

Washington, DC 20230; telephone (202) 482-1766.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2003, the Department issued its final results in the antidumping duty administrative review of certain preserved mushrooms from the PRC covering the POR of February 1, 2001, through January 31, 2002. See *Final Results*. In the *Final Results*, the Department applied total adverse facts available (AFA) in calculating the cash deposit and assessment rates for respondents Gerber Food (Yunnan) Co., Ltd. (Gerber) and Green Fresh (Zhangzhou) Co., Ltd. (Green Fresh). See *Final Results*, 68 FR at 41306. The Department found that Gerber and Green Fresh were involved in a business arrangement during the POR that resulted in the circumvention of the proper payment of cash deposits on certain POR entries of subject merchandise made by Gerber. *Id.* As total AFA, the Department applied the PRC-wide rate of 198.63 percent to both companies. Gerber and Green Fresh challenged the Department's resorting to total AFA to determine their cash deposit and assessment rates for the POR in the *Final Results*.

In *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 05-84 (July 18, 2005) (*Gerber v. United States I*), the CIT remanded the *Final Results*, holding that the Department's application of the "facts otherwise available" and "adverse inference" provisions was not supported by substantial record evidence and was otherwise not in accordance with law. In *Gerber v. United States II*, the CIT held that the Department's Redetermination Pursuant to Court Remand complied with the remand order in *Gerber v. United States I* in some respects but not others, and remanded the redetermination to the Department for further reconsideration.

On September 18, 2007, the Department issued its final results of redetermination pursuant to *Gerber v. United States II*. The remand redetermination explained that, in accordance with the CIT's instructions, the Department: (1) Recalculated the assessment rate for Gerber using a rate other than the PRC-wide rate as partial AFA with respect to certain POR sales of subject merchandise produced by Gerber for which the customs entry documentation identified Green Fresh as the exporter; and (2) recalculated the assessment rate for Green Fresh based on the data it reported, exclusive of the aforementioned transactions, without resorting to facts available or adverse

inferences. The Department's redetermination resulted in changes to the *Final Results* weighted-average margins for Gerber from 198.63 percent to 92.11 percent, and for Green Fresh from 84.26 percent to 31.55 percent.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Gerber v. United States III* on September 16, 2008, constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from Gerber and Green Fresh based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: September 26, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8-23269 Filed 10-1-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-921]

Lightweight Thermal 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 (the "Department") has determined that countervailable subsidies are being provided to producers and exporters of lightweight thermal paper ("LWTP")

from the People's Republic of China ("PRC"). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

DATES: *Effective Date:* October 2, 2008.

FOR FURTHER INFORMATION CONTACT:

David Layton, David Neubacher, or Scott Holland, 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, (202) 482-5823, or (202) 482-1279, respectively.

Petitioner

The Petitioner in this investigation is Appleton Papers, Inc. ("the Petitioner").

Period of Investigation

The period for which we are measuring subsidies, or period of investigation ("POI"), is January 1, 2006, through December 31, 2006.

Case History

The following events have occurred since the announcement of the preliminary determination on March 10, 2008. See *Lightweight Thermal Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 13850 (March 14, 2007) ("*Preliminary Determination*").

The Department issued questionnaires to the Government of the People's Republic of China ("GOC"), Shanghai Hanhong Paper Co., Ltd. ("Hanhong"), Guangdong Guanbao High-Tech Co., Ltd. ("GG") and GG's affiliated input supplier Zhanjiang Guanlong Paper Industrial Co., Ltd ("ZG") regarding new subsidy allegations filed by the Petitioner on February 8 and February 14, 2008. We received responses to these questionnaires and to several supplemental questionnaires, and comments from the Petitioner regarding the responses.

The Petitioner and GG/ZG submitted additional factual information consistent within the deadline for the submission of factual information established by 19 CFR 351.301(b)(1).

In the *Preliminary Determination*, the Department stated that it would accept the claim of respondent Xiamen Anne Paper Co., Ltd. ("Xiamen Anne") that it made no shipments of subject merchandise during the POI, subject to

verification.¹ On May 6, 2008, counsel for Xiamen Anne informed the Department that Xiamen Anne would not participate further in the investigation and canceled the scheduled on-site verification of its shipments. See Memorandum to File, "E-mail Correspondence with Respondent Xiamen Anne Paper Co. Ltd." (May 7, 2008) ("Xiamen Anne Memo"). On May 7, 2008, the Department informed Xiamen Anne that if it did not participate in the on-site verification, the Department might use facts otherwise available, in accordance with section 776 of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.308. See further discussion in the "Use of Facts Otherwise Available" section below.

From June 18 through July 1, 2008, we conducted verification of the questionnaire responses submitted by the GOC, Hanhong, GG and ZG.

