



A-602-807
Investigation
POI: 01/01/14-12/31/14
Public Document
AD/CVD: OIII: GM, EQW

DATE: January 8, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (the Department) 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 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On August 26, 2015, the Department published the *Preliminary Determination* of this AD investigation.¹

On August 27, 2015, the mandatory 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 withdrawal of the sole respondent, Australian Paper from this investigation,

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.



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.⁶ On October 2, 2015, Gartner Studios Inc. (Gartner Studios) submitted its case brief regarding the scope of the investigations. 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 (CVD) investigations of certain uncoated paper, which is incorporated by reference in, and hereby adopted by, this final determination.¹⁰

We have conducted this investigation in accordance with section 735(a) 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 2015.¹¹

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 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 Petitioners' letter titled, "Petitioners' Request to Extend Briefing Schedule," dated September 24, 2015.

⁶ See Letter from Petitioners titled, "Certain Uncoated Paper From Australia: Case Brief Submitted on Behalf of the Petitioners," dated October 2, 2015.

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).

¹¹ See 19 CFR 351.204(b)(1).

IV. LIST OF COMMENTS

Company-Specific Issues

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

V. DISCUSSION OF COMMENTS

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

Petitioners' Arguments:

- Following the *Preliminary Determination*, the sole mandatory respondent and only producer of subject merchandise, Australian Paper, withdrew from this investigation. As a result, the Department is unable to verify the already submitted data. Consistent with its practice and in accordance with the statute, the Department should apply adverse inferences to determine the final dumping margin for Australian Paper.
- Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” if necessary information is not on the record or a party withholds information, significantly impedes the proceeding, or provides information that cannot be verified.
- The Department may use inferences adverse to the interests of a party in applying facts available (adverse facts available or AFA) where a party fails to cooperate by not acting to the best of its ability to comply with the Department’s requests for information, pursuant to section 776(b) of the Act.
- By withdrawing from further participation in the investigation, Australian Paper refused to cooperate to the best of its ability. Through its non-cooperation, Australian Paper withheld information, significantly impeded the proceeding, and rendered information previously submitted unverifiable.
- The Department has previously found that the withdrawal of a once-cooperative respondent prior to verification requires the application of total AFA.¹²
- The purpose of AFA is “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹³
- Australian Paper’s withdrawal bars the Department’s access to any further information on Australian Paper’s sales or costs, including information that the Department would have collected at verification. This has prevented the Department from completing the investigation of Australian Paper’s dumping margin.

¹² Petitioners cited *Carbon and Certain Alloy Steel Wire Rod From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858 (November 19, 2014), and accompanying Issues and Decision Memorandum at 3.

¹³ Petitioners cited Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. I, 103d Cong., 2d Sess. (1994) (SAA), at 870.

- To ensure that Australian Paper does not benefit from its decision not to cooperate further in the investigation, the Department should apply total AFA.

We received no rebuttal comments from Australian Paper or any other interested party.

Department's Position: We agree with Petitioners and determine that the application of facts available with an adverse inference is warranted for the final determination.

Section 776(a)(1) and (2) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹⁴ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁵

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁶ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other

¹⁴ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. 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 (August 6, 2015) (*Applicability Notice*).

¹⁵ See *Applicability Notice*, 80 FR at 46794-95. The 2015 amendments may be found at the following website address: <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

¹⁶ See section 776(b)(1)(B) of the Act.

information placed on the record.¹⁷ When selecting an AFA rate from among the possible sources of information, the Department’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”¹⁸ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁹

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.²⁰ Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²¹ Further, under section 776(c)(2) of the Act, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.²²

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.²³ The Act also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²⁴

Use of Facts Available

As noted in the “Background” section, above, Australian Paper withdrew its participation from this investigation, which resulted in the cancellation of the Department’s sales and cost verifications.²⁵ The Department was unable to access any further information on Australian Paper’s sales or costs, including all of the required information that the Department would have reviewed or collected at verification, which prevented the Department from completing the investigation. Thus, Australian Paper significantly impeded this proceeding, and provided information that cannot be verified by the Department pursuant to section 782(i) of the Act. Accordingly, we find that the use of facts available is warranted in determining the AD margin for Australian Paper, pursuant to sections 776(a)(2)(C) and (D) of the Act.

