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November 7, 2003

BY HAND DELIVERY

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

Attention: Treatment of Section 201 Duties and Countervailing Duties

Re: Rebuttal Comments on Proposal Regarding Treatment of Section 201 Duties and Countervailing Duties in Antidumping Proceedings

Dear Assistant Secretary Jochum:

Weyerhaeuser Company submits the following rebuttal comments in response to the U.S. Department of Commerce's (the "Department") notice dated September 9, 2003, requesting comments from interested parties regarding a proposal to deduct countervailing duties and section 201 duties from U.S. price in calculating antidumping margins.[1] The Department extended the deadline for rebuttal comments to November 7, 2003 (68 Fed. Reg. 60,079 (Oct. 21, 2003)).

[1] Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties, 68 Fed. Reg. 53,104 (Sept. 9, 2003).

Weyerhaeuser has already submitted initial comments in this proceeding. As the largest lumber producer in North America (including Canada and the United States combined), and as a respondent in the pending antidumping and countervailing duty proceedings involving softwood lumber from Canada, Weyerhaeuser has a direct interest in the outcome of this debate, particularly with respect to the treatment of countervailing duties.

As stated in its initial comments, Weyerhaeuser opposes the proposal to deduct CVDs and section 201 duties from U.S. price in an antidumping calculation. We have reviewed comments in support of this proposal, and find them factually inaccurate, distorted, and erroneous in their interpretation of current law and legislative and administrative history. Further, Weyerhaeuser adamantly disagrees with the allegation proffered by some parties that the adjustment is necessary to prevent foreign producers from avoiding antidumping duties. This is simply wrong, as shown in the methodological discussion provided in section III below. We have not endeavored to respond to every point raised by the proponents of the proposed treatment. Instead, we offer a few significant observations about the law, how it should be interpreted, and why deducting CVDs from U.S. price in a dumping calculation is neither appropriate nor consistent with our international obligations.

I. WHAT ARE WE ARGUING ABOUT?

Before we discuss the arguments in favor of this proposal, let us be clear about what is being proposed. There is a great deal of rhetoric being tossed about concerning the need to "level the playing field," and how CVDs are not properly reflected in antidumping calculations. There is little discussion, however, of what adjustments are currently made in antidumping

calculations, and no discussion of the true impact of the proposal on the calculation of antidumping duties.

The proponents of the proposal seek to change current practice by deducting countervailing duties and section 201 duties from U.S. price in an antidumping calculation. Thus, U.S. price would be reduced, and any dumping margin would substantially increase as a result. This differs from current law and practice, in which the Department treats subsidies in a dumping calculation differently depending upon whether the subsidy is an export subsidy or a domestic subsidy.

An export subsidy is a grant or benefit provided only if a producer exports the product at issue. Special tax rebates or incentives provided on proof of export are examples of an export subsidy. In the case of an export subsidy, the law requires that the Department **increase** U.S. price in the dumping calculation by the amount of the countervailing duty imposed to counter the subsidy. U.S. price is increased because only exports get the benefit, and the countervailing duty exactly offsets the benefit provided, effectively increasing U.S. price by the amount of the CVD.

A domestic subsidy is a subsidy provided regardless of where the product is sold. An interest free loan to a steel mill would be an example of a domestic subsidy. The domestic subsidy, however, may affect both home market and export prices since all production benefits. Accordingly, under current law, Commerce does not increase the U.S. price for the CVD imposed in calculating dumping margins, even though the CVD imposed should effectively increase the price to the U.S. (as in the case of the export subsidy). The Department omits the

CVD in the determination of the U.S. price in order to counter the price effect of the subsidy in the home market.[2]

Thus, current law treats CVDs imposed to counter export subsidies (upward adjustment to price) differently than domestic subsidies (no adjustment to U.S. price) in order to compensate for the additional benefits conferred internally in the country of manufacture in the case of the domestic subsidy. The proposal, however, would change current treatment of CVDs imposed on both export subsidies and domestic subsidies by requiring that such subsidies be DEDUCTED from U.S. price. Thus the proposal would reverse the adjustment for export subsidy CVDs (which currently increase U.S. price), and magnify the distinction already made in the treatment of domestic subsidies in a dumping calculation.

