



C-570-921
2013 Sunset Review
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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 Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Lightweight Thermal Paper from the People's Republic of China

Summary

We are conducting an expedited sunset review of the countervailing duty (CVD) order covering lightweight thermal paper (thermal paper) from the People's Republic of China (the PRC).¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

History of the Order

On October 2, 2008, the U.S. Department of Commerce (the Department) published its final determination in the CVD investigation of thermal paper from the PRC.² On November 24, 2008, the Department published its amended final determination and the *CVD Order*.³ The Department determined that benefits that constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), were provided by the Government of the PRC (GOC) to PRC manufacturers, producers, and exporters of this merchandise. The following 15 programs were found to confer countervailable subsidies in the investigation to the cooperating mandatory respondent companies:

1. Government Policy Lending;
2. Shareholder Loans;
3. Income Tax Reduction for High-Tech Industries in Guangdong Province;

¹ See *Lightweight Thermal Paper from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 70958 (November 24, 2008) (*CVD Order*).

² See *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Investigation Final*).

³ See *CVD Order*.

4. Reduced Income Tax Rates for Foreign-Invested Enterprises (FIEs) Based on Location;
5. Income Tax Exemptions/ Reductions Under the “Two Free/Three Half” Program;
6. Local Income Tax Exemption and Reduction Program for “Productive” FIEs;
7. Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area;
8. Value-Added Tax (VAT) and Tariff Exemptions on Imported Equipment;
9. Stamp Tax Exemption Under the Non-tradable Share Reform Program (NTSR Program);
10. Funds for Outward Expansion of Industries in Guangdong Province;
11. Zhanjiang Municipality and Zhanjiang Economic and Technological Development Zone (ZETDZ) Export Related Assistance;⁴
12. Environmental Subsidy to Zhanjiang Guanlong Paper Industrial Co., Ltd.;
13. Exemption from Land-Use Taxes and Fees;
14. Provision of Electricity for Less Than Adequate Remuneration (LTAR) in the ZETDZ;
15. Provision of Land to Guangdong Guanhao High-Tech Co., Ltd. in the ZETDZ for LTAR.

In the *Investigation Final*, the Department also determined that 22 programs, listed in the “Nature of the Subsidies” section below, were not used or did not provide any benefit during the period of investigation (POI) to the cooperating mandatory respondent companies, but found them countervailable on the basis of adverse facts available with respect to the non-cooperating mandatory respondents. We also determined that two programs were not countervailable, and that parts of two programs – the income tax exemption of the “Stamp Tax Exemption Under the NTSR Program” and the non-payment of land-use taxes and fees of the “Exemption from Land-Use Taxes and Fees” program required further information.⁵

The Department found the following net subsidies in the original investigation:⁶

Manufacturers/Producers/Exporters⁷	Net Subsidy Rate (Percent)
Guangdong Guanhao High-Tech Co., Ltd.	13.63
Shenzhen Yuanming Industrial Development Co., Ltd.	138.53
MDCN Technology Co., Ltd.	124.93
Xiamen Anne Paper Co., Ltd.	124.93
All Others	13.63

Following notification of an affirmative injury determination by the U. S. International Trade Commission (ITC), the Department published the *CVD Order*.

The Department issued one scope ruling regarding thermal paper, in which the Department stated that thermal paper converted into smaller thermal paper rolls in the PRC, from jumbo thermal

⁴ During the investigation, we found that this program provided non-recurring grants in 2002 and 2004, which were allocated over the average useful life (AUL). As the AUL for thermal paper is 13 years and, thus, the benefits from these grants would continue beyond the sunset review period, we find that it is unnecessary to adjust the investigation rate reported for this program.

⁵ See *Investigation Final*, and accompanying Issues and Decision and Memorandum at 19 and 22.

⁶ We note that these rates are from the amended final, published concurrently with the *CVD Order*. See *CVD Order*.

⁷ Shanghai Hanhong Paper Co., Ltd. had a *de minimis* margin in the investigation and was therefore excluded from the *CVD Order*. See *CVD Order*, 73 FR at 70959.

paper rolls produced in certain third countries, is not within the scope of the *CVD Order* and companion antidumping duty order.⁸

The Department has not conducted any administrative reviews of the *CVD Order* because either none were requested or the reviews were rescinded after the requests were timely withdrawn.⁹ The Department has not issued any anti-circumvention or changed circumstance determinations.

