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DEPARTMENT OF COMMERCE

International Trade Administration

(C-570-959)

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Yasmin Nair and Joseph Shuler, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3813 and (202) 482-1293, respectively.

SUPPLEMENTARY INFORMATION

The Petition

On September 23, 2009, the Department of Commerce (“Department”) received a petition filed in proper form by Appleton Coated LLC, NewPage Corporation, S.D. Warren Company d/b/a Sappi Fine Paper North America, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, “Petitioners”), domestic producers of certain coated paper suitable for high-quality print graphics using sheet-fed presses (“coated paper”).<sup>1</sup> In response to the Department’s requests, Petitioners provided timely information supplementing the Petition on October 2, 2009, and October 6, 2009.

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<sup>1</sup> See Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as Amended: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China, dated September 23, 2009 (“Petition”).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (“the Act”), Petitioners allege that manufacturers, producers, or exporters of coated paper in the People’s Republic of China (“PRC”) receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the countervailing duty (“CVD”) investigation (see “Determination of Industry Support for the Petition” section below).

#### Period of Investigation

The period of investigation is January 1, 2008, through December 31, 2008.

#### Scope of Investigation

The products covered by the investigation are coated paper products from the PRC. For a full description of the scope of the investigation, please see “Scope of Investigation,” in Appendix I of this notice.

#### Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department’s regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by November 2, 2009, twenty calendar days from the signature date of this notice. Comments should be addressed to Import

Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of the scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on September 23, 2009, the Department invited representatives of the Government of the PRC ("GOC") for consultations with respect to the CVD petition. The GOC did not request such consultations, however, on October 13, 2009, the GOC's Ministry of Commerce submitted to the United States Embassy in Beijing, China comments pertaining to the Petition.

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (Ct. Int’l Trade 2001), citing Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners offer a definition of domestic like product that includes sheeter rolls (rolls of certain coated paper intended to be slit and used in sheet-fed presses) and, therefore, is broader than the scope of the investigation, which does not include sheeter rolls. Based on our analysis of the information submitted on the record, we have

determined that coated paper described in the scope of the investigation and sheeter rolls constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Countervailing Duty Investigation Initiation Checklist: Certain Coated Paper from the PRC (“PRC Initiation Checklist”) at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Coated Paper from the People’s Republic of China and Indonesia, dated concurrently with this notice and on file in the Central Records Unit, Room 1117 of the main Department of Commerce building.

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the Petition. To establish industry support, Petitioners provided their own 2008 shipments of the domestic like product, as well as one supporting company’s (SMART Papers) 2008 shipments, and compared the total to the 2008 shipments of the entire domestic industry. See Volume I of the Petition, at 2-3, Exhibits I-3, I-4, and I-19, and Supplement to the AD/CVD Petitions, dated October 2, 2009, at 19-22 and Exhibit 4. Petitioners estimated total 2008 shipments of the domestic like product based on the American Forest & Paper Association annual Coated Printing Papers Survey. See Volume I of the Petition, at 3 and Exhibits I-3 and I-4, and Supplement to the AD/CVD Petitions, dated October 2, 2009, at 22 and Exhibit 4; see also PRC Initiation Checklist at Attachment II.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as

such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See section 702(c)(4)(D) of the Act; see also PRC Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. See PRC Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See id.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting the Department initiate. See id.

### Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of coated paper from the PRC are benefitting from

countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing certain coated paper. In addition, Petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, increased import penetration, lost sales and revenue, reduced production, capacity, and capacity utilization, reduced shipments and inventories, reduced employment, and reduced financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See PRC Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Coated Paper from the People's Republic of China and Indonesia.

#### Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioner(s) supporting the allegations. The Department has examined the CVD petition on coated paper from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of coated paper in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see Initiation

Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Preferential Lending to the Coated Paper Industry

1. Policy Loans from State-Owned Commercial Banks and Government Policy Banks
2. Fast-Growth High-Yield Forestry Program Loans

B. Income Tax Programs

1. Income Tax Exemption/Reduction under “Two-Free/Three Half” Program
2. Local Income Tax Exemption and Reductions for “Productive” Foreign-Invested Enterprises (“FIEs”)
3. Income Tax Reduction for FIEs Purchasing Domestically-Produced Equipment
4. Tax Subsidies to FIEs Based on Geographic Location
5. Preferential Tax Policies for Technology or Knowledge-Intensive FIEs
6. Tax Programs for FIEs that are High or New Technology Enterprises
7. Income Tax Reductions for High-Technology Industries in Guangdong Province
8. Preferential Tax Policies for Research and Development at FIEs
9. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
10. Income Tax Exemption Program for Export-Oriented FIEs
11. Corporate Income Tax Refund Program for Reinvestment of FIE profits in Export-Oriented Enterprises
12. Exemption from City Maintenance and Construction Taxes and Education Surcharges for FIEs

C. Indirect Tax and Import Tariff Programs

1. Value Added Tax (“VAT”) and Tariff Exemptions on Imported Equipment
2. VAT Rebates on Domestically Produced Equipment
3. Domestic VAT Refunds for Companies Located in the Hainan Economic Development Zone

D. Grant Programs

1. Funds for Forestry Plantation Construction and Management
2. The State Key Technologies Renovation Project Fund
3. Loan Interest Subsidies for Major Industrial Technology Reform Projects in Wuhan
4. Funds for Water Treatment Improvement Projects in the Songhuajiang Basin
5. Special Fund for Energy Saving Technology Reform in Wuhan and Shouguang Municipality
6. Clean Production Technology Fund
7. Famous Brands Awards

E. Provision of Goods or Services for Less Than Adequate Remuneration (“LTAR”)

1. Papermaking Chemicals
2. Electricity
3. Land-Use Rights to State Owned Enterprises

F. Economic Development Zone Programs

1. Subsidies in the Nanchang EDZ
2. Subsidies in the Wuhan EDZ
3. Subsidies in the Yangpu EDZ
4. Subsidies in the Zhenjiang EDZ

For further information explaining why the Department is investigating these programs, see Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. State Science and Technology Support Scheme

Petitioners allege that the GOC provides grants to support research and development under the National Mid-term and Long-term Science and Technology Plan (2006 – 2020). While the Department has relied on policy directives such as the 2007 Paper Plan and Decision No. 40 to support specificity findings with respect to policy lending, Petitioners have not pointed to any language in these policy directives regarding grants to promote research and development. Instead, the grants are given pursuant to the Science and Technology Plan and Petitioners' specificity allegations in this respect are based on Section 771(5A)(D)(ii) and (D)(iii)(I) of the Act. Regarding the former, Petitioners appear to argue that because eligibility is not automatic ((D)(ii)(I)) and/or because the eligibility criteria are not clearly set out ((D)(ii)(III)), the program is specific as a matter of law. However, Petitioners have misconstrued the structure of (D)(ii) and a finding of *de jure* specificity set forth under section 771(5A)(D)(i) of the Act. Section 771(5A)(D)(ii) does not mean that if one or more of the criterion listed under this section of the Act is not met then the program is specific as a matter of law. To be specific as a matter of law the program must meet the standard set forth under section 771(5A)(D)(i) of the Act: the legislation under which the program operates expressly limits access to the subsidy to an enterprise or industry. Petitioners have failed to sufficiently allege or support a claim that this program is *de jure* specific under Section 771(5A)(D)(i) of the Act. Finally, Petitioners have provided no support for their claim that the number of recipients is limited. Consequently, we do

not plan on investigating this program.

## 2. Special Funds for Environmental Protection

Petitioners allege that central, provincial, and local government funds, in the form of grants or loan interest subsidies, are available to support certain qualified environmental protection projects. Although Petitioners point to specific language in the Papermaking Plan regarding policy support, that Plan was in place from 2001 – 2005, while the measures authorizing these grants were put in place after that timeframe. Further, Petitioners have not provided evidence showing that grants provided pursuant to these authorizations are specific in law under Section 771(5A)(D)(i) or in fact under Section 771(5A)(D)(iii). We do not agree with Petitioners' claim of specificity under Section 771(5A)(D)(ii) for the reasons explained above under, "State Science and Technology Support Scheme." Consequently, we do not plan on investigating this program.

