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Investigation
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August 19, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that certain uncoated paper (“uncoated paper”) from Brazil 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 Brazil,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 “Petitioners”). The Department initiated this investigation on February 10, 2015.² Based on Petitioners’ cost allegation, the Department also initiated a country-wide sales-below-cost investigation.³

In the *Initiation Notice*, the Department stated that the Petition identified two companies, International Paper⁴ and Suzano,⁵ as producers/exporters of uncoated paper in Brazil and that the

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, (January 21, 2015) (“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*”).

³ *Id.*, 80 FR at 8613-4.

⁴ International Paper do Brasil Ltda., and International Paper Exportadora Ltda. (collectively “International Paper”).

⁵ Suzano Papel e Celulose S.A./Suzano Pulp and Paper America, Inc. (“Suzano”).



Department had no knowledge of any additional producers/exporters in Brazil.⁶ Accordingly, the Department notified interested parties that it intended to examine all known producer/exporters, International Paper and Suzano, of U.S. imports of uncoated paper from Brazil but also requested comments from interested parties on this issue.⁷ No interested party submitted comments on this issue.

On February 24, 2015, the Department issued the AD questionnaire to International Paper and Suzano. Between March 2015 and August 2015, International Paper and Suzano timely responded to the Department's original and supplemental questionnaires.

Additionally, 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. In March 2015, Petitioners, 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; International Paper; Portucel S.A./Portucel Soporcel N.A. (a respondent in the companion AD investigation on uncoated paper from Portugal); and Paper Australia Pty. Ltd. (a respondent in the companion AD investigation on uncoated paper from Australia).⁸ In the same month, each of these parties, with the exception of Paper Australia Pty. Ltd., 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 Brazil.⁹

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.¹⁰ During the same month, Gartner Studios supplemented this request by submitting photographs of the products at issue. In May 2015, Petitioners responded to Gartner Studios' submissions, indicating that they believe that each item in these submissions should be excluded.

In May 2015, 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 and pursuant to 19 CFR 351.205(e), the Department published a postponement of the preliminary determination until no later than August 19, 2015.¹¹

⁶ *Id.*, 80 FR at 8614.

⁷ *Id.*

⁸ See *Initiation Notice*.

⁹ See *Investigation Nos. 701-TA-528-529 and 731-TA-1264-1268 (Preliminary) Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal*, 80 FR 13890 (March 17, 2015).

¹⁰ 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.

¹¹ 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).

In July 2015, Petitioners filed pre-preliminary determination comments on the record.¹² Additionally, in July 2015, Petitioners requested that we postpone the final determination in the event that the Department issued a negative preliminary determination of this investigation.¹³

The Department is conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The 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 2015.¹⁴

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on August 13, 2015, International Paper, one of the mandatory respondents in this proceeding, requested that the Department postpone the final determination and that provisional measures be extended from a four-month period to a six-month period. 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 exporters account for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, the Department is granting the respondent's request and is postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and the Department is 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, and we stated that all such comments must be filed within 20 calendar days of publication of the Initiation Notice.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

¹² See Letter to the Secretary of Commerce from Petitioners "Pre-Preliminary Determination Comments" (July 27, 2015).

¹³ See Letter to the Secretary of Commerce from Petitioners "Request for Postponement of Final Determination" (July 31, 2015).

¹⁴ See 19 CFR 351.204(b)(1).

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

¹⁶ See Letters 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," (April 14, 2015) and (April 28, 2015), respectively.

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 preliminarily agree with Gartner Studios and 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

VI. AFFILIATION DETERMINATIONS

Section 771(33) of the Act, provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

Section 771(33) of the Act continues that, "{f}or purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreement Act states the following:

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

¹⁸ See also 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," (August 3, 2015).

¹⁹ *Id.*, at 5.

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.²⁰

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs the Department not to find that control exists on the basis of these factors unless the relationship has “the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” The regulation also directs the Department to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Based on the information presented in International Paper’s questionnaire responses, the Department preliminarily finds that International Paper do Brasil Ltda (“IP Brasil”), International Paper Exportadora Ltda (“IPEX”), and International Paper — Comercio de Papel e Participacoes Arapoti Ltda. (“IP Comercio”) are affiliated with International Paper Company and several other entities identified in the questionnaire responses, pursuant to sections 771(33)(E) and (F) of the Act. The affiliation status with certain companies has been designated by International Paper as business proprietary information. Therefore, the Department issued a separate business proprietary memorandum that contains a full discussion of our affiliation determinations.²¹

19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

²⁰ See SAA, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994), at 838.

²¹ See “Memorandum to James C. Doyle, Director, Office V, through Paul Walker, Acting Program Manager, from Julia Hancock, Senior International Trade Compliance Analyst, Office V; Antidumping Duty Investigation of Certain Uncoated Paper from Brazil: Preliminary Determination of Affiliation/Single Entity Treatment of International Paper do Brasil Ltda, International Paper Exportadora Ltda., *et. al.*,” issued concurrently with this memorandum and herein incorporated by reference (“International Paper Affiliation Memorandum”).

