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Investigation
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DATE: August 19, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Uncoated Paper from Australia

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain uncoated paper (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 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On January 21, 2015, the Department received an antidumping duty (AD) petition covering imports of uncoated paper from Australia,¹ which was filed in proper form by 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”). The Department published the notice of initiation of this investigation on February 18, 2015.²

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China (PRC), Indonesia, and Portugal; and Countervailing Duties on Imports from the People’s Republic of China and Indonesia, dated January 21, 2015 (the Petition).

² 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 8608 (February 18, 2015) (*Initiation Notice*).

In the *Initiation Notice*, the Department stated that, although the Department normally relies on import data from Customs and Border Protection (CBP) to select a limited number of producers/exporters for individual examination in AD investigations, the Petitions identified only one company as a producer/exporter of uncoated paper in Australia: Paper Australia Pty. Ltd (Australian Paper).³ In addition, the Petitioners provided information from independent third party sources as support for identifying this firm as the sole producer/exporter from Australia.⁴ The Department has no information identifying any additional producers/exporters of merchandise under consideration from Australia. Accordingly, the Department indicated it would examine all known producers/exporters in the investigation for Australia (*i.e.*, Australian Paper).⁵ We invited interested parties to comment on this issue within five days of publication of the *Initiation Notice* but received no comments. The Department issued the initial AD questionnaire to Australian Paper on February 24, 2015 (section A) and March 20, 2015 (sections B-D).

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of uncoated paper to be reported in response to the Department's AD questionnaire.⁶ In March 2015, the Petitioners, Australian Paper, and the following interested parties submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes: Suzano Papel e Celulose S.A./Suzano Pulp and Paper America, Inc. (Suzano) and International paper do Brasil Ltda./ International Paper Exportadora Ltda. (International Paper) (respondents in the companion AD investigation on uncoated paper from Brazil), AKU/AFPM (respondents in the companion AD investigation on uncoated paper from Indonesia); and Portucel S.A./Portucel Soporcel N.A. (Portucel) (a respondent in the companion AD investigation on uncoated paper from Portugal).⁷ In the same month, each of these parties, with the exception of Australian Paper, filed rebuttal comments.

On March 17, 2015, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of uncoated paper from Australia.⁸

Finally, in April 2015, Gartner Studios, Inc. (Gartner Studios), an importer of print and social stationery, requested that the Department clarify whether certain pre-printed forms are covered by the scope of the investigation.⁹ During the same month, Gartner Studios supplemented this

³ See Volume I of the Petitions, at Exhibit I-7.

⁴ See Volume II of the Petitions, at II-1 – II-2 at footnote 1, and Exhibit II-3.

⁵ See *Initiation Notice*, 80 FR at 8614.

⁶ *Id.*, at 8609-8610.

⁷ In July 2015, Australian Paper placed on the administrative record of the companion investigations certain comments related to product characteristics that it filed in March 2015 in the instant Australia investigation.

⁸ See *Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal*, 80 FR 13890 (March 17, 2015) (*ITC Preliminary Determination*).

⁹ Gartner Studios initially made this submission in March 2015; however, the submission failed to meet the filing requirements set forth in 19 CFR 351.102(b)(21). The Department permitted Gartner Studios to remedy its filing deficiencies and accepted Gartner's refiled submission in April 2015. See Letter from Eric B. Greynolds to Gartner Studios, "Antidumping Duty 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: Garner Studio's Scope Comments," dated March 16, 2015.

request by submitting photographs and samples of the products at issue. In May 2015, the Petitioners responded to Gartner Studios' submissions, indicating that they believe that each item in the submissions of Gartner Studios should be excluded from the scope of the investigation.

In May 2015, the Petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the Department published a postponement of the preliminary determination until no later than August 19, 2015.¹⁰

Also, in March 2015, Australian Paper submitted a timely response to section A of the Department's AD questionnaire (*i.e.*, the section relating to general information), and in May 2015, Australian Paper responded to sections B, C, and D (*i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively). In June and July 2015, we issued supplemental questionnaires to Australian Paper, and we received responses to these supplemental questionnaires in June, July, and August 2015.

In July 2015, the Petitioners made a timely allegation that critical circumstances exist with respect to imports of the merchandise under consideration produced and exported by Australian Paper.¹¹ Also in July and August 2015, the Petitioners and Australian Paper requested that the Department postpone the final determination, and that provisional measures be extended.

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2014, through December 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was January 2015.¹²

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on August 11, 2015, Australian Paper requested that the Department postpone the final determination, and that provisional measures be extended.¹³ In addition, the Petitioners also requested that, in the event of a negative preliminary determination, the Department postpone its final determination to 135 days after the date of publication of the preliminary determination.¹⁴

¹⁰ See *Certain Uncoated Paper From Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 80 FR 31017 (June 1, 2015).

¹¹ See letter from the Petitioners, "Certain Uncoated Paper from Australia – Allegation of Critical Circumstances," dated July 15, 2015 (the Petitioners' Critical Circumstances Allegation).

¹² See 19 CFR 351.204(b)(1).

¹³ See letter from Australian Paper entitled, "Certain Uncoated Paper from Australia: Respondents' Comments on the Extension of Final Determination," dated August 11, 2015.

¹⁴ See letter from the Petitioners entitled, "Certain Uncoated Paper from Australia -- Petitioners' Comments on the Extension of the Final Determination," dated July 31, 2015.

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE COMMENTS

As noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage.¹⁵

As referenced above, Gartner Studios submitted letters, including nine product samples, requesting that the Department clarify whether the scope of the instant investigations includes certain printed uncoated paper, including printed forms and paper with printed designs.¹⁶

The Petitioners submitted comments in response to Gartner Studios' request, indicating that each of the nine samples Gartner Studios provided appears to be "printed with final content of printed text or graphics" within the intended meaning of the scope exclusion language.¹⁷

Based on the information on the record, we agree with Gartner Studios and the Petitioners that each sample Gartner Studios provided is considered "paper printed with final content of printed text or graphics" and, thus, is excluded from the scope of these investigations.¹⁸

As stated in the Preliminary Scope Comments Decision memorandum, we invite parties to comment on this finding in their case briefs so that the issue can be addressed in the final determinations of these investigations. Further, we note that with the exception of HTS categories 4911.99.6000 and 4911.99.8000, Gartner Studios' samples of printed uncoated paper fall under HTS categories that are included in the scope. Therefore, we invite parties to comment on whether and how the language of the scope can be revised to exclude the printed uncoated paper at issue in a manner that will facilitate the enforcement and administration of the scope by U.S. Customs and Border Protection.¹⁹

¹⁵ See *Initiation Notice*, 80 FR at 8608; see also *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁶ See Letter from Gartner Studios, entitled "Antidumping Duty Investigations on Certain Uncoated Paper from Australia, Brazil, the People's Republic of China (PRC), Indonesia, and Portugal, and Countervailing Duty Investigations on Certain Uncoated Paper from Indonesia and the PRC," dated April 14, 2015 and April 28, 2015.

¹⁷ See Letter from the Petitioners, entitled "Certain Uncoated Paper From Australia, Brazil, The People's Republic Of China, Indonesia, and Portugal: Response To Gartner Studios," dated May 8, 2015, at 2.

¹⁸ See Memorandum from Erin Begnal, Director, Office III, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled "Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 3, 2015 (Preliminary Scope Comments Decision Memorandum).

¹⁹ *Id.*, at 5.

VI. DISCUSSION OF THE METHODOLOGY

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of uncoated paper from Australia to the United States were made at LTFV, we compared the constructed export price (CEP) to the normal value (NV), as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum.

A) *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or CEPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the EPs (or CEPs) of individual transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.²⁰

In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).²¹ The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the average-to-transaction method. The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating estimated weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the estimated weighted-average dumping margin. The differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by Australian Paper. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale.

²⁰ See 19 CFR 351.414(b)(1) and (2); *see also* section 777A(d)(1)(B) of the Act.