II. DEDUCTING CVDS FROM U.S. PRICE IN A DUMPING CALCULATION IS NOT CONSISTENT WITH, LET ALONE REQUIRED BY, U.S. LAW

Proponents argue that the deduction of CVDs from U.S. price is required by current law. They cite the "unambiguous language of the statute" and legislative history from the Antidumping Act of 1921 for the proposition that the law has always required a deduction (despite more than 80 years of contrary court practice and Congressional approval). The proponents' argument is not true. In fact, the statute and the legislative history make clear that treating duties as a deductible cost will violate current U.S. law.

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[2] This is illustrated by example in section III below.

A. The Proposal Treats All CVDs as Deductible Costs, Regardless of the Type of Subsidy

The proposal calls for all CVDs to be deducted from U.S. price, regardless of the source of the subsidy. But the statute specifically states that CVDs levied on export subsidies should be **ADDED** to U.S. price in an antidumping calculation. 19 U.S.C. § 1677a(c)(1)(C) states quite clearly that export price (EP) or constructed export price (CEP) shall be increased by "the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy." The statute is unambiguous: Commerce may not deduct CVDs based on export subsidies. Even the proponents to the proposed treatment appear to concede this point in their remarks, because they focus on CVDs imposed on domestic subsidies only.

B. The Legislative History Shows Congress Intended That No Adjustment Should Be Made In the Case of Domestic Subsidies

Contrary to the assertions made by proponents of the proposal[3], the law does not permit the Department to deduct CVDs to offset non-export subsidies. True, 19 U.S.C. § 1677a(c)(2)(A) states that "U.S. import duties" as well as other "costs, expenses and charges" should be deducted from U.S. price, but the statute does not define the term "import duties" nor does it reference CVDs (other than as an adjustment to increase U.S. price). Proponents have asserted that the Congress clearly intended for domestic subsidy-based CVDs to be deducted from U.S. price as United States import duties or as costs, charges and expenses. They offer as primary support, a discussion of the Antidumping Act of 1921.

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[3] *See, e.g.,* Comments by Dewey Ballantine LLP on behalf of the Coalition of Fair Lumber Imports (Oct. 9, 2003), at 8 (hereafter the "Dewey Comments").

In fact, although the Antidumping Act of 1921 was repealed and replaced by the Trade Agreements Act of 1979 (which harmonized U.S. law with our obligations under the Tokyo Round GATT Antidumping Code), its historical application is useful to the discussion.

Prior to enactment of the 1979 Trade Agreements Act, the antidumping and countervailing duty law was administered by the U.S. Department of the Treasury ("Treasury"). We are not aware of any instances during the 58 years between the 1921 Act and the 1979 Act in which Treasury deducted CVDs in antidumping calculations. Yet, throughout that extended period of time, neither Congress nor the courts ever disagreed with Treasury's interpretation, although both knew full well that Treasury did not deduct CVDs in its dumping calculations.

As mentioned earlier, the relevant law is the 1979 Trade Agreements Act, the statute that is in force today. The legislative history to that Act explains that, and why, Congress did NOT intend to treat CVDs as a deduction from U.S. price. The Senate Report to the 1979 Act clearly states that "no adjustment is appropriate" to a dumping calculation when a domestic subsidy is subject to a CVD. It reads:

> Section 772 of the Tariff Act of 1930, as added by Section 101 of the bill ... reenacts the provision of the Antidumping Act ... with one substantive change and one clarifying change. ... **The addition for countervailing duties assessed on the same merchandise to offset subsidies is clarified to apply only to subsidies that are classified as export subsidies.**
>
> *Reasons for the provision.*— Section 772 of the Tariff Act of 1930, as added by the bill, **would generally continue existing law** with respect to the meaning of purchase price and exporter's sales price. Most changes in wording are necessitated by the creation of the new term "United States price," which incorporates the existing terms purchase price and exporter's sales price, and by other simplifying changes.
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> . . .

> The purpose of the amendment with regard to additions to Purchase Price and Exporter Sales Price with respect to **countervailing duties** also being assessed because of an export subsidy is designed **to clarify that such adjustment is made only to the extent** that the exported merchandise, and not the other production of the foreign manufacturer or producer or other merchandise handled by the seller in the foreign country, benefits from a particular subsidy. The **principle behind adjustments to the price paid in these instances is to achieve comparability between the prices which are being compared. Where the situation is the same, *e.g.* both the merchandise examined for the purposes of determining 'Export Price' and such similar merchandise examined for the purposes of determining 'Foreign Market Value' benefit from the same subsidy, then no adjustment is appropriate.**

S. Rep. No. 96-249, at 93-94 (1979) (emphasis added).

The above quoted passage makes several points clear: (a) Congress intended that Commerce adjust U.S. price only in the case of an export subsidy; (b) Congress was concerned that Commerce should make no adjustment where a domestic subsidy was being countervailed; and (c) Congress intended that Commerce "generally continue existing law" in applying adjustments to U.S. price.

