 201 duty that is above 25 percent would necessarily result in an overall duty impact under Section 201 that exceeds 50 percent ad valorem. Moreover, the statute requires

that the Section 201 remedy be imposed for a specified duration and progressively decrease over its duration. Given the retrospective nature of U.S. antidumping laws, deducting Section 201 duties would perpetuate the effect of the remedy well beyond the limits specified by statute.[25] In addition, the double counting of Section 201 duties would defeat the progressive elimination of the remedy codified in the statute.[26]

II. Arguments that the Failure to Deduct Section 201 Duties Would Permit the "Absorption" of Dumping or Treat Some Importers Unfairly Fundamentally Distort the Goals and Purposes of Section 201.

Unable to deny the double-counting that occurs when Section 201 duties are both paid upon import *and* deducted from U.S. price in antidumping calculations, commenters in favor of deducting such duties argue that, unless such duties are deducted, Section 201 duties could be "absorbed" by the exporter,[27] thereby treating some importers "more favorably" than other importers who purchases on an f.o.b. basis.[28] However, these arguments are based on a fundamentally flawed view of Section 201 relief, which is that the additional Section 201 duties are intended to be immediately and fully reflected in the price of the subject merchandise at the time of its importation. Not surprisingly, the commenters cannot cite any evidence in support of this view. In fact, it is wrong.

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[25] See 19 U.S.C. § 2253(e)(1).

[26] See 19 U.S.C. § 2253(e)(5).

[27] Comments of Collier Shannon Scott at 10.

[28] Comments of Stewart and Stewart at __.

A. Nothing in Section 201 Requires that These Duties be Fully Passed Through in the Price of the Imported Product.

There is nothing in Section 201 that requires these remedial duties be fully reflected in an increase in the price of the subject merchandise at the time of importation. Rather, the goal of Section 201 is to provide protection to the domestic industry from "increased imports." Thus, remedies can be imposed in the form of quantitative restraints, which may have no direct price impact at all. When restraints are imposed in the form of duties, Section 201 imposes no requirements as to who pays the duties. Thus, where a product is not subject to an antidumping duty order, the exporter can fully reimburse the importer for Section 201 duties or sell the merchandise duty paid, without raising U.S. prices one cent. Section 201 itself is indifferent as to who pays the duties.

Why then, do commenters in favor of deducting Section 201 duties from U.S. price in antidumping calculations argue that Section 201 duties must be paid by the importer when the product is subject to an antidumping duty order? The only support that they can muster for this claim is the opinion of the U.S. International Trade Commission ("ITC") in the Section 201 decision on *Certain Steel Products*.[29] The ITC statements cited by these commenters, however, do not stand for the proposition that Section 201 duties must be reflected in the price of imports. Instead, the ITC stated:

> the tariff-based remedies we are recommending are intended to <u>increase domestic prices</u> . . .[30]

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[29] See Certain Steel Products, USITC Publication 3479 (Dec. 2001).

[30] Id. at 354 (emphasis added).

> we found that a tariff will not unduly restrict imports but will allow domestic prices to rise . . .[31]

The language used refers to *domestic* prices, not import prices. The assumption of the ITC's statements is that the restrictions on imports will eventually result in an increase in domestic prices ("will allow domestic prices to rise"). But, this goal can be achieved without increasing the U.S. price of imports. Indeed, the statements cited by the commenters pointedly do not require that there be any impact at all on import prices.

There is, then, simply nothing in Section 201 itself that dictates these remedial duties must be fully reflected in the price paid by the importer for the product. As a result, there is no basis to object if these duties are absorbed rather than passed on to the importer.

B. Section 201 Duties are not "Absorbed" When They Are Paid by the Exporter.

Thus, the domestic interests have failed in their attempt to prove their claim that the "goal" or purpose of Section 201 is to force an immediate reflection of those duties in the price of the imported product. However, regardless of the success or failure of this argument, it simply does not follow that the failure to deduct Section 201 duties results in the "absorption" of those duties by the exporter. This is merely another flawed claim. In fact, one commenter even goes so far as to claim that exporters that do not raise their U.S. prices to account for the full Section 201 duties "effectively lower their prices to the first unaffiliated

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[31] Id. at 363 (emphasis added).

customer. In that instance, the section 201 duties *would not be counted at all* if they were not deducted from EP/CEP."[32]

These claims ignore one obvious fact: an exporter that sells on a duty-paid basis, by definition, *pays the Section 201 duties.* The duties do not disappear. They are not magically "absorbed." They are *paid*. The merchandise simply cannot enter the United States unless someone, either the importer or exporter, pays the Section 201 duties. To argue that these duties somehow magically disappear when paid by the exporter is to disregard reality.

