



A-570-022, C-570-023
CIRC: Uncoated Paper Rolls
Public Document
E&C/OV: RG

November 6, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for Anti-Circumvention
Inquiries of the Antidumping and Countervailing Duty Orders on
Certain Uncoated Paper from the People's Republic of China:
Uncoated Paper Rolls

I. SUMMARY

In response to a request from Domtar Corporation (Domtar); Packaging Corporation of America; North Pacific Paper Company; Finch Paper LLC; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the petitioners), we initiated anti-circumvention inquiries, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(g),¹ to determine whether imports of certain uncoated paper rolls that are further processed into uncoated paper sheets in the United States, are circumventing the *Orders* on certain uncoated paper from the People's Republic of China (China).² Based on the information submitted by interested parties and the analysis below, we recommend that, pursuant to section 781(a) of the Act, the Department of Commerce (Commerce) preliminarily find that imports of certain uncoated paper rolls from China are circumventing the *Orders*.

¹ See *Certain Uncoated Paper Products from Australia, Brazil, the People's Republic of China, and Indonesia: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders*, 84 FR 55915 (October 18, 2019) (*Initiation Notice*).

² See Petitioners' Letters, "Petitioners' Request for an Anti-Circumvention Inquiry Pursuant to Section 781(a) of the Tariff Act of 1930," dated August 2, 2019 (Allegation of Circumvention); and "Petitioners' Response to the Department's Questions Regarding Petitioners' Request for Anti-Circumvention Inquiries," dated August 23, 2019 (Petitioners' August 23 Response); see also *Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders*, 81 FR 11174 (March 3, 2016); and *Certain Uncoated Paper from Indonesia and the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 81 FR 11187 (March 3, 2016) (collectively, *Orders*).



II. BACKGROUND

Initiation and Respondent Selection

On October 18, 2019, Commerce initiated anti-circumvention inquiries with respect to certain uncoated paper rolls from China that are further processed in the United States into uncoated paper sheets covered by the scope of the *Orders* (subject-paper rolls).³ On October 24, 2019, we released entry data from U.S. Customs and Border Protection (CBP) for the period February 1, 2015 through February 28, 2019, to all interested parties under an administrative protective order and invited interested parties to comment on the data.⁴ Also on October 24, 2019, we identified a list of companies through publicly-available sources involved in the production, export, import, or possible conversion of uncoated paper rolls in the United States and invited interested parties to comment on the list.⁵

We requested information on the quantity and value (Q&V) of subject-paper rolls from seven of the companies/company groups identified in the Companies List Memo,⁶ and we received timely Q&V responses and supplemental responses from three of them (*i.e.*, Asia Symbol,⁷ Gold Huasheng,⁸ and Marubeni).^{9,10} We also received Q&V responses from two U.S. converters, Case Paper Company (Case Paper) and Performance Office Papers, Inc. (Performance Papers).¹¹ Two companies on the list (*i.e.*, Central National Asia Limited (CNAL) and Kingdecor (Zhejiang) Co., Ltd. (Kingdecor)) did not respond to the Q&V questionnaire, and we subsequently determined that the remaining two companies (*i.e.*, Shandong Sun Paper Industry Joint Stock Co Ltd (Shandong Sun Paper) and Sun Paper (Hong Kong) Co., Limited (Sun Paper HK)) could not receive the Q&V questionnaires issued to them via Commerce's electronic filing system, ACCESS.

In May 2020, we selected the mandatory respondents in this inquiry. We selected Shandong Sun Paper, Sun Paper HK, and Sunpack Paper Products Company (Sunpack) as mandatory

³ See *Initiation Notice*.

⁴ See Memorandum, "Release of Customs and Border Protection (CBP) Data Query," dated October 24, 2019 (CBP Data Query).

⁵ See Memorandum, "Publicly Identified Companies List," dated October 24, 2019 (Companies List Memo).

⁶ See Letter, "Quantity and Value Questionnaire," dated November 6, 2019.

⁷ Asia Symbol includes the following companies: Greenpoint Global Trading (Macao) Commercial Offshore Ltd. (Greenpoint)/Asia Symbol (Guangdong) Paper Co., Ltd./Asia Symbol (Shandong) Pulp and Paper Co., Ltd.

⁸ Gold Huasheng Paper Co., Ltd Inc. (Gold Huasheng) also includes its affiliated parties Gold East Paper Co., Ltd., Hainan Jinhai Pulp and Paper Company, and Ningbo Zhonghua Paper Co, Ltd.

⁹ Marubeni (China) Corporation, Ltd. (Marubeni) also includes its affiliates Marubeni America Corporation and Marubeni (Shanghai) Corporation, Ltd.

