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Global Trade Practice

US Int'l Trade Commission Overturns Precedent-Breaking Duties on Chinese Imports

The US Department of Commerce (Commerce) treats the People's Republic of China (PRC) as a non-market economy (NME) country. As a result, Commerce previously refused to apply the countervailing (i.e., anti-subsidy) law of the US to PRC imports. But Commerce recently broke with this decades-long precedent. In October 2007, in the final determination regarding coated-free sheet paper, Commerce imposed countervailing duties of 7.40 to 44.25 percent on PRC imports, as well as antidumping duties of 21.12 to 99.65 percent. Separately, Commerce imposed countervailing and antidumping duties on coated-free sheet paper imports from Indonesia and South Korea. See Mayer Brown Global Trade Practice Client Alert, "[US Department of Commerce Breaks With Over 20 Years of 'Trade Remedy' Precedent](#)" (Oct. 24, 2007).

On November 20, 2007, the US International Trade Commission (ITC) effectively struck down Commerce's final determination in each of these investigations. The ITC voted 5-to-1 against imposing either countervailing or antidumping duties on coated-free sheet paper from Indonesia, Korea, and the PRC. The ITC found that these imports were not materially injuring or threatening material injury to the coated-free sheet paper industry in the United States. An affirmative ITC injury finding is a prerequisite under US trade law for the duties ordered by Commerce to remain in place. The full ITC decision will not be available to the public until after December 21, 2007.

Although welcome news for Beijing, the ITC's decision should not be viewed by Chinese officials as a US trade policy reversal. The ITC is an independent government agency and its decision in the coated-free sheet paper case was based on the weak evidence of injury and causal link presented by the US industry petitioner, NewPage Corporation. The ITC's decision overturns Commerce's imposition of duties on coated-free sheet paper imports, but does not upset Commerce's policy to apply the countervailing duty law to imports from the PRC. Indeed, there are six other countervailing duty investigations pending against Chinese-made imports – circular steel pipe, rectangular pipe and tube, laminated woven sacks, off-the-road tires, raw flexible magnets, and lightweight thermal paper.

NewPage Corporation is likely to appeal the ITC's decision before the US Court of International Trade. In the meantime, US importers of coated-free sheet paper will receive refunds of any cash deposits for duties they paid at the border after Commerce's preliminary determination to impose antidumping and countervailing duties.

It is unclear what Beijing's next steps will be. The PRC has brought a challenge before the World Trade Organization (WTO) against Commerce's preliminary determination in this case, which implemented the new policy to apply countervailing duties against the PRC. Although the ITC's negative determination does not affect the PRC's legal ability to pursue this WTO challenge, it may affect Beijing's political will to press ahead. It is unclear whether the PRC may also challenge Commerce's final affirmative coated-free

sheet paper determination at the WTO, given the ITC's negative determination.

For more information on the ITC's ruling or Mayer Brown's Global Trade Group, please contact [Duane Layton](#) in Mayer Brown's Washington, DC office at +1 202 263 3811 or dlayton@mayerbrown.com.

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