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DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-807]

Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: The Department of Commerce (Department) determines that certain uncoated paper from Australia is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2014, through December 31, 2014. The final dumping margins of sales at LTFV are listed below in the “Final Determination” section of this notice.

DATES: *Effective:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Eve Wang or George McMahon, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6231 or (202) 482-1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2015, the Department published the *Preliminary Determination* of this antidumping duty (AD) investigation.¹ The following events occurred since the *Preliminary Determination* was issued.

On August 27, 2015, sole respondent Paper Australia Pty. Ltd. (Australian Paper) withdrew its participation from this investigation, stating that “due to the significant preliminary dumping margin,” it was suspending its participation in the U.S. market “pending the final determination on Injury.”²

On August 28, 2015, the Department notified interested parties of a revised, accelerated briefing schedule due to the lack of participation from the sole respondent, Australian Paper, which resulted in the cancellation of verification of its questionnaire responses.³ On September 24, 2015, the Department granted Petitioners’⁴ request to extend the briefing schedule.⁵ On October 2, 2015, Petitioners submitted a case brief.

Scope of the Investigation and Scope Comments

The product covered by this investigation is certain uncoated paper from Australia. For a complete description of the scope of the investigation, see the “Scope of the Investigation,” in

¹ See *Certain Uncoated Paper From Australia: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 80 FR 51783 (August 26, 2015) (*Preliminary Determination*).

² See Australian Paper’s letter titled, “Respondents Paper Australia Pty Ltd and Paper Products Marketing (USA) Notification of Withdrawal,” dated August 27, 2015 (Australian Paper’s Letter of Withdrawal), at 2.

³ See the Department’s Memorandum titled, “Antidumping Duty Investigation of Certain Uncoated Paper from Australia: Case Brief and Rebuttal Brief Schedule for Final Determination of the above referenced Investigation,” dated August 28, 2015.

⁴ Petitioners in this investigation are 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.

⁵ See the Department’s Memorandum titled, “Certain Uncoated Paper From Australia: Antidumping Duty Investigation: Revised Briefing Schedule,” dated September 24, 2015; see also Petitioners’ letter titled, “Petitioners’ Request to Extend Briefing Schedule,” dated September 24, 2015.

Appendix I of this notice, which incorporates changes made subsequent to the *Preliminary Determination*.

On October 2, 2015, Gartner Studios submitted its case brief regarding the scope of the investigations.⁶ On October 6, 2015, the Department revised the briefing schedule for scope comments and rebuttal comments.⁷ On October 19, 2015, American Greetings Corporation (American Greetings) submitted its case brief regarding the scope of the investigations.⁸ On October 29, 2015, Petitioners submitted their rebuttal brief regarding the scope of the investigations.⁹ The Department is issuing a scope comments decision memorandum for the final determinations of the AD and countervailing duty investigations of certain uncoated paper, which is incorporated by reference in, and hereby adopted by, this final determination.¹⁰ As explained in the Final Scope Decision Memorandum, to facilitate the scope's administrability and enforcement, we have clarified the scope language such that certain uncoated paper with "final printed content" is excluded from the scope of the investigations.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties in this investigation that are not related to the scope of this investigation are addressed in the Issues and Decision

⁶ Because there are multiple investigations of uncoated paper, the Department has considered collectively all comments regarding the scope of the investigations filed by the interested parties.

⁷ See Memorandum titled, "Revised Briefing Schedule for Scope Comments and Rebuttal Comments," dated October 6, 2015.

⁸ See Letter from American Greetings titled, "Certain Uncoated Paper From Australia, Brazil, The People's Republic of China, Indonesia, and Portugal: Case Brief of American Greetings Corporation," dated October 19, 2015.

⁹ See Letter from Petitioners titled, "Certain Uncoated Paper From Australia, Brazil, The People's Republic of China, Indonesia, and Portugal: Scope Rebuttal Brief," dated October 20, 2015.

¹⁰ See the Department's memorandum to the file titled, "Less-Than-Fair-Value Investigations of Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal; and Countervailing Duty Investigations of Certain Uncoated Paper from the People's Republic of China and Indonesia: Scope Comments Decision Memorandum for the Final Determinations," dated January 8, 2016 (Final Scope Decision Memorandum).

Memorandum, which is incorporated by reference by, and hereby adopted by, this notice.¹¹

A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and it is available to all parties in the Central Records Unit, room B-8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the *Preliminary Determination*

Based on our analysis of the comments received and Australian Paper's withdrawal of participation from this investigation, we have revised the margin for Australian Paper to reflect the application of facts available with an adverse inference pursuant to sections 776(a)(2)(C) and (D) and 776(b) of the Act. We have also revised the all-others rate. For a discussion of these changes, see the Issues and Decision Memorandum at Comments 1, 2, and 3.

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Where the sole individually investigated respondent's margin is based

¹¹ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Uncoated Paper from Australia" (Issues and Decision Memorandum), dated concurrently with this notice.

on total AFA under section 776 of the Act, our practice under these circumstances has been to assign as the all-others rate the simple average of the margins in the petition,¹² which we have done in this final determination.¹³

Final Determination

The Department determines that the estimated final weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Dumping Margin (percent)
Paper Australia Pty. Ltd.	222.46
All Others	138.87

Disclosure

We will disclose the calculations performed to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

Final Affirmative Determination of Critical Circumstances, In Part

In the *Preliminary Determination*, the Department found that critical circumstances did not exist with respect to imports of uncoated paper from Australia from Australian Paper and all other exporters or producers.¹⁴ Based on Australian Paper’s withdrawal from this investigation, and upon further analysis following the *Preliminary Determination*, we are modifying our findings for the final determination.

¹² See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey*, 73 FR 5508, 5513-14 (January 30, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey*, 73 FR 19814, 19815 (April 11, 2008); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007).

¹³ See Issues and Decision Memorandum at Comment 3.

¹⁴ See *Preliminary Determination*, 80 FR at 51784.

Because we do not have verifiable shipment data from Australian Paper, we must base our “massive imports” determination on the facts available, pursuant to section 776(a) of the Act. Because Australian Paper failed to cooperate by not acting to the best of its ability to allow for verification of its sales and cost questionnaire responses, we are making an adverse inference in selecting from the facts available, pursuant to section 776(b) of the Act. Thus, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available, and determine that there were massive imports from Australian Paper over a relatively short period pursuant to section 733(e)(1)(B) of the Act.¹⁵ We also find that Australian Paper’s dumping margin is sufficient to impute importer knowledge of sales at less than fair value, and the International Trade Commission’s (ITC) preliminary injury determination is sufficient to impute the likelihood of material injury, in accordance with section 733(e)(1)(A)(ii) of the Act. For those reasons, we determine that critical circumstances exist for imports from Australia of uncoated paper produced by Australian Paper. For a discussion of these changes, see the Issues and Decision Memorandum at “VI. Finding of Critical Circumstances, In Part.”

However, we have not inferred, as AFA, that massive imports exist for companies under the all-others category, because, unlike the uncooperative company in question, the all-others companies have not failed to cooperate in this investigation. Furthermore, the record indicates that the only known producer of uncoated paper from Australia is Australian Paper.¹⁶ Therefore, an adverse inference with respect to finding a massive surge in imports by the all-others

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan*, 64 FR 73215 (December 29, 1999).

¹⁶ See *Certain Uncoated Paper From Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 8614 (February 18, 2015); see also Initiation Checklist at 2.

companies is not appropriate. Therefore, we determine that critical circumstances do not exist for imports of uncoated paper from Australia for companies in the all-others category. For further discussion of this analysis, see the Issues and Decision Memorandum at “VI. Finding of Critical Circumstances, In Part.”

Continuation of Suspension of Liquidation

As noted above, for this final determination, the Department found that critical circumstances exist with respect to imports of the subject merchandise from Australian Paper. However, the Department did not find that critical circumstances existed with respect to imports by Australian Paper in the *Preliminary Determination*.¹⁷ Therefore, in accordance with section 735(c)(4)(B) of the Act, the Department is modifying the suspension of liquidation as announced in the *Preliminary Determination* for Australian Paper. The Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of uncoated paper from Australian Paper, as described in Appendix I of this notice, to apply to unliquidated entries that were entered, or withdrawn from warehouse, for consumption on or after May 28, 2015, 90 days prior to publication of the *Preliminary Determination* of this investigation in the *Federal Register*, and require a cash deposit for such entries equal to the estimated amount by which the normal value exceeds the U.S. price as noted above for such unliquidated entries.

Because we continue to find that critical circumstances do not exist with respect to all others, in accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation of all appropriate entries of uncoated paper from all others, which were entered, or withdrawn from warehouse, for consumption on or after August 26, 2015, the date of publication of the *Preliminary Determination* in the *Federal Register*.

¹⁷ See *Preliminary Determination*, 80 FR at 51784.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of uncoated paper from Australia no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 8, 2016.

Paul Piquado,

Assistant Secretary

for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation 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 level¹ 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 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 of the investigation is dispositive.

¹ 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.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum:

- I. Summary
- II. Background
- III. Period of Investigation
- IV. List of Comments
- V. Discussion of Comments

Comment 1: Whether Adverse Facts Available (AFA) are Warranted for Respondent Australian Paper

Comment 2: Rate to Assign to Australian Paper Based on AFA

Comment 3: Derivation of the All-Others Rate

- VI. Finding of Critical Circumstances, In Part

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