

*Comment 11:* Use of Malaysian Export Statistics as the Starting Point for Deriving Stumpage Benchmarks  
*Comment 12:* The Stumpage Rate Calculation Provided by Respondents in their Expert's Report  
*Comment 13:* Calculation of Species-Specific Benchmarks  
*Comment 14:* Whether to Adjust the Benchmark for Movement Expenses  
*Comment 15:* Whether to Use Monthly Exchange Rates  
*Comment 16:* Whether to Adjust the Benchmark for Export Royalty Fees and G&A Expenses  
*Comment 17:* Profit Adjustment to the Benchmark  
*Comment 18:* Use of Actual Versus Accrued Stumpage Payments  
*Comment 19:* Use of the FAO's Conversion Factors  
*Comment 20:* Whether to Adjust WKS' Log Harvest  
*Comment 21:* Adjustments to the Sales Denominator  
*Comment 22:* Treatment of Alleged Illegal Logging in Indonesia  
*Comment 23:* Indications of Illegal Logging Practices in Subsidizing Indonesia's CFS Paper Industry  
*Comment 24:* Examination of Log Purchases from Non-Cross Owned Entities Under the Log Export Ban  
*Comment 25:* The Legality of the WTO's Findings on Export Restraints  
*Comment 26:* Whether Respondent Companies Cured Any Deficiency with Respect to Settling Debt with COEs  
*Comment 27:* Specificity of IBRA's Acceptance of BII Shares and COEs for the Repayment of SMG/APP Debt  
*Comment 28:* The Effect of IBRA's Outright Debt Forgiveness on the Specificity of the Acceptance of COEs for SMG/APP Debt  
*Comment 29:* Benefit from IBRA's Acceptance of COEs as Settlement of Debt  
*Comment 30:* Whether an Adverse Inference Can be Applied in Determining that Orleans was Affiliated with SMG/APP  
*Comment 31:* Specificity of IBRA's Sale of SMG/APP Debt to an Affiliate of the Original Debtor  
*Comment 32:* Whether the Information the Department Relied Upon Was Speculative and Circumstantial  
*Comment 33:* Procedural Abnormalities in IBRA's Sale of the SMG/APP Debt and Specificity  
*Comment 34:* Effect of the Lack of Reduction in Debt on the Countervailability of the Sale of SMG/APP's Debt to Orleans  
*Comment 35:* The Appropriateness of the Department's Reliance on Facts Available with an Adverse Inference

*Comment 36:* Whether A Government Can Provide a Financial Contribution When the Act is Illegal

### VIII. Recommendation

[FR Doc. E7-21040 Filed 10-24-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-907]

#### Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

**SUMMARY:** The Department of Commerce (Department) has made a final determination that countervailable subsidies are being provided to producers and exporters of coated free sheet (CFS) paper from the People's Republic of China. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

**EFFECTIVE DATE:** October 25, 2007.

**FOR FURTHER INFORMATION CONTACT:**

David Layton or David Neubacher, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0371 or (202) 482-5823, respectively.

**SUPPLEMENTARY INFORMATION:**

**Petitioner**

The petitioner in this investigation is the NewPage Corporation (petitioner).

**Period of Investigation**

The period for which we are measuring subsidies, or period of investigation, is January 1, 2005, through December 31, 2005.

**Case History**

The following events have occurred since the announcement of the preliminary determination on March 30, 2007, and subsequent publication in the **Federal Register** on April 9, 2007. See *Coated Free Sheet Paper from the People's Republic of China: Amended Affirmative Preliminary Countervailing Duty Determination*, 72 FR 17484 (April 9, 2007) (*Preliminary Determination*).

On April 9, 2007, Gold East Paper (Jiangsu) Co., Ltd. (GE) and the petitioner submitted ministerial error allegations relating to the *Preliminary*

*Determination*. We addressed these ministerial error allegations in a May 11, 2007, memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled *Ministerial Error Allegations*, which is on file in the Central Records Unit (CRU), Room B-099 of the main Department building.

On April 12, 2007, the Department requested that GE amend the bracketing and resubmit its March 9, 2007, supplemental questionnaire response, which GE did on April 17, 2007.

We issued a supplemental questionnaire to the Government of the People's Republic of China (GOC) on April 23, 2007, and to GE and Shandong Chenming Paper Holdings Ltd. (Shandong Chenming) on April 20, 2007. We received the GOC's supplemental questionnaire response on May 13, 2007, Shandong Chenming's supplemental questionnaire response on May 18, 2007, and GE's supplemental response on May 25, 2007. On May 25, 2007, we issued a supplemental questionnaire to Shandong Chenming, but did not receive a response. The GOC, GE, the petitioner, and interested parties also submitted factual information, comments, and arguments at numerous instances prior to the final determination based on various deadlines for submissions of factual information and/or arguments established by the Department subsequent to the *Preliminary Determination*.

On May 2, 2007, the Department published notification of alignment of the final determinations in the antidumping and countervailing duty investigations of CFS paper from the People's Republic of China (PRC). See *Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea: Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations*, 72 FR 24277 (May 2, 2007). The Department subsequently postponed the final determinations for the antidumping and countervailing investigations of CFS paper from the PRC. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758 (June 4, 2007).

On June 13, 2007, we received a letter from Shandong Chenming withdrawing its participation in the investigation and requesting that all of its business proprietary information be removed from the record and destroyed. On June 27, 2007, the Department notified Shandong Chenming that it had

removed and destroyed the company's submitted proprietary information from the record of this investigation and would direct all interested parties under the Administrative Protective Order (APO) to certify its destruction. All interested parties certified destruction of Shandong Chenming's proprietary information.

From July 11 to July 28, 2007, we conducted verification of the questionnaire responses submitted by the GOC and GE.

On August 30, 2007, we issued our preliminary determination regarding the creditworthiness of GE and its cross-owned companies. We addressed our preliminary findings in a August 30, 2007, memorandum to David M. Spooner, Assistant Secretary for Import Administration, entitled *Preliminary Creditworthiness Determination for Gold East Paper (Jiangsu) Co., Ltd. and its Cross-Owned Companies*, which is on file in the CRU.

We received case briefs from the GOC; GE; the petitioner; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC on September 7, 2007. The same parties submitted rebuttal briefs on September 12, 2007. We held a hearing for this investigation on September 18, 2007.

#### Scope of the Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not-more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms "wood free" or "art" paper may also be used to describe the imported product.

Excluded from the scope are: (1) coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900,

4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

#### Scope Comments

On August 20, August 28, and September 10, 2007, the petitioner requested that the Department clarify the scope of the antidumping and countervailing duty investigations of CFS paper from Indonesia, Korea and the People's Republic of China. Specifically, the petitioner asked the Department to "clarify that the scope of the investigation includes coated free sheet paper containing hardwood BCTMP."

Because this was a general issue pertaining to all six investigations, the Department set up a general issues file to handle this scope request. A hearing on the scope request was held on September 26, 2007. The hearing comprised a public session, a closed session for the antidumping investigation from Korea, and a closed session for the countervailing duty investigation from the PRC. After considering the comments submitted by the parties to these investigations, we have determined not to adopt the scope clarification sought by the petitioner. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification Request: NewPage Corporation," dated concurrently with this notice, which is appended to the "Issues and Decision Memorandum for Final Determination" from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated October 17, 2007 (*Decision Memorandum*).

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in

the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

#### Use of Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See *Statement of Administrative Action* (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

The Department has concluded that it is appropriate to base the final determination for Shandong Chenming on facts otherwise available. Shandong Chenming failed to respond fully to the Department’s questionnaires and did not respond at all to one questionnaire. Also, on June 13, 2007, Shandong Chenming withdrew its proprietary information from the record. Thus, Shandong Chenming withheld information requested by the Department. Consequently, the use of facts otherwise available is warranted under section 776(a)(2)(A) of the Act.

In selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, in addition to not fully responding to all of our requests for information, as of June 13, 2007, Shandong Chenming withdrew from all participation in the investigation and did not provide the Department with the opportunity to verify the information it did submit. Thus, Shandong Chenming failed to cooperate by not acting to the best of its ability, and our final determination is based on total AFA.

#### **Selection of the Adverse Facts Available Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final

determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department’s practice to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., *Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and accompanying Issues and Decision Memorandum at “Analysis of Programs.”