Some commenters also argue that, when the exporter pays Section 201 duties it "masks" dumping. This argument, however, is a tautology. Dumping involves a comparison of a net home market price (after certain deductions) against a U.S. price after certain deductions. Commenters who support deducting Section 201 duties in making this comparison essentially argue that, if an exporter that sells on a duty-paid basis does not raise its U.S. price to account for the full amount of Section 201 duties, it is dumping because its U.S. price must be reduced by the amount of the Section 201 duties. In other words, Section 201 duties must be deducted because they must be deducted.[33]

Other commentators argue that, when Section 201 duties are not deducted from U.S. price in dumping calculations, there is "no beneficial effect to the

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[32] Comments of Collier Shannon Scott, 10 (italics added).

[33] To be sure, not deducting Section 201 duties from the sales price results in a different treatment for Section 201 duties as opposed to normal "import duties." The fact that Section 201 duties are treated differently from import duties is nothing more than a reflection of the fact that they are a different type of duty, as set forth in detail in Section I of these comments. Section 201 duties **are not normal import duties and thus they are not supposed to be treated the same as normal import duties in the calculation of dumping margins.**

domestic industry *as intended by the section 201 relief*"[34] This statement is equally, demonstrably wrong. It ignores the fact, again, that when an exporter sells duty-paid, *it pays the duties,* thereby receiving less return on its exports. Over the long run, an exporter that receives less return on its exports to the United States will reduce its exports. This is precisely the same effect that occurs when an exporter who is not subject to a dumping order pays the Section 201 duties. The economic effect is the same whether the importer pays more for its goods or the exporter receives less in return. In either case, imports to the U.S. are reduced, and the domestic industry is protected. This is the only protection intended or afforded by the statute. The goal of section 201 is equally accomplished regardless of who pays the duty.

C. Refusal to Deduct Section 201 Duties Does not Provide "Inequitable Treatment" to Importers.

One commenter argues that, if Section 201 duties are not deducted in antidumping duty calculations, importers that purchase on a duty-paid basis are treated "more favorably" than importers who purchase on an f.o.b. basis.[35] At one level, this is little more than a tautology: an importer that does not pay duties by definition pays less than an importer that does pay duties (unless the duty costs are fully passed through). Obviously. The question, however, is whether this results in "inequitable treatment" under either the dumping law or Section 201.

The only time an importer purchasing on a duty-paid basis may ultimately be treated "more favorably" than an importer who purchases on an f.o.b. basis is

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[34] Comments of Collier Shannon Scott, 11 (italics added).

[35] Comments of Stewart and Stewart at 15.

when the exporter does not raise its duty-paid price to fully reflect the Section 201 duties. That is, if an importer would pay $100 on an f.o.b. basis, and Section 201 duties are 20%, then the importer would pay $120 for the merchandise.[36] If the exporter charged $120 for the product on a duty-paid basis, then the importer would be no better off (and no worse off) than it would have been buying on an f.o.b. basis. However, if the exporter kept its duty-paid price to the importer at $100, then the importer would pay less than it would have paid had it paid the duties itself. Again, however, this is because *the exporter pays the duties.* The importer may be better off, but the exporter is worse off by the amount of the duty.

The fact that the exporter can choose to pay the Section 201 duties and not increase its price to the U.S. importer does not mean that it is dumping by the amount of the Section 201 duties. As previously discussed, dumping is defined as U.S. price less certain specified deductions. If the dumping statute does not require the deduction of Section 201 duties, then the exporter cannot be dumping by virtue of the payment of the duties.

Commenters who argue that, unless Section 201 duties are deducted, dumping will be "masked" are engaged in a circular argument: Section 201 duties should be deducted because they should be deducted. As we demonstrated at length in our initial comments and in Section I of these comments, however, section 201 duties are not "U.S. import duties" that are required to be deducted in an antidumping duty proceeding. Hence, failure to deduct them in calculating antidumping duties does not "mask" dumping.

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[36] For purposes of simplicity, we are assuming all transportation and other costs are zero.

As for the goal or intention of the Section 201 duties, as stated above, there is nothing in Section 201 that requires the U.S. price of imported merchandise to be raised to take into account for the full amount of the duties. Section 201 is entirely indifferent as to whether the exporter or importer pays the duties. Section 201 assumes that, if the exporter pays the duties and receives less return on the export, the domestic industry will be every bit as protected as if the Section 201 duties were paid by the importer.

In sum, the importer may pay less when purchasing f.o.b. than when purchasing duty paid if the exporter does not pass the full amount of the Section 201 duties through to the importer. Nonetheless, there is no reason to conclude that this treatment is "discriminatory" or that it provides "more favorable" treatment than is intended by either the dumping law or Section 201.