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A-570-022, C-570-023, A-602-807
Anti-circumvention Inquiry
Public Document
AD/CVD Ops Office II: WAM

DATE: June 2, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Affirmative
Preliminary Determination of Circumvention of the Antidumping
and Countervailing Duty Orders on Certain Uncoated Paper from
Australia, Brazil, the People's Republic of China, Indonesia, and
Portugal

I. Summary

The Department of Commerce (the Department) preliminarily determines that imports of uncoated paper with a GE brightness of 83 +/- 1% (83 Bright paper),¹ otherwise meeting the description of in-scope merchandise, constitute merchandise "altered in form or appearance in minor respects" from in-scope merchandise that should be considered subject to the antidumping (AD) and countervailing duty (CVD) *Orders* on certain uncoated paper (uncoated paper).²

II. Background

On November 7, 2016, the Department, in response to a request from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; Finch Paper LLC; P.H. Glatfelter Company; and Packaging Corporation of America (collectively, the petitioners),³ initiated an anti-circumvention inquiry

¹ GE brightness is measured on a percentage basis.

² See *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 (Indonesia) and Countervailing Duty Order (People's Republic of China)*; 81 FR 11187, (March 3, 2016) (collectively, the *Orders*).

³ See Letter from the petitioners entitled, "Certain Uncoated Paper from Australia, Brazil, The People's Republic Of China, Indonesia, and Portugal: Petitioners' Request For Minor Alterations And Later-Developed Merchandise Anti-

pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act).⁴ On December 2, 2016, the Department sent a supplemental questionnaire to Asia Pulp and Paper (APP), requesting information regarding its sales of 83 Bright paper to the United States.⁵ On December 7, 2016, APP submitted a request to reconsider the initiation of this anti-circumvention inquiry,⁶ to which the petitioners on December 19, 2016, submitted opposition comments.⁷ On January 6, 2017, APP submitted sur-rebuttal comments,⁸ and on January 11, 2017, submitted a response to the Department's supplemental questionnaire.⁹ On January 27, 2017, the petitioners submitted additional comments requesting that the Department issue an affirmative preliminary determination,¹⁰ to which APP responded on February 3, 2017.¹¹ On February 17, 2017, and February 24, 2017, respectively, the petitioners and APP submitted sur-rebuttal comments.¹²

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 level¹³ 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).

circumvention Inquiry Or, Alternatively, For A Scope Ruling," dated July 15, 2016 (Initiation Request).

⁴ See *Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Initiation of Anti-Circumvention Inquiry*; 81 FR 78117 (November 7, 2016) (*Initiation Notice*).

⁵ See Letter from the Department entitled, "Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Initiation of Anticircumvention Inquiry," dated December 2, 2016.

⁶ See Letter from APP entitled, "Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal, Request for Reconsideration of Initiation Decision," dated December 7, 2016.

⁷ See Letter from the Petitioners entitled, "Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Petitioners' Response in Opposition to APP's Request for Reconsideration of Initiation Decision," dated December 19, 2016 (The Petitioners' December 19 Letter).

⁸ See Letter from APP entitled, "Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal – Response to Petitioners' Opposition to Request for Reconsideration," dated January 6, 2017.

⁹ See Letter from APP entitled, "Certain Uncoated Paper from Australia, Brazil, Indonesia, Portugal, and the People's Republic of China – Questionnaire Response," dated January 11, 2017 (Questionnaire Response).

¹⁰ See Letter from the Petitioners entitled "Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Petitioners' Request for Issuance Of An Affirmative Preliminary Determination," dated January 27, 2017 (The Petitioners' January 27 Letter).

¹¹ See Letter from APP entitled, "Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal, Comments on Applicable Precedent and Response to Petitioners' Request for an Affirmative Preliminary Determination of Circumvention," dated February 3, 2017.

¹² See Letter from the Petitioners entitled "Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Petitioners' Response In Opposition To APP's "Comments on Applicable Precedent,"" dated February 17, 2017, and Letter from APP entitled, "Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal, Response to Petitioners' February 17, 2017 Letter," dated February 24, 2017.

¹³ 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.

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.

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. Statutory and Regulatory Framework

Section 781(c)(1) of the Act provides that the Department may find circumvention of an AD and/or CVD order when products which are of the class or kind of merchandise subject to an AD and/or CVD order have been “altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “[p]aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD} order{.}”

While the statute is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), the Department examines such factors as: 1) overall physical characteristics; 2) expectations of ultimate users; 3) use of merchandise; 4) channels of marketing; and 5) cost of any modification relative to the value of the imported products.¹⁴ Each case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, along with the five factors enumerated above, the Department has also considered additional factors, such as

¹⁴ See, e.g., *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China*, 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from the PRC*) (unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*; 74 FR 40565 (August 12, 2009)).

commercial availability of the product at issue prior to the issuance of the order as well as the circumstances under which the products at issue entered the United States, the timing and quantity of said entries.¹⁵

In certain anti-circumvention inquiries, we have also analyzed additional factors on a case-by-case basis and as appropriate, to determine if circumvention of the order is taking place. For example, such additional factors have included the circumstances under which the products enter the United States, the timing of the entries during the period at issue, and the quantity of merchandise entered during the period at issue.¹⁶

V. Allegations of Circumvention as Identified in the Initiation Inquiry and Subsequent Submissions

As discussed above, the petitioners identify the product subject to this inquiry as 83 Bright paper. The petitioners note that 83 Bright paper is made without the addition of optical brightening agents (OBAs).¹⁷ The petitioners discuss business proprietary information in support of their allegations that cannot be discussed here. This information is contained in the memorandum entitled, “Accompanying Information for the Preliminary Decision Memorandum for the Affirmative Preliminary Determination on Certain Uncoated Paper from Australia, Brazil, Indonesia, the People’s Republic of China, and Portugal,” (Accompanying Information Memo) dated concurrently with this memorandum. As a result, the petitioners allege that 83 Bright paper represents a minor alteration of in-scope merchandise that circumvents the *Orders*, pursuant to section 781(c) of the Act.

In the Initiation Request, the petitioners presented the following evidence with respect to each of the aforementioned criteria:

A. Overall Physical Characteristics

The petitioners state that 83 Bright paper is nearly identical to other uncoated paper in the market – it has the same dimensions, the same basis weight, and is advertised for the same printing and copying purposes. The petitioners assert that the only difference between 83 Bright paper and paper covered by the scope of the *Orders* is the paper’s GE brightness level. In support of this assertion, the petitioners reference the Declaration of Paul LeBlanc (LeBlanc Declaration).¹⁸

¹⁵ See, e.g., *CTL Plate from the PRC*, 74 FR at 33992-33993, see also, e.g., *Brass Sheet and Strip From West Germany*; *Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990) unchanged in *Brass Sheet and Strip From Germany*; *Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991), see also, e.g., *Small Diameter Graphite Electrodes From the People’s Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873 (June 25, 2012).

¹⁶ See, e.g., *Preliminary Determination of Circumvention of Antidumping Order*; *Cut-to-Length Carbon Steel Plate from Canada*, 65 FR at 64930-31.

¹⁷ See the Petitioners’ December 19 Letter at 10. The petitioners originally assumed that the production process for 83 Bright paper involved the addition of black dye. See Initiation Request at 9. However, in the letter from APP entitled, “Certain Uncoated Paper from Australia, Brazil, The People’s Republic of China, Indonesia, and Portugal – Response to Request for Inquiry” dated August 19, 2016 (APP Response), APP explained how 83 Bright paper is produced.

¹⁸ See Initiation Request at 14 and Exhibit 2.

B. Expectations of the Ultimate Users

The petitioners assert that the expectations of the ultimate users of 83 Bright paper and other uncoated paper covered by the scope of the *Orders* are exactly the same. Specifically, the petitioners state that 83 Bright paper is advertised for use in the same printing and copying applications as other uncoated paper covered by the scope of the *Orders*. In support of this assertion, the petitioners reference the LeBlanc Declaration.¹⁹

C. Use of Merchandise

The petitioners assert that 83 Bright paper is used in printing and copying applications, similar to other uncoated paper covered by the scope of the *Orders*. The petitioners also claim that the brightness of 83 Bright paper has no apparent bearing or impact on the ultimate use.²⁰

D. Channels of Marketing

The petitioners assert that the marketing channels for 83 Bright paper and other uncoated paper covered by the scope of the *Orders* are the same.²¹ The petitioners provide documentation demonstrating that 83 Bright paper is offered to the same customers and in the same manner as other uncoated paper.²² According to the petitioners, this demonstrates that the GE brightness level does not affect the marketing channel in which the paper is sold and that for end-users, these products are interchangeable.

E. Cost of Modification Relative to Total Value

The petitioners assert that the cost of the minor alteration necessary to shift the GE brightness level of 83 Bright paper is minimal.²³ Moreover, the petitioners note that APP concedes that 83 Bright paper actually costs less to produce than uncoated paper covered by the scope of the *Orders* because it is produced without OBAs and fewer bleaching chemicals.²⁴

VI. Summary of APP's Responses

A. Overall Physical Characteristics

APP states that there are numerous and significant physical differences between 83 Bright paper and other uncoated paper covered by the scope of the *Orders* beyond GE brightness, including whiteness, bleaching chemicals, shade, and opacity.²⁵ Further, APP explains that OBAs are often added during production to increase the GE brightness of paper. APP claims as significant

¹⁹ See Initiation Request at 15 and Exhibit 2.

²⁰ *Id.*, at 3.

²¹ *Id.*, at 15.

²² *Id.*, at 15-16 and Exhibits 10 and 11.

²³ See the Petitioners' January 27 Letter at 22.

²⁴ *Id.*

²⁵ See APP Response at 24.

the fact that its 83 Bright paper is produced without adding OBAs and, thus, is “OBA-free.”²⁶ In addition, APP claims that 83 Bright paper has a higher opacity level than uncoated paper covered by the scope of the *Orders*.²⁷ In support of these assertions, APP references a document from the Xerox Corporation.²⁸

B. Expectations of the Ultimate Users

APP disagrees that the expectations of the ultimate users of 83 Bright paper are the same as users of other uncoated paper covered by the scope of the *Orders*. According to APP, users of 83 Bright paper expect to benefit from reduced eyestrain, cost savings, and appreciate the generally warmer tones of this paper.²⁹ Further, APP notes that certain purchasers of paper covered by the *Orders* require photocopy paper with a minimum GE brightness of 92 and, thus, 83 Bright paper would not meet the requirements of such purchasers. APP references the RISI Global Outlook, which contains information regarding customers of uncoated paper in the United States.³⁰

C. Use of the Merchandise

APP states that 83 Bright paper is best for black-and-white copier applications and not suitable for ink- or laser-jet printing. In support of this assertion, APP references a document from the Xerox Corporation.³¹

D. Channels of Marketing

APP claims that 83 Bright paper is marketed differently from other uncoated paper covered by the *Orders* because it is advertised as a lower brightness product produced to reduce eyestrain, manufactured for two-sided copying, and is OBA free. APP references information on the ream of paper to support further its position that 83 Bright paper is advertised as an “Eyecare” product.³²

E. Cost of Modification Relative to Total Value

APP states that 83 Bright paper is not produced with additional OBAs and contains fewer bleaching chemicals. As a result, APP notes that it is less expensive to produce than other uncoated paper covered by the scope of the *Orders*.³³

²⁶ *Id.*, at Exhibit 7.

²⁷ *Id.*, at 19 and Exhibit 1.

²⁸ *Id.*, at 26 and Exhibit 4.

²⁹ *Id.*, at 26.

³⁰ *Id.*, at 24-25 and Exhibit 8.

³¹ *Id.*, at 27-28 and Exhibit 4.

³² *Id.*, at 29 and Exhibit 9.

³³ *Id.*, at 30.

VII. Analysis

1. Overall Physical Characteristics

The scope of these *Orders* identifies various physical parameters of the subject merchandise (e.g., weight, dimension). The International Trade Commission (ITC) found that the important physical characteristics of uncoated paper include: (1) brightness, (2) basis weight, (3) opacity, (4) smoothness, and (5) caliper (thickness).³⁴

Analysis of Criterion: Based on record evidence, we conclude that the overall physical characteristics APP's 83 Bright paper are only slightly different than paper covered by the scope of the *Orders*. Furthermore, we disagree with APP's statement that 83 Bright paper has higher opacity levels than uncoated paper covered by the scope of the *Orders*. Specifically, information contained in APP Response at Exhibit 11 shows that, for certain uncoated paper covered by the scope of the *Orders*, the opacity level ranges from 88 to 98. Therefore, the opacity level of 83 Bright paper (i.e., greater than or equal to 94) does not distinguish it from uncoated paper covered by the scope of these *Orders*. Thus, the only difference in physical characteristics between 83 Bright paper and uncoated paper covered by the scope of the *Orders* is the GE brightness level; there are no significant differences with respect to the other physical characteristics referenced by the ITC (i.e., basis weight, opacity, smoothness, and thickness).³⁵ We find that four out of the five important physical characteristics of uncoated paper are substantially identical for 83 Bright paper and uncoated paper covered by the scope of the *Orders*. We also find that the difference in the paper's GE brightness level alone does not represent a significant departure from the physical characteristics of subject merchandise and, therefore, is not a meaningful difference for purposes of our minor alterations inquiry. As a result, we find that 83 Bright paper is physically similar to uncoated paper covered by the scope of the *Orders*.

2. Expectations of the Ultimate Users

According to the ITC, uncoated paper covered by the scope of the *Orders* is generally used in office and home copiers and printers, books, business forms, instruction manuals, inserts, flyers, brochures, and maps. The ITC found that uncoated paper is sold to office superstores (such as Staples and Office Depot), club stores (such as Costco, Sam's Club, and BJ's), retailers (such as WalMart, Kroger, Walgreen's, Best Buy, CVS, and Target), paper merchants/distributors, and end users (such as commercial printers, schools, and offices).³⁶

Analysis of Criterion: Based on record evidence, we find that the expectations of the ultimate users of 83 Bright paper significantly overlap with those of users of uncoated paper covered by the scope of the *Orders*. While APP claims that certain of its customers require photocopy paper with a minimum GE brightness of 92, APP provided no evidence to support this assertion. Further, while APP attempts to differentiate 83 Bright paper as a product which reduces

³⁴ See *Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal*, Investigations Nos. 701-TA-528-529 and 731-TA-1264-1268 (Final) (February 2016) (ITC Report) at 6 and 10.

³⁵ See APP Response at 24.

³⁶ See ITC Report at 6.

eyestrain, the only support for this claim that APP provides is a statement printed on the packaging of this product. Even assuming that the statement on the packaging is correct, there is no evidence that the ultimate users base their purchasing decisions on reducing eyestrain. Therefore, we preliminarily determine that there does not appear to be any significant difference in the expectations of ultimate users of 83 Bright paper and uncoated paper covered by the scope of the *Orders*.

3. Use of Merchandise

As stated above, uncoated paper covered by the scope of the *Orders* is generally used for paper in office and home copiers and printers, books, business forms, instruction manuals, inserts, flyers, brochures, and maps. It is sold to office superstores (such as Staples and Office Depot), club stores (such as Costco, Sam's Club, and BJ's), retailers (such as WalMart, Kroger, Walgreen's, Best Buy, CVS, and Target), paper merchants/distributors, and end users (such as commercial printers, schools, and offices).³⁷

Analysis of Criterion: Based on record evidence, we find that 83 Bright paper can be used in the same copying and printing applications as other uncoated paper covered by the scope of the *Orders*. While APP contends that 83 Bright paper is not suitable for ink- or laser-jet printing, APP provides no evidence to support this claim. Furthermore, we note that the packaging for 83 Bright paper which APP provided in Exhibit 7 of its August 19 response indicates no limits to the paper's suitable uses. Therefore, we preliminarily determine that there does not appear to be any significant difference in the uses of 83 Bright paper and uncoated paper covered by the scope of the *Orders*.

4. Channels of Marketing

The ITC Report did not discuss the channels of marketing for uncoated paper.

Analysis of Criterion: Based on the record evidence, we find that 83 Bright paper is marketed in the same manner as uncoated paper covered by the scope of the *Orders*. While APP claims that 83 Bright paper is advertised as an "Eyecare" product, the only documentation APP provides in support of this claim is the paper's packaging. Furthermore, information provided by the petitioners demonstrates that 83 Bright paper is advertised to customers in the same manner as uncoated paper covered by the scope of the *Orders*.³⁸ Therefore, we preliminarily determine that there is no significant difference in the channels of marketing for 83 Bright paper and uncoated paper covered by the scope of the *Orders*.

5. Cost of Modification

APP stated that 83 Bright paper is less expensive to produce because it does not contain the OBAs used to raise the paper's brightness level to 85 or above and has fewer bleaching chemicals than other uncoated paper covered by the scope of the *Orders*.

³⁷ See ITC Report at 6.

³⁸ See Initiation Request 15-16 and Exhibits 10 and 11.

Analysis of Criterion: Based on APP's own admission, APP manufactures 83 Bright paper using largely the same production process as other uncoated paper, with the exception of the omission of OBAs and certain bleaching chemicals. APP did not quantify the actual cost of bleaching chemicals or OBAs, but simply indicated that 83 Bright paper is less expensive to produce because it uses fewer bleaching chemicals and no OBAs. Therefore, we preliminarily determine that the cost of modification for APP's 83 Bright paper does not increase the production cost when compared to the cost of production of uncoated paper covered by the scope of the *Orders*.

VIII. Other Case-Specific Criteria (Circumstances Under Which the Products Enter the United States, Timing of Entries, and Quantity of Merchandise Entered)

With respect to the timing and quantities of APP's exports of uncoated paper to the United States, we requested that APP provide the quantity and value of its sales between January 2013 and November 2016. APP provided information demonstrating that, between January 2013 and May 2015, it exported uncoated paper covered by the scope of the *Orders*.³⁹ The specific average quantity of these exports is business proprietary information and cannot be discussed here. This information is contained in the Accompanying Information Memo. The Department issued its preliminary affirmative countervailing duty determination on June 29, 2015, and the information APP provided shows that it stopped shipping uncoated paper covered by the scope of the *Orders* to the United States altogether after this date.⁴⁰ See Accompanying Information Memo. APP for the first time began exporting 83 Bright paper to the United States in January 2016, the month the Department published its final determinations of the uncoated paper AD and CVD investigations.⁴¹

While APP's shipments of 83 Bright paper are in smaller quantities than its exports of uncoated paper covered by the scope of the *Orders* during January 2013 to May 2015 period, we find the timing of these shipments noteworthy, given that they coincided with the publication of the final determinations, in which the Department placed AD and CVD cash deposits of 17.39 percent and 109.15 percent, respectively, on APP's entries of uncoated paper covered by the scope of the *Orders*. We also find it significant that APP shipped a significant quantity of 83 Bright paper to the United States in March 2016, the month in which the Department issued the *Orders*.⁴² Furthermore, we note that the customers who purchased 83 Bright paper from APP in 2016 purchased uncoated paper covered by the scope of the *Orders* between January 2013 and May 2015.⁴³ Therefore, it appears that APP continues to sell to some of the same customers as it did before the imposition of the AD and CVD *Orders*, but switched to selling 83 Bright paper in the United States shortly before the issuance of the *Orders*.

Analysis of Additional Factors: Based on the record evidence described above, we find that certain of APP's customers switched their purchases of uncoated paper covered by the scope of

³⁹ See Questionnaire Response at Exhibit 1.

⁴⁰ *Id.* We note that the Department imposed provisional CVD duties of 131.12 percent in June 2015. See *Certain Uncoated Paper from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 80 FR 36971 (June 29, 2015).

⁴¹ See Questionnaire Response at Exhibit 1.

⁴² *Id.* See also the Accompanying Information Memo for the quantity of 83 Bright paper shipped in March 2016, as well as the average quantity of 83 Bright paper per month APP shipped between January and November 2016.

⁴³ *Id.*

the *Orders* to 83 Bright paper shortly before the issuance of the *Orders*. Given these circumstances, we preliminarily find that APP's decision to terminate its sales of uncoated paper covered by the scope of the *Orders* and the shift its exports to the United States to 83 Bright paper correlated with the AD and CVD investigations and imposition of the trade remedy measures. Thus, the totality of the circumstances detailed above and under which 83 Bright paper entered the United States provides further support to finding that 83 Bright paper is circumventing the *Orders*.

IX. Preliminary Findings

We preliminarily determine, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), that imports of 83 Bright paper, otherwise meeting the description of in-scope merchandise, constitute merchandise "altered in form or appearance in minor respects" that should be subject to the *Orders*. While APP argues that there are physical differences between 83 Bright paper and other uncoated paper covered by the scope of the *Orders*, it has not identified any differences, other than brightness, which affect the physical characteristics of the merchandise. In addition, we preliminarily determine that the GE brightness difference between 83 Bright paper and other uncoated paper covered by the scope of the *Orders* does not alter the expectations of the ultimate users, the use of the merchandise, and the channels of marketing in any meaningful way, because purchasers of 83 Bright paper are buying paper for copying and printing. We also preliminarily determine that the modification to the production process to produce 83 Bright paper does not increase the production costs. By APP's own admission, 83 Bright paper is less expensive to produce because it does not contain the OBAs needed to raise the paper's brightness level to 85 or above and uses fewer bleaching chemicals than other uncoated paper covered by the scope of the *Orders*. Moreover, we preliminary determine that, because APP switched from selling uncoated paper covered by the scope of the *Orders* to selling 83 Bright paper in the United States shortly before the issuance of the *Orders*, this is indicative of its attempt to circumvent the *Orders*. Accordingly, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), we preliminarily determine that 83 Bright paper constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders*.

X. Recommendation

We recommend that, pursuant to section 781(c) of the Act and 19 CFR 351.225, the Department issue an affirmative preliminary determination that 83 Bright paper is circumventing the *Orders*. Further, in accordance with 19 CFR 351.225(m), we recommend finding it appropriate to apply our finding on 83 Bright paper to each of the outstanding *Orders* on uncoated paper to prevent future shipments of 83 Bright paper from Australia, Brazil, the PRC, or Portugal from circumventing those orders in the same manner as APP's shipments of 83 Bright paper from Indonesia.



Agree



Disagree

6/2/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN
Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance