



A-570-920
Sunset Review
Public Document
ADCVDOpsII: DJG

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Review of the Antidumping Duty Order on Lightweight Thermal
Paper from the People's Republic of China

Summary

We analyzed the responses of the interested parties in the sunset review of the antidumping duty order covering lightweight thermal paper (LWTP) from the People's Republic of China (PRC). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive responses:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins Likely to Prevail

Scope of the Order

The scope of the order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of $\pm 4.0 \text{ g/m}^2$) or less; irrespective of dimensions;¹ with or without a base coat² on one or both sides; with thermal active coating(s)³ on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;⁴ and without an adhesive backing. Certain LWTP is typically (but not exclusively) used in point-of-sale applications such

¹ LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of the order.

² A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

³ A thermal active coating is typically made of sensitizer, dye, and co-reactant.

⁴ A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3703.10.60, 4811.59.20, 4811.90.8000, 4811.90.8030, 4811.90.8040, 4811.90.8050, 4811.90.9000, 4811.90.9030, 4811.90.9035, 4811.90.9050, 4811.90.9080, 4811.90.9090, 4820.10.20, and 4823.40.00.⁵ Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

History of the Order

On November 24, 2008, the Department published in the Federal Register the antidumping duty order on LWTP from the PRC.⁶ In the AD Order, the Department assigned the following margins:

<u>Exporter/Producer Combination</u>	<u>Percent Margin</u>
Exporter: Shanghai Hanhong Paper Co., Ltd, also known as Hanhong International Limited/Producer: Shanghai Hanhong Paper Co., Ltd	115.29
Exporter: Guangdong Guanhao High-Tech Co., Ltd/ Producer: Guangdong Guanhao High-Tech Co., Ltd.	19.77
PRC-Wide Entity ⁷	115.29

The Department has not conducted any administrative reviews since the issuance of the AD Order. There have been no findings of duty absorption by the Department, and no changed circumstances determinations over the history of this order. The Department issued one scope ruling regarding LWTP, in which the Department stated that LWTP converted into smaller LWTP rolls in the PRC, from jumbo LWTP rolls produced in certain third countries, is not within the scope of the AD Order and companion countervailing duty order.⁸

Background

On October 1, 2013, the Department published the initiation of the sunset review of the AD Order pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).⁹ On October 28, 2013, the Department received a notice of intent to participate from Appvion, Inc. (Appvion)¹⁰ within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).¹¹ Appvion

⁵ HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for “other” including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for “other,” including LWTP).

⁶ See Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People's Republic of China, 73 FR 70959 (November 24, 2008) (AD Order).

⁷ Includes Anne Paper Co., Ltd. and Yalong Paper Product (Kunshan) Co., Ltd.

⁸ See Notice of Scope Rulings, 77 FR 50084 (August 20, 2012).

⁹ See Initiation of Five-Year (“Sunset”) Review, 78 FR 60253 (October 1, 2013).

¹⁰ Appvion was formerly known as Appleton Papers Inc. Under that name, Appvion was the petitioner in the

claimed interested party status under section 771(9)(C) of the Act as a manufacturer of the domestic like product in the United States.

On November 18, 2013, we received a complete substantive response from Appvion within the 30-day deadline applicable under 19 CFR 351.218(d)(3)(i).¹² We received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the order.

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the AD Order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before, and the periods after, the issuance of the AD Order.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide, rather than company-specific, basis.¹³ In addition, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above de minimis after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹⁴

Alternatively, the Department normally will determine that revocation of an antidumping duty order would not be likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.¹⁵ In addition, as a base period of import volume comparison, it is the

underlying less-than-fair-value (LTFV) investigation of LWTP from the PRC.

¹¹ See Appvion's October 28, 2013, Notice of Intent. As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013). Therefore, all deadlines in this sunset review have been extended by 16 days.

¹² See Appvion's November 18, 2013, substantive response (Appvion Response)

¹³ See SAA at 879, and House Report at 56.

¹⁴ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998) ("Sunset Policy").

¹⁵ See SAA at 889-90, House Report at 63, and Senate Report at 52.

Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.¹⁶

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the antidumping duty margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.¹⁷

In February 2012, the Department announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.¹⁸ In the Final Modification for Reviews, the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.¹⁹ The Department further stated that apart from the "most extraordinary circumstances," it would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."²⁰

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or de minimis shall not by itself require the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.²¹ Our analysis of the comments submitted by Appvion follows.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Appvion asserts that the Department should conclude that revocation of the order would be likely to lead to continuation or recurrence of dumping when applying the Department's Sunset

¹⁶ See, e.g., Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁷ See SAA at 890; see also Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁸ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8103 (February 14, 2012) (Final Modification for Reviews).

¹⁹ Id.

²⁰ Id.