¹⁷ See also 19 CFR 351.308(c).

¹⁸ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at “V. Use of Facts Otherwise Available and Adverse Inferences;” see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

¹⁹ See SAA at 870.

²⁰ See also 19 CFR 351.308(d).

²¹ See SAA at 870.

²² See section 776(c)(2) of the Act.

²³ See section 776(d)(1)-(2) of the Act.

²⁴ See section 776(d)(3) of the Act.

²⁵ See Australian Paper’s Letter of Withdrawal.

Application of Facts Available with an Adverse Inference

As described above, section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.

We find that Australian Paper failed to cooperate by not acting to the best of their ability to comply with requests for information in this investigation, within the meaning of section 776(b) of the Act, because it withdrew from this investigation.²⁶ Australian Paper's failure to participate in this investigation has precluded the Department from performing the necessary analysis and verification of its questionnaire responses, as required by section 782(i)(1) of the Act. Therefore, we find that an adverse inference is warranted in selecting from the facts otherwise available with respect to Australian Paper, in accordance with section 776(b) of the Act.²⁷

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

Petitioners' Arguments:

- In determining an AFA rate, the Department may rely on information in (1) the petition, (2) a final determination in the order, (3) a previous administrative review of the order, or (4) other information placed on the record.²⁸
- Consistent with the statute and its practice, the Department should select the highest rate among the available information on this record as AFA for Australian Paper. Specifically, the Department should use the highest transaction-specific margin calculated for Australian Paper in the *Preliminary Determination*.
- Alternatively, the Department may also use the highest petition rate, 222.46 percent, which is easily corroborated, consistent with prior decisions.²⁹

We received no rebuttal comments from Australian Paper or any interested party.

Department's Position: We agree with Petitioners, in part. Petitioners suggest two alternatives to choose from when assigning an AFA rate to Australian Paper, the highest transaction-specific margin calculated for Australian Paper in the *Preliminary Determination*, or the highest rate from the petition.

²⁶ See, e.g., *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum at "VI. Use of Facts Otherwise Available and Adverse Inferences."

²⁷ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("Compliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide {the Department} with full and complete answers to all inquiries in an investigation").

²⁸ Petitioners cited to section 776(b)(2) of the Act (potential sources of information for adverse inferences); SAA at 870; 19 CFR 351.308(c)(1) and (2).

²⁹ Petitioners cited to, e.g., *Grain-Oriented Electrical Steel From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES From China*), and accompanying Issues and Decision Memorandum at 19 -20.

The Department has previously found that the withdrawal of a once-cooperative respondent prior to verification requires the application of total AFA.³⁰ We have assigned the corroborated petition margin of 222.46 percent to Australian Paper as AFA because it is in accordance with the Department's longstanding practice, in general, to assign the highest corroborated petition rate to an uncooperative respondent in an LTFV investigation where there are no other respondents.³¹

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.³² In selecting a rate based on AFA, the SAA explains that the Department 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."³³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.³⁴ In cases involving uncooperative respondents, "the discretion granted by the statute is particularly great, allowing {the Department} to select among various secondary sources as a basis for its adverse factual inferences."³⁵

In order to induce respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice in investigations is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.³⁶

³⁰ See *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858 (November 19, 2014) and accompanying Issues and Decision Memorandum at 3-4.

