

With respect to the point on horizontal integration, there are hundreds of companies with stumpage rights which are not horizontally integrated. In any event the point is irrelevant as the lumber, pulp and paper industries and the many others using the resource such as plywood, veneer, building boards and shingles and shakes operate in separate markets and are clearly different industries. With the spread of conglomerates, to hold otherwise would be patently absurd.

With respect to the manner in which the decision on general availability was reached, Canadian authorities consider that it is contrary to fundamental precepts of U.S. law and natural justice to have placed on the respondent the burden of proof to establish that stumpage is generally available. It should have required the petitioner to establish the validity of its allegations, particularly when, in essentially the same circumstances, it is seeking a reversal of a previous determination which was not appealed. Nevertheless, Canadian authorities are prepared to provide any further information required to ensure that the final determination will be based on all of the facts and not merely on the petitioners' allegations.

Having made this finding on general availability, Commerce was required to examine whether, and to what extent, stumpage is being made available at preferential rates. Here again, Commerce officials have departed radically from established countervailing duty law and practice. Commerce officials have erred fundamentally in adding the direct cost of producing standing timber to an indirect cost representing the imputed value of trees and land. Such a methodology, which confuses "costs" and "value" and adds them together, inevitably results in double-counting which inflates the alleged subsidy.

Such an approach is not among the criteria listed in the statute and appears to be an indirect way of expanding the definition of "domestic subsidy" set forth in Section 771(5)(B) of the U.S. Tariff Act of 1930. While purporting to be finding preferential rates, as laid down in Section 771(5)(B)(ii), Commerce has actually used a cost of production analysis, as provided in Section 771(5)(B)(iv). This ignores the limitations that previous decisions have placed on subsection iv as well as the previous interpretation that subsections i through iv are "mutually exclusive".

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