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.²²

Based on information provided in International Paper's questionnaire responses, the Department also preliminarily finds that IPEX, the exporter in Brazil, and IP Brasil, the producing entity in Brazil, should be considered as a single entity for purposes of this investigation. The relevant information for this determination has been designated by International Paper as business proprietary information. Therefore, the Department issued the International Paper Affiliation Memorandum, a separate business proprietary memorandum that contains a full discussion of our single entity determination.²³

VII. ALL-OTHERS RATE

Section 735(c)(5)(A) of the Act provides that the estimated "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 or *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Specifically, this rate of 37.76 percent is based on a simple average of the weighted-average margin of each mandatory respondent. Because the Department cannot apply its normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, the Department finds this rate to be the best proxy of the actual weighted-average margin determined for these respondents.^{24, 25}

VIII. DISCUSSION OF THE METHODOLOGY

To determine whether sales of uncoated paper from Brazil to the United States were made at LTFV, the Department compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this memorandum below. In accordance with section 777A(d)(1)(A) of the Act, the Department compared POI weighted-average EPs to POI weighted-average NVs.

²² See 19 CFR 351.401(f).

²³ See International Paper Affiliation Memorandum.

²⁴ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination*, 76 FR 41203, 41205 (July 13, 2011).

²⁵ See Memorandum to the File from Julia Hancock and Paul Walker, Senior Case Analysts, Office V, Enforcement and Compliance, "Uncoated Paper from Brazil: Calculation of All-Others' Rate in Preliminary Determination," dated August 19, 2015.

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 EPs or constructed export prices (“CEPs”) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. The Department’s regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).²⁶

In recent investigations, 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).²⁷ 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 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 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 differ 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 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 customer codes reported by each respondent. 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. For purposes of analyzing sales transactions by customer, 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* test 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* test is applied when the test and comparison groups of data each

²⁶ See 19 CFR 351.414(b)(1) and (2).

²⁷ 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.

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 calculated 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 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 CEPs and EPs 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 CEPs and EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examined 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 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, 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 weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the 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 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*

i. International Paper

Based on the results of the differential pricing analysis, the Department finds that less than 33 percent of International Paper's export sales pass the Cohen's *d* test. Thus, the results of the test do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines that it is appropriate to use the average-to-average method for all U.S. sales in making comparisons of EP and NV for International Paper.²⁸

ii. Suzano

Based on the results of the differential pricing analysis, the Department finds that more than 33 percent but less than 66 percent of Suzano's export sales confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among time periods and support the consideration of an alternative to the average-to-average method, in this case the mixed alternative method. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the relevant alternative comparison method. Accordingly, the Department preliminarily determines that it is appropriate to use the average-to-average method for all U.S. sales in making comparisons of CEP and NV for Suzano.²⁹

IX. DATE OF SALE

19 CFR 351.401(i) 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.³⁰ The Court of International Trade ("CIT") stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."³¹ Alternatively, the Department may exercise its discretion to rely on a date other than invoice date if the Department "provides a

²⁸ See Memorandum to the File, through Paul Walker, Acting Program Manager, Office V, from Julia Hancock, Senior Analyst, "Calculations Performed for International Paper do Brasil Ltda and International Paper Exportadora Ltda for the Preliminary Determination in the Antidumping Duty Investigation of Certain Uncoated Paper from Brazil," ("International Paper Preliminary Analysis Memorandum"), dated concurrently with this memorandum and herein incorporated by reference.

²⁹ See Memorandum to the File, through Paul Walker, Acting Program Manager, Office V, from Paul Walker, Acting Program, "Calculations Performed for Suzano Papel e Celulose S.A. ("Suzano"), for the Preliminary Determination in the Antidumping Duty Investigation of Certain Uncoated Paper from Brazil," ("Suzano Preliminary Analysis Memorandum"), dated concurrently with this memorandum and herein incorporated by reference.

³⁰ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) ("*Allied Tube*") (quoting 19 CFR 351.401(i)).

³¹ See *Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).

rational explanation as to why the alternative date ‘better reflects’ the date when ‘material terms’ are established.”³² The date of sale is generally the date on which the parties establish the material terms of the sale,³³ which normally includes the price, quantity, delivery terms and payment terms.³⁴

International Paper

In the home market, International Paper reported the invoice date to the first unaffiliated customer as the date of sale for home market sales.³⁵ For the preliminary determination, the Department used the invoice date as International Paper’s date of sale in the home market.

