

January 16, 2007

DELIVERY BY HAND

Ms. Susan H. Kuhbach
Senior Office Director for Import Administration
U.S. Department of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: Application of the Countervailing Duty Law to Imports from China

Dear Ms. Kuhbach:

On behalf of Seaman Paper Company of Massachusetts, Inc., this submission responds to the agency's notice seeking comments on the application of the U.S. countervailing duty law to imports from China. 71 Fed. Reg. 75,507 (Dec. 15, 2006). Seaman is a U.S. producer of tissue and crepe paper products that was a petitioner in recent investigations leading to the imposition of antidumping duties on imports of certain tissue and crepe paper from China. See, Certain Tissue Paper Products from the People's Republic of China, 70 Fed. Reg. 16,223 (Mar. 30, 2005); Certain Crepe Paper Products from the People's Republic of China, 70 Fed. Reg. 3509 (Jan. 25, 2005). Seaman strongly supports the application of the U.S. countervailing duty law to imports from China as required by U.S. law and the international agreements.

Effective December 11, 2001, China became a member of the World Trade Organization ("WTO") and committed itself to the obligations of the international subsidies agreement. The

Kelley Drye & Warren LLP Washington Harbour 3050 K Street, NW Suite 400 Washington, DC 20007
Tel: 202.342.8400 Fax: 202.342.8451

New York Washington, DC Tysons Corner Chicago Stamford Parsippany Brussels
AFFILIATE OFFICE Mumbai www.kelleydrye.com

Protocol of Accession signed by China expressly provides for the application of CVD measures to imports from China immediately upon its accession to the WTO. WT/L/432 at 9 (Dec. 23, 2001). Application of the CVD law to China, therefore, is consistent with China's express commitment in its Accession Protocol. Indeed, failure to apply the CVD law to China under these facts would favor China as compared to other WTO members and, therefore, violate basic most-favored-nation principles in the international agreements. See WTO General Agreement on Tariffs and Trade, Article 1.

The agency's prior practice of not applying the CVD law to China predated China's membership in the WTO and its express commitment to the obligations of the international subsidies agreement. The agency's prior practice also predated significant revisions to the statute. Effective January 1, 1995, U.S. law set forth a specific definition of the term "subsidy" that encompasses any governmental financial contribution that confers a benefit upon a person. 19 U.S.C. § 1677(5). If this definition is met, a subsidy exists and countervailing duties should be applied. There is no exemption in the statute or otherwise for China or any other nonmarket economy countries from the application of this law.

The appellate court's decision sustaining the agency's practice in the 1980s of not applying the CVD law to China does not require or justify the agency's maintenance of that practice today. See Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986). Not only did the Georgetown Steel decision pre-date China signing the Accession Protocol and the enactment of the new statute expressly defining subsidies, but the court did not hold that the CVD law could not be applied to China in that case. Instead, the court simply deferred to the agency's decision at that time not to apply the CVD law to non-market economy countries. The

court's deference to an agency practice of twenty years ago does not inhibit the agency from changing that practice now, where the law has changed and the international agreements have changed.

Finally, although selection of benchmarks is a case- and fact-specific exercise, there is no impediment to the agency's ability to measure subsidies in China. The Accession Protocol expressly permits the agency to adjust internal benchmarks or rely on third-country benchmarks if needed. WT/L/432, para. 15(b). In addition, since Georgetown Steel was issued, the agency has developed significant expertise at devising benchmarks to measure subsidies in market economy countries where traditional benchmarks were distorted or unavailable.¹ Similar approaches could be used to develop benchmarks against which to measure subsidies provided to Chinese companies as well.

For all of these reasons, Seaman urges the Commerce Department to alter its past practice and to now apply the CVD law to imports from China.

Respectfully submitted,



DAVID A. HARTQUIST
KATHLEEN W. CANNON

Counsel to
Seaman Paper Company of Massachusetts, Inc.

¹ See, e.g., Issues and Decision Memorandum: Final Results of Countervailing Duty Investigation of Certain Lined Paper Products from Indonesia at 34 (Aug. 9, 2006), referenced in 71 Fed. Reg. 47,1745 (Aug. 16, 2006); Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 Fed. Reg. 54,990, 54,994 (Oct. 22, 1997).