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.” See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*; 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

For these reasons the Department is relying on the highest calculated final subsidy rates for income tax, VAT, and policy lending programs of the other producer/exporter of the subject merchandise in this investigation, GE, to calculate the AFA rate for Shandong Chenming. We do not need to corroborate these rates because they are not considered secondary information as they are based on information obtained in the course of this investigation, pursuant to section 776(c) of the Act.

#### **Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, GE and Shandong Chenming. According to section 705(c)(5)(A)(i) of the Act, the

Department excludes any rates determined entirely under section 776 of the Act. As Shandong Chenming’s rate was calculated under section 776 of the Act, we have used the rate for GE as the “all others” rate.

Exporter/Manufacturer	Net Subsidy Rate
Gold East Paper (Jiangsu) Co., Ltd. ....	7.40 %
Shandong Chenming Paper Holdings Ltd. ....	44.25 %
All Others .....	7.40 %

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of coated free sheet paper from the PRC which were entered or withdrawn from warehouse, for consumption on or after April 9, 2007, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after August 7, 2007, but to continue the suspension of liquidation of entries made from April 9, 2007, through August 7, 2007.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### **ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: October 17, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

### Appendix

List of Comments and Issues in the Decision Memorandum

- Comment 1: Applicability of the CVD Law to China
- Comment 2: The Administrative Procedures Act (APA) Claim
- Comment 3: The Department's Justification for its Change in Practice from *Sulfanilic Acid from Hungary*
- Comment 4: China's WTO Accession Protocol
- Comment 5: Retroactive Application of the CVD Law to China
- Comment 6: Comparison of the Department's Findings in the *Georgetown Memo* and the *August 30 Market Economy Status Memo*
- Comment 7: Application of Adverse Facts Available to the GOC
- Comment 8: Policy Lending
- Comment 9: Countervailability of Foreign-denominated Loans
- Comment 10: Benchmark for Policy Lending
- Comment 11: Adjustment for Long-term Interest Rate Benchmark
- Comment 12: Creditworthiness of GE and its Cross-owned Companies
- Comment 13: Application of a Risk Premium to the Short-term Loan Benchmark
- Comment 14: Specificity of Programs for FIEs
- Comment 15: Over-calculation of the Two Free/Three Half Benefit
- Comment 16: Specificity of VAT Programs
- Comment 17: Attribution of GHS' Subsidies to GE

- Comment 18: Attribution of Subsidies Bestowed on Input Suppliers
- Comment 19: Whether the Department's Cross-ownership Regulations Provide for the Attribution of Upstream Subsidies to Cross-owned Companies
- Comment 20: Attribution of Subsidies Bestowed on the Forestry Companies to CFS
- Comment 21: Rate Adjustment for GE's *Ad Valorem* Subsidy Rate
- Comment 22: Subsidies to Forestry Companies Discovered After the Preliminary Determination
- Comment 23: Correction to GE's Domestic Sales Value
- Comment 24: Application of Adverse Facts Available to Chenming
- Comment 25: Certification of Non-Reimbursement of Duties

[FR Doc. E7-21046 Filed 10-24-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[Application No. 85-14A18]

#### Export Trade Certificate of Review

**ACTION:** Notice of Application (#85-14A18) to Amend the Export Trade Certificate of Review Issued to U.S. Shippers Association.

**SUMMARY:** Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or E-mail at: [oetca@ita.doc.gov](mailto:oetca@ita.doc.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the

**Federal Register** identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021-X H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 85-14A18."

The U.S. Shippers Association's original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and last amended on April 6, 2006 (71 FR 18721, April 12, 2006).

A summary of the current application for an amendment follows.

#### *Summary of the Application:*

*Applicant:* U.S. Shippers Association ("USSA"), 344 Canford Park East, Canton, Michigan 48187.

*Contact:* John S. Chinn, Project Director, Telephone: (734) 927-4328.

*Application No.:* 85-14A18.

*Date Deemed Submitted:* October 18, 2007.

*Proposed Amendment:* USSA seeks to amend its Certificate to add the following company as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Cook Composites and Polymers Co., North Kansas City, Missouri (controlling entity: TOTAL Holdings USA, Inc., Houston Texas).

Dated: October 19, 2007.

**Jeffrey C. Anspacher,**

*Director, Export Trading Company Affairs.*

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