However, for its U.S. sales of the subject merchandise, International Paper reported that it issues both an internal invoice for shipments from the mill or third-party warehouse to the port of export and a commercial invoice to the first unaffiliated customer.³⁶ According to International Paper, an internal invoice is issued along with the commercial invoice because Brazilian government regulations require an invoice to be generated whenever there is a movement of goods for tax purposes.³⁷ International Paper stated that sometimes the internal invoice or the commercial invoice will precede the other invoice document and thus International Paper reported as the date of the sale the earlier of the internal invoice or commercial invoice date since this is the date on which the material terms are fixed.³⁸ The Department notes that International Paper stated that the material terms of sale (*i.e.*, quantity, gross unit price, total value, and sales terms) do not change between issuance of the internal invoice and the commercial invoice for its sales of the merchandise under consideration to the United States.³⁹ Additionally, International Paper stated that the commercial invoice to the first unaffiliated customer is the date of sale recorded in International Paper’s accounting records.⁴⁰ In light of the Department’s preference for using a uniform date of sale under section 19 CFR 351.401(i), the Department preliminarily used the commercial invoice date as the date of sale for all of International Paper’s sales of merchandise under consideration to the United States made during the POI.⁴¹

Suzano

Suzano reported the date of invoice to the first unaffiliated customer as the date of sale for both its home market sales and U.S. sales (EP and CEP).⁴² As explained above, 19 CFR 351.401(i) 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

³² See *SeAH Steel Corp. v. United States*, 25 CIT 133, 135 (CIT 2001).

³³ See 19 CFR 351.401(i).

³⁴ See *USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

³⁵ *Id.*, at B-15.

³⁶ See International Paper’s Section C Questionnaire Response (“International Paper’s SCQR”), (May 22, 2015) at C-16.

³⁷ *Id.*

³⁸ *Id.*, at C-17.

³⁹ See International Paper’s Supplemental Section C Questionnaire Response (“International Paper’s SSCQR”), (July 20, 2015) at 6-7.

⁴⁰ *Id.*

⁴¹ See *Union Steel Mfg. Co. v. United States*, 968 F. Supp. 2d 1297, 1323-5 (CIT 2014).

⁴² See Suzano’s Sections B and C Questionnaire Response (“Suzano’s SBCQR”) (May 26, 2015) at B-15 and C-19.

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.⁴³ In this case, Suzano reported that the invoice date best represents the date of sale because, at that point, the material terms of the sale cannot be altered.⁴⁴ Therefore, the Department preliminarily used the invoice date as the date of sale for Suzano, in accordance with our practice.

X. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, the Department considered all products produced and sold by the respondents in Brazil during the POI that meet the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice. The Department 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, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, the Department 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.

XI. TREATMENT OF RE-EXPORT SALES

Both International Paper and Suzano reported that they exported the subject merchandise to an unaffiliated customer located in the United States. This merchandise was kept in the customer's⁴⁵ warehouse and then re-exported to third-country markets.⁴⁶ International Paper and Suzano stated that these re-exported sales should not be included in the Department's calculation of U.S. price because these sales were re-exported and never entered U.S. commerce.⁴⁷ Additionally, although respondents reported that these sales were imported for consumption for "logistical purposes," International Paper and Suzano stated that they knew the sales would be re-exported and are priced differently than sales that entered the United States for consumption.⁴⁸ Because these sales were re-exported and never entered U.S. commerce, International Paper and Suzano submit that the Department should find that these sales did not enter for consumption, and thus, should not be considered a U.S. sale since these sales were ultimately concluded and entered commerce outside the United States.⁴⁹ Therefore, International Paper and Suzano contend that the Department should not include these re-exported sales in the calculation of U.S.

⁴³ 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)).

⁴² See Suzano's SBCQR, at B-15 and C-19.

⁴⁵ Because the identity of this customer is business proprietary information, for further information, please see International Paper's Supplemental Section C Questionnaire Response, (July 20, 2015) at 1-3 and Exhibit SC1S-2; Suzano's Supplemental Section A Questionnaire Response, (June 9, 2015) at 1-9.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

price for each company, pursuant to the Court of Appeals for the Federal Circuit (“CAFC”)’s findings in *Torrington*.⁵⁰

In order to determine whether there is a U.S. sale which should be included in the margin calculation, the Department considers whether the unaffiliated customer is located in the United States,⁵¹ whether the merchandise was delivered in the United States and finally, whether the goods entered for consumption.⁵² The Department notes that International Paper and Suzano are not affiliated with their respective customer in the United States that re-exported the merchandise to third-country markets.⁵³ Additionally, the Department finds that the record evidence shows that International Paper’s and Suzano’s sales to their respective customer were delivered to the customer’s warehouse in the United States and then re-exported to third-country markets.⁵⁴ Moreover, while these sales were re-exported to third-country markets, record evidence indicates that these sales were entered for consumption into the United States.⁵⁵

Although International Paper and Suzano submit that the CAFC’s findings in *Torrington* apply here, the Department disagrees. In *Torrington*, the CAFC considered the issue of the methodology used in calculating cash deposits and assessment rates in administrative reviews, and not the treatment of sales to the United States that subsequently were re-exported to a third-country.⁵⁶ However, as explained above, the issue here is whether the Department should include in the calculation of the U.S. price International Paper’s and Suzano’s respective re-exported sales. The Department finds *Hiep Thanh* instructive to this case.⁵⁷ Specifically, the Department finds that International Paper’s and Suzano’s respective sales to the customer should be included in the calculation of the U.S. price for each company because: 1) the customer is not affiliated with either company; 2) the merchandise entered for consumption in the United States; and 3) the merchandise was delivered in the United States to the customer’s warehouse. Therefore, the Department will include International Paper’s and Suzano’s respective sales to the customer in calculating the U.S. price for the preliminary determination, which is consistent with our practice.⁵⁸

⁵⁰ See *Torrington Company v. United States*, 44 F.3d 1572, 1579 (Fed. Cir. 1995) (“*Torrington*”).