Some proponents suggest that Congress merely forgot to mention domestic subsidies because at the time the legislation was enacted no one really thought about levying CVDs against non-export subsidies. But the legislative history to the 1979 amendment specifically distinguishes between the two types of subsidies and concludes, again, that "no adjustment is appropriate" to a dumping calculation in the case of domestic subsidies. Clearly, Congress intended that CVDs imposed due to a finding of domestic subsidies should *not* be deducted from U.S. price in an antidumping calculation.

Counsel for various parties opposed to the proposal have cited to dozens of court cases and administrative rulings in their comments that confirm this interpretation of the law. To take but one such statement of Commerce's longstanding policy, as affirmed by the courts, as cited by Counsel to the Korean Steel Association:

> In the hundreds of antidumping administrative reviews that Commerce has conducted since 1980, the Department has never deducted AD duties or CVD duties from the starting price in the United States, and courts have never directed the Department to change this practice. Congress has been well aware of this situation, and, despite numerous revisions of the antidumping law since 1921, has never amended the law to change this result.

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 Fed. Reg. 18,404, 18,422 (Apr. 15, 1997).

C. CVD Deposits Are Not "Import Duties"

Proponents argue that CVD duties, including cash deposits on estimated CVD duties, are like any other form of "normal" import duty and that all such import duties are to be deducted under the statute. But CVD deposits and duties are not normal import duties.

Commerce and the courts have historically recognized the uniqueness of CVD duties. Unlike normal duties, which are an assessment against value, CVD duties derive from the rate of subsidization found. Consequently, Commerce's longstanding policy and practice is not to treat estimated or final countervailing (and antidumping) duties as import duties or costs under 19 U.S.C. 1677a(d). *See Hoogovens Staal BV v. United States*, 4 F. Supp. 2d 1213 (Ct. Int'l Trade 1998).

The Court of International Trade likewise has recognized that CVD duties are not import duties for purposes of 19 U.S.C. 1677a(c). To be considered otherwise, the deduction of CVD duties from U.S. price would result in a double remedy for the industry. *See, e.g., U.S. Steel*

Group, 15 F. Supp. 2d 892, 899-900 (Ct. Int'l Trade 1998), *rev'd on other grounds*, 225 F.3d 1284 (Fed. Cir. 2000). In this decision, the court reasoned that Commerce had already corrected for the subsidies on the subject merchandise in the countervailing duty order, thereby providing the domestic industry with its remedy for the subsidies. *Id.* at 900. The court further explained that to deduct countervailing duties from U.S. price would create a greater dumping margin and, in effect, a second remedy for the domestic industry. *See also AK Steel Corp. v. United States*, 988 F. Supp. 594, 607-08 (Ct. Int'l Trade 1997) (antidumping and countervailing duties are intended to offset the discriminatory pricing between two countries; making an additional deduction for the same duties that correct this price discrimination would result in "double-counting"), *aff'd*, 215 F.3d 1342 (Fed. Cir. 1999).

Moreover, treatment of countervailing duties as a deduction from U.S. prices would cause serious problems for the administration of the trade laws. The U.S. system of trade remedy enforcement is retrospective. Final determination and court review of the amount of CVD duties due for a particular period of time may not occur until years after the relevant period. In the meantime, deduction of cash deposits of estimated CVD duties from U.S. price would be improper because the cash deposits may not bear any relationship to the actual CVD duties owed. *See Hoogovens Staal*, 4 Supp. 2d at 1220. *See also Outokumpu Cupper Rolled Prods. AB v. United States*, 829 F. Supp. 1371, 1384 (Ct. Int'l Trade 1993). In other words, administrative reviews would have to remain open, and liquidations suspended, as long as a CVD rate is under appeal, potentially for years, leaving both the U.S. industry and foreign producers operating under conditions of complete uncertainty. This is not appropriate policy.