³¹ See, e.g., *GOES From China*, 79 FR at 59226, and accompanying Issues and Decision Memorandum at 19; *Grain-Oriented Electrical Steel From Germany, Japan, Poland, and the Russian Federation: Preliminary Determination of Sales at Less Than Fair Value, Certain Affirmative Preliminary Determinations of Critical Circumstances, and Postponement of Russian Final Determination*, 79 FR 26941 (May 12, 2014), and accompanying Preliminary Decision Memorandum for German Investigation at 7 (selecting highest petition dumping margin for respondent TKES), unchanged in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501 (July 22, 2014); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218 (December 27, 2004) (*CMC From Finland Preliminary Determination*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005) (*CMC From Finland Final Determination*).

³² See SAA at 868-870; 19 CFR 351.308(c)(1) and (2).

³³ See SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007); see also *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

³⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

³⁵ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1338-39 (Fed. Cir. 2002).

³⁶ See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3; *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR

The margins in the petition ranged from 49.90 percent to 222.46 percent.³⁷ In this case, we selected the petition rate of 222.46 percent, as referenced in the *Initiation Notice*,³⁸ because there are no other respondents with calculated rates in the investigation to consider.³⁹

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available.⁴⁰ Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”⁴¹ The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁴² The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁴³ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.⁴⁴

Nonetheless, new section 776(d)(3) of the Act makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁴⁵

We determined that the petition margin of 222.46 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this final determination, as discussed below.⁴⁶

We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this final determination. During our pre-initiation analysis, we examined the key elements of the export price (EP) and normal value (NV) calculations used in the petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources provided either in the petition or, on our request, in the supplements to the petition that

38986 (July 8, 2008) (*Sodium Nitrate from Germany*) and accompanying Issues and Decision Memorandum at Comment 1.

³⁷ 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, 8614 (February 18, 2015) (*Initiation Notice*).

³⁸ *Id.*

³⁹ See, e.g., *CMC From Finland Preliminary Determination*, 69 FR at 77218, unchanged in *CMC From Finland Final Determination*, 70 FR at 28279.

⁴⁰ See also 19 CFR 351.308(d).

⁴¹ See SAA at 870.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Mittal Steel Galati S.A. v. United States*, 491 F. Supp. 2d 1273, 1278 (Ct. Int’l Trade 2007).

⁴⁵ See section 776(d)(3) of the Act; TPEA, section 502(3) section.

⁴⁶ See Antidumping Duty Investigation Initiation Checklist: Uncoated Paper from Australia, dated February 10, 2015 (Initiation Checklist).

corroborates key elements of the EP and NV calculations used in the petition to derive an estimated margin.⁴⁷

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider Petitioners' EP and NV calculations to be reliable. Consistent with the Department's corroboration of the rate used as AFA in the *GOES From China AD* investigation,⁴⁸ we examined the data sources used by Petitioners to calculate EP and NV. Petitioners based calculations of U.S. prices in the petition on average unit values (AUVs) for imports of merchandise subject to the scope of the investigation during the POI.⁴⁹ Because Australian Paper is the only known producer/exporter of certain uncoated paper from Australia, we find that the import AUVs reasonably reflect Australian Paper's U.S. sales practices.⁵⁰ Petitioners adjusted these free on board (FOB)-Australia prices for transportation and handling costs to the mill using data from the World Bank's *Doing Business* reports and an Australian government publication,⁵¹ which are the same type of sources that the Department found have independent probative value in *GOES From China*.⁵² The calculated export prices are relevant not only to the subject industry, but specifically to Australian Paper, the only known producer/exporter of the merchandise subject to this investigation in Australia. For NVs, Petitioners relied on information from third party affidavits,⁵³ which is another source of independent information the Department has recognized to have probative value.⁵⁴ Accordingly, as the Department found in the Initiation Checklist, and as discussed above, the petition rates have probative value.