Background

Pursuant to section 751(c) of the Act, on October 1, 2013, we published the notice of initiation of a sunset review of the *CVD Order*.¹⁰ Subsequently, on October 28, 2013, we received a notice of intent to participate from the petitioner in the investigation, Appvion, Inc.¹¹ (Petitioner), within the deadline specified in 19 CFR 351.218(d)(1)(i).¹² On November 18, 2013, the Department received an adequate substantive response from Petitioner within the 30-day deadline specified in 19 CFR 351.218(d)(3).¹³ Petitioner claimed interested party status under section 771(9)(C) of the Act as a manufacturer of a domestic like product in the United States. We did not receive any substantive responses from respondent interested parties or the GOC.

According to the Department's regulations at 19 CFR 351.218(e)(1)(ii)(B)-(C), when there are inadequate responses from respondent interested parties, we normally will conduct an expedited sunset review and, no later than 120 days after the date of publication in the *Federal Register* of the notice of initiation, issue final results of review based on the facts available, in accordance with 19 CFR 351.308(f).¹⁴ Therefore, we are conducting an expedited (120-day) sunset review of the *CVD Order*.

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

⁹ See *Lightweight Thermal Paper from the People's Republic of China: Rescission of Countervailing Duty Administrative Review*, 75 FR 9397 (March 2, 2010); *Lightweight Thermal Paper from the People's Republic of China: Rescission of Countervailing Duty Administrative Review*, 77 FR 27437 (May 10, 2012); *Lightweight Thermal Paper from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2011*, 78 FR 23222 (April 18, 2013).

¹⁰ See *Initiation of Five-Year ("Sunset") Review*, 78 FR 60253 (October 1, 2013).

¹¹ Appvion, Inc. was formerly known as Appleton Papers Inc.

¹² The deadline for domestic interested party notification of intent to participate would have been October 16, 2013 (15 days after the date of publication of the initiation notice). However, 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) (*Tolling Memorandum*). Therefore, the revised deadline for notification of intent to participate was November 1, 2013.

¹³ The deadline substantive responses would have been October 31, 2013. However, due to tolling of deadlines resulting from the closure of the Federal Government, the revised deadline for substantive responses was November 16, 2013. See *Tolling Memorandum*. Because that day fell on a Saturday, the new deadline was November 18, 2013. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

¹⁴ See section 751(c)(3)(B) of the Act and 19 CFR 351.221(c)(5)(ii).

Scope of the Order

The merchandise covered by this 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;¹⁵ with or without a base coat¹⁶ on one or both sides; with thermal active coating(s)¹⁷ 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;¹⁸ and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such 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 4811.90.9035, 4811.90.9080, 4811.59.2000, 4820.10.20, 4823.40.0000, 3703.10.60, 4811.90.8030, 4811.90.8040, 4811.90.8050, 4811.90.9030, 4811.90.9050, and 4811.90.9090.¹⁹

Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the *CVD Order* would be likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider (1) the net countervailable subsidy determined in the investigation and subsequent reviews and (2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the *CVD Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information

¹⁵ Lightweight thermal paper 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 this order.

¹⁶ 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.

¹⁷ A thermal active coating is typically made of sensitizer, dye, and co-reactant.

¹⁸ 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.

¹⁹ HTSUS subheading 4811.90.8000 was a classification used for lightweight thermal paper 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 lightweight thermal paper). HTSUS subheading 4811.90.9000 was a classification for lightweight thermal paper 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 lightweight thermal paper).

concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Below we address the substantive response submitted by Petitioner.

A. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Petitioner avers that the Department should determine that subsidies countervailed in the original investigation have continued and would be likely to continue or recur if the *CVD Order* were revoked because: 1) the subsidies at issue remain in existence, having neither been terminated nor suspended; and, 2) the imposition of the *CVD Order* resulted in imports of subject merchandise declining precipitously – decreasing from over 7,400 metric tons (MT) in 2006 (the POI), to 78 MT in 2009 (the first full year after the imposition of the *CVD Order*), 132 MT in 2010, 136 MT in 2011, 108 MT in 2012, and 162 MT during the six months of 2013.²⁰

As a result, Petitioner concludes that revocation of the *CVD Order* is likely to lead to a continuation or recurrence of countervailable subsidization.

Department's Position

Section 752(b)(1) of the Act directs the Department in determining the likelihood of continuation or recurrence of a countervailable subsidy to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. The Statement of Administrative Action (SAA) further advises that the continuation of a program is “highly probative of the likelihood of continuation or recurrence of countervailable subsidies.”²¹ As explained above, there have been no administrative reviews of the *CVD Order*. As such, there is no information indicating any changes in the programs.