Further, the proposal would visit a terrible unfairness on parties that attempt to eliminate unfair trade practices. Suppose a foreign producer is investigated and is assessed CVD deposits based on receipt of a special domestic subsidy tax break. Now suppose as a result of the CVD deposit finding, the subsidy is withdrawn or the foreign producer decides not to accept the tax break. For at least some period of time the producer will continue to pay CVD deposits (which will eventually be refunded with interest) until a review is completed. The proposal would tack on an antidumping penalty after the foreign producer has foresworn receipt of the subsidy, because of the imposition of the deposit. As important, it is far from clear whether the foreign producer will ever have his dumping rate adjusted for refusing the subsidy, since the deduction is based on the deposit made, not on the actual liability incurred.

III. A DEDUCTION FOR CVDS CANNOT BE JUSTIFIED FROM A METHODOGICAL PERSPECTIVE

Some proponents argue that the proposed deduction to U.S. price for CVDs is "Fair and Economically Sound" because it is necessary to counter dumping and maintain a level playing field. Dewey Ballantine Comments at 25. They also argue that the deduction does not constitute double counting. The argument proffered, however, contains no methodological analysis in support of these assertions. In fact, when carefully examined, the proposal makes no sense from a methodological, fairness, or economic perspective. To the contrary, it is arbitrary, and excessive.

For starters, let's be clear about what CVDs and antidumping duties are designed to accomplish. A CVD is imposed to counter a subsidy provided by a foreign government to a specific industry. The CVD is imposed because the foreign subsidy provides an unfair

advantage to the subsidized industry relative to a non-subsidized U.S. competitor. That unfair advantage can take the form of either an increase in revenue to the subsidized foreign producer (who pockets the subsidy as profit), or as a reduction in prices (to increase sales at the expense of non-subsidized competitors). The CVD remedies this, by imposing a duty to neutralize the benefit of the subsidy provided.

The conditions that give rise to an antidumping duty, on the other hand, do not involve government action. If a foreign producer chooses to sell product to the U.S. at "less than fair value" (generally less than prices for the same product in the home market), then the foreign producer will be found to be dumping. Whether dumping occurs depends on pricing decisions of individual companies, not governments (although in competitive commodities markets, producers have little or no control over product prices).

Also to be clear, U.S. antidumping and countervailing duties are solely remedial, not punitive. *See, e.g.*, *Gerald Metals, Inc.*, 132 F.3d 716, 723 (Fed. Cir. 1997) (antidumping); *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995) (antidumping); *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103 (Fed. Cir. 1990) (antidumping and CVD) (*citing, inter alia,* S. Rep. No. 92-1221, at 8 (1972) (CVD)). There should not be a penalty or fine associated with a finding of dumping or subsidization.

The purposes for the CVD and antidumping rules are quite distinct, and the remedies to achieve those purposes should remain distinct as well. However, there is one interrelationship between the two: if a foreign producer attempts to absorb a CVD by its lowering U.S. price, that producer may end up triggering an antidumping duty. That is the only proper intersection between the two trade remedies.

To understand why deducting CVDs in a dumping calculation is not warranted (nor in accord with Congressional intent) it is helpful to work through a hypothetical example. Assume a producer manufactures widgets in Canada and sells them in both Canada and the United States. At first, the widget producer receives no subsidies and fairly sets prices in Canada and the U.S. such that no dumping is occurring. The widget-maker then receives a subsidy (we will examine both an export subsidy and a domestic subsidy) upon which the U.S. imposes a countervailing duty.

We will examine the effect of each scenario in the detailed example below. The example will show that the impact of a subsidy and corresponding countervailing duty depends on how the producer and consumer respond to the duty. As we will see, the 1979 Trade Agreements Act got it exactly right. Proper treatment for an export subsidy requires that the CVD should be added to (not deducted from) the U.S. price. Likewise, the appropriate treatment for a domestic subsidy is that the CVD not be deducted from the U.S. price.

In particular, for a domestic subsidy, (1) if the producer responds to the CVD by allowing the CVD to increase price by the amount of the CVD, the duty has done its job, there is no dumping, and there should be no additional adjustment to any dumping calculation. The producer is no better off than it was before the subsidy. The subsidy is in effect delivered from the foreign government, through the producer/importer, to the U.S. Treasury. (2) If the producer responds by keeping the U.S. price low, but increases its home market price, it will be dumping and will be penalized for trying to maintain the higher home market price. In the end, it will be no better off than before the subsidy and quite possibly worse off (because it may well be found to be selling below cost, as well as below home market price). (3) If the producer keeps both

prices low, it will not be dumping (assuming its sales prices are above cost), and should therefore not be penalized. It will not benefit at all from the subsidy, since the full amount of the subsidy is going to the U.S. Treasury. Consequently, any additional adjustment to the dumping calculation will penalize the producer for behaviour that is not improper.