The petition margins also bear a rational relationship to Australian Paper individually because the petition information was specific to not only the industry but also to Australian Paper, and nothing on the record calls its relevance into question. Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the petition, based on our examination of the aforementioned information, we consider the EP and NV calculations from the petition to be reliable. Because we confirmed the accuracy and validity of the

⁴⁷ See Initiation Checklist at U.S. Price and Normal Value (NV) sections, citing to letter from the petitioners to the Department entitled "Re: Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal—Petitioners' Response to the Department's January 26, 2015 Supplemental Questions—Australia Dumping Allegation," dated January 30, 2015 (Australia AD Supplement); see Petitioners' letter entitled "Re: Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal—Petitioners' Response to the Department's February 2, 2015 Second Supplemental Question—Australia Dumping Allegation," dated February 3, 2015, (Australia AD Second Supplement); see also Petitioners' letter entitled "Re: Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal—Petitioners' Submission of Revised Information per the Department's Request—Australia Dumping Allegation," dated February 4, 2015 (Australia AD Third Supplement).

⁴⁸ See *GOES From China* and accompanying Issues and Decision Memorandum at 20-22.

⁴⁹ See Initiation Checklist at 7; see also *Initiation Notice*, 80 FR at 8611.

⁵⁰ See *Sodium Nitrate from Germany* and accompanying Issues and Decision Memorandum at 4-5; see also Initiation Checklist at 2; Volume I of the Petition at I-11 and Exhibit I-7, and Volume II of the Petition at II-1.

⁵¹ See Initiation Checklist at 8.

⁵² See *GOES From China* and accompanying Issues and Decision Memorandum, at 20-22, and 24.

⁵³ See Initiation Checklist at 9 and footnote 24; see also *Initiation Notice*, 80 FR at 8612.

⁵⁴ See *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (*KYD*) (in the context of a review, agreeing with the Department and the Court of International Trade that price quotes and third-party affidavits used in the petition to calculate estimated margins constituted independent information that could support an AFA rate, needing no further corroborative information).

information underlying the derivation of the margin in the petition by examining source documents and affidavits, as well as publicly available information, we determine that the highest margin in the petition is reliable for Australian Paper's AFA rate in this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. In accordance with new section 776(d)(3) of the Act, when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.⁵⁵ As there are no other participating cooperative respondents in this investigation, we relied upon the rates found in the petition, which is the only information regarding the uncoated paper industry in Australia reasonably at the Department's disposal. Furthermore, as noted in *GOES From China*, which also applied AFA to the sole respondent, "there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information."⁵⁶

Accordingly, by using information that was determined to be reliable and relevant in the pre-initiation stage of this investigation, we have corroborated the AFA rate of 222.46 percent to the extent practicable within the meaning of section 776(c) of the Act.⁵⁷

Comment 3: Derivation of the All Others Rate

Petitioners' Arguments:

- The Department will need to determine an all others rate for the final determination, even though there are no other known subject producers in Australia.
- The general rule for determining the all others rate is to calculate the weighted average of the rates established for individually investigated respondents.⁵⁸ However, where all

⁵⁵ See section 776(d)(3) of the Act.

⁵⁶ See *GOES From China* and accompanying Issues and Decision Memorandum at 20; see also *KYD*, 607 F.3d at 765 (agreeing with Commerce that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that "{t}he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition").

⁵⁷ See section 776(c) of the Act and 19 CFR 351.308(d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1; see also *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at 6-7 (finding that reliance on information that was determined to be reliable in the pre-initiation stage of the investigation was determined it to be relevant for the uncooperative respondent in the investigation. Accordingly, the Department corroborated the AFA rate to the extent practicable within the meaning of section 776(c) of the Act), 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).

⁵⁸ Petitioners cited to section 735(c)(5)(A) of the Act.

individually investigated respondents received either zero, *de minimis*, or total AFA rates, the Department is authorized to use “any reasonable method” to calculate the all others rate.⁵⁹

- Because the margin for the sole respondent should be based on AFA, the Department should re-calculate the all others rate as the average of the margins estimated in the petition.
- In the *Initiation Notice*, the Department identified Petitioners’ estimated dumping margins which range from 49.90 to 222.46 percent.⁶⁰ Accordingly, the Department should apply the average of these rates, 136.18 percent, as the all others rate.