⁵¹ See section 772(a) of the Act (defining “export price,” which is “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act.).

⁵² See *Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 49169 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

⁵³ See International Paper’s Supplemental Section C Questionnaire Response, (July 20, 2015) at 1-3 and Exhibit SC1S-2; Suzano’s Supplemental Section A Questionnaire Response, (June 9, 2015) at 1-9; International Paper’s Supplemental Section A Questionnaire Response, (May 22, 2015) at 1-12 and Exhibit SA1S-2 and Exhibit SA1S-3.

⁵⁴ *Id.*

⁵⁵ See International Paper’s Supplemental Section C Questionnaire Response, (July 20, 2015) at 1-3 and Exhibit SC1S-2; Memorandum to the File from Julia Hancock, Senior Case Analyst, Re: “Antidumping Duty Investigation on Certain Uncoated Paper from Brazil: Placing U.S. Customs and Border Protection (“CBP”) Data on the Record and Reporting of U.S. Sales in Section C Databases,” (April 16, 2015) at Attachment 2.

⁵⁶ See *Torrington*, 44 F.3d at 1578-9.

⁵⁷ See *Hiep Thanh Seafood Joint Stock Co. v. United States*, 821 F. Supp. 2d 1335 (CIT 2012) (“*Hiep Thanh*”) (where the CIT found the merchandise should be included in the U.S. price because the respondent sold merchandise to an unaffiliated customer in the United States, which was then exported to a third country).

⁵⁸ See *Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value*

XII. EXPORT PRICE (“EP”)

In accordance with section 772(a) of the Act, the Department used EP for International Paper’s U.S. sales and for certain of Suzano’s U.S. sales because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

International Paper

For International Paper, the Department calculated EP based on a packed price to the first unaffiliated purchaser in the United States. The Department also made adjustments for billing adjustments, credit expenses, royalties, bank charges, inventory carrying costs in the country of manufacture, and indirect selling expenses incurred in the country of manufacture, as appropriate. The Department made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign warehousing, foreign brokerage and handling, foreign inland insurance, international freight, and marine insurance.⁵⁹

Suzano

For certain of Suzano’s U.S. sales, the Department calculated EP based on a packed price to the first unaffiliated purchaser in the United States. The Department also made adjustments for billing adjustments, credit expenses, other direct selling expenses, indirect selling expenses incurred in the country of manufacture, and inventory carrying costs in the country of manufacture, as appropriate. The Department made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling, and international freight.⁶⁰

XIII. CONSTRUCTED EXPORT PRICE (“CEP”)

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.

For purposes of this investigation, Suzano classified some of its sales of uncoated paper to the United States as CEP sales. Suzano reported that it sold the merchandise under consideration to its affiliated U.S. importer, Suzano Pulp and Paper America, Inc. (“SPPA”), which then re-sold

and Final Negative Determination of Critical Circumstances, 79 FR 41969 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁹ See International Paper Preliminary Analysis Memorandum.

⁶⁰ See Suzano Preliminary Analysis Memorandum.

the merchandise to the unaffiliated U.S. customer. Further, the Department concluded that EP, as defined by section 772(a) of the Act, was not otherwise warranted. The Department calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. The Department made adjustments to the prices for billing adjustments, early payment discounts, and rebates. The Department adjusted these prices for movement expenses, including foreign inland freight, foreign inland insurance, brokerage and handling incurred in the country of manufacture, U.S. brokerage and handling, international freight, U.S. inland freight, U.S. warehousing, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, the Department also deducted selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (credit expenses, advertising expenses, and other direct selling expenses) and indirect selling expenses (inventory carrying costs and indirect selling expenses). In accordance with section 772(f) of the Act, the Department calculated the CEP profit rate using the expenses incurred by Suzano and its U.S. importer/affiliate, SPPA, related to their sales of the foreign like product in the comparison market and their sales of the merchandise under consideration in the United States and the profit associated with those sales.⁶¹

XIV. 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), the Department 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 the Department determines that no viable home market exists, the Department 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, the Department determined that the aggregate volume of home market sales of the foreign like product for International Paper and Suzano, respectively, was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, the Department used home market sales as the basis for NV for International Paper and Suzano, in accordance with section 773(a)(1)(B) of the Act.⁶²

⁶¹ See Suzano Preliminary Analysis Memorandum.

⁶² See International Paper's Section A Questionnaire Response, (March 27, 2015) at 5 and Exhibit A-2 ("International Paper's SAQR"); Suzano's Section A Questionnaire Response, (March 27, 2015) at A-4 and Appendix A-1 ("Suzano's SAQR").