Let's turn to a numerical example that demonstrates these points. We will start with a free trade market environment where a foreign (Canadian) widget-maker receives no subsidy and prices his product fairly in the two markets so there is no dumping. Assume the following relative prices:

	Sales in Canada	Sales in U.S.
Price	$100	$110
Freight	-10	-15
Regular customs duty	0	- 5
Net ex-factory price	$ 90	$ 90
Cost of Production	$ 80	$ 80

The widget maker receives no subsidy. In this example there is also no dumping because the net U.S. price ($90) is equal to or higher than the above-cost net sales price in Canada ($90) for the same widget, and the price is above cost. The widget-maker makes a $10 profit in each country. We will call this the free trade parity price.

U.S. Price with Export Subsidy

Now suppose the Canadian producer receives a $10 subsidy to promote exports of its widgets. This is a pure export subsidy: only export sales receive the benefit. The effect of the subsidy is to lower the cost of production (on exports only) by $10. The Canadian producer will either capture the subsidy benefit as added profit, lower its U.S. price to gain market share, or do

some of both. In this case let's assume the producer lowers its U.S. price (presumably the most harmful event to U.S. producers). The subsidy does not directly affect Canadian sales prices, because the producer does not receive the benefit on sales in Canada. But the net price in the U.S becomes $80 as shown below:

Price assuming no subsidy passthrough	$110
Less passthrough of subsidy benefit	-10 [4]
U.S. price to importer	100
Freight	-15
Regular customs duty	- 5
Net price	$ 80

In this situation, and in the absence of a CVD law, the producer is now dumping the product in the U.S. because the $80 net U.S. sales price is lower than the $90 net Canadian price, but the dumping is induced entirely by the export subsidy. But then we do have a CVD law as a remedy.

U.S. price with CVD on Export Subsidy

Now the U.S. invokes its countervailing duty law and imposes a $10 CVD on imports of the Canadian product to counter the export subsidy. What happens? The $10 CVD is added to the U.S. price paid for by the importer, neutralizing the benefit of the subsidy:

[4] The subsidy may be thought of as effecting a decrease in the producer's costs or as an increase in its revenues. The economic effect is the same. Again, for this analysis we have treated the subsidy as a negative adjustment to net price on the assumption that the producer passes through the entire subsidy as a price reduction in order to increase sales at the expense of U.S. producers (presumably the worst case scenario).

Price assuming no subsidy passthrough	$110
Less passthrough of subsidy benefit	-10
U.S. price to importer	100
Plus CVD on export subsidy	+10 [5]
Freight	-15
Regular customs duty	- 5
Net price	$ 90

As you can see, the CVD counteracts the benefit of the export subsidy, AND it eliminates the dumping by returning the U.S. price charged to $90. In effect, the subsidy is now being paid to the U.S. Treasury. Of course the producer could choose to lower its price net of the CVD (*e.g.*, charging a U.S. price of $95, inclusive of the subsidy, or net price $85), but then he would be found to be dumping product at the rate of $5 per unit, because his Canadian net price is still $90.

Given the demonstrated effect on prices, it is easy to see why the statute requires that CVDs for export subsidies be ADDED to U.S. price. The CVD precisely counteracts the subsidy conferred, leading prices back to their non-subsidized free trade parity state. In that event, the CVD is an addition to U.S. price and is treated as such in the dumping calculation. If the Canadian producer lowered his prices to reduce the effect of the CVD, he would be found to be dumping.

But the proponents want to DEDUCT the export subsidy CVD from U.S. price, even though such an adjustment is contrary to current law. However, assuming one could deduct the CVD as proposed, then U.S. price would decrease to $70 for purposes of the dumping calculation:

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[5] The importer, not the producer, pays the CVD. The effect of the CVD will be to lower the amount the importer is willing to pay the producer (exclusive of the CVD).