Therefore, consistent with our practice, we find that countervailable programs continue to exist and be used by PRC producers and exporters of thermal paper.²² Consequently, given the continued existence of programs found to provide countervailable benefits, the Department finds that a countervailable subsidy would be likely to continue or recur if the *CVD Order* were revoked.²³

²⁰ See Substantive Response at 5-6.

²¹ See *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) at 888.

²² See, e.g., *Sulfanilic Acid From India; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 76 FR 33243 (June 8, 2011); see also *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010).

²³ Although Petitioner cites to evidence of a decline in the volume of imports since the investigation, determinations concerning the likelihood of continuation or recurrence of countervailable subsidies – unlike determinations concerning the likelihood of continuation or recurrence of dumping – are primarily based upon the continued existence of countervailing duty programs and/or benefits. For a discussion of our practice see *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18874-75 (April 16, 1998) (*Sunset Policy Bulletin*).

B. Net Countervailable Subsidy Likely to Prevail

In determining the net countervailable subsidy likely to prevail in the event of revocation, Petitioner contends that the Department should use the subsidy rates found in the investigation, “because that is the only calculated rate that reflects the behavior of exporters ... without the discipline of an order or suspension agreement in place.”²⁴ Furthermore, Petitioner submits that the *Sunset Policy Bulletin* supports this contention, as it states that when:

a company-specific countervailing duty rate was determined for a particular company in the original investigation, the Department normally will provide that rate to the {ITC} as the net countervailable subsidy that is likely to prevail for that company if the order is revoked or the suspended investigation is terminated. Specifically, the Department normally will provide the company-specific countervailing duty rate from the investigation for each company, where available, regardless of whether the rate was calculated using a company's own information or was based on best information available or facts available.²⁵

As such, Petitioner argues that since there have been no administrative reviews, the subsidy rates determined in the investigation represent the best evidence of PRC exporters’ behavior in the absence of the *CVD Order*.

Department’s Position

As Petitioner noted, consistent with the SAA and legislative history, the Department normally will provide to the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.²⁶

Section 752(b)(1)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy.

Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.²⁷

²⁴ See Substantive Response at 10, citing the SAA at 890.

²⁵ *Id.*, citing the *Sunset Policy Bulletin*, 63 FR 18875-18876.

²⁶ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

²⁷ See *Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010) and accompanying Issues and Decision Memorandum at 4.

In determining company-specific, net countervailable subsidy rates likely to prevail, the Department has started with the rates found in the original investigation. Since the Department has not conducted any administrative reviews of the *CVD Order*, we do not need to adjust the rates from the investigation to account for additional subsidies, program-wide changes or terminated programs.

As a result, the Department is providing to the ITC the rates found in the original investigation. Consistent with section 752(b)(3) of the Act, the Department will provide to the ITC the net countervailable subsidy rates shown in the section entitled “Final Results of Review.”

Nature of the Subsidies

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies, and whether any of the subsidies are as described in Article 3 or Article 6.1 of the SCM Agreement. However, Article 6.1 of the SCM Agreement expired on January 1, 2000.

The following programs are export subsidies as described in Article 3 of the SCM Agreement:

1. Zhanjiang Municipality and Zhanjiang Economic and Technological Development Zone (ZETDZ) Export-Related Assistance

Respondent companies received export assistance in the form of grants from the municipal government and ZETDZ.

2. Funds for Outward Expansion of Industries in Guangdong Province

Respondent companies received export contingent grants from the local Department of Foreign Trade and Economic Cooperation.

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement, but could be a subsidy as described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. The subsidy could also fall within the meaning of Article 6.1 if it constitutes debt forgiveness, a grant to cover debt repayment, or is a subsidy to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We are providing the ITC with the following program descriptions:

1. Shareholder Loans

A respondent benefitted from loan forgiveness granted by wholly state-owned financial institutions prior to and during the POI. Because these institutions were shareholders in the company, the debt forgiveness was found to be specific to the company.

2. Government Policy Lending Program

The GOC, through Policy Banks and State-Owned Commercial Banks, provided preferential loans to respondents, which were found to be specific to the forestry and paper industry.

3. Income Tax Reduction for High-Tech Industries in Guangdong Province

Companies placed on Guangdong Province's list of high-tech industries pay a reduced national income tax rate. The incentive was found specific to certain high-tech enterprises.