¹⁰ See Gold Huasheng's Letters, "Response to Q&V Questionnaire," dated November 19, 2019; and "Response to Supplemental Q&V Questionnaire," dated January 22, 2020 (collectively, Gold Huasheng's Q&V Response); see also Asia Symbol's Letters, "Quantity and Value Questionnaire," dated November 25, 2019) (filed in two submissions, one for Asia Symbol and one for Greenpoint), and "Supplemental Questionnaire Response," dated January 17, 2020 (collectively, Asia Symbol's Q&V Response); and Marubeni's Letters, "Quantity and Value Questionnaire Response," dated November 25, 2019; and "Supplemental Quantity and Value Questionnaire Response," dated January 17, 2020 (collectively, Marubeni's Q&V Response).

¹¹ See Case Paper's Letter, "Uncoated Paper from Australia, Brazil, the People's Republic of China, and Indonesia," dated November 19, 2019; and Performance Paper's Letters, "Quantity and Value Questionnaire," dated November 27, 2019; and "Response to Commerce's Supplemental Quantity & Value Questionnaire," dated January 28, 2020.

respondents because these three companies account for the largest exporters of uncoated paper rolls during the inquiry period based on CBP data.¹² Additionally, in the Respondent Selection Memo we also stated that Commerce would continue to analyze the no shipment responses received from Asia Symbol, Gold Huasheng, and Marubeni.¹³ From April 28, 2020 through June 22, 2020, we received questionnaire and supplemental questionnaire responses from Asia Symbol, Gold Huasheng, and Marubeni.¹⁴ The mandatory respondents did not respond to the initial questionnaire.

III. SCOPE OF THE *ORDERS*

The merchandise subject to these *Orders* includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level¹⁵ of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope of these *Orders* are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered “printed with final content” where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

On September 1, 2017, Commerce determined that imports of uncoated paper with a GE brightness of 83 +/- 1% (83 Bright paper), otherwise meeting the description of in-scope merchandise, constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise that are subject to these *Orders*.¹⁶

¹² See Memorandum, “Respondent Selection,” dated May 18, 2020 (Respondent Selection Memo).

¹³ *Id.*

¹⁴ See Asia Symbol’s Letters, “Supplemental Questionnaire Response,” dated April 28, 2020, and “Supplemental Questionnaire Response,” dated July 12, 2020; see also Gold Huasheng’s Letters, “Questionnaire Response,” dated April 30, 2020; and “Questionnaire Response,” dated July 13, 2020; and Marubeni’s Letters, “Response to the Initial Questionnaire,” dated April 30, 2020 (Marubeni’s April 30 IQR); and “Response to the Supplemental Questionnaire,” dated July 20, 2020 (Marubeni’s July 20 SQR).

¹⁵ One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. “Colored paper” as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

¹⁶ See *Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal*:

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. MERCHANDISE SUBJECT TO THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover certain uncoated paper rolls that are commonly, but not exclusively, known as “sheeter rolls,” from China that are further processed in the United States into individual sheets of uncoated paper that would be subject to the *Orders* (i.e., paper that weighs at least 40 grams per square meter but not more than 150 grams per square meter; and that either is a white paper with a GE brightness level of 83 +/-1% or higher or is a colored paper (as defined in section III above)), except as noted below. The uncoated paper rolls covered by these inquiries are converted into sheets of uncoated paper using specialized cutting machinery prior to printing, and are typically, but not exclusively, between 52 and 103 inches wide and 50 inches in diameter. For clarity, we herein refer to “subject-paper rolls” when referencing the certain uncoated paper rolls that may be converted into subject merchandise. Subject-paper rolls are classified under HTSUS category 4802.55.¹⁷

Certain importers of the subject-paper rolls that are not converted into subject merchandise may certify that the rolls are not further processed into subject merchandise covered by the scope of the *Orders*. Failure to comply with the requisite certification requirement may result in the merchandise being found subject to antidumping and countervailing duties.

V. PERIOD OF ANTI-CIRCUMVENTION INQUIRIES

The period for this proceeding examines the time period starting in the month the initiation of the underlying *Orders* was published, and ending four years later, i.e., February 1, 2015 through February 28, 2019.

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of antidumping duty (AD) and/or countervailing duty (CVD) orders.¹⁸ Section 781(a) of the Act provides that Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include imported merchandise within the scope of an order at any time an

Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders, 82 FR 41610 (September 1, 2017).

¹⁷ See *Initiation Notice*, 84 FR at 55917.