²¹ See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

Policy.²² Appvion notes that all U.S. imports of the subject merchandise from the PRC have ceased, or the exporters continued to dump at the rates assigned in the LTFV investigation, as published in the AD Order.²³

With respect to import volumes, Appvion states that, although it is difficult to estimate pre-AD Order import levels because pre-2009 imports of LWTP entered under large basket tariff categories, it estimates that pre-AD Order imports from the PRC totaled at least 9,500 metric tons, based on the information on the public record provided by the LTFV respondents.²⁴ Since the AD Order was imposed, imports declined substantially, ranging from 78 to 136 metric tons during 2009 through 2012 based on data compiled by the International Trade Commission and the Department.²⁵

With respect to the continuation of dumping after the AD Order was imposed, Appvion states that the margins from the LTFV investigation remain in place.²⁶ Accordingly, any entries of the subject merchandise since the AD Order have been dumped at a level above de minimis.²⁷ Therefore, the conditions outlined in the Sunset Policy under which the Department normally concludes that there is likelihood that dumping would continue or recur if the AD Order were revoked exist in this case.²⁸

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA, the House Report, and the Senate Report, the Department's determinations of likelihood will be made on an order-wide basis.²⁹ In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.³⁰

As explained in the Legal Framework section above, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. According to the SAA, "{d}eclining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the

²² See Appvion Response at 4 (citing Sunset Policy, 63 FR at 18872).

²³ See Appvion Response at 4.

²⁴ Id. at 5-6 and Attachment 1.

²⁵ Id. at 6 and Attachment 2.

²⁶ Id. at 7-8.

²⁷ Id. at 8.

²⁸ Id. at 7-8.

²⁹ See SAA at 879, and House Report at 56.

³⁰ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also Sunset Policy, 63 FR at 18872.

exporter needs to dump to sell at pre-order volumes.”³¹ We find that revocation of the AD Order would likely result in the continuation of dumping in the United States due to the continued existence of dumping margins and a significant decline in import volume since the issuance of the AD Order.

We considered whether revocation of the AD Order is likely to lead to continuation or recurrence of dumping where “dumping continued at any level above de minimis after issuance of the order.”³² As noted above, the Department determined rates above de minimis for all PRC producers and exporters during the investigation. As the Department has not conducted any administrative reviews since the issuance of the AD Order, the margins from the LTFV investigation remain in place. Therefore, we find that dumping has continued at levels above de minimis during the period of this sunset review.

In conducting our analysis, we also examined the import data provided by Appvion, which, as described above, indicated that, after the issuance of the AD Order in 2008, imports declined substantially relative to the pre-investigation levels. The Department finds this significant decrease in import volumes of subject merchandise, along with the continued existence of dumping margins, supports the finding of likelihood of continuation or recurrence of dumping absent the AD Order.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

Appvion states that the Department should report to the ITC the margins that were determined in the LTFV Final,³³ as these margins are the only ones calculated in this proceeding and thus the only rates that reflect the behavior of exporters without the discipline of an antidumping duty order. Appvion adds that the LTFV margins were calculated in a WTO-consistent manner. Accordingly, there is no impediment to reporting these margins.³⁴

Department’s Position:

Normally, the Department will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.³⁵ The Department’s preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.³⁶ For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the “All-Others” rate from the investigation.³⁷ However, for the PRC, which the

³¹ See SAA at 889.

³² See Sunset Policy, 63 FR at 18872.

³³ See Lightweight Thermal Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) (LTFV Final),

³⁴ See Appvion Response at 7-8.

³⁵ See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

³⁶ Id.; see also SAA at 890.

³⁷ See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India,

Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an “All-Others” rate. Thus, in non-market economy cases, instead of an “All-Others” rate, the Department uses an established rate, which it applies to all imports from exporters that have not established their eligibility for a separate rate.³⁸

The Department has determined that the weighted-average antidumping duty margins established in the LTFV Final represent the magnitude of the margins of dumping most likely to prevail if the AD Order were revoked. We further determine that these margins were not affected by the denial of offsets in accordance with the Final Modification for Reviews.³⁹ Specifically, the rates for the respondents were calculated without zeroing because the LTFV Investigation occurred after the Department ceased zeroing in investigations.⁴⁰ Furthermore, the final antidumping duty margin for the PRC entity was based on total adverse facts available and did not involve the denial of offsets.⁴¹ Accordingly, we find it appropriate to provide the ITC with the final determination rates from the LTFV Final because these rates best reflect the behavior of exporters without the discipline of an order in place. As a result, we will report to the ITC the margins of dumping likely to prevail listed in the “Final Results of Review” section below.

Final Results of Review

We determine that revocation of the AD Order on LWTP from the PRC would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail are as follows:

<u>Exporter/Producer Combination</u>	<u>Percent Margin</u>
Exporter: Shanghai Hanhong Paper Co., Ltd, also known as Hanhong International Limited/Producer: Shanghai Hanhong Paper Co., Ltd	115.29
Exporter: Guangdong Guanhao High-Tech Co., Ltd/ Producer: Guangdong Guanhao High-Tech Co., Ltd.	19.77
PRC-Wide Entity	115.29

Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

³⁸ See Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1378 (CIT 2010) (citation omitted); see also Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1379 (CIT 2009) (citation omitted).

³⁹ See Final Modification for Reviews, 77 FR 8103.

⁴⁰ The underlying LTFV investigation was initiated in September 2007. See LTFV Final, 73 FR at 57329. The Department announced that it would cease zeroing in investigations initiated on or after January 16, 2007. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006).

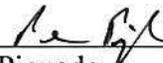
⁴¹ See Final Modification for Reviews, 77 FR 8103.

Recommendation

Based on our analysis of the response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of sunset review in the Federal Register and notify the ITC of our determination.

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 FEBRUARY 2014
Date