4. Reduced Income Tax Rates for Foreign-Invested Enterprises (FIEs) Based on Location

FIEs located in designated coastal economic zones, special economic zones, and economic and technical development zones in the PRC pay reduced corporate income tax rates. The incentive was found to be geographically specific.

5. Income Tax Exemptions/ Reductions Under the "Two Free/Three Half" Program

"Productive FIEs" pay no income tax in the first two years of profitability and pay reduced income taxes for the next three years. These incentives were found to be specific to "productive FIEs."

6. Local Income Tax Exemption and Reduction Program for "Productive" FIEs

Provincial governments provide an exemption or reduction in local income taxes specifically to "productive" FIEs.

7. Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area

Shanghai tax authorities allow enterprises located in the Shanghai Pudong New Area to pay reduced national and local income taxes. The incentives were found to be geographically specific.

8. VAT and Tariff Exemptions on Imported Equipment

FIEs and certain domestic enterprises are exempted from paying VAT and import tariffs on eligible imported equipment used in production. These incentives were found to be specific to a limited number of enterprises.

9. Stamp Tax Exemption Under the Non-Tradable Share Reform (NTSR) Program

Respondent did not pay a Stamp Tax to PRC tax authorities when it transferred non-tradable shares to tradable share shareholders. Benefits were found to be specific to companies that participated in the NTSR program.

10. Environmental Subsidy to Zhanjiang Guanlong Paper Industrial Co., Ltd.

The Zhangjiang Finance Bureau provided financial assistance to a respondent for its environmental protection project. Actual recipients of the assistance were found to be limited in number.

11. Exemption from Land-Use Taxes and Fees

A respondent was exempted from certain land-use taxes and fees under a program found to be limited by law to certain enterprises.

12. Provision of Electricity for Less Than Adequate Remuneration (LTAR) in the ZETDZ

The GOC provided electricity for LTAR to respondents, which was found to be geographically specific.

13. Provision of Land to Guangdong Guanhao High-Tech Co., Ltd. in the ZETDZ for LTAR

A respondent obtained “granted” land-use rights in the ZETDZ, which was found to be geographically specific.

The Department determined the following programs to be not used by mandatory respondents Guangdong Guanhao High-Tech Co., Ltd. (or its cross-owned affiliate) or Shanghai Hanhong Paper Co., Ltd., but found the programs to be countervailable on the basis of adverse facts available for non-cooperating companies.

1. Loans Provided Pursuant to the Northeast Revitalization Program;
2. Loan Guarantees from Government-Owned and Controlled Banks;
3. Income Tax Exemption Program for Export-Oriented FIEs;
4. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises;
5. Reduced Income Tax Rate for Technology and Knowledge Intensive FIEs;
6. Reduced Income Tax Rate for High or New Technology FIEs;
7. Preferential Tax Policies for Research and Development (R&D) at FIEs;
8. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies;
9. State Key Technology Renovation Program Fund;
10. Export Interest Subsidy Funds for Enterprises Located in Shenzhen City and Zhejiang Province;
11. Loans and Interest Subsidies Pursuant to Liaoning Province’s Five-Year Framework;
12. Currency Retention Program;
13. Special Fund for Technology Innovation Projects in Guangdong Province;
14. Zhanjiang Municipality Grants for Patents;
15. Zhanjiang Municipality Grants to “Famous Brand/Famous Trademark” Enterprises;
16. Government Interest Discounts;
17. “Enterprise Innovation Funds” Grants;

18. Grants from the ZETDZ for High and New Technology Enterprises;
19. Funding for Construction of Enterprise Technology R&D Centers from the Guangdong Government;
20. Grants Under the Three Science and Technology Expenditure Fund;
21. Research Assistance from the Local Government to GG; and
22. Provision of Certain Papermaking Chemicals (DPE, BPS, and ODB2) for LTAR.

Final Results of Review

Based on the analysis above, the Department finds that revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Producers/Exporters	Net Subsidy Rate (Percent)
Guangdong Guanbao High-Tech Co., Ltd.	13.63
Shenzhen Yuanming Industrial Development Co., Ltd.	138.53
MDCN Technology Co., Ltd.	124.93
Xiamen Anne Paper Co., Ltd.	124.93
All Others	13.63

Recommendation

We recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register* and notify the ITC of our findings.

AGREE ✓

DISAGREE _____

Paul Piquado
 Paul Piquado
 Assistant Secretary
 for Enforcement and Compliance

14 FEBRUARY 2014
 Date