¹⁸ Specifically, the legislative history to section 781(b) of the Act indicates that Congress intended Commerce to make determinations regarding circumvention on a case-by-case basis, in recognition that the facts of individual cases and the nature of specific industries are widely variable. See S. Rep. No. 103-412 (1994) at 81-82.

order is in effect, if: (A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of an AD/CVD order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components is a significant portion of the total value of the merchandise.

In determining whether the process of assembly or completion in the United States is minor or insignificant under section 781(a)(1)(C) of the Act, section 781(a)(2) of the Act directs Commerce to consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.¹⁹ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the United States, depending on the totality of the circumstances of the particular anti-circumvention inquiry.²⁰

Furthermore, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in the United States in an AD/CVD order. Specifically, Commerce shall take into account: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the AD and/or CVD investigation that resulted in the issuance of an order.

VII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive companies,²¹ Commerce finds it necessary to rely on facts available pursuant to section 776(a) of the Act because these companies failed to provide necessary information upon which Commerce could rely and, thereby, withheld information requested by Commerce, failed to provide requested information within the established deadlines, and significantly impeded these anti-circumvention inquiries. Further, as discussed *infra*, we find it appropriate to apply facts available with an adverse inference (AFA), pursuant to section 776(b) of the Act, to the non-responsive companies because these companies failed to cooperate by not acting to the best of their ability to comply with Commerce's requests for information in these anti-circumvention inquiries.

¹⁹ See 19 CFR 351.225(g).

²⁰ See e.g., *Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

²¹ As noted above, the non-responsive companies include the following companies: CNAL, Kingdecor, Shandong Sun Paper, Sun Paper HK, and Sunpack.

A. Legal Standard

Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the Statement of Administrative Action (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²² The Court of Appeals for the Federal Circuit, in *Nippon Steel*,²³ explained that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.²⁴ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.²⁵ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.²⁶

²² See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 870.

²³ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

²⁴ See SAA at 870.

²⁵ See *Nippon Steel*, 337 F.3d at 1382-83; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

²⁶ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

B. Use of Facts Available with an Adverse Inference

Application of AFA: Entries are Circumventing the Orders

CNAL and Kingdecor failed to respond to Commerce's Q&V questionnaire. Additionally, after being selected as mandatory respondents, Shandong Sun Paper, Sun Paper HK, and Sunpack failed to respond to the initial anti-circumvention questionnaire. Thus, Commerce preliminarily finds that these non-responsive companies failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that use of facts available is warranted in making a determination with respect to these non-responsive companies, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, because these companies did not notify Commerce of any difficulty in providing a response to the questionnaire, nor respond, we find that they did not act to the best of their ability in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

Thus, for these preliminary determinations, we relied upon the information available on the record, including information that was on the record at the time of initiation of the inquiry, as AFA in determining whether subject-paper rolls are circumventing the *Orders*. In relying on this record information, we preliminarily find that Chinese-origin subject-paper rolls are circumventing the *Orders* when they are further processed in the United States into uncoated paper sheets subject to the *Orders*. For our application of AFA to the non-responsive companies, we preliminarily find that during the inquiry period, CNAL, Kingdecor, Shandong Sun Paper, Sun Paper HK, and Sunpack exported subject-paper rolls that were converted into subject merchandise in the United States; therefore, these non-responsive companies are circumventing the *Orders*. Finally, because the non-responsive companies exported and/or produced the majority of U.S. imports of uncoated paper rolls from China,²⁷ we find that these companies are representative of the experience of other producers and/or exporters of uncoated paper rolls from China. Accordingly, we are preliminarily applying this affirmative circumvention finding to all entries of subject-paper rolls from China.

Application of AFA: Effective Date and Certification Program

Because of the nature of the importer certification, and the record information that subject-paper rolls used for subject merchandise and subject-paper rolls used for non-subject merchandise generally cannot be distinguished upon importation, as discussed further below, we find that it is appropriate to impose: (1) the suspension of liquidation; (2) the collection of cash deposits; and (3) the certification requirement, prospectively from the preliminary determination signature date except for the non-responsive companies. We are also allowing a grace period for importers of eligible entries to submit the certifications.²⁸ As a result of our application of AFA, we preliminarily determine that the non-responsive companies are precluded from participating in any certification process that Commerce may impose for this merchandise, and that the suspension of liquidation and collection of cash deposits will be imposed starting from the initiation date of this inquiry (*i.e.*, October 10, 2019) pursuant to 19 CFR 351.225(l).

²⁷ See CBP Data.

²⁸ See Appendix II and III of the accompanying *Federal Register* notice for further details.