## 3. Provision of Coal for LTAR

Petitioners allege that the GOC provides coal to Chinese producers of coated paper for LTAR. Petitioners have not supported their allegation that this program is specific to paper producers. The program as it relates to electricity generation targets the electricity industry, not the papermaking industry. Further, Petitioners have not supported their claim that the paper industry is an "export industry." Consequently, we do not plan on investigating this program.

## 4. Provision of Water for LTAR

Petitioners allege that the GOC provides favored sectors with differential water rates and unlimited water use. Petitioners have not provided sufficient support of a national policy to provide water for LTAR to coated paper producers. Consequently, we do not plan on investigating this program.

## 5. Currency Undervaluation

Petitioners allege that the GOC-maintained exchange rate effectively prevents the appreciation of the Chinese currency (RMB) against the U.S. dollar. Therefore, when producers/exporters in the PRC sell their dollars at official foreign exchange banks, as required by law, the producers receive more RMB than they otherwise would if the value of the RMB were set by market mechanisms. In the alternative, Petitioners allege that GOC foreign exchange market interventions constitute a price support (of the U.S. dollar vis a vis the RMB), within the meaning of section 771(5)(B)(ii). In both cases, Petitioners describe the benefit conferred as the excess of RMB received, over what would have been received at a market rate (“excess RMB”) and alleges specificity within the meaning of Section 771(5A)(B) of the Act by virtue of the fact that “...there is a direct and positive correlation between the export activity/export earnings and the amount of subsidy received.” Section 771(5A)(B) of the Act describes an export subsidy as “...a subsidy that is, in law or fact, contingent upon export performance, alone or as 1 of 2 or more conditions.” Petitioners have failed to sufficiently allege that the receipt of the excess RMB is contingent on export or export performance because receipt of the excess RMB is independent of the type of transaction or commercial activity for which the dollars are converted or of the particular company or individuals converting the dollars. Consequently, we do not plan on investigating this program because Petitioners have failed to properly allege the specificity element.

### Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the period of investigation. We intend to release the CBP data under Administrative Protective Order (“APO”) to all parties

with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this Federal Register notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, consistent with section 351.203(c)(2) of the Department's regulations

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized coated paper from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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Date

## **Appendix I Scope of the Investigation**

The merchandise covered by this investigation includes certain coated paper and paperboard<sup>2</sup> in sheets suitable for high quality print graphics using sheet-fed presses; coated on one or both sides with kaolin (China or other clay), calcium carbonate, titanium dioxide, and/or other inorganic substances; with or without a binder; having a GE brightness level of 80 or higher<sup>3</sup>; weighing not more than 340 grams per square meter; whether gloss grade, satin grade, matte grade, dull grade, or any other grade of finish; whether or not surface-colored, surface-decorated, printed (except as described below), embossed, or perforated; and irrespective of dimensions (“Certain Coated Paper”).

Certain Coated Paper includes (a) coated free sheet paper and paperboard that meets this scope definition; (b) coated groundwood paper and paperboard produced from bleached chemi-thermo-mechanical pulp (“BCTMP”) that meets this scope definition; and (c) any other coated paper that meets this scope definition.

Certain Coated Paper is typically (but not exclusively) used for printing multi-colored graphics for catalogues, books, magazines, envelopes, labels and wraps, greeting cards, and other commercial printing applications requiring high quality print graphics.

Specifically excluded from the scope are imports of paper and paperboard printed with final content printed text or graphics.

As of 2009, imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTSUS”): 4810.14.11, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.6000, 4810.14.70, 4810.19.1100, 4810.19.1900, 4810.19.2010, 4810.19.2090, 4810.22.1000, 4810.22.50, 4810.22.6000, 4810.22.70, 4810.29.1000, 4810.29.5000, 4810.29.6000, 4810.29.70. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

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<sup>2</sup> “ ‘Paperboard’ refers to Certain Coated Paper that is heavier, thicker and more rigid than coated paper which otherwise meets the product description. In the context of Certain Coated Paper, paperboard typically is referred to as ‘cover,’ to distinguish it from ‘text.’ ”

<sup>3</sup> One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off of a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade.