



A-351-842
Anti-Circumvention Inquiry
Uncoated Paper Rolls
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January 19, 2021

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
Inquiry of the Antidumping Duty Order on Certain Uncoated Paper
from Brazil: Uncoated Paper Rolls

I. SUMMARY

In response to a request¹ 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 an anti-circumvention inquiry, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(g),² to determine whether imports of certain uncoated paper rolls that are further processed into uncoated paper sheets in the United States are circumventing the *Order* on certain uncoated paper from Brazil.³ 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 Brazil are circumventing the *Order*.

¹ 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).

² 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*).

³ 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) (*Order*).



II. BACKGROUND

On October 18, 2019, Commerce initiated an anti-circumvention inquiry with respect to certain uncoated paper rolls from Brazil that can be further processed in the United States into uncoated paper sheets covered by the scope of the *Order* (subject-paper rolls).⁴ 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.⁵ 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.⁶

We requested information on the quantity and value (Q&V) of subject-paper rolls from each of the four companies/company groups identified in the Companies List Memo,⁷ and we received timely Q&V responses and supplemental responses from three of them (*i.e.*, Carvajal Pulpa y Papel S.A. (Carvajal),⁸ International Paper do Brasil Ltda (IP)/International Paper Exportadora Ltda (IPEX) (collectively, IP),⁹ and Suzano S.A. (Suzano)).¹⁰ One company on the list (*i.e.*, Ahlstrom Brasil Ltd. (Ahlstrom)) did not respond to the Q&V questionnaire.¹¹

On May 18, 2020, we selected two mandatory respondents in this inquiry. We selected IP and Suzano as the mandatory respondents because these two companies account for the largest volume of exports of uncoated paper rolls during the inquiry period based on Q&V data.¹²

⁴ See *Initiation Notice*.

⁵ See Memorandum, “Release of Customs and Border Protection (CBP) Data Query,” dated October 24, 2019 (CBP Data Query).

⁶ See Memorandum, “Publicly Identified Companies List,” dated October 24, 2019 (Companies List Memo).

⁷ See Commerce’s Letter, “Quantity and Value Questionnaire,” dated November 6, 2019.

⁸ See Carvajal’s Letter, “Anticircumvention Inquiry of the Antidumping Duty Orders on Uncoated Paper Sheets from Australia, Brazil, the People’s Republic of China, and Indonesia, and the Countervailing Duty Orders on Uncoated Paper Sheets from the People’s Republic of China and Indonesia: Quantity and Value Questionnaire,” dated November 20, 2019.

⁹ IP submitted one Q&V response on behalf of itself and IPEX. See IP’s Letters, “Anti-Circumvention Inquiry on Uncoated Paper from Brazil: Response to Q&V Questionnaire,” dated November 22, 2019; and “Anti-Circumvention Inquiry on Uncoated Paper from Brazil: Response to Supplemental Q&V Questionnaire,” dated January 22, 2020. In the less-than-fair-value investigation, we determined that IP and IPEX constituted a single entity. Because no interested party submitted comments on this issue, and in the absence of any new information regarding this finding, Commerce is continuing to find that IP and IPEX are affiliated, pursuant to sections 771(33)(E) and (F) of the Act, and are a single entity, pursuant to 19 CFR 351.401(f). See *Certain Uncoated Paper from Brazil: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 52029 (August 27, 2015), and accompanying Preliminary Decision Memorandum (PDM) at “Affiliation Determinations,” unchanged in *Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115 (January 20, 2016).

¹⁰ See Suzano’s Letters, “Antidumping Duty Investigation of Certain Uncoated Paper from Brazil: Suzano’s Q&V Questionnaire Response,” dated November 25, 2019; and “Anti-Circumvention Inquiry of the Duty Order on Certain Uncoated Paper from Brazil: Resubmission of Suzano’s January 22, 2020, February 12, 2020, and February 24, 2020 Filings with Redactions at the Request of the Department of Commerce,” dated March 24, 2020.

¹¹ See Memorandum, “Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Uncoated Paper from Brazil: Respondent Selection,” dated May 18, 2020 (Respondent Selection Memo).

¹² *Id.*

Additionally, in the Respondent Selection Memo, we also stated that Commerce would continue to analyze the no shipment response received from Carvajal.¹³

In May 2020, we issued initial questionnaires to IP and Suzano. We received responses to these questionnaires in July 2020.¹⁴ Based on these responses, we issued a questionnaire to IP's customer, Perez Trading Company (Perez); Perez's customer, Colonial Press International, Inc. (Colonial);¹⁵ and Suzano's customer Company B.¹⁶

From September through November 2020, we received questionnaire and supplemental questionnaire responses from the mandatory respondents IP¹⁷ and Suzano;¹⁸ as well as three U.S. companies: Colonial;¹⁹ Company B;²⁰ and Perez.²¹

III. SCOPE OF THE ORDER

The merchandise subject to this *Order* 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 level²² 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).

¹³ *Id.* at 6.

¹⁴ See IP's Letter, "Anti-Circumvention Inquiry on Uncoated Paper from Brazil: Response to Initial Circumvention Questionnaire," dated July 10, 2020; see also Suzano's Letter, "Anti-Circumvention Inquiry of the Duty Order on Certain Uncoated Paper from Brazil: Initial Questionnaire Response," dated July 10, 2020 (Suzano July 10, 2020 IQR).

¹⁵ We note that Commerce initially referred to Colonial as "Company A." However, in Colonial's affidavit in lieu of responding to Commerce's questionnaire, the company name is public. See Colonial's Letter, "Affidavit of Chris Seruga," dated October 30, 2020 (Colonial Affidavit).

¹⁶ Suzano claimed business proprietary treatment for its customer's identity; therefore, we refer to this customer as "Company B."

¹⁷ See IP's Letter, "Anti-Circumvention Inquiry on Uncoated Paper from Brazil: Response to Supplemental Circumvention Questionnaire," dated September 9, 2020; see also IP's Letter, "Anti-Circumvention Inquiry on Uncoated Paper from Brazil: Response to Second Supplemental Anti-Circumvention Questionnaire," November 9, 2020.

¹⁸ See Suzano's Letter, "Anti-Circumvention Inquiry of the Duty Order on Certain Uncoated Paper from Brazil: Supplemental Questionnaire Response," dated September 8, 2020.

¹⁹ See Colonial Affidavit.

²⁰ See Company B's Letter, "Anti-Circumvention Inquiry of the Duty Order on Certain Uncoated Paper from Brazil: Converter Questionnaire Response," dated November 13, 2020 (Company B November 13, 2020 QR).

²¹ See Perez's Letter, "Anti-Circumvention Inquiry on Uncoated Paper from Brazil: Response to Importer Questionnaire," dated July 10, 2020 (Perez July 10, 2020 IQR); see also Perez's Letter, "Anti-Circumvention Inquiry on Uncoated Paper from Brazil: Response to Supplemental Questionnaire," dated November 16, 2020 (Perez November 16, 2020 SQR).

²² 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 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 is subject to this *Order*.²³

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 INQUIRY

This anti-circumvention inquiry covers certain uncoated paper rolls that are commonly, but not exclusively, known as “sheeter rolls,” from Brazil that are further processed in the United States into individual sheets of uncoated paper that would be subject to the *Order* (*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 this inquiry 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 4802.55.²⁴

Certain importers of the subject-paper rolls that are not converted into subject merchandise may certify that the rolls will not be further processed into subject merchandise covered by the scope

²³ See *Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 82 FR 41610 (September 1, 2017).

²⁴ See *Initiation Notice*, 84 FR at 55917.

of the *Order*. Failure to comply with the requisite certification requirement may result in the merchandise being found subject to antidumping (AD) duties.

V. PERIOD OF ANTI-CIRCUMVENTION INQUIRY

The period for this inquiry examines the time period starting in the month the initiation of the underlying *Order* 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 AD and/or countervailing duty (CVD) orders.²⁵ 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 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 the United States is minor or insignificant.²⁶ 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.²⁷

Furthermore, section 781(a)(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

²⁵ 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.

²⁶ *See* 19 CFR 351.225(g).

²⁷ *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.

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 Ahlstrom, the non-responsive company, Commerce finds it necessary to rely on facts otherwise available on the record pursuant to section 776(a)(1) of the Act because this company failed to provide necessary information upon which Commerce could rely, and pursuant to sections 776(a)(2)(A), (B), and (C) of the Act because Ahlstrom withheld information requested by Commerce, failed to provide requested information within the established deadlines, and significantly impeded this anti-circumvention inquiry. Further, as discussed *infra*, we find it appropriate to use an adverse inference when applying the facts otherwise available on the record (AFA), pursuant to section 776(b) of the Act, to Ahlstrom because it failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information in this anti-circumvention inquiry.

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."²⁸ The Court of

²⁸ See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 870.

Appeals for the Federal Circuit, in *Nippon Steel*,²⁹ 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.³⁰ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³¹ 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.³²

B. Use of Facts Available with an Adverse Inference

Application of AFA: Entries are Circumventing the Order

Ahlstrom failed to respond to Commerce’s Q&V questionnaire. Thus, Commerce preliminarily finds that Ahlstrom 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 the facts otherwise available is warranted in making a determination with respect to Ahlstrom, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, because Ahlstrom did not notify Commerce of any difficulty in providing a response to the questionnaire, nor respond, we find that it did not act to the best of its ability in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

Thus, for this preliminary determination, 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 *Order*. In relying on this record information, we preliminarily find that Brazil-origin subject-paper rolls are circumventing the *Order* when they are further processed in the United States into uncoated paper sheets subject to the *Order*. For our application of AFA to Ahlstrom, we preliminarily find that during the inquiry period, Ahlstrom exported subject-paper rolls that were converted into subject merchandise in the United States; therefore, it was circumventing the *Order*.

Application of AFA: Effective Date and Certification Program for Ahlstrom

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 date of publication of this preliminary determination in the *Federal Register* except for Ahlstrom. We are also allowing a grace period

²⁹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

³⁰ See SAA at 870.

³¹ See *Nippon Steel*, 337 F. 3d at 1382-83; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

³² 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 PDM 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).

for importers of eligible entries to submit the certifications.³³ As a result of our application of AFA, we preliminarily determine that Ahlstrom is 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 date of publication of initiation of this inquiry (*i.e.*, October 18, 2019) pursuant to 19 CFR 351.225(l).

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. 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 Brazil are circumventing the *Order*.

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 Brazil, are the same class or kind of merchandise as the uncoated paper sheets covered by the *Order*.³⁴ Company B and Perez (collectively, U.S. companies)³⁵ reported that they converted subject-paper rolls into sheets during the inquiry period, and that these sheets met the definition of subject merchandise.³⁶ The U.S. companies then sold the converted sheets to customers in the United States.³⁷

Further, as detailed above in Section VII, Ahlstrom did not respond to Commerce's request for information. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record, including the fact that subject-paper rolls need only undergo minimal processing (*i.e.*, sheeting and packaging) to become uncoated paper sheets. As a result, we preliminarily find that Ahlstrom imported subject-paper rolls which it then converted into subject merchandise.

Thus, record evidence indicates that subject-paper rolls imported by the U.S. companies and converted into uncoated paper sheets in the United States would be subject merchandise because such uncoated paper sheets meet the physical characteristics outlined in the scope of the *Order*. As a result, we preliminarily determine that merchandise produced from the imported, Brazilian-origin subject-paper rolls and the uncoated paper sheets sold in the United States are of the same class or kind as the subject merchandise.

³³ See Appendices II and III of the accompanying *Federal Register* notice for further details.

³⁴ See Allegation of Circumvention at 6-9, and 17; see also Petitioners' August 23 Response at 3-4.

³⁵ As noted above, Commerce also solicited information from a third U.S. company, Colonial. However, Colonial reported that it is a commercial printing company which uses purchased rolls for completing printing orders placed by its customers. Colonial did not sell any subject merchandise nor is it capable of converting subject-paper rolls into subject paper sheets, see Colonial Affidavit.

³⁶ See Company B November 13, 2020 QR at 4; see also Perez November 16, 2020 SQR at 3.

³⁷ See Company B November 13, 2020 QR at 2-3 and Exhibits 1 and 3; see also Perez November 16, 2020 SQR at 2-3 and Exhibit Supp-3.

B. Completion of Merchandise in the United States

The petitioners assert that the subject-paper rolls are imported from Brazil, and that the rolls only need to undergo the sheeting operation to create uncoated paper sheets; this means that converters do not need to add additional materials in the United States to produce these sheets. Rather, performing the sheeting in the United States simply requires a cut size (*i.e.*, consumer size) sheeting machine to convert the rolls of paper into consumer-size sheets.³⁸ To support these assertions, 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.³⁹

As explained above, the U.S. companies reported importing Brazilian-origin subject-paper rolls that are subject to this inquiry, which they then converted into uncoated paper sheets which meet the description of sheets in the *Order*.⁴⁰ Further, as detailed above in Section VII, Ahlstrom did not respond to Commerce's request for information. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record, and, as a result, we find that Ahlstrom also converted subject-paper rolls to subject paper sheets in the United States. Thus, we preliminarily determine that uncoated paper sheets are completed and sold in the United States from parts or components produced in Brazil.

C. Minor or Insignificant Processing

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 The petitioners allege that converting subject-paper rolls only requires that converters have sheeting machines of particular sizes, and this investment is minor compared to the investment required in 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.

³⁸ See Petitioners' August 23 Response at Exhibit Supp 7.

³⁹ *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).

⁴⁰ See Company B November 13, 2020 QR at 2-3 and Exhibits 1 and 2; see also Perez November 16, 2020 SQR at 1, 2, 4, 7, 10 and Exhibits Supp-3, Supp-6, and Supp-7.

⁴¹ See Allegation of Circumvention at 19-25.

⁴² *Id.*

⁴³ *Id.* at 21.

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 as they themselves did not directly convert subject-paper rolls to sheets in the United States during the inquiry period, and we are reliant on the information placed on the record by Company B, Perez, and the petitioners. Thus, for those sections with limited information on the record from the foreign producers/exporters, our analysis is based on information provided by the U.S. companies and the petitioners.

Level of Investment

With respect to part (A) under section 781(a)(2) of the Act, 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

Information provided by the U.S. companies is consistent with the low level of required investment in the United States for converting subject-paper rolls claimed by the petitioners. Perez reported that it used a single piece of equipment to convert rolls into sheets. This machinery was purchased in 1974 and sold in 2017. During that time, the only investment Perez made into this machinery was repairs and maintenance.⁴⁵ Perez's operations are located at one facility, and when it maintained converting operations, these operations were also located at that facility.⁴⁶ In addition, while Company B could not provide specific information related to its level of investment in the United States, it claimed that its conversion operations were an extremely small part of its business.⁴⁷ Finally, as noted above, Ahlstrom did not respond to our information request. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record, and, as a result, we find that Ahlstrom's level of investment in the United States related to conversion operations is small.

Therefore, based upon record evidence, we preliminary find that the level of investment to convert subject-paper rolls into sheets in the United States is minimal. Because some of the information on which this conclusion is based involves business proprietary information (BPI), for a complete discussion, *see* BPI Memos.⁴⁸

Level of Research and Development

The petitioners state that there is no known research or development associated with the sheeting process.⁴⁹ Further, both of the U.S. companies reported that they conducted no research or

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

⁴⁵ See Perez November 16, 2020 SQR at 11-13.

⁴⁶ *Id.*

⁴⁷ See Company B November 13, 2020 QR at 8-9 and 11-12.

⁴⁸ See Memorandum, "Business Proprietary Memorandum for Company B," dated concurrently with this memorandum (Company B BPI Memo); *see also* Memorandum, "Business Proprietary Memorandum for Perez Trading Company," dated concurrently with this memorandum (Perez BPI Memo) (collectively, BPI Memos).

⁴⁹ See Allegation of Circumvention at 22.

development.⁵⁰ Finally, as noted above, Ahlstrom did not respond to our request for information. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record. Thus, we find that Ahlstrom also conducted no research or development activities related to paper conversion in the United States.

Thus, with respect to section 781(a)(2)(B) of the Act, we preliminarily find that the level of research and development spending on converting subject-paper rolls in the United States is non-existent.

Nature of the Production Process

The petitioners argue that the production process of a fully integrated paper mill is extensive and has numerous steps.⁵¹ Sheeter operations, on the other hand, involve significantly less production operations, in that automatic machines require a limited number of employees to unroll sheeter rolls and cut them into sheets.⁵²

There is limited information on the record from the U.S. companies. However, Perez's response appears to support the petitioners' claim. Perez explains that, generally, rolls are loaded onto a sheeter and then automatically drawn and cut to the selected size by the sheeter. The only material input for this process is the rolls, and the only subsidiary product is paper waste.⁵³ Further, while Company B did not provide any information related to the nature of the production process itself, the information in its response was generally consistent with other information on the record. Finally, as detailed above in Section VII, Ahlstrom did not respond to our request for information. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record. Thus, we find that Ahlstrom's production process is the same as Perez's process.

Thus, with respect to section 781(a)(2)(C) of the Act, we preliminarily find that the process of converting subject-paper rolls in the United States is not significant.

Extent of Production Facilities

As stated above, the petitioners assert 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. Also explained *supra*, the record evidence indicates that a single piece of machinery is required to convert subject-paper rolls in the United States and that this machinery does not require a separate facility to operate.

Perez reported that, when it operated a conversion operation, it was located at the same facility as its other operations. Perez further stated that it did not have a separate manufacturing plant.⁵⁴

⁵⁰ See Company B November 13, 2020 QR at 13; *see also* Perez November 16, 2020 SQR at 16.

⁵¹ See Allegation of Circumvention at 23 (citing ITC Final at I-11-I-13).

⁵² *Id.*

⁵³ See Perez November 16, 2020 SQR at 15.

⁵⁴ *Id.* at 11-12.

Further, while Company B provided limited information on its production facilities, the information in its response was generally consistent with other information on the record. Finally, as detailed above in Section VII, Ahlstrom did not respond to our initial request for information. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record. Thus, we find that Ahlstrom's production facilities for the conversion of subject-paper rolls into uncoated paper sheets are minimal.

Thus, with respect to section 781(a)(2)(D) of the Act, we preliminarily find that the extent of the production facilities in the United States for converting subject-paper rolls in the United States is not significant.

Value of Conversion in the United States

With regard to section 781(a)(2)(E) of the Act, the petitioners state that the cost of sheeting 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 base this assertion on a declaration provided by a U.S. producer of uncoated paper sheets, which discusses the energy, labor, and packaging materials required to finish subject merchandise.⁵⁵ The petitioners also address other costs in completing the manufacture of uncoated paper sheets, such as maintenance, overhead, and depreciation.⁵⁶ 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 and quantitatively, the value of the conversion from a subject-paper roll to uncoated paper sheets is minor or insignificant, in light of the fact that they did not have access to cost or price data of Brazilian producers, U.S. importers, or U.S. converters at the time of their allegation of circumvention.

With regard to this criterion, we preliminarily determine that the appropriate method for valuing the conversion costs performed in the United States is by comparing on a product-specific basis the expenses associated with Perez's conversion of subject-paper rolls into finished uncoated paper sheets (*i.e.*, the cost of direct material, the conversion fee from the unaffiliated converter(s), selling, general and administrative expenses, and net interest expenses) with the average sales prices of the finished uncoated paper sheets in the United States over the same time period.⁵⁷ We find that this is the appropriate methodology because Perez has provided the most detailed and complete cost information of the U.S. companies. As discussed in Perez BPI Memo, our analysis of Perez's data indicates that the value of converting subject-paper rolls in the United States represents a small proportion of the value of the merchandise sold in the United States.⁵⁸ Further, while Company B provided only summary information on its costs, analysis of

⁵⁵ See Allegation of Circumvention at 24-25 and Attachment 1; Petitioners' August 23 Response Exhibit Supp-2 and Exhibit Supp-3.

⁵⁶ *Id.*

⁵⁷ See Perez November 16, 2020 SQR at 16-21 and Exhibits Supp-13 to Supp-15.

⁵⁸ See Perez BPI Memo.

this information leads to similar conclusions as those set forth below based on Perez's data.⁵⁹ Finally, as detailed above in Section VII, Ahlstrom did not respond to our initial request for information. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record. As a result, we also find that Ahlstrom's costs in the United States are minimal. Thus, with respect to section 781(a)(2)(E) of the Act, we preliminarily determine that 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. For a complete discussion of this factor, *see* BPI Memos.

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

Based on our analysis of the figures placed on the record by the U.S. companies, we preliminarily find that the value of the parts or components produced in Brazil is a significant portion of the total value of the merchandise in question. Because the U.S. companies claimed business proprietary treatment for the information on which this conclusion is based, *see* BPI Memos for further discussion. Finally, as detailed above in Section VII, Ahlstrom did not respond to our request for information. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record. Thus, we find that the value of the rolls produced in Brazil and purchased by Ahlstrom is a significant portion of the total value of the merchandise in question.

As such, with respect to section 781(a)(1)(D) of the Act, we find that this factor weighs in favor of an affirmative anticircumvention determination.

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.

Patterns of Trade, Including Sourcing Patterns

Under section 781(a)(3)(A) of the Act, Commerce shall take into account whether there has been a change in the pattern of trade when making its determinations with respect to circumvention. Record evidence indicates that there was a shift in the pattern of trade from 2014 to the present by the U.S. companies. Ahlstrom did not respond, as detailed above in Section VII. As a result, for Ahlstrom, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record. Thus, we find that there was also a shift in the pattern of trade for Ahlstrom. As such, we preliminarily find that this factor does support our preliminary affirmative determination that subject-paper rolls from Brazil are circumventing the *Order*. Because much of this discussion is BPI, *see* BPI Memos.

⁵⁹ *See* Company B BPI Memo.

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. Record evidence indicates that none of the U.S. companies are affiliated with the mandatory respondents.⁶⁰ With respect to Ahlstrom, because it did not respond to our request for information, as detailed above in Section VII, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record. Thus, we find that Ahlstrom may be affiliated with other firms that complete the uncoated paper sheets in the United States. On balance, we preliminarily find that this factor does not support our preliminary affirmative determination that subject-paper rolls from Brazil are circumventing the *Order*.

Subsequent Import Volume after Initiation of the Investigation

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 investigation in February 2015,⁶¹ and published the *Order* in March 2016. Since the initiation of the investigation, imports of subject-paper rolls by U.S. companies have increased.⁶² More critically, since the initiation of the investigation, conversion by these U.S. companies has also increased.⁶³ Further, because Ahlstrom did not respond to our request for information, as detailed above in Section VII, we preliminarily determine that Commerce must use an adverse inference when relying on the facts otherwise available on the record with respect to its import volume. Thus, we find that Ahlstrom's imports of subject-paper rolls also increased after the initiation of the investigation. As such, we preliminarily find that this factor weighs in favor of our preliminary affirmative determination that subject-paper rolls from Brazil are circumventing the *Order*. Because much of this discussion is BPI, *see* BPI Memos.

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 two largest exporters of uncoated paper rolls for examination based on the Q&V data to account for the largest volume of uncoated paper roll exports to the United States from Brazil.⁶⁵ Based on information provided by IP and Suzano, we then gathered information from certain U.S. customers of uncoated paper

⁶⁰ *See, e.g.*, Suzano July 10, 2020 IQR at Exhibit 1; and Perez July 10, 2020 IQR at 1.

⁶¹ *See Initiation Notice*.

⁶² *See* BPI Memos.

⁶³ *Id.*

⁶⁴ *See* CBP Data Query.

⁶⁵ *See* Respondent Selection Memo.

rolls, to extrapolate the best overall picture of the significance of further manufacturing on a country-wide basis.

As explained *supra*, the U.S. companies reported converting subject-paper rolls originating in Brazil into subject merchandise and provided full questionnaire responses substantiating this fact. Further, IP and Suzano are the largest Brazilian exporters of uncoated paper rolls to the United States. Given these facts, we find that the affirmative preliminary circumvention findings outlined above are representative of the experiences of other exporters from Brazil and importers and converters in the United States.⁶⁶ Therefore, we are applying this affirmative preliminary finding to all shipments of subject-paper rolls from Brazil in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Although we do have evidence that subject-paper rolls are sometimes imported into the United States, but not converted into subject merchandise,⁶⁷ 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 *Order*.

Finally, for IP, we preliminarily determine that IP did not export subject-paper rolls from Brazil to the United States during the period of inquiry.⁶⁸

X. CERTIFICATION REQUIREMENT

Commerce has an obligation to administer the law in a manner that prevents evasion of the *Order*.⁶⁹ 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 *Order* are circumventing the *Order*. Therefore, based on our preliminary findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *Order*.

As discussed above, it is possible that certain paper rolls from Brazil that otherwise match the physical description of subject-paper rolls upon importation are not further processed into uncoated paper sheets subject to the *Order*. Accordingly, to administer the affirmative circumvention determination, Commerce is requiring that importers of certain paper rolls from Brazil that otherwise match the physical description of subject-paper rolls and that are not further processed into uncoated paper sheets subject to the *Order* 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

⁶⁶ See BPI Memos.

⁶⁷ See Company B November 13, 2020 QR at Exhibit 1; see also Perez July 10, 2020 IQR at 6 and Exhibit 8; and Colonial Affidavit.

⁶⁸ See Memorandum, “Business Proprietary Memorandum for International Paper do Brasil Ltda and International Paper Exportadora Ltda,” dated concurrently with this memorandum.

⁶⁹ 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).

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 AD duties under the *Order*. Exemption from AD duties under the *Order* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met.

Entries of subject-paper rolls produced and/or exported by Ahlstrom are not eligible for certification.

XI. RECOMMENDATION

Because imports of subject-paper rolls exported from Brazil 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 a preliminary affirmative circumvention determination that imports of subject-paper rolls from Brazil are circumventing the *Order*.



Agree

Disagree

1/19/2021

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance