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Dated: June 18, 2003.

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Policy Bulletin—Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber From Canada

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Purpose of the Policy Bulletin

A government may confer a benefit on an industry by virtue of the provision of goods or services for "less than adequate remuneration." Section 771(5)(E)(iv) of the Tariff Act of 1930, as amended; 19 U.S.C. 1677(5)(E)(iv). The term "adequate remuneration" is not defined in the statute. The Department interprets the term "adequate remuneration," as used in section 771(5)(E)(iv), to mean fair market value. The government provision of goods or services at or above fair market value, therefore, does not provide a countervailable subsidy.

Softwood lumber from Canada is, with certain exceptions, currently subject to countervailing duties, based on the Department's determination that the Canadian provinces provided their lumber producers with a subsidy by selling timber from provincial lands for less than "adequate remuneration," *i.e.*, for less than fair market value. The purpose of this policy bulletin is, consistent with the intent of U.S. law, to provide an incentive for Canadian provinces to move to market-based systems of timber sales that ensure that the provinces receive adequate remuneration for their sales of standing timber to Canadian producers of softwood lumber.

More broadly, the Department intends the policy guidance to serve as the basis for a long-term, durable solution to the ongoing dispute between the United States and Canada over trade in softwood lumber and encourage the development of an integrated market for forest products consistent with the goals of the North American Free Trade Agreement and sustainable forestry. The Department is publishing this policy bulletin with the goal that firms in Canada are free from government restraints that inhibit their ability to respond to changing conditions in the markets in which they operate and pay market prices for their timber.

The overriding objective is to create economic conditions under which lumber producers and timber markets throughout North America would face the same competitive pressures. The Department expects that reforms introduced by the Canadian provinces, consistent with the discussion below, will result in a North American market in which lumber producers and timber markets in Canada and the United States operate under similar competitive conditions and that timber valuations would equilibrate, subject to the normal qualifications based on geography, species, and other factors that normally apply in the case of timber markets in either country.

General Statement of Policy

Upon submission of an application by a provincial government that satisfies the criteria for initiation, the Department will conduct a changed circumstances review of the countervailing duty order on certain softwood lumber from Canada ("countervailing duty order")¹ to determine

¹ *Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 37,775 (May 30, 2002).

whether reforms to the province's system of timber sales meet the standards set out in this policy bulletin for a market-based timber sales system that charges adequate remuneration.² If those standards are met, the Department will determine that the provincial system does not provide a countervailable subsidy and will revoke the countervailing duty order with respect to lumber produced in that province.³

I. Standard for a Market-Based Timber Sales System

To be considered "market-based," a province must implement changes in its current timber sales programs that—(1) eliminate practices and policies that inhibit the ability of lumber producers to respond to changes in the market; and (2) ensure that the pricing of standing timber on provincial lands is set by reference to prices established in an open and competitive, independently functioning market for sales of standing timber or logs. Open and competitive, independently functioning markets, as discussed below, are based on buyers and sellers participating unencumbered by artificial constraints that are part of existing administered systems.

A. Policies and Practices That Inhibit Market Response

In order to move toward a market-based system of timber sales and ensure that a province receives adequate remuneration for its sales of standing timber, it is essential that the price for standing timber be set with reference to prices established in independently functioning markets. Just as important, however, are any government practices that limit the operation of market forces and interfere with an industry participant's ability to respond freely to changes in the marketplace. Functioning markets rely on industry participants to respond to market signals free of artificial constraint.

Accordingly, as part of any changed circumstances review, the Department will determine whether individual provinces have, in fact, eliminated or substantially reformed the policies and practices identified below in a way that removes the current constraints on a lumber producer's ability to respond to changes in the market and, thereby, reinforces the operation of market forces.

1. Appurtenancy Requirements

Appurtenancy and similar provisions mandate that the tenure holder process timber harvested under the tenures in

² Solely for the purpose of such changed circumstances reviews, the policies set forth in this bulletin supercede any prior guidelines, analytical frameworks or draft policies for assessing whether a provincial timber sales system is market-based and, therefore, does not provide a countervailable subsidy. The calculation of an *ad valorem* subsidy rate from provincial stumpage programs in an administrative review or other type of proceeding is governed by the Department's regulations at 19 CFR 351.511.

³ Revocation is also contingent on the absence of any other countervailable subsidies (above *de minimis* in the aggregate), whether such subsidies are new or preexisting.