On September 2, 2008, we issued our post-preliminary determination regarding the new subsidy allegations and certain other programs discovered in the course of the investigation. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, entitled "Post-Preliminary Findings for New Subsidy Allegations," dated September 2, 2008, which is on file in the Central Records Unit ("CRU").

On September 2, 2008, the Department issued a preliminary determination that ZG was uncreditworthy for the years 2003 and 2004. See Memorandum from David Neubacher to Susan Kuhbach, Senior Director, Office 1, regarding "Preliminary Creditworthiness Determination for Zhanjiang Guanlong Paper Industrial Co., Ltd.," dated September 2, 2008, which is on file in the CRU.

We received case briefs from the GOC, GG/ZG and the Petitioner on September 10, 2008. The same parties submitted rebuttal briefs on September 15, 2008.

Scope of the Investigation

The merchandise subject to this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter ("g/m²") (with a tolerance of ± 4.0 g/m²) or less; irrespective of dimensions;² with or

without a base coat³ on one or both sides; with thermal active coating(s)⁴ 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;⁵ 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 investigation may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.⁶ Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

The scope listed above has changed from the *Preliminary Determination*.

We set aside a period for interested parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*.⁷ We only received comments on the scope from the Petitioner. See the Petitioner's letter to the Department regarding, "Lightweight Thermal Paper from China, Germany, and Korea," dated November 19, 2007. Petitioner requested that the Department

³ 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.

⁴ A thermal active coating is typically made of sensitizer, dye, and co-reactant.

⁵ 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.

⁶ 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). Petitioner indicated that, from time to time, LWTP also may have been entered under HTSUS subheading 3703.90, HTSUS heading 4805, and perhaps other subheadings of the HTSUS, including HTSUS subheadings: 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.

⁷ See *Notice of Initiation of Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China*, 72 FR 62209, 62210 (November 2, 2007) ("Initiation Notice").

include in LWTP's scope language the HTSUS subheadings 3703.10.60,⁸ 4811.59,⁹ 4820.10,¹⁰ and 4823.40,¹¹ because LWTP may enter the United States under one of these HTSUS subheadings. Specifically, the Petitioner contends that HTSUS subheading 3703.1060 should be included because LWTP is sensitive to heat radiation; LWTP with certain latex topcoats could enter as paper coated with plastic under HTSUS subheading 4811.59; HTSUS subheading 4820.10's description may encompass products converted from thermal paper; and HTSUS subheading 4823.40's description appears to encompass LWTP not elsewhere specified within the HTSUS.

On April 11, 2008, and April 16, 2008, the Department received a request from U.S. Customs and Border Protection ("CBP") to update the antidumping and countervailing duty ("AD/CVD") module for LWTP from the PRC. Specifically, CBP requested that the Department add HTSUS subheadings 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00 to the AD/CVD module. See the Department's memorandum to the file entitled, "Request from Customs and Border Protection to update AD/CVD Module," dated April 17, 2008. Based on the requests from the Petitioner and CBP, we are modifying the scope of this investigation to include the additional HTSUS subheadings.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission ("ITC") must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On December 11, 2007, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly

⁸ See ITC website located at <http://usitc.gov/> which describes 3703.1060 as "photographic paper, paperboard, and textiles, sensitized: other."

⁹ See *id.*, which describes HTSUS subheading 4859.10 as "other: In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state."

¹⁰ See *id.*, which describes HTSUS subheading 4820.10 as "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles."

¹¹ See *id.*, which describes HTSUS subheading 4823.40 as "Rolls, sheets and dials, printed for self-recording apparatus."

¹ See *Preliminary Determination* at 73 FR 13850.

² 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 rolls and converted rolls (as well as LWTP in any other forms, presentations, or dimensions) are covered by the scope of these investigations.

subsidized imports of LWTP from the People's Republic of China ("PRC") and Germany. See *Certain Lightweight Thermal Paper from China, Germany and Korea*, Investigation Nos. 701-TA-415 and 731-TA-1126-1128, 72 FR 70343 (Preliminary) (December 11, 2007).

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. See "Issues and Decision Memorandum for the Final Determination," from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated September 25, 2008 ("Decision Memorandum"). 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 Facts Otherwise Available and Adverse Inferences

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.

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.