B. *Affiliated Party Transactions and Arm's-Length Test*

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁶³ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁶⁴

To test whether International Paper's and Suzano's home market sales to affiliated customers were made at arm's-length prices, the Department compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, the Department determined that the sales to that affiliated customer were at arm's-length prices.⁶⁵ The Department excluded from its analysis all of International Paper's and Suzano's sales made to an affiliated customer for consumption in the home market where the Department determined that these sales, on average, were not sold at arm's-length prices.⁶⁶

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, 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).⁶⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁸ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, the Department examined 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.

⁶³ See 19 CFR 351.403(c).

⁶⁴ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) ("*Mexican Pipe*").

⁶⁵ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

⁶⁶ See International Paper Preliminary Analysis Memorandum and Suzano Preliminary Analysis Memorandum for a detailed discussion of the Arm's-Length-Test.

⁶⁷ See 19 CFR 351.412(c)(2).

⁶⁸ *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*").

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),⁶⁹ the Department considered the starting prices before any adjustments. For CEP sales, the Department considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁷⁰

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.⁷¹

In this investigation, the Department obtained information from both International Paper and Suzano regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each/the respondent for each channel of distribution. Our LOT findings are summarized below.

International Paper

In the home market, International Paper reported that it made sales through two channels of distribution (*i.e.*, direct sales from the paper mill to the customer (retailers, distributors, and end-users) (Channel 1), and sales sold from inventory through third-party warehouses to the customer (retailers, distributors, and end-users) (Channel 2)).⁷² According to International Paper in the home market, it sold the foreign like product through two LOTs: 1) retailers (both Channel 1 and 2); and 2) distributors and end-users (both Channel 1 and 2).⁷³ International Paper reported that selling functions for sales to its home market customers that are retailers are at a higher level of intensity than selling functions for sales to its home market customers that are distributors and end-users.⁷⁴

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. In its questionnaire responses regarding home market sales, International Paper reported the level of trade for retailers included selling activities at high levels for advertising, sales promotion, direct sales personnel, sales and marketing support, rebates, and freight and delivery.⁷⁵ For its home market sales to end-users and distributors,

⁶⁹ 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).

⁷⁰ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁷¹ See, e.g., *OJ from Brazil*, at Comment 7.

⁷² See International Paper's Section A Questionnaire Response ("SAQR"), (March 27, 2015) at 16-17.

⁷³ See International Paper's SAQR at 19-21 and Exhibit A -11.

⁷⁴ *Id.*

⁷⁵ *Id.*; International Paper's 3rd Supplemental Section A Questionnaire Response ("3rd SSAQR"), (June 24, 2015) at

International Paper reported the level of trade for these customers included selling activities at a lower level for advertising, sales promotion, direct sales personnel, sales and marketing support, rebates, and freight and delivery.⁷⁶ However, in examining International Paper's questionnaire responses and the home market sales database, the Department finds that the selling activities performed by International Paper to its retailer, distributor, and end-user customers in the home market in Channels 1 and 2 do not significantly differ. Specifically, in contrast to International Paper's questionnaire responses, the Department finds that some sales and marketing activities were performed at the same level for these three customer categories.⁷⁷ Additionally, the Department finds that the following activities, customer training, packing, order/input process, market research, technical assistance, after sales-services, and freight/delivery, are either at the same level or close to the same level of intensity for retailers, distributors, and end-users.⁷⁸ Moreover, while International Paper reported that sales/marketing support and direct sales personnel activities were at a much higher level for retailers than distributors and end-users, the Department finds that International Paper did not provide record evidence beyond statements to demonstrate this difference.⁷⁹ Accordingly, the Department finds that the record evidence does not demonstrate that there are significant differences in the level of the selling activities for International Paper's home market sales to retailers, distributors, and end-users in Channel 1 and Channel 2. Therefore, the Department preliminarily finds that International Paper's home market sales in Channel 1 and Channel 2 constitute a single LOT. However, the Department intends to request further supplemental information from International Paper on this issue for consideration in the final determination. The Department intends to examine International Paper's reported levels of trading and selling activities in the home market further in the context of verification.

With respect to the U.S. market, International Paper reported that it made sales through two channels of distribution (*i.e.*, direct shipments from the paper mill to the port of export (U.S. Channel 1) and shipments stored at a third-party warehouse that were then shipped to the port of export (U.S. Channel 2)).⁸⁰ According to International Paper, it sold the merchandise under consideration to trading companies in both U.S. Channel 1 and U.S. Channel 2 and thus reported a single LOT for its U.S. sales.⁸¹ The Department notes that International Paper reported that it performed the following selling functions in Brazil for sales to all its U.S. customers: packing; order/input processing; direct sales personnel; market research; technical assistance; and provide freight/delivery.⁸² Accordingly, based on the selling function categories noted above, the Department finds that International Paper performed sales and marketing, and freight and delivery services for all of its reported U.S. sales.⁸³ While International Paper reported that inventory maintenance and warehousing is only provided for sales in U.S. Channel 2, the Department finds that except for this activity all other activities are at the same level of intensity

Exhibit SA3S-2.