VIII. ANTI-CIRCUMVENTION ANALYSIS

Section 781(a) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in the United States is circumventing an order. We received limited information from the foreign producers and/or exporters for conducting our analysis of the record pursuant to section 781(a). Therefore, pursuant to section 776(a) of the Act, we relied on the information placed on the record by the petitioners for these preliminary determinations. As explained and referenced below, the information available to Commerce indicates that all factors, as set forth by section 781(a) of the Act are satisfied. Thus, based on our analysis of these criteria, we preliminarily determine that imports of subject-paper rolls from China are circumventing the *Orders*.

A. Merchandise of the Same Class or Kind

The petitioners state that the uncoated paper sheets that are sold in the United States, which result from converting subject-paper rolls exported to the United States from China, are the same class or kind of merchandise as the uncoated paper sheets covered by the *Orders*.²⁹ The petitioners note that subject-paper rolls were not explicitly included or excluded from the scope of the *Orders*, and asserts that subject-paper rolls are not used for any purpose but for the subsequent conversion into sheets of paper.³⁰ When the paper comprising the subject-paper roll otherwise meets the scope of the *Orders* (e.g., brightness levels, weight per square meter, etc.), the sheets of paper resulting from the conversion process are identical to subject merchandise.³¹ The petitioners provided affidavits³² and supporting documentation,³³ indicating that Chinese companies are exporting subject-paper rolls to the United States and then U.S. converters are cutting sheets of paper from the rolls, resulting in merchandise identical to that which is subject to the *Orders*.³⁴ Thus, the petitioners presented information indicating that the merchandise sold in the United States is the same class or kind as uncoated paper sheets from China, which are subject to the *Orders*.

The non-responsive companies in this inquiry did not respond to requests for information regarding subject-paper rolls, and the three participating Chinese companies maintain that they did not export subject-paper rolls to the United States during the inquiry period. However, Marubeni, a company that reports no shipments of subject-paper rolls that were converted into subject merchandise, provided documentation to indicate that subject-paper rolls are sometimes imported into the United States, but not converted into subject merchandise.³⁵ The information provided by the petitioners, and record information provided by a company with no shipments, does not provide any additional information on the class or kind of subject-paper rolls.

²⁹ *Id.* at 7; *see also* Petitioners' August 23 Response at 3-4.

³⁰ *See* Allegation of Circumvention at 5-6.

³¹ *Id.* at 7 (citing Exhibit 1); *see also* Petitioners' August 23 Response at 3-4.

³² *See* Allegation of Circumvention at Exhibits 1 and 3.

³³ This documentation includes shipment documentation where the imported merchandise was uncoated paper rolls and the importer was a paper converter. *See* Petitioners' August 23 Response at Exhibit Supp-10 for the shipment documentation and Allegation of Circumvention at Exhibit 1 for the affidavit identifying the importer as a converter.

³⁴ *See* Allegation of Circumvention at Exhibits 1 and 3.

³⁵ *See* Marubeni's April 30 IQR at 20; *see also* Marubeni's July 20 SQR at Exhibit 1.

As a result, necessary information is missing from the record of these segments pursuant to section 776(a) of the Act and Commerce must rely on the facts available, including the fact that subject-paper rolls need only undergo minimal processing (*i.e.*, sheeting and packaging) to become uncoated paper sheets, but that there are some commercial reasons for importing uncoated subject-paper rolls other than conversion into uncoated paper sheets subject to the *Orders*. We note that no party to this proceeding has provided information that would distinguish subject-paper rolls that are used to produce subject merchandise from rolls used to produce non-subject merchandise at the time of importation. For these reasons, we preliminarily determine that subject-paper rolls are entered into the United States and further processed into uncoated paper sheets of the same class or kind as subject merchandise and sold in the United States; however, as discussed below, certain importers of subject-paper rolls that are not converted into subject merchandise may certify that the rolls are not further processed into subject merchandise covered by the scope of the *Orders*.

B. Completion of Merchandise in the United States

The petitioners assert that the subject-paper rolls are imported from China, and that the rolls only need to undergo the sheeting operation to create uncoated paper sheets, which means that no materials are added in the United States. As such, the merchandise as entered has all the necessary raw materials for uncoated paper sheets. Performing the sheeting in the United States simply involves a cut size (*i.e.*, consumer size) sheeting machine converting rolls of paper into consumer-size sheets.³⁶ To support this assertion, the petitioners' provided a brochure illustrating Domtar's production process and the ITC Final where the ITC described the production process of uncoated paper sheets.³⁷

To support their claim, the petitioners provide import statistics that illustrate a decline in imports of uncoated paper sheets from China and an increase in imports of uncoated paper rolls in 2015, the year of the initiation of the underlying investigations.³⁸ The petitioners also provided and bills of lading from Datamyne, a database of import and export records, that illustrate exports from China of uncoated paper rolls to importers who are known U.S. converters, to support the claim that subject-paper rolls from China are being imported into the United States and then finished/converted into subject merchandise in the United States.³⁹ Thus, the petitioners have presented information to support their contention that subject-paper rolls are produced from merchandise imported into the United States from China, further processed, and then sold in the United States as in-scope merchandise. In addition, Marubeni, a company that reports no shipments of subject-paper rolls that were converted into subject merchandise, provided

³⁶ See Petitioners' August 23 Response at Exhibits Supp 7.

³⁷ *Id.* at Exhibit Supp 7; see also Allegation of Circumvention at 8 (citing *Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal*, U.S. ITC, Investigation Nos. 701-TA-528-529 and 731-TA-1264-1268 (Final) (February 2016) Publication 4592 (ITC Final) at I-11-1-13).

³⁸ See Allegation of Circumvention at Exhibit 2; see also *Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 8608 (February 18, 2015); and *Certain Uncoated Paper from the People's Republic of China and Indonesia: Initiation of Countervailing Duty Investigations*, 80 FR 8598 (February 18, 2015) (collectively, *Initiation of Investigations*).

³⁹ See Allegation of Circumvention at Exhibit 2; see also Petitioners' August 23 Response at Exhibits Supp-10-a and Supp-10-b.

documentation to indicate that subject-paper rolls are sometimes imported into the United States, but not converted into subject merchandise.⁴⁰

As described above, no party to this proceeding has provided information that would distinguish subject-paper rolls that are used to produce subject merchandise from rolls used to produce non-subject merchandise at the time of importation. For these reasons, as explained above and pursuant to section 776(a) of the Act, Commerce preliminarily determines that subject-paper rolls are completed and sold in the United States. However, as discussed below, certain importers of subject-paper rolls that are not converted into subject merchandise may certify that the rolls are not further processed into subject merchandise covered by the scope of the *Orders*.

C. Minor or Insignificant Process

According to the petitioners, the process of sheeting subject-paper rolls into uncoated paper sheets is minor or insignificant.⁴¹ Specifically, the petitioners assert that a conversion operation is a simple process that does not require major investment, complex equipment, or research and development.⁴² Converting subject-paper rolls only requires sheeting machines of particular sizes, compared to the production of paper starting from pulp, which requires a fully-integrated paper mill.⁴³

Section 781(a)(2) of the Act instructs us to consider the following when determining whether the process of assembly or completion is minor or insignificant under section 781(a)(1)(c) of the Act: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

With regard to parts (A) through (E) under section 781(a)(2) of the Act, we have limited information from the foreign producers and/or exporters. Therefore, pursuant to section 776(a) of the Act, we relied on the information placed on the record by the petitioners for these preliminary determinations. The petitioners argue that the level of investment in the United States to convert subject-paper rolls into sheets is extremely limited as the only equipment needed to complete this operation is sheeting machines. The petitioners assert that the cost of purchasing and installing a sheeting machine, used or new, is a small fraction of the \$2 billion investment in building a new pulp mill.⁴⁴ The petitioners also state that there is no known research or development associated with the sheeting process.⁴⁵ The petitioners reiterate that the production process of a fully integrated paper mill is extensive and has numerous steps.⁴⁶ Sheeter operations, on the other hand, involve significantly less production operations, in that

⁴⁰ See Marubeni's April 30 IQR at 20; see also Marubeni's July 20 SQR at Exhibit 1.

⁴¹ See Allegation of Circumvention at 19-25.

⁴² *Id.*

⁴³ *Id.* at 21.

⁴⁴ See Petitioners' August 23 Response at Exhibits Supp 16-19; see also Allegation of Circumvention at 22.

⁴⁵ See Allegation of Circumvention at 22.

⁴⁶ *Id.* at 23 (citing ITC Final at I-11-I-13).

automatic machines requiring a limited number of employees unroll sheeter rolls and cut them into sheets.⁴⁷

Finally, the petitioners allege that the cost of completing uncoated paper (from subject-paper rolls) in the United States is a small portion of the total value of the merchandise sold in the United States. The petitioners refer to the declaration provided by a U.S. producer of uncoated paper sheets, which discusses the energy, labor, and packaging materials required to finish subject merchandise.⁴⁸ The petitioners also address other costs in completing the manufacture of uncoated paper sheets, such as maintenance, overhead, and depreciation.⁴⁹

The petitioners relied on both public and proprietary information to determine whether the further processing is minor or insignificant, including production information submitted by U.S. producers, research, and their own experience in the production process. The petitioners relied on their own knowledge of the production process to demonstrate that qualitatively, the value of the conversion from a subject-paper roll to uncoated paper sheets is minor or insignificant because they do not have access to cost or price data of Chinese producers, U.S. importers, or U.S. converters. Moreover, as described above, no parties have presented argument, analysis, or evidence to contradict the petitioners' assertions. In the absence of any information contradicting the information the petitioners have provided, we preliminarily determine that performing sheeting operations in the United States is a minor and insignificant process.

D. Value of the Parts or Components Produced in the Foreign Country Is a Significant Portion of the Total Value of the Merchandise

As stated above, and as supported by U.S. producer declarations, which included the cost of production of producing uncoated paper and an estimate of the production cost for only sheeting the merchandise, the petitioners contend that the value of the processing performed in the United States represents a minor portion of the value of the completed merchandise.⁵⁰ Therefore, because virtually all of the value of the uncoated paper is created in China, the value of the subject-paper rolls as it is entered into the United States is a significant portion of the total value of ultimate, sheeted, merchandise.

The petitioners relied on the information and arguments in the “minor or insignificant process” portion of their request for a circumvention inquiry to indicate that the value of the China-produced subject-paper rolls is significant relative to the total value of uncoated paper sheets sold in the United States.⁵¹ As described above, no interested parties aside from the petitioners have presented argument, analysis, or evidence in these proceedings. The relevant legislative history directs that “{t}he determination of whether the value of the parts or components is a significant portion of the total value of the merchandise should be made on a case-by-case basis, looking at the totality of the circumstances.”⁵² As described in the foregoing discussion, the petitioners

⁴⁷ *Id.*

⁴⁸ *Id.* at 23-24 and Attachment 1.

⁴⁹ *Id.*

⁵⁰ See Petitioners' August 23 Response at Exhibits Supp-2 and Supp-3.

⁵¹ See Allegation of Circumvention at 25.

⁵² See Uruguay Round Agreements Act, S. Rep. 103-412 (1994) at 82.

provided evidence that the majority of the value of the uncoated paper sheets is created in China and, therefore, the value of the parts or components (*i.e.*, the rolls used to produce the sheets) entered is a significant portion of the total value of the subject-paper rolls. In the absence of any information contradicting the information that the petitioners have provided, we preliminarily determine that the value of merchandise produced in China is a significant portion of the value of the merchandise sold in the United States.

E. Additional Factors to Consider

Section 781(a)(3) of the Act identifies additional factors that Commerce shall consider in determining whether to include parts or components in an AD and/or CVD order as part of a circumvention inquiry.

i. Patterns of Trade, Including Sourcing Patterns

The petitioners argue that importation of the circumventing merchandise represents a change in the pattern of trade.⁵³ The petitioners assert that, prior to the 2015 investigations, there were little to no imports of sheeter rolls into the United States; the petitioners support this statement with import statistics from the ITC which demonstrate that imports of uncoated paper rolls increased by 59.51 percent from the year before the initiation of the investigations to the end of the year after the initiation of investigations.⁵⁴ The petitioners argue that importing uncoated paper in the form of sheeter rolls is less efficient and cost effective than importing sheets, and doing so only makes sense as “mechanisms to avoid the payment of antidumping and countervailing duties.”⁵⁵ In addition, the petitioners provide a declaration stating that customers of a U.S. producer have stated that a Chinese paper producer “is exporting sheeter rolls to the United States where conversion is undertaken by ... a paper converter{.}”⁵⁶

As described above, Marubeni, a company that reports no shipments of subject-paper rolls that were converted into subject merchandise, provided documentation to indicate that subject-paper rolls are sometimes imported into the United States, but not converted into subject merchandise.⁵⁷ However, no party to this proceeding has provided information that would distinguish subject-paper rolls that are used to produce subject merchandise from rolls used to produce non-subject merchandise at the time of importation.

Because several companies, including the largest exporters of paper rolls from China, have not cooperated with Commerce’s requests for information, we must rely on facts available regarding the pattern of trade. The data provided by the petitioners show U.S. imports of uncoated free sheet paper and paper rolls. However, these data do not segregate non-subject paper from subject-paper rolls. Nor do they distinguish between subject-paper rolls that are used to produce subject merchandise from rolls used to produce non-subject merchandise. In sum, the CBP Data Query showed import statistics with respect to uncoated paper rolls, but we were unable to

⁵³ See Allegation of Circumvention at 9-12.

⁵⁴ *Id.* at Exhibit 2; see also *Initiation of Investigations*.

⁵⁵ *Id.* at 10-11.

⁵⁶ *Id.* at Exhibit 1 paragraph 11.

