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**BY HAND DELIVERY**

James J. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: *Treatment of Countervailing Duties in Antidumping Proceedings – Rebuttal Comments by West Fraser Mills Ltd.*

Dear Assistant Secretary Jochum:

This letter is submitted on behalf of West Fraser Mills Ltd. ("West Fraser"), a Canadian and U.S. producer of forest products, in response to the letter filed by the Coalition for Fair Lumber Imports ("the Coalition") concerning the treatment of countervailing duties in antidumping determinations. West Fraser respectfully asks that the Department reject the Coalition's request that the Department begin deducting countervailing duty deposits from U.S. prices in calculating dumping margins.

West Fraser notes that more specific comments on the Coalition's proposal are being submitted this day by Baker & Hostetler LLP, Miller & Chevalier, and others. While West Fraser agrees with the positions advanced in those letters (and, indeed, is a signatory to the

letter submitted by Baker & Hostetler), we write separately in order to highlight two basic problems in the Coalition's request.

## I. The Court of International Trade Has Previously Decided That The Statute Does *Not* Require The Deduction Of Countervailing Duties.

First, in its comments to the Department, the Coalition provides extensive arguments as to why the antidumping statute – in particular, 19 U.S.C. § 1677a(c)(2)(A) – "mandates" that U.S. prices be adjusted downward by the amount of any countervailing duties included in the price. However, the Coalition's comments overlook the fact that the U.S. Court of International Trade has previously *rejected* the very arguments that the Coalition now advances. *See U.S. Steel Group v. United States*, 22 CIT 670, 677-680 (1998); *AK Steel Corp. v. United States*, 21 CIT 1265, 1279-81 (1997). That is, the CIT has previously held that the statute does *not* require the deduction of countervailing duties in calculating U.S. price, and that Commerce's practice of not deducting countervailing duties was reasonable. The Coalition's arguments to the contrary should therefore be rejected.

## II. Though Aware of Commerce's Practice, Congress Has Never Amended The Law To Change That Practice.

Second, the Coalition advances various arguments as to why Commerce's current policy of not deducting countervailing duties is inconsistent with Congressional intent. For example, on pages 16 and 17 of its comments the Coalition claims that Congress' failure to provide a distinct definition for "United States import duties" in the Antidumping Act of 1921 indicates Congress' intent that *all* import duties be deducted from U.S. price. Similarly, on page 12 the Coalition alleges that Congress' amendments in the Trade Agreements Act of 1979 "made even more clear" Congress' intent the countervailing duties be deducted.

The Coalition's attempt to glean Congress' intent in this manner overlooks a basic fact. Congress has been well aware of Commerce's long-standing practice of not deducting countervailing and antidumping duties in calculating dumping margins. And, despite extensive revisions to the statute, Congress has never amended the law to change this practice. *See*

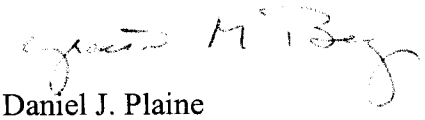
*Certain Cut-to-Length Carbon Steel Plate from Germany*, 62 Fed. Reg. 18,390, 18,395 (April 15, 1997) ("[T]he treatment of AD and CVD duties (already paid or to be assessed) as a cost to be deducted from the export price is an issue that was arduously debated during passage of the URAA and ultimately rejected by Congress."); *see also* S. Rept. 103-412 (1994), at 64 (discussing the reimbursement and deduction of CVD and AD duties). This fact alone is conclusive evidence of Congress' intent on the issue. *See United States v. Hermanos*, 209 U.S. 337, 339 (1908) "[T]he reenactment by Congress, without change, of a statute, which had previously received long continued executive construction, is an adoption by Congress of such construction."); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381-82 (1982) ("[T]he fact that a comprehensive reexamination and significant amendment of the CEA left intact the statutory provisions under which the federal courts had implied a cause of action is itself evidence that Congress affirmatively intended to preserve that remedy.").

In this respect, the Coalition's claims that failure to deduct countervailing duties would "preclude an 'applies to apples' comparison" and would make impossible a "fair comparison" of U.S. price and normal value similarly fail. *See* Coalition Comments at 4, 10. Again, these claims overlook the fact that it is Congress, in enacting the law in a manner consistent with the United States' international obligations, which is the final arbiter of what is an "applies to apples" or "fair" comparison. Congress had been aware of the Department's practice on this issue and has effectively adopted it. Thus, if any change is to occur, it is the job of Congress to make such a change.

* * *

For these and other reasons set out in West Fraser's letter of October 9, 2003, the Department should not change its long-standing policy regarding the treatment of countervailing duties in calculating U.S. prices. Should you have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,



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