⁷⁶ *Id.*

⁷⁷ Because of the business proprietary information related to this analysis, for further discussion, please *see* International Paper Preliminary Analysis Memorandum.

⁷⁸ *See* International Paper's SAQR at 19-21 and Exhibit A -11; International Paper's 3rd SSAQR, at Exhibit SA3S-2.

⁷⁹ *Id.*

⁸⁰ *See* International Paper's SAQR at 16-7.

⁸¹ *Id.*, at 19 and Exhibit A-11.

⁸² *See* International Paper's 3rd SSAQR, at Exhibit SA3S-2.

⁸³ *Id.*

for both U.S. Channel 1 and U.S. Channel. Because the record indicates that International Paper performed the same selling functions at the same relative level of intensity for almost all of its U.S. sales, the Department preliminarily determines that all of International Paper's U.S. sales are at the same LOT.

Finally, we compared the selling activities associated with sales at the U.S. LOT (EP) to those associated with sales at the home market LOT, and based on our analysis of the record evidence, we preliminarily find that the degree to which International Paper provided the selling functions for its customers in the home market was greater than the degree to which it provided selling functions in the U.S. market. Although both markets had many similar selling functions (*i.e.*, packing, order/input processing, market research, and technical assistance), the record indicates that International Paper provided certain selling functions in the home market that it did not provide in the U.S. market (*i.e.*, advertising, rebates, and provision of after sales-services).⁸⁴ However, we are unable to calculate a level-of-trade adjustment because there was only one LOT in International Paper's home market. Therefore, for this preliminary determination, the Department determined that it is appropriate to match International Paper's EP sales to home market sales without making a LOT adjustment to NV.^{85,86}

Suzano

Suzano reported that it made its home market sales through two channels-of-distribution, which are distinguished by the two sales divisions which made the sale: 1) Home Market Channel 1: Sales Office A sells directly to small retailers and end-users; and 2) Home Market Channel 2: Sales Office B sells directly to distributors and merchants.⁸⁷ The Department finds that the selling activities in the two channels of distribution in the home market are essentially the same, and the distinction is not based on commercial differences, but by the sales office which made the sales.⁸⁸ For example, Suzano classifies some of the same customers in both categories, and classifies other customers in an incorrect channel of distribution.⁸⁹ Moreover, in examining Suzano's questionnaire responses and the home market sales database, the Department finds that the selling activities performed by Suzano to its customers in the home market in Channels 1 and 2 do not significantly differ. Specifically, the Department finds that many sales and marketing activities were performed at the same level or similar level for these two customer categories.⁹⁰ More specifically, the Department finds that the only activities not at either the same level or close to the same level of intensity for the two LOTs are rebates, inventory maintenance and distributor/dealer training.⁹¹ As the selling activities are essentially the same in the two channels of distribution, the Department finds that Suzano's home market sales are at a single level of trade.

⁸⁴ *Id.*

⁸⁵ See section 773(a)(7)(A) of the Act; for a more detailed explanation of our LOT analysis for International Paper, see the "Level of Trade" section in the International Paper Preliminary Analysis Memorandum.

⁸⁶ See *Mexican Pipe*, 76 FR 55352, 55354.

⁸⁷ The names of these selling units are proprietary. See Suzano's Section A Response at 16.

⁸⁸ *Id.*, at 11 – 15, Exhibit 9; Suzano's July 23, 2015 submission at 3 – 5, 10 - 11.

⁸⁹ *Id.*

⁹⁰ Because of the business proprietary information related to this analysis, for further discussion, please see Suzano Preliminary Analysis Memorandum.

⁹¹ See, *e.g.*, Suzano's March 27, 2015 submission at Exhibit 10.

In the U.S. market, Suzano made EP and CEP sales. For EP sales, Suzano sold the merchandise through one channel of distribution, sales to trading companies.⁹² For EP sales, which are made on a FOB Brazil or CFR basis, Suzano's selling activities end at the port in Brazil.⁹³ For CEP sales, Suzano sold the merchandise to its U.S. importer/affiliate, SPPA, through one channel of distribution, sales to distributors.⁹⁴ In contrast to the selling activities performed by Suzano for sales in Brazil, the record shows the relatively limited selling functions that Suzano performs for sales to its U.S. affiliate, SPPA. For CEP sales, which are sold to SPPA typically on a CIF basis, the selling activities of Suzano ends at the port in the United States.⁹⁵ Suzano contends that sales to the United States constitute one level of trade because its selling functions for U.S. sales are minimal.⁹⁶ Therefore, the Department considered Suzano's EP and CEP sales in the United States to constitute only one LOT.

The Department also considered the role played by Suzano's U.S. importer/affiliate, SPPA, to be relevant in its decision concerning level of trade.⁹⁷ In prior cases, the Department found that evidence showing that the U.S. affiliate performs significant selling activities in the U.S. market supports the conclusion that the foreign producer's sales in the comparison market are made at a more advanced LOT than CEP sales. The Department's reasoning, as explained in past cases, is that if the U.S. affiliate performs significant selling activities in the U.S. market that are handled by the foreign producer in the comparison market, then the comparison-market LOT is necessarily more advanced than the CEP LOT, which excludes the activities performed by the U.S. affiliate from the price, pursuant to section 772(d) of the Act.⁹⁸

The Department compared the selling activities reported by Suzano at the EP and CEP LOT with its selling activities at the comparison market LOT. The Department finds that while the one channel of distribution in the home market has more warehousing, distributor/dealer training and rebates associated with it, these selling functions are not exclusive to this channel, and as noted above, we find Suzano's comparison market sales to constitute one level of trade. In contrast, the Department finds that these selling activities, warehousing, distributor/dealer training and rebates were at a lower level for sales at the EP and CEP LOT. Therefore, we considered the comparison market sales to be at a different LOT and at a more advanced stage of distribution than the EP and CEP LOT.

Thus, the Department finds that Suzano's EP and CEP LOT is different from its home-market LOT and is at a less advanced stage of distribution than the home-market LOT.

⁹² *Id.*

⁹³ See Suzano's May 26, 2015 submission at C-34.

⁹⁴ *Id.*, at C-33 - 34.

⁹⁵ *Id.*

⁹⁶ *Id.*, at C-34 - 35.

⁹⁷ See, e.g., *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024, 45029 (August 6, 2006) (finding that in the home market the respondent made sales "further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market") (unchanged in *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006)).

⁹⁸ See *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum at Comment 8.

Because the comparison market LOT was different from the EP and CEP LOT, the Department could not match to sales at the same LOT in the comparison market. Moreover, because there was only one LOT in Suzano's comparison market, there is no basis for an LOT adjustment. Therefore, for Suzano's CEP sales, the Department 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.

D. Cost of Production Analysis

Based on our analysis of an allegation contained in the Petition, we found that there were reasonable grounds to believe or suspect that 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 International Paper's and Suzano's respective sales were made at prices below their respective COPs. We examined International Paper's and Suzano's respective 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.

1. Calculation of COP

We calculated each respondent's COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative ("SG&A") expenses, in accordance with section 773(b)(3) of the Act.⁹⁹

Based on our review of the record evidence, neither International Paper nor Suzano appear to have experienced significant changes in the cost of manufacturing during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost. The Department relied on the COP data provided by the respondents in their most recently submitted cost database for the COP calculation, except as follows:

International Paper

For IP Brasil, we adjusted the cost of manufacturing ("COM") to include the biological asset fair value adjustment normally reported in its books and records. In addition, we revised IP Brasil's general and administrative ("G&A") expense ratio to include non-operating expenses in G&A, and adjusted the cost of sales ("COS") denominator by deducting the revised amount for packing expenses.¹⁰⁰

⁹⁹ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

¹⁰⁰ For additional details, see Memorandum to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, International Paper do Brasil Ltda and International Paper Exportadora Ltda," dated concurrently with this memorandum.

Suzano

For Suzano, we adjusted COM to include certain depreciation and depletion expenses recognized in Suzano's normal books and record.¹⁰¹ We also adjusted Suzano's COM to exclude the income earned (*i.e.*, revenue less the associated cost incurred) on the sale of excess electricity.¹⁰² We decreased the numerator of Suzano's G&A expense ratio to include the gain resulting from the fair value adjustment of biological assets normally recognized by Suzano in its books and records.¹⁰³ We reduced the denominator of Suzano's G&A expense ratio to exclude certain expenses not included in COM.¹⁰⁴ We revised the numerator of Suzano's financial expense ratio to exclude interest income associated with long-term interest bearing assets.¹⁰⁵ We also revised the denominator of the financial expense ratio to exclude certain expenses not included in COM.¹⁰⁶

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 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.

¹⁰¹ See Memorandum to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Suzano Papel e Celulose S.A." dated concurrently with this memorandum.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

We found that, for certain specific products, more than 20 percent of International Paper's and Suzano's respective 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.

E. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for International Paper and Suzano, we based NV on comparison market prices. We calculated NV based on packed, ex-factory or delivered prices to unaffiliated customers in Brazil.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, the Department also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. The Department based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the merchandise under consideration.¹⁰⁷

International Paper

The Department calculated the NV based on prices to unaffiliated customers. For the certain sales that International Paper reported as samples, the Department is treating these sales as sample sales because International Paper provided the samples to the respective customer for testing and did not receive payment for these samples.¹⁰⁸ Accordingly, the Department finds that these sample sales are not a "sale" since no "consideration" was provided and should not be included in calculating the comparison market price in the home market.¹⁰⁹

The Department increased, where appropriate, the starting price to account for late payment fees and other billing adjustments, in accordance with 19 CFR 351.401(c).¹¹⁰ The Department also made a deduction from the starting price for early payment discounts and rebates, pursuant to 19 CFR 351.401(c). Next, pursuant to section 773(a)(6)(B)(iii) of the Act, the Department made further deductions for certain taxes, (*i.e.*, tax on sales and services ("ICMS"), social integration program tax ("PIS"), and the social contribution on billing tax ("COFINS")) that were imposed directly on sales of the foreign like product but not collected on sales of the merchandise under consideration.¹¹¹ Because record evidence does not indicate that the federal value-added tax

¹⁰⁷ See 19 CFR 351.411(b); International Paper Preliminary Analysis Memorandum.

¹⁰⁸ See International Paper's Supplemental Section B Questionnaire Response, (July 9, 2015) at 23 and Exhibit SB1S-15.

¹⁰⁹ See *NSK Ltd. And NSK Corp. v. United States*, 115 F.3d 965, 975 (CIT 1997) (because NSK's samples did not constitute "sales" they should not have been included in calculating United States price); *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 73 FR 55036 (September 24, 2008) and accompanying Issues and Decision Memorandum at Comment 7.

¹¹⁰ See International Paper Preliminary Analysis Memorandum.

¹¹¹ See *Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 24524, 24526 (May 10, 2005) (where the Department deducted PIS and COFINS taxes from home market prices that were compared to COP figures).

(“IPI”), ICMS Tax Substitution (“ICMS ST”) tax, or employer’s contribution tax (“INSS”) were imposed directly on sales of the foreign like product (*i.e.*, not included in the gross unit price of home market sales), the Department did not deduct these taxes.¹¹²

The Department then adjusted the starting price for foreign inland freight to the distribution warehouse, foreign inland freight from distribution warehouse to the customer, and warehousing expenses, pursuant to section 773(a)(6)(B) of the Act. Additionally, the Department has not treated International Paper’s reported freight revenue as an addition to International Paper’s price, pursuant 19 CFR 351.401(c). Instead, the Department followed its normal practice by treating freight revenue as an offset to freight costs rather than as an addition to U.S. price where freight revenue exceeds freight expenses.¹¹³

Next, the Department made deductions pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410 for differences in circumstances of sale for home market credit expenses, royalties, and bank charges. In accordance with 19 CFR 351.410(e), the Department also made adjustments to International Paper’s NV for indirect selling expenses and inventory carrying costs incurred in the comparison market. In accordance with sections 773(a)(6)(A) and (B) of the Act, the Department also deducted home market packing costs, and added U.S. packing costs.

Suzano

The Department calculated the NV based on prices to unaffiliated customers. The Department increased, where appropriate, the starting price to account for late payment fees and other billing adjustments, in accordance with 19 CFR 351.401(c).¹¹⁴ The Department also made a deduction from the starting price for early payment discounts and rebates, pursuant to 19 CFR 351.401(c). Next, pursuant to section 773(a)(6)(B)(iii) of the Act, the Department made further deductions for certain taxes, (*i.e.*, ICMS, PIS, and COFINS taxes) that were imposed directly on sales of the foreign like product but not collected on sales of the merchandise under consideration.¹¹⁵ The Department did not deduct taxes, such as the IPI, ICMS ST, or INSS taxes, that were not imposed directly on sales of the foreign like product (*i.e.*, not included in the gross unit price of home market sales but as separate line items in the sales and payment documentation).¹¹⁶

¹¹² See International Paper’s 2nd Supplemental Section B Questionnaire Response, (July 14, 2015) at 2-4; *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 71 FR 7517 (February 13, 2006) (“*Silicon Metal*”) and accompanying Issues and Decision Memorandum at Comment 1.

¹¹³ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying Issues and Decision Memorandum at Comment 3; see also *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 39 (explaining that where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services).

¹¹⁴ See Suzano Preliminary Analysis Memorandum.

¹¹⁵ See *Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 24524, 24526 (May 10, 2005) (where the Department deducted PIS and COFINS taxes from home market prices that were compared to COP figures).

¹¹⁶ See Suzano’s Supplemental Section B Questionnaire Response, (July 23, 2015) at Appendix SB-15; *Silicon Metal* at Comment 1.

The Department then adjusted the starting price for foreign inland freight to the distribution warehouse, foreign inland freight from distribution warehouse to the customer, inland insurance, and warehousing expenses, pursuant to section 773(a)(6)(B) of the Act. Next, the Department made deductions pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410 for differences in circumstances of sale for home market credit expenses, royalties, bank charges, and other direct selling expenses. Additionally, in accordance with 19 CFR 351.410(e), the Department made an adjustment to U.S. sales where commissions were granted on sales in one market and not granted in the other market. In accordance with 19 CFR 351.410(e), the Department also made adjustments to Suzano's NV for indirect selling expenses and inventory carrying costs incurred in the comparison market. In accordance with sections 773(a)(6)(A) and (B) of the Act, the Department also deducted home market packing costs, and added U.S. packing costs.

XV. CURRENCY CONVERSION

The Department 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 date of the U.S. sales as certified by the Federal Reserve Bank.

XVI. VERIFICATION

As provided in section 782(i) of the Act, the Department intends to verify information relied upon in making our final determination.

The Department will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

The Department recommends applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

19 August 2015
(Date)