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January 15, 2007

Ms. Susan H. Kuhlback  
Senior Office Director for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania and 14<sup>th</sup> Street, NW  
Washington, D.C. 20230

SUBJECT: Application of the Countervailing Duty Law to Imports From the People's Republic of China: Request for Public Comments

Dear Ms. Kuhlback:

The American Forest & Paper Association (AF&PA) appreciates this opportunity to provide comments on the application of the countervailing duty law to imports from the People's Republic of China pursuant to *Federal Register* notice Vol. 71, No. 245 (December 15, 2006). AF&PA is the national trade association of the forest, pulp, paper, paperboard and wood products industry. The forest and paper products industry accounts for more than 7 percent of total U.S. manufacturing output and ranks among the top ten manufacturing employers in 42 states.

AF&PA strongly believes that the U.S. Department of Commerce ("Commerce") should not continue to exempt China and other countries designated as non-market economies ("NMEs") from coverage under one of the most important trade laws, the countervailing duty law ("CVD"), which off-sets subsidy practices by U.S. trading partners. China has an enormous trade surplus with the United States (approximately \$225 billion in 2006), a trade surplus which is growing. U.S. companies and workers should be permitted to use all legal remedies to address any unfair trade practices, including government subsidies. There is no reason, in light of WTO rules or U.S. law for Commerce to continue to exempt China from coverage under the U.S. countervailing duty law. In fact, U.S. law and the rules of the WTO clearly contemplate covering China under the CVD law.

### WTO Rules

WTO rules permit the United States to apply CVDs to non-market economies NMEs such as China. The WTO Subsidies and Countervailing Measures Agreement ("SCM Agreement") allows the imposition of CVDs on subsidized imports under specified circumstances and does not exempt imports from an NME country. In the absence of any

distinction between market economies and NMEs, the SCM Agreement plainly applies to both types of economies.

The lack of any distinction between China and other WTO members in the application of CVD remedies is made clear by China's Protocol of Accession to the WTO in late 2001. In Article 15 of the Protocol, China *agreed* to subject Chinese-origin goods imported into a WTO member country to CVD remedies. This is not premised on the idea that China has achieved the status of a market economy country. If China was not subject to CVD remedies under the SCM Agreement, there is no way that it would have negotiated the inclusion of this provision in the Protocol of Accession.

The absence of any WTO impediment to a CVD case against imports from China is made clear by the fact that other WTO member countries, for example Canada, have conducted CVD investigations of imports from China and have imposed CVDs.

### U. S. Law

Commerce's authority to apply CVDs to imports from China is not limited by Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986). The court held in that case that, under a now-repealed CVD law (section 303 of the Tariff Act of 1930), Commerce was not required to conduct a CVD investigation with respect to goods from an NME country. The court did not hold that the statute compelled Commerce to adopt its current policy or that it cannot change its policy and apply CVDs to NME countries.

A number of significant changes have occurred since *Georgetown Steel* to call for a change in Commerce's policy. The statute applied by Commerce is different from that at issue in *Georgetown Steel*. The current law, which was enacted to implement U.S. obligations under the WTO SCM Agreement, does not differentiate between market economies and NMEs. In wording that is nearly identical to the SCM, the U.S. law provides for the imposition of CVDs without limiting their application to any particular set of countries or any type of foreign economy. In fact, the statute nowhere mentions NME countries generally or China in particular. The law also broadly defines a countervailable subsidy in terms of conferring certain types of benefits on producers in the foreign country. This definition is not confined to activities that can be engaged in only by the government of a market economy.

In adopting its current policy in the mid-1980s, Commerce reasoned that, in market economy countries, markets generate prices that can be used to measure the impact of government subsidies. It further reasoned that in an NME country, government intervention in the economy is so pervasive that it is not possible to find meaningful benchmarks for subsidization. This conclusion, however, was made in a different context than applies today with respect to China. The Eastern European economies at issue in *Georgetown Steel* were fully centrally planned and their trade with the United States was limited. That is not true today with respect to China and its impact on U.S. trade and the economy.

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### **The Chinese Economy**

China's economy has been in transition for many years. Because of economic reforms adopted since the mid-1980s, central planning is far less pervasive in controlling investment, production, and pricing. As a result, valid and measurable subsidy benchmarks should be available to a far greater extent than contemplated at the time Commerce's policy was adopted.

In addition, many Chinese companies are now publicly traded. As a result, they are required to meet financial reporting requirements that provide significant economic and financial data that are available to Commerce.

### **The Antidumping Law**

Applying remedies under the U.S. antidumping law -- the only recourse available to domestic industries today in the case of unfairly traded imports from China -- does nothing to address subsidies enjoyed by Chinese manufacturers and exporters. Antidumping duties do not address the underlying problem of government subsidies. Even when antidumping duties are imposed against individual firms, they cannot compel the Chinese Government to reform its subsidy practices and remove the injury to U.S. producers.

### **Conclusion**

AF&PA recommends that Commerce change its current practice and apply CVD law to China and other NMEs. The adverse impact on U.S. manufacturers of subsidized imports must be addressed under the CVD law regardless of whether they originate in a market economy or an NME.

AF&PA appreciates this opportunity to provide comments on this important issue. Please do not hesitate to contact us for further information regarding this submission.

Sincerely,

  
Jacob Handelsman  
Senior Director, International Trade