Price assuming no subsidy passthrough	$110
Less passthrough of subsidy benefit	-10
U.S. price to importer	100
Less CVD on export subsidy	-10
Freight	-15
Regular customs duty	- 5
Net price	$ 70

By applying the proposed deduction, the producer now will be found to be selling for $90 in Canada compared to $70 in the U.S., leading to a dumping margin of 28% (90-70/70). The dumping margin in this case was CREATED solely by deduction of the CVD from the U.S. price, despite the fact that with the CVD duty in place the producer is now selling at the same economic net ex-factory price in both the Canadian and U.S. markets. This is illegal under current law, and does not accord with the purpose of the AD and CVD laws to return prices to free trade parity. Instead, it double counts the CVD and results in a (steep) dumping margin that is simply not real.

Prices With Domestic Subsidy

Now let's examine the case of a domestic subsidy. Assume that Canada gives all widget producers a $10 tax rebate on each widget sold, regardless of market. Also, let's assume the worst case where the producer uses the entire subsidy to reduce prices. In purely economic terms (i.e., not a dumping calculation), the following results:

	Sales in Canada w/subsidy	Sales in U.S. w/subsidy
Price pre-subsidy	$100	$110
Less subsidy passthrough	-10	-10
U.S. price to importer	90	100
Freight	-10	-15
Regular customs duty	0	-5
Net ex-factory price	$ 80	$ 80
Cost of Production	$ 70 (80-10)	$ 70 (80 –10)

Note that prices in both markets are reduced to $80, and effective costs reduced to $70, as a result of the $10 subsidy.

CVD Imposed with Domestic Subsidy

Now the U.S. imposes a $10 CVD to counter the domestic subsidy. In economic terms (again, not in the antidumping calculation), U.S. price increases as a result of the CVD for the same reasons that they increase in the export subsidy CVD case. The price to the U.S. customer has effectively increased by the amount of the CVD back to the pre-subsidy level. But Canadian prices are (we assume) unaffected by the U.S. action:

	Sales in Canada w/subsidy and CVD	Sales in U.S. w/subsidy and CVD
Price pre-subsidy	$100	$110
Less subsidy passthrough	-10	-10
U.S. price to importer	90	100
Freight	-10	-15
Regular customs duty	0	- 5
Add CVD to price	0	+10
Net ex-factory price	$ 80	$ 90
Cost of Production	$ 70 (80-10)	$ 70 (80 –10)

As you can see, the effective U.S. price has increased to $90 (the non-subsidized equilibrium state), while the Canadian price, at $80, still benefits from the subsidy. In addition, the Canadian

producer's cost are still $10 less, although it could be argued that the CVD increased costs on U.S. sales by the amount of the CVD.

From a CVD perspective, all is well, because once again we have driven the U.S. price back to the free trade parity price. Once again, for all sales into the U.S. the subsidy effectively is paid to the U.S. Treasury. However, because the Canadian price remains at $80, there is now an anomaly from the antidumping perspective. The Canadian price of $80 is $10 less than it should be in a free market. As a result, the producer could sell into the U.S. market at prices up to $10 below the free trade parity price without being found to be dumping. The anomaly is the result of the addition of the CVD to the U.S. price. So how do we "level the playing field?"

Congress recognized and fixed this problem back in 1979. Instead of adding the amount of the CVD duty to the U.S. price, Congress determined that the U.S. should simply MAKE NO ADJUSTMENT TO U.S. PRICE FOR THE CVD. Thus, under U.S. antidumping rules, we get the following result:

	Sales in Canada w/subsidy	Sales in U.S. w/subsidy and CVD
Price pre-subsidy	$100	$110
Less subsidy passthrough	-10	-10
U.S. price to importer	90	100
Freight	-10	-15
Regular customs duty	0	- 5
Add CVD to price	0	+ 0
Net ex-factory price	$ 80	$ 80
Cost of Production	$ 70 (80-10)	$ 70 (80 –10)

As you can see, the prices used in the dumping calculation are once again at parity, albeit at $10 less than the pre-subsidy level. While U.S. prices have actually increased by $10 with the CVD,

the U.S. ignores the adjustment to compensate for the distortion caused in the Canadian market because of the subsidy. The result: the CVD precisely counters the effect of the subsidy in the U.S., and returns prices to relative parity for antidumping purposes as well. Thus, the Congress achieved what it intended: a level playing field for both CVD and antidumping purposes. This treatment has been the consistent practice of the US Department of Commerce under the Trade Act of 1979.

Now let's consider what happens if the CVD were deducted from U.S. price as proposed in the Commerce Department notice.

	Sales in Canada w/subsidy	Sales in U.S. w/subsidy and CVD Deducted
Price pre-subsidy	$100	$110
Less subsidy passthrough	-10	-10
U.S. price to importer	90	100
Freight	-10	-15
Regular customs duty	0	-5
Deduct CVD from price	0	-10
Net ex-factory price	$ 80	$ 70
Cost of Production	$ 70 (80-10)	$ 70 (80 –10)

Now U.S. prices are $10 less than Canadian prices in the dumping calculation, leading to a dumping finding of 14% (80-70/70). This is the same imbalance that led Congress to require that U.S. price be INCREASED by the amount of the CVD in the export subsidy case, and is why the Senate Finance Committee did not advocate an adjustment to U.S. price under these circumstances.

In short, by deducting the CVD from the U.S. price in the dumping calculation, the U.S. would be overcompensating for the effect of the domestic subsidy in Canada, which has already

been remedied by not increasing U.S. price by the amount of the CVD. A deduction doubles the effect of the adjustment, and amounts to a double counting of the CVD, creating dumping and dumping duties, where dumping is not happening. In effect, the deduction acts as a penalty, and creates or magnifies any margin of dumping. This is not what Congress intended, nor is it appropriate to the goals of eliminating the effect of the subsidy and creating free trade parity pricing.

IV. THE CHANGE IN PRACTICE WOULD NOT BE CONSISTENT WITH THE TREATMENT AFFORDED BY OUR MAJOR TRADING PARTNERS

Proponents to the proposal point to statutory references in other countries as support for the concept that that our trading partners already deduct CVDs from U.S. price in antidumping calculations. In particular they cite to the antidumping laws of Canada, the European Union and Mexico. *See, e.g.,* Dewey Ballantine Comments at 35-36.

First, while proponents make a few references to foreign statutes, they do not cite a single example where a CVD deduction was actually applied in an antidumping calculation. In fact, Weyerhaeuser does not believe the deduction has ever been applied in these jurisdictions, statutory references notwithstanding. Of course the proponents also read U.S. statutes to authorize the same adjustment (even though the Department has never deducted CVDs either), so their liberal construction of foreign laws as well as our laws is not surprising.

Second, proponents cite to Bulgarian law as support for their position that EU law permits the adjustment. *See* Dewey comments at 36. We concede that Bulgarian law may not be consistent with WTO rules (although Bulgaria was not a member of the EU the last we checked). More to the point, as Kaye Scholer points out in their comments, the EU regulations prohibit

double counting of adjustments in AD and CVD cases. Again, we are not aware of any case where the EU applied a deduction for CVD duties. *See also,* Kaye Scholer comments on behalf of Korean Iron and Steel Association (Oct. 9, 2003) at 9.

Third, to the extent that any country attempts to deduct CVDs or 201 duties in a dumping calculation, Weyerhaeuser fully supports remedial action by the United States, either in the WTO or elsewhere, to eliminate the practice. It is wrong and should not be permitted.

V. THE PROPOSED TREATMENT WOULD BE INCONSISTENT WITH GATT ARTICLE VI(5)

Proponents take pains to suggest that Article VI(5) of the GATT does not prohibit the deduction because it only refers to "export subsidization" and therefore does not apply to domestic subsidies. But Article VI(5) cannot be read that way. Article VI(5) provides:

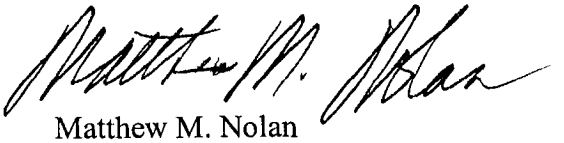
> No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

By its plain terms, the term "export subsidization" in this section is a general reference to all subsidization of exports. It does not attempt to distinguish export and domestic subsidies and such a distinction cannot be read into the provision. *Expressio unius est exclusio alterius.*

The Court of International Trade has confirmed that GATT Article VI(5) is intended to preclude double counting of adjustments. In the *U.S. Steel* case noted earlier, the Court cited GATT Article VI(5) and stated: "As the U.S. antidumping laws are generally intended to be GATT consistent, Commerce's desire to avoid double remedies is legitimate." 15 F. Supp. 2d at 899 n.7. By deducting countervailing duties from U.S. price in a dumping calculation, Commerce would be doing exactly what Article VI(5) prohibits.

Weyerhaeuser appreciates the opportunity to present its views and requests an opportunity to appear at any hearing conducted on this proposal.

Respectfully submitted,



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