In this investigation, Shenzhen Yuanming Industrial Development Co., Ltd. ("Shenzhen Yuanming"), MDCN Technology Co., Ltd. ("MDCN"), and Xiamen Anne did not provide the requested information that is necessary

to determine a CVD rate for this final determination. Specifically, MDCN did not respond to the Department's December 14, 2007, request for shipment data and never participated in the investigation. Shenzhen Yuanming responded to the Department's December 14, 2007, request for shipment data, but failed to respond to the Department's January 4, 2008, CVD questionnaire and ceased to participate further in the investigation after the December 26, 2007, submission of its shipment data. In the case of Xiamen Anne, on November 29, 2007 it notified the Department that it did not ship the subject merchandise to the United States during the POI. However, Xiamen Anne did not permit the Department to verify Xiamen Anne's claim of no shipments of subject merchandise, and since May 6, 2008, Xiamen Anne has not participated in the investigation. See Memorandum to File, "E-mail Correspondence with Respondent Xiamen Anne Paper Co. Ltd." (May 7, 2008). Thus, in reaching our final determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based the countervailing duty rates of Shenzhen Yuanming, MDCN, and Xiamen Anne on facts otherwise available.

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, MDCN, Shenzhen Yuanming and Xiamen Anne withdrew from all participation in the investigation. MDCN failed to respond to any of the Department's questionnaires. Shenzhen Yuanming responded to the Department's December 14, 2008, request for shipment data, but thereafter ceased to participate in the investigation. Xiamen Anne notified the Department that it had no shipments of subject merchandise, but after tentatively scheduling an on-site verification, it decided to cancel the verification and stop its participation in the proceeding. Thus, MDCN, Shenzhen Yuanming, and Xiamen Anne failed to cooperate by not acting to the best of their abilities to comply with the Department's requests for information, and our final determination is based on total AFA. Accordingly, we find that an adverse inference is warranted to ensure that MDCN, Shenzhen Yuanming, and Xiamen Anne will not obtain a more favorable result than had they fully complied with our request for information.

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. 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 statutory purposes of the adverse facts available rule 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 Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994), 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).

Selection of the Adverse Facts Available Rate

Parties can find a full discussion of the selection of the AFA rate at Comment 1 in the *Decision Memorandum*, which is on file in the CRU.

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: GG, Hanhong, MDCN, Shenzhen Yuanming, and Xiamen Anne. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted average countervailable

subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776. As the rates for MDCN, Shenzhen Yuanming, and Xiamen Anne were calculated under section 776 of the Act, those rates were not reflected in the “all others” rate.

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we determined an “all others” rate by weighting the individual company subsidy rate of each of the companies investigated by each company’s exports of the subject merchandise to the United States. The “all others” rate does not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, because we have only one rate that can be used to calculate the “all others” rate, GG’s rate, we have assigned that rate to all other non-investigated companies.

Exporter/manufacturer	Net subsidy rate
Guangdong Guanbao High-Tech Co., Ltd.	13.17
Shanghai Hanhong Paper Co., Ltd.	0.57 (<i>de minimis</i>)
Shenzhen Yuanming Industrial Development Co., Ltd.	137.25
MDCN Technology Co., Ltd.	123.65
Xiamen Anne Paper Co., Ltd.	123.65
All Others	13.17

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 LWTP from the PRC which were entered or withdrawn from warehouse, for consumption on or after March 14, 2008, the date of the publication of the *Preliminary Determination* in the **Federal Register**, except for entries from Hanhong, which had a *de minimis* rate.

In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes on all shipments of the subject merchandise entered, or withdrawn from the warehouse, for consumption on or after July 12, 2008, but to continue the suspension of liquidation of entries made from March 14, 2008 through July 11, 2008.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the 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: September 25, 2008.

Stephen J. Claeys,
Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

- Comment 1: The Department’s Authority to Apply the Countervailing Duty Law to China.
- Comment 2: Cut-off Date for Recognition of Subsidies.
- Comment 3: Adverse Facts Available (“AFA”).
- Comment 4: Sales Denominator for GG and ZG.
- Comment 5: Government Policy Lending—Specificity.
- Comment 6: Government Policy Lending—Financial Contribution.

Comment 7: Government Policy Lending—Whether Particular Banks Are “Authorities”.

Comment 8: Chinese Interest Rates as the Benchmark.

Comment 9: Benchmark Rates.

Comment 10: Whether to Countervail Certain Loans Received from Shareholders.

Comment 11: Provision of Electricity for Less Than Adequate Remuneration.

Comment 12: Provision of Land for Less Than Adequate Remuneration.

Comment 13: Stamp Tax and Income Tax Exemption Under Non-Tradable Share Reform.

Comment 14: Whether ZG is Creditworthy.

Comment 15: Double Counting/Overlapping Remedies.

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A–428–840)

Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (the Department) has determined that imports of lightweight thermal paper (LWTP) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final estimated margins of sales at LTFV are listed below in the section entitled “Final Determination Margins.”

EFFECTIVE DATE: October 2, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or George McMahan, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3797 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On May 13, 2008, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of LWTP from Germany. See *Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 27498