²¹ *See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group will have been found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test (*i.e.*, the “mixed alternative” method). If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the estimated weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A

difference in the estimated weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the estimated weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting estimated weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) *Results of the Differential Pricing Analysis*

For Australian Paper, based on the results of the differential pricing analysis, the Department finds that 69.45 percent of Australian Paper's U.S. sales passed the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly by purchasers, regions, or time periods. Therefore, the results support consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. However, we find that the average-to-average method can account for such differences because, when comparing the estimated weighted-average dumping margins calculated using the average-to-average method for all U.S. sales and the estimated weighted-average dumping margins calculated using the average-to-transaction method for all U.S. sales, there is not a meaningful difference in the results. Accordingly, for the preliminary determination, we will use the standard average-to-average method to calculate the estimated weighted-average dumping margin for Australian Paper.²²

VII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²³

In this case, Australian Paper reported the date of invoice to the first unaffiliated customer as the date of sale for all of its home market and U.S. sales.²⁴ Australian Paper reported that there can be changes to the order after the order is placed but prior to invoicing.²⁵ Based on our analysis of the information on the record which supports that the material terms of sale are established on

²² See Memorandum from George McMahon, Case Analyst to the File titled "Preliminary Determination Sales Analysis Memorandum for Australian Paper" dated concurrently with this memorandum (Australian Paper Preliminary Sales Analysis Memo).

²³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²⁴ See Australian Paper's Section A questionnaire response dated March 23, 2015 (Sec. AQR) at page A-28, Sections B and C questionnaire response, dated May 19, 2015, at pages B-16 and C-12.

²⁵ See Sec. AQR at page A-28; see also Australian Paper's Section B-C Supplemental Questionnaire response dated August 6, 2015 at 28.

the invoice date for these sales, and consistent with our regulatory preference in 19 CFR 351.401(i), we preliminarily used the invoice date as the date of sale for Australian Paper's home market and U.S. sales.

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent, Australian Paper, in Australia during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: whether the product is folio paper, color, existence of embossing/watermark, basis weight, sheet size, brightness, recycled weight, printing, perforations, and punching.

IX. CONSTRUCTED EXPORT PRICE

In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under consideration is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Australian Paper classified all of its sales of merchandise under consideration to the United States as CEP sales because such sales were invoiced and sold by Australian Paper's U.S. affiliate, Paper Products Marketing (USA) Inc. (PPM USA).²⁶ We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, inland insurance, U.S. brokerage and handling, U.S. inland freight, U.S. warehouse expense, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.²⁷ In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.

²⁶ See Sec. AQR at page A-25 – A-26, and A-28.

²⁷ See the Australian Paper Preliminary Sales Analysis Memo (Proprietary Document).

X. NORMAL VALUE

A. *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for Australian Paper was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.²⁸ Therefore, we used home market sales as the basis for NV for Australian Paper, in accordance with section 773(a)(1)(B) of the Act.

B. *Level of Trade*

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA),²⁹ to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁰ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³¹ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),³² we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³³

²⁸ See Australian Paper's Sec. AQR at pages A-2 – A-3.

²⁹ See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

³⁰ See 19 CFR 351.412(c)(2).

³¹ *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

³² Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³³ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁴

Australian Paper reported that its home market sales were all made through two channels of trade directly to unaffiliated retailers and end users.³⁵ Australian paper submitted a chart of selling functions³⁶ which indicates that the selling functions for its two channels of trade are similar, with no significant variation across the broader categories of sales process/marketing support, freight and delivery and warehousing. Consequently, we preliminarily determine that these two channels of trade constitute one LOT in the home market. In the U.S. market, Australian Paper sold the merchandise to its U.S. affiliate, PPM USA, and the goods were then sold into one channel of trade to unaffiliated paper merchants, distributors, and wholesalers.³⁷ The selling activities are consistent in this single channel of trade, with no significant variation across the broader categories of sales process/marketing support, freight and delivery and warehousing. Therefore, we considered these CEP sales to constitute one LOT. Australian Paper provided information regarding channels of distribution and selling activities performed for different categories of customers.³⁸ We compared the selling activities reported by Australian Paper at the CEP LOT with its selling activities at the comparison market LOT and find that there are greater sales activities performed in the home market as compared to Australian Paper's U.S. CEP sales.³⁹ We preliminarily determine that these differences support a finding that the home market sales are made at a different and more advanced stage of marketing than the LOT of Australian Paper's CEP sales.

Because the comparison market LOT was different from the CEP LOT, we could not match to sales at the same LOT in the comparison market. Moreover, because the CEP LOT did not exist in the comparison market, there is no basis for a LOT adjustment. Therefore, for Australian Paper's CEP sales, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP offset adjustment to NV is subject to a cap, which is calculated as the sum of comparison market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

C. *Cost of Production Analysis*

As noted above, based on our analysis of an allegation contained in the petition, we found that

³⁴ See, e.g., *OJ from Brazil*, at Comment 7.

³⁵ See Sec. AQR at pages A-21 – A-22. Australian paper sells folio paper in the home market to paper merchants and printers; see also Attachment A-3.3

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Sec. AQR at Attachment A-3.3

there were reasonable grounds to believe or suspect that Australian Paper's sales of uncoated paper in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether Australian Paper's sales were made at prices below their respective COPs. We examined Australian Paper's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.⁴⁰

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.⁴¹

We relied on the COP data submitted by Australian Paper,⁴² except as follows:

We adjusted Australian Paper's submitted per-unit variable cost of manufacturing (VCOM) amounts so that they did not include depreciation. We instead included depreciation in the per-unit total cost of manufacturing (TCOM) amounts.⁴³

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where

⁴⁰ See *Initiation Notice*, 80 FR at 8613. Because the Department issued the complete initial questionnaire to Australian Paper prior to August 6, 2015, the recent amendment to section 773(b)(2) of the Act effectuated by the Trade Preferences Extension Act of 2015 does not apply to this preliminary determination. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015).

⁴¹ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁴² We have relied upon Paper Australia Pty. Ltd.'s COP information contained in Exhibit D-51 of Australian Paper's supplemental questionnaire response, dated July 13, 2015, (cost database file named, "aupcp03.sas7bdat").

⁴³ See Memorandum from Kristin L. Case, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Adjustments for the Preliminary Determination – Paper Australia Pty. Ltd.," dated concurrently with this memorandum (Australian Paper Preliminary Cost Calculation Memo).

less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Australian Paper's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁴⁴

D. *Calculation of NV Based on Comparison-Market Prices*

We calculated NV based on delivered or ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, discounts, and rebates, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁴⁵

XI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

XII. CRITICAL CIRCUMSTANCES

On July 15, 2015, the Petitioners filed a timely critical circumstances allegation, pursuant to section 733(e) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist

⁴⁴ *Id.*

⁴⁵ *See* 19 CFR 351.411(b).

with respect to imports of certain uncoated paper from Australia.⁴⁶

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Critical Circumstances Allegation

The Petitioners' Allegation

In their allegation, the Petitioners contend that the Department may rely on the margins calculated in the preliminary determination for this determination or margins estimated in the petition and in the initiation notice to decide whether importers knew or should know that dumping was occurring.⁴⁷ The Petitioners point out that the estimated margins in the *Initiation Notice* for Australia range from 49.90 to 222.46 percent.⁴⁸ Therefore, the Petitioners maintain that the estimated margins stated in the *Initiation Notice* are sufficient to impute knowledge to importers that uncoated paper from Australia was being sold in the United States at LTFV.⁴⁹

The Petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.⁵⁰ Consequently, the Petitioners claim that the requirements of section 733(e)(1)(A) are satisfied.⁵¹ Finally, as part of their allegation, and pursuant to section 733(e)(1)(B) and 19 CFR 351.206(h)(2), the Petitioners submitted import statistics from USITC Trade DataWeb for the subject imports covered by the scope of this investigation for the period between October 2014 and May 2015 as evidence of massive imports of uncoated paper from Australia during a relatively short period, based on four-month comparison (February 2015-May

⁴⁶ See Letter from the Petitioners, entitled "Certain Uncoated Paper From Australia: Allegation of Critical Circumstances," dated July 15, 2015 (Critical Circumstances Allegation).

⁴⁷ The Petitioners cite to *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002).

⁴⁸ The Petitioners cite to *Initiation Notice*, 80 FR at 8614.

⁴⁹ See Critical Circumstances Allegation, at 4.

⁵⁰ Petitioners cite to *Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal*, 80 FR 13890, 13890 (USITC March 17, 2015) (*ITC Preliminary Determination*); see also Critical Circumstances Allegation, at 4.

⁵¹ See Critical Circumstances Allegation, at 4.

2015) and base (October 2014-January 2015) periods.^{52, 53}

Australian Paper's Rebuttal Comments

Australian Paper argues the data on both imports and shipments show no massive imports over a relatively short period. Australian Paper asserts that the Petitioners' proposed four-month period for comparison shows an import increase due primarily to aberrations in the supply situation and thus should not be adopted by the Department. According to Australian Paper, exports in October 2014 were well below the normal average because stock of U.S. letter size in Australia was fully depleted or allocated by the end of July such that exports in October were generally nearly 2,000 tons lower than normal. Additionally, Australian Paper asserts that its production of letter size paper was also reduced by significantly in August to supply A4 size paper to other export markets as well as the domestic market, which caused its US affiliated importer to run out of stock in September and October. Australian Paper also argues that inclusion of May 2015 data further skewed the analysis due to an extraordinary circumstance resulting from a labor dispute affecting U.S. West Coast ports in late 2014 and early 2015. Instead, Australian Paper asserts that use of a three-month or five-month comparison period provides a more accurate basis for critical circumstances analysis. Finally, Australian Paper argues that other factors normally examined by the Department show the absence of critical circumstances. For instance, Australian Paper cites to seasonal trends, extraordinary circumstances resulting from a labor dispute in the U.S. West Coast ports during late 2014 and early 2015, and a small percentage imports of U.S. domestic consumption attributed to Australia.⁵⁴

Analysis

We considered each of the statutory criteria for finding critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.⁵⁵ The Petitioners did not address this criterion in their allegation.⁵⁶ Therefore, we considered the criterion in section 733(e)(1)(A)(ii) of the Act.

⁵² See Critical Circumstances Allegation, at 6 and Attachment 1.

⁵³ Petitioners note that imports from Australia during October 2014 and May 2015 have been under HTS 482.56.1000, among all the eleven main HTS categories contained in the scope of these investigations. For allegation of critical circumstances, Petitioners relied on the imports under HTS 482.56.1000.

⁵⁴ See Letter from Australian Paper, entitled "Certain Uncoated Paper From Australia; Response to Petitioners' Allegation of Critical Circumstances," dated July 24, 2015 (Critical Circumstances Response).

⁵⁵ See section 733(e)(1)(A)(i) of the Act; see, e.g., *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014), and accompanying Issues and Decision Memorandum at "IV. Critical Circumstances" (*Rebar From Turkey*).

⁵⁶ See Critical Circumstances Allegation.

Section 733(e)(1)(A)(ii) of the Act: Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales

The Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.⁵⁷ Based on Australian Paper's margin in this preliminary determination, which is 40.65 percent, we find that the requirement under section 733(e)(1)(A)(ii) of the Act has been met. Further, in determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.⁵⁸ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.⁵⁹ Here, the ITC found that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Australia, Brazil, China, Indonesia, and Portugal of certain uncoated paper, provided for in subheadings 4802.56 and 4802.57 of the Harmonized Tariff Schedule of the United States...."⁶⁰ Therefore, the ITC's preliminary injury determination in this investigation is sufficient to impute knowledge of the likelihood of material injury.

Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "[i]n general, unless the imports during the 'relatively short period' ... have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." 19 CFR 351.206(i) defines "relatively short period" generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later (*i.e.*, the comparison period). This section of the regulations further provides that, if the Department "finds that importers, or exporters or producers, had reason to believe, at

⁵⁷ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (*Steel Wire Rod Moldova Preliminary Determination*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790, 55792 (August 30, 2002) (*Steel Wire Rod Moldova Final Determination*); *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 5606, 5607 (February 3, 2005) (*Magnesium Metal Preliminary Critical Circumstances Determination*), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (*Magnesium Metal Final Determination*) (February 24, 2005).

⁵⁸ See, e.g., *1,1,1,2-Tetrafluoroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying Issues and Decision Memorandum at Comment 6.

⁵⁹ See, e.g., *Steel Wire Rod Moldova Preliminary Determination*, 67 FR at 6225, unchanged in *Steel Wire Rod Moldova Final Determination*, 67 FR at 55792; *Magnesium Metal Preliminary Critical Circumstances Determination*, 70 FR 5607, unchanged in *Magnesium Metal Final Determination*, 70 FR at 9037.

⁶⁰ See *ITC Preliminary Determination*, 80 FR at 13890.

some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

Since the Australia Uncoated Paper AD petition was filed on January 21, 2015,⁶¹ the Petitioners noted in their allegations that the comparison period commences with the month of February 2015, and the base period concludes with the month of January 2015. Additionally, the Petitioners maintain that the Department should use a four-month comparison (February 2015 through May 2015) and base (October 2014 through January 2015) periods to calculate the increase in imports of subject imports.⁶² The Petitioners included in their submission U.S. import data collected from the U.S. International Trade Commission.⁶³ Based on these data, the Petitioners assert that imports of uncoated paper from Australia increased 23.1 percent by value and 19.8 percent by volume during the comparison period over the base period. Thus, the Petitioners conclude that there were massive imports during a relatively short period.⁶⁴

The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base, or comparison, period depending on whether the event that gave rise to the reason for belief occurred in the first or second half of the month.⁶⁵ Moreover, it is the Department’s practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁶⁶ This is particularly the case when the Department determines that the conditions described under section 733(e)(1)(A)(i) or (ii) of the Act are met. With these practices in mind, we examined a base period of August 2014 through January 2015, and a corresponding comparison period of February 2015 through July 2015 in order to determine whether imports of subject merchandise were massive.

It is the Department’s practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison periods.⁶⁷ In response to the Department’s shipment questionnaire,⁶⁸ Australian Paper reported

⁶¹ See The Petition.

⁶² See Critical Circumstances Allegation at 6-7.

⁶³ *Id.*, at 8 and Attachment 1.

⁶⁴ *Id.*, at 8.

⁶⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31312 (May 25, 2012), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decision Memorandum.

⁶⁶ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

⁶⁷ See, e.g., *Grain-Oriented Electrical Steel From the Czech Republic: Final Determination of Sales at Less Than*

monthly U.S. shipment during the period from August 2014 through July 2015.⁶⁹ Australian Paper's reported shipment data are business proprietary information and are summarized in our sales analysis memorandum.⁷⁰

Based on Australian Paper's reported data, we find there was no massive import surge by Australian Paper during a six-month comparison period.⁷¹ Because no evidence shows massive imports to the United States from Australian Paper, we find that Australian Paper's rebuttal arguments are moot. Thus, based on our analysis of Australian Paper's shipment data, the Department preliminarily determines that critical circumstances do not exist with respect to imports of uncoated paper from Australian Paper. Further, for the companies subject to the "all others" rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies.⁷² Accordingly, we find that the critical circumstances determination for Australian Paper should also be applied to all others, given that Australian Paper is the only known, identified producer in the petition and the initiation.⁷³

We will make a final determination concerning critical circumstances for uncoated paper from Australia when we issue our final determination of sales at LTFV for this investigation.

We recommend applying the above methodology for this preliminary determination.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

19 August 2015

Date

2014).
⁶⁸ See Letter from the Department, entitled "Antidumping Duty Investigation of Certain Uncoated Paper from Australia: Critical Circumstances Shipment Questionnaire," dated July 17, 2015.
⁶⁹ See Letter from AP, entitled "Certain Uncoated Paper From Australia; Response to Petitioners' Allegation of Critical Circumstances," dated July 24, 2015.
⁷⁰ See the Australian Paper Preliminary Sales Analysis Memo (Proprietary Document) for detailed analysis regarding Australian Paper's shipment data.
⁷¹ *Id.*
⁷² See, e.g., *Sodium Metal from France: Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances*, 73 FR 62252, 62254 (October 20, 2008); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413, 17415-416 (March 26, 2012).
⁷³ See *Initiation Notice*, 80 FR at 8614; see also Volume II of the Petitions, at II-1 – II-2 at footnote 1, and Exhibit II-3 ;Volume V of the Petitions, at V-1 through V-2 and Exhibit V-1; Volume VI of the Petitions, at Exhibits VI-1 and VI-2.