We received no rebuttal comments from Australian Paper or any interested party.

Department’s Position: We agree with Petitioners, in part. Section 735(c)(5)(A) of the Act provides that the all others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. However, 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 respondent’s margin is based on total AFA under section 776 of the Act, our practice has been to assign as the all others rate the simple average of the margins in the petition.⁶¹ Therefore, we are following our practice in this investigation and assigning an all others rate of 138.87 percent, which represents a simple average of all antidumping duty margins pertaining to uncoated paper from Australia which the Department relied on in the *Initiation Notice*.

Petitioners assert that the Department should apply the average of the two petition rates, 49.90 and 222.46 percent. However, instead of calculating an average of the range of the two antidumping duty margins specified in the *Initiation Notice*, 49.90 and 222.46 percent,⁶² as suggested by Petitioners, as stated above, we calculated an average rate of 138.87 percent, using all of the antidumping duty margins which the Department relied on in the *Initiation Notice*.⁶³ The Department’s average calculation for the all others rate is more specific than the rate suggested by Petitioners because it relies on the margin based on constructed value and the individual dumping margins for each of the selling prices referenced in the petition for which we relied on in the *Initiation Notice*.

⁵⁹ Petitioners cited to section 735(c)(5)(B) of the Act.

⁶⁰ Petitioners cited to *Initiation Notice*, 80 FR at 8614.

⁶¹ 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); *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).

⁶² See *Initiation Notice*, 80 FR at 8614.

⁶³ See Final Determination Calculation Memorandum for Australian Paper and All Others Rate, dated concurrently with this memorandum.

VI. FINDING OF CRITICAL CIRCUMSTANCES, IN PART

On July 15, 2015, 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 with respect to imports of certain uncoated paper from Australia.⁶⁴

On August 26, 2015, we issued a negative preliminary determination of critical circumstances, stating that: “(1) importers of uncoated paper from Australian Paper knew or should have known that the exporter was selling the merchandise under consideration at LTFV and that there was likely to be material injury in accordance with section 733(e)(1)(A)(ii) of the Act; and (2) imports of the subject merchandise from these companies have not been massive over a relatively short period in accordance with section 733(e)(1)(B) of the Act.”⁶⁵

We received no comments from interested parties regarding the preliminary determination of critical circumstances. However, we have re-examined our preliminary determination of critical circumstances because of the withdrawal of Australian Paper’s participation from the instant investigation.

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.

Section 351.206(h)(1) of the Department’s regulations provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the “relatively short period” of time may be considered “massive.” Section 351.206(i) of the Department’s regulations defines “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date on which the petition is filed) and ending at least three months later (*i.e.*, the comparison period). The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

1. Australian Paper

As explained in the *Preliminary Determination*, Petitioners did not address the criterion of whether there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of subject merchandise, in accordance with section 733(e)(1)(A)(i) of

⁶⁴ See Letter from Petitioners titled, “Certain Uncoated Paper From Australia: Allegation of Critical Circumstances,” dated July 15, 2015 (Critical Circumstances Allegation).

⁶⁵ See *Preliminary Determination*, 80 FR at 51784, and accompanying Preliminary Decision Memorandum at 14-17.

the Act. Therefore, we consider anew the criterion in section 733(e)(1)(A)(ii) of the Act in light of Australian Paper's revised dumping rate, as discussed above.

The Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.⁶⁶ Based on Australian Paper's margin in this final determination, which is 222.46 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.⁶⁷ 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.⁶⁸ 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...."⁶⁹ Therefore, the ITC's preliminary injury determination in this investigation is sufficient to impute knowledge of the likelihood of material injury.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date on which the petition is filed) and ending at least three months later (*i.e.*, the comparison period). The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

Due to the fact that 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

⁶⁶ 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).

⁶⁷ 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.

⁶⁸ 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.

⁶⁹ See *ITC Preliminary Determination*, 80 FR at 13890.

Act.⁷⁰ 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 the facts available, pursuant to section 776(b) of the Act.

The Department's long-standing practice is to rely on respondent-specific shipment data to determine whether imports were massive in the context of critical-circumstances determinations. Where such verified information does not exist because of the respondent's failure to cooperate to the best of its ability in the course of the investigation, the Department normally makes an adverse inference that imports were massive during the relevant time period. In response to our shipment questionnaire, Australian Paper reported monthly U.S. shipments during the 12-month period from August 2014 through July 2015. However, because Australian Paper withdrew its participation in this investigation immediately following the *Preliminary Determination*, we are unable to rely on Australian Paper's unverified shipment data. 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.⁷¹

Based on our determination that there is a reasonable basis to believe or suspect that the importers knew or should have known that Australian Paper was selling uncoated paper from Australia at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that, as adverse facts available, there have been massive imports of uncoated paper from Australian Paper over a relatively short period, we determine that critical circumstances exist for imports from Australia of uncoated paper produced by Australian Paper.

2. All Others

With respect to critical circumstances for the all others, it is the Department's normal practice to conduct its critical-circumstances analysis of companies in the all others group based on the experience of investigated companies.⁷² However, as we determined in *HR Steel from Japan*,⁷³ applying this approach literally could produce anomalous results in certain cases. Thus, in

⁷⁰ Because Australian Paper withdrew its participation from the instant investigation, which precluded the Department from verifying any of Australian Paper's submitted shipment data or questionnaire responses, we consider Australian Paper a non-cooperating respondent. Accordingly, we cannot rely on Australian Paper's monthly shipment data, consistent with our practice. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 68 FR 71072, 71076-77 (December 22, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 69 FR 11834 (March 12, 2004), and accompanying Issues and Decision Memorandum at Comment 2.

⁷¹ 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, 73220 (December 29, 1999) (applying AFA on question of "massive imports" to Nippon, NKK, Kobe, and Sumitomo).

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 28, 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 *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24338 (May 6, 1999) (*HR Steel from Japan*).

deciding whether critical circumstances apply to companies covered by the all others rate, the Department also considers the traditional critical-circumstances criteria.⁷⁴

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling uncoated paper at less than fair value, we look to the all others rate.⁷⁵ The dumping margin for the all others category, 138.87 percent, is greater than the 25 percent threshold necessary to impute knowledge of dumping, consistent with section 733(e)(1)(A)(ii) of the Act. Second, based on the ITC's preliminary determination that there is a reasonable indication of material injury, we find that importers knew or should have known that there would be material injury from the dumped merchandise, consistent with section 733(e)(1)(A)(ii) of the Act and 19 CFR 351.206.⁷⁶ Therefore, the ITC's preliminary injury determination in this investigation is sufficient to impute knowledge of the likelihood of material injury to all others companies.

Finally, with respect to massive imports, we are unable to base our determination on our findings for Australian Paper because our determination for Australian Paper was based on AFA. 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. Therefore, an adverse inference with respect to finding a massive surge in imports by the all others companies is not appropriate.⁷⁷ In addition, the record indicates that the only known producer of uncoated paper from Australia is Australian Paper.⁷⁸ Accordingly, we determine that there were no massive imports from companies in the all others category.

Consequently, the criteria necessary for determining affirmative critical circumstances with respect to the all others category have not been met. Therefore, we determine that critical circumstances do not exist for imports of uncoated paper from Australia for companies in the all others category, as we have not identified any shipments of the foreign like product from any other company during the relevant period.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See *ITC Preliminary Determination*, 80 FR at 13890.

⁷⁷ See *HR Steel from Japan*.

⁷⁸ See *Initiation Notice*, 80 FR at 8614; see also *Initiation Checklist* at 2; see also *Volume I of the Petition* at I-11 and *Exhibit I-7*, and *Volume II of the Petition* at II-1.

We recommend applying the above methodology for this final determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 JANUARY 2016
Date