⁵⁷ See Marubeni’s April 30 IQR at 20; see also Marubeni’s July 20 SQR at Exhibit 1.

segregate data that would identify information useful for ascertaining the pattern of trade of subject-paper rolls used to produce subject merchandise.

We are aware of at least eight producers or exporters of subject merchandise from China.⁵⁸ Given our above analysis, it appears that all of these producers or exporters would necessarily be capable of producing subject-paper rolls. Additionally, we have no record information regarding how many other producers or exporters of subject-paper rolls exist. In the absence of an affirmative response from any producers or exporters of subject rolls that are used to produce subject merchandise, we are unable to identify the pattern of trade, aside from the petitioners' assertions. In light of what record information currently exists, and in the absence of any information contradicting what the petitioners have stated, we preliminarily determine that the importation of subject-paper rolls into the United States represents a change in the pattern of trade.

ii. Affiliation

Under section 781(a)(3)(B) of the Act, Commerce shall take into account whether the manufacturer or exporter of the parts or components is affiliated with the person who completes the uncoated paper sheets in the United States from the parts or components produced in the foreign country when making a decision in a circumvention inquiry. No interested parties, aside from the companies who claim they did not export subject-paper rolls that were converted in the United States, and aside from the petitioners, have presented argument, analysis, or evidence in this proceeding regarding this matter. The only evidence before us is that subject-paper rolls that were produced and/or exported by the non-responsive companies were imported into the United States and completed and sold in the United States. Thus, neither we nor the petitioners have any way of knowing specifically whether the manufacturer and/or exporter of the subject-paper rolls from China is affiliated with the entity that completes the merchandise sold in the United States.

While we lack specific information regarding potential affiliation, this factor is not required prior to making an affirmative circumvention determination,⁵⁹ and its significance will vary depending on the nature of the circumvention inquiry or product at issue. In this case, we are not limiting these affirmative preliminary findings to a particular exporter or producer because it appears, based on the information on the record pertaining to the production process, that many, if not all, uncoated paper producers could produce unfinished subject-paper rolls by simply removing the rolls from the production line prior to the sheeting operation.⁶⁰ As such, it is unlikely that our preliminary affirmative determinations would change based on information pertaining to affiliation between the known exporter and entities completing the subject-paper rolls in the

⁵⁸ See Asia Symbol's Q&V Response, Gold Huasheng's Q&V Response, and Marubeni's Q&V Response. Additionally, because we are applying adverse facts available to five non-cooperative parties, we determine those parties are producers of subject merchandise.

⁵⁹ See *Brass Sheet and Strip from Canada; Final Affirmative Determination of Circumvention of Antidumping Order*, 58 FR 33610, 33613-14 (June 18, 1993) (*Brass Sheet and Strip from Canada*) (explaining that the "factors to consider" are not mandatory criteria which must be present prior to making an affirmative determination of circumvention).

⁶⁰ See Petitioners' August 23 Response at Exhibit Supp-7.

United States. Thus, we preliminarily determine that analysis of the affiliation factor is unnecessary to our preliminary determinations of circumvention in this instance.

iii. Subsequent Import Volume after Initiation of the Investigations

Under section 781(a)(3)(C) of the Act, another factor Commerce should consider is whether imports into the United States of the parts or components produced in the foreign country increased after the initiation of the investigation, which resulted in the issuance of the *Order*, when making a decision in a circumvention case.

We initiated the underlying investigations in February 2015,⁶¹ and published the *Orders* in March 2016. The petitioners provided U.S. ITC Dataweb Data for U.S. imports of uncoated paper rolls from 2015 through 2019. This import data indicates that in 2014, the year before the initiation of the investigations, the volume of roll imports was 1,214 metric tons (MT); then in 2015, the year the investigation was initiated, the volume of roll imports increased to 2,998 MT. Subsequently, in 2016, 2017, 2018, and 2019, the volume of the roll imports was 2,624, 1,686, 620, 183, and 106 MT, respectively. As discussed above, we note that these import data are not specific to subject-paper rolls that are used to produce subject merchandise nor do they indicate whether, after the initiation of the *Orders*, exports of subject-paper rolls increased. Although we do have evidence that subject-paper rolls are sometimes imported into the United States, but not converted into subject merchandise,⁶² no party to this proceeding has provided information that would distinguish subject-paper rolls that are used to produce subject merchandise from rolls used to produce non-subject merchandise at the time of importation. Accordingly, for the preliminary determinations, although there was an initial significant (*i.e.*, over 100 percent) increase in import volumes from pre-investigation to investigation, since that time we do not find that the import volume of subject-paper rolls from China has consistently increased. However, consistent with *Brass Sheet and Strip from Canada*, we find that an affirmative finding for this criterion is not required to make an affirmative circumvention finding.⁶³

IX. COUNTRY-WIDE DETERMINATION

As noted above, Commerce has identified the universe of potential producers, exporters, importers, and converters of subject-paper rolls using CBP entry data for U.S. imports of uncoated paper rolls and Q&V questionnaires.⁶⁴ We selected the three largest exporters of uncoated paper rolls for examination based on the CBP data to account for the largest volume of uncoated paper roll exports to the United States from China. As we noted in the Respondent Selection Memo, “an individual examination of the three companies which account for the largest volume of uncoated sheeter roll exports to the United States and an examination of all of the producers/exporters which reported no shipments of uncoated sheeter rolls into the United States from China ... will allow us to balance our resource constraints while obtaining the most accurate overall picture of the significance of the process of completion or assembly in the

⁶¹ See *Initiation of Investigations*.

⁶² See Marubeni’s April 30 IQR at 20; see also Marubeni’s July 20 SQR at Exhibit 1.

⁶³ See *Brass Sheet and Strip from Canada*, 58 FR at 33613-14

⁶⁴ See CBP Data Query.

United States.”⁶⁵ Five exporters of uncoated paper rolls did not cooperate with Commerce’s requests for information (*i.e.*, CNAL, Kingdecor, Shandong Sun Paper, Sun Paper HK, and Sunpack), including three of the largest exporters of such merchandise (*i.e.*, Shandong Sun Paper, Sun Paper HK, and Sunpack), and, as a result, we are applying AFA, finding all five companies to be circumventing the *Orders*. Given that exports from Shandong Sun Paper, Sun Paper HK, and Sunpack represent the largest volume of uncoated paper rolls exported to the United States from China, we find that the affirmative circumvention findings for these companies are representative of the experiences of other uncoated paper roll producers.

As described above, Commerce relied on the facts on the record, in light of our use of AFA in these inquiries to find that all entries of subject sheeter rolls from China are circumventing the *Orders*. Further, although we do have evidence that subject-paper rolls are sometimes imported into the United States, but not converted into subject merchandise,⁶⁶ no party to this proceeding has provided information that would distinguish subject-paper rolls that are used to produce subject merchandise from rolls used to produce non-subject merchandise at the time of importation. Therefore, as discussed below, certain importers of subject-paper rolls that are not converted into subject merchandise may certify that the rolls are not further processed into subject merchandise covered by the scope of the *Orders*.

X. CERTIFICATION REQUIREMENT

Commerce has an obligation to administer the law in a manner that prevents evasion of the *Orders*.⁶⁷ As discussed above, we preliminarily find that imports of subject-paper rolls further processed by sheeting in the United States into uncoated paper sheets subject to the *Orders* are circumventing the *Orders*. Therefore, based on our preliminary findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *Orders*.

As discussed above, it is possible that certain paper rolls from China that otherwise match the physical description of subject-paper rolls upon importation are not further processed into uncoated paper sheets subject to the *Orders*. Accordingly, to administer the affirmative circumvention determination, Commerce is requiring that importers of certain paper rolls from China that otherwise match the physical description of subject-paper rolls and that are not further processed into uncoated paper sheets subject to the *Orders* certify that the merchandise will not be further processed into subject uncoated paper sheets. Importers of such merchandise will be required to certify and maintain their certifications and supporting documentation to provide to CBP and/or Commerce upon request. The importer certification is provided at Appendix III of the accompanying *Federal Register* notice. Properly certified entries are not subject to antidumping or countervailing duties under the *Orders*. Exemption from antidumping and countervailing duties under the *Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met.

⁶⁵ See Respondent Selection Memo at 7.

⁶⁶ See Marubeni’s April 30 IQR at 20; *see also* Marubeni’s July 20 SQR at Exhibit 1.

⁶⁷ *See, e.g., Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff’d* 354 F.3d 1371 (Fed. Cir. 2004) (finding that Commerce has a responsibility to prevent the evasion of payment of antidumping duties).

Entries of subject-paper rolls produced and/or exported by the non-responsive companies (*i.e.*, CNAL, Kingdecor, Sunpack, Sun Paper HK, and Shandong Sun Paper) are not eligible for certification.

XI. RECOMMENDATION

Because imports of subject-paper rolls, exported from China, are further processed in the United States, and, given the above analysis of the criteria set forth by the Act with respect to circumvention, we recommend that, pursuant to section 781(a) of the Act and 19 CFR 351.225(g), Commerce issue preliminary affirmative circumvention determinations that imports of subject-paper rolls from China are circumventing the *Orders*.

Agree

Disagree

11/6/2020

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance