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Investigation
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DATE: August 19, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (the “Department”) preliminarily determines that certain uncoated paper (“uncoated paper”) from Portugal 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 Portugal,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

In the Initiation Notice, the Department stated that the Petitions identified only one company as a producer/exporter of uncoated paper in Portugal and that we currently know of no additional

¹ See Letter to the Secretary of Commerce from Petitioners “Petitions for the Imposition of Antidumping Duties on Imports of Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal and Countervailing Duties on Imports from 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”).



producers/exporters of merchandise under consideration from Portugal.³ Accordingly, on February 24, 2015, the Department selected as the mandatory respondent and issued the AD questionnaire to the only known producer/exporter in Portugal, Portucel, S.A. (“Portucel”).⁴

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of uncoated paper to be reported in response to the Department’s AD questionnaire.⁵ In March 2015, the following interested parties submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes: Petitioners; PT Anugerah Kertas Utama/ APRIL Fine Paper Macao Commercial Offshore Limited (respondents in the companion AD investigation on uncoated paper from Indonesia); Suzano Papel e Celulose S.A./Suzano Pulp and Paper America, Inc., and International Paper do Brasil Ltda./ International Paper Exportadora Ltda. (respondents in the companion AD investigation on uncoated paper from Brazil); and Portucel.⁶ In the same month, each of these parties, with the exception of Australian Paper, filed rebuttal comments.

On March 17, 2015, the U.S. International Trade Commission 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 Portugal.⁷

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 these investigations.⁸ During the same month, Gartner Studios supplemented this request by submitting photographs of the products at issue.⁹ In May 2015, Petitioners responded to Gartner Studios’ submissions, indicating that they believe that each item in these submissions should be excluded.¹⁰

³ Id., 80 FR at 8614.

⁴ See Letter to Portucel from Catherine Bertrand, Program Manager, Office V, regarding AD Questionnaire (February 24, 2015). Portucel is comprised of sales subsidiaries Portucel Soporcel Lusa, Unipessoal, Lda. (“Lusa”), and Portucel Soporcel Fine Paper, S.A. (“Fine Paper”), production subsidiaries About the Future, S.A. (“About the Future”), Portucel Papel Setubal, S.A. (“Setubal”), and Soporcel, Sociedade Portuguesa de Papel, S.A. (“Soporcel”) and U.S. subsidiary Portucel Soporcel North America, Inc. (“Portucel NA”). See Letter to the Secretary of Commerce from Portucel “Portucel’s Section A Response” (March 26, 2015) (“Portucel SAQR”); Letter to the Secretary of Commerce from Portucel “Portucel’s Supplemental Section A Response” (May 15, 2015) (“Portucel SuppA”). See also “Affiliation and Collapsing” section, below.

⁵ See Initiation Notice, 80 FR at 8609.

⁶ In July 2015, Paper Australia Pty Ltd. and Paper Products marketing (USA) Inc., a respondent in the companion AD investigation on uncoated paper from Australia, placed on the administrative record certain comments related to product characteristics that it filed in March 2015 in that companion investigation.

⁷ See Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal, 80 FR 13890 (March 17, 2015).

⁸ 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 Studios’ refiled submission in April 2015. See Letter to Gartner Studios from Eric Greynolds, Program Manager, Office III “Gartner Studios’s Request For Permission To Submit Additional Factual Information Pertaining To The Scope Of The Investigations” (April 6, 2015).

⁹ See Letter to the Secretary of Commerce from Gartner Studios regarding submission of product samples (April 28, 2015)

¹⁰ See Letter to the Secretary of Commerce from Petitioners “Response to Gartner Studios” (May 8, 2015).

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.¹¹ Based on the request, the Department published a postponement of the preliminary determination until no later than August 19, 2015.¹²

In March 2015, Portucel submitted a timely response to section A of the Department's AD questionnaire (i.e., the section relating to general information), and in May 2015, Portucel responded to sections B and C (i.e., the sections relating to home market and U.S. sales). In June 2015, based on a timely allegation from Petitioners,¹³ the Department initiated an investigation to determine whether Portucel's sales of uncoated paper were made at prices below the cost of production ("COP") during the period of investigation ("POI").¹⁴ Accordingly, the Department requested that Portucel submit a response to Section D of the AD questionnaire (i.e., the section relating to COP/constructed value ("CV")),¹⁵ and, in July 2015, Portucel submitted its initial response.¹⁶ From April through July 2015, we issued supplemental questionnaires to Portucel, and we received responses to these supplemental questionnaires from May through August 2015.

We are 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 2015.¹⁷

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On July 30, 2015, pursuant to 19 CFR 351.210(b) and (e), Portucel requested that, contingent upon an affirmative preliminary determination of sales at LTFV for Portucel, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁸ In addition, on July 31, 2015, Petitioners requested that the Department postpone its final determination in accordance with 19 CFR 351.210(b)(2)(i).¹⁹

¹¹ See Letter to the Secretary of Commerce from Petitioners "Request for Postponement of the Preliminary Determination" (May 18, 2015).

¹² 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).

¹³ See Letter to the Secretary of Commerce from Petitioners "Allegation of Sales Below Cost" (May 27, 2015).

¹⁴ See Memorandum to James Doyle, Director, Office V, from The Team "Petitioners' Allegation of Home Market Sales at Prices Below the Cost of Production for Portucel S.A." (June 16, 2015).

¹⁵ See Letter to Portucel from Catherine Bertrand, Program Manager, Office V "Initiation of Investigation of Prices Below the Cost of Production" (June 16, 2015).

¹⁶ See Letter to the Secretary of Commerce from Portucel "Portucel's Section D Response" (July 13, 2015) ("Portucel Section D Response").

¹⁷ See 19 CFR 351.204(b)(1).

¹⁸ See Letter to the Secretary of Commerce from Portucel "Request for Postponement of Final Determination" (July 30, 2015).

¹⁹ See Letter to the Secretary of Commerce from Petitioners "Petitioners' Comments on the Extension of the Final Determination" (July 31, 2015).

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

V. SCOPE COMMENTS

As noted in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage.²⁰ 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.²¹ 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.²² Based on the information on the record, we 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.²³

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.²⁴

VI. AFFILIATION AND COLLAPSING

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered "affiliated" or "affiliated persons" as: two or more persons directly or indirectly controlling,

²⁰ See Initiation Notice; see also Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) ("Preamble").

²¹ See Letters to the Secretary of Commerce from Gartner Studios "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).

²² See Letter to the Secretary of Commerce from Petitioners "Certain Uncoated Paper From Australia, Brazil, The People's Republic Of China, Indonesia, and Portugal: Response To Gartner Studios" (May 8, 2015) at 2.

²³ See also Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Erin Begnal, Director, Office III "Scope Comments Decision Memorandum for the Preliminary Determinations" (August 3, 2015).

²⁴ Id., at 5.

controlled by, or under common control with, any person.²⁵ Section 771(33) of the Act further stipulates that 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, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”) notes that control may be found to exist within corporate groupings.²⁶ The Department’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁷

Fine Paper, Lusa, Portucel, Portucel NA, About the Future, Setubal and Soporcel

For the reasons set forth in the proprietary Preliminary Affiliation Memorandum, which we incorporate by reference, we preliminarily determine that Portucel, Fine Paper and Lusa, entities involved in the sale of merchandise under consideration and the foreign like product, About the Future, Setubal, and Soporcel, entities involved in the production of merchandise under consideration and the foreign like product, and Portucel NA, a U.S. reseller of merchandise under consideration, are affiliated because they are under common control, pursuant to sections 771(33)(B), (E) and (F) of the Act.²⁸

The Department’s practice is to rely on the totality of the circumstances in deciding when to collapse affiliated entities. In this case, we have sufficient information to find that parties are affiliated and produced the merchandise under consideration during the POI. Moreover, record evidence demonstrates significant potential for manipulation of prices and production between each of the above-referenced entities because of: 1) significant ownership of all three companies by Portucel; 2) overlapping board members; and 3) intertwined operations.²⁹

In consideration of the above facts, and in accordance with 19 CFR 351.401(f) and the Department’s practice,³⁰ we are, thus, treating Fine Paper, Lusa, Portucel, About the Future, Setubal, and Soporcel as a single entity for purposes of this preliminary determination.³¹

²⁵ See section 771(33)(F) of the Act.

²⁶ See SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994) (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

²⁷ See also Preamble, 62 FR at 27298.

²⁸ For further discussion of this issue, see Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Preliminary Affiliation Memorandum” (August 19, 2015) (“Prelim Affiliation Memo”).

²⁹ See, e.g., Portucel SAQR at 6-19 and Exhibits 2-8; Portucel SuppA at 4-23 and Exhibits 2 and 3; Letter to the Secretary of Commerce from Portucel “Portucel’s Supplemental Section A-C Questionnaire Response” (July 28, 2015).

³⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR59223 (September 27, 2010), and accompanying Issues and Decision Memorandum.

³¹ See Prelim Affiliation Memo.

VII. DISCUSSION OF THE METHODOLOGY

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

A) *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or 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).³²

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).³³ 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 Portucel.³⁴ Regions are defined using the reported destination state (*i.e.*, two-letter state abbreviation) 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

³² See 19 CFR 351.414(b)(1) and (2).

³³ 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.

³⁴ See, *e.g.*, Letter to the Secretary of Commerce from Portucel “Portucel’s Section C Response” (May 15, 2015) at Exhibit C-7.

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 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, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the 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

Based on the results of the differential pricing analysis, the Department finds that between 33 and 66 percent of Portucel's export sales confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.³⁵ Therefore, the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test (mixed alternative method). However, when comparing the weighted-average dumping margins calculated using the average-to-average method for all U.S. sales with those calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales, there is not a meaningful difference in the results (*e.g.*, relative change in the results is less than 25 percent). Accordingly, the Department used the A-A method in making comparisons of EP and NV for Topsun for this preliminary determination.

VIII. DATE OF SALE

Portucel reported the date of invoice to the first unaffiliated customer as the date of sale for all home market and U.S. sales.³⁶ Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁷ In this case, Portucel reported that the invoice date best represents the date of sale because, at that point, the material terms of the sale cannot be altered.³⁸ Portucel also provided documentation supporting its contention that there were changes to the material terms of sale between receipt of the purchase order and the issuance of the invoice.³⁹ Accordingly, we used the invoice date as the date of sale for purposes of this preliminary determination.

³⁵ See the Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst "Preliminary Determination Calculation for Portucel S.A. in the Antidumping Duty Investigation of Certain Uncoated Paper from Portugal" (August 19, 2015) ("Portucel Preliminary Calc Memo").

³⁶ See Letter to the Secretary of Commerce from Portucel "Portucel's Section C Response" (May 15, 2015) ("Portucel SCQR") at 15; Letter to the Secretary of Commerce from Portucel "Portucel's Section B Response" (May 15, 2015) ("Portucel SBQR") at 14.

³⁷ 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)).

³⁸ See Portucel SAQR at 17.

³⁹ See Portucel SuppA at 14-15.

IX. PRODUCT COMPARISONS

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

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

X. CONSTRUCTED EXPORT PRICE

In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under consideration is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Portucel classified all of its sales of merchandise under consideration to the United States as CEP sales because all such sales were invoiced and sold by Portucel’s U.S. affiliate, Portucel NA, from inventory maintained at U.S. warehouses.⁴⁰ We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, U.S. brokerage and handling, 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, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.⁴¹

⁴⁰ See, e.g., Portucel SAQR at 13; Portucel SCQR at 12.

⁴¹ For further discussion, see Portucel Preliminary Calc Memo. We note that on July 24, 2015, Petitioners submitted comments expressing concerns with Portucel’s allocation methodology and potential distortions in its expense calculations. See Letter to the Secretary of Commerce from Petitioners “Petitioners’ Comments Regarding the Upcoming Preliminary Determination” (July 24, 2015). On July 28, 2015, Portucel submitted a substantial supplemental questionnaire response and revised databases wherein it provided additional details on its allocation methodology and a revised database. See Letter to the Secretary of Commerce from Portucel “Portucel’s Supplemental Section A-C Questionnaire Response” (July 28, 2015). Portucel subsequently submitted two revisions to its sales databases on August 4 and August 5, 2015. On August 7 and 13, 2015, Petitioners submitted additional comments concerning the preliminary determination. Given the proximity to the statutory deadline of these filings, the Department did not consider them for the preliminary determination and the Department finds that Portucel’s revised databases and narrative explanation of its methodology is sufficient for this preliminary determination and intends to subject its methodology and reported data to additional scrutiny at verification.

XI. EXCLUDED U.S. SALES

Portucel reported that it purchased paper heavier than that which Portucel produces from an unaffiliated producer, Prado - Cartolinas da Lousa (“Prado”), and exported a small quantity to the United States that was sold by Portucel NA during the POI.⁴² Portucel contends that because Prado knows the destination of such exports at the time of sale, these exports should not be considered exports of Portucel for purposes of this investigation.⁴³ Portucel also provided documentation demonstrating that Prado was aware that certain sales were destined for the United States.⁴⁴ The Department has the discretion in LTFV investigations to exclude from the margin calculation certain sales if they represent a small quantity of the respondents POI sales.⁴⁵ Because it appears that Prado may have had knowledge that these sales were destined for the U.S. market, and the sales in question relate to a relatively small quantity of specialty paper purchased by Portucel from Prado, we are exercising our discretion to disregard these sales for this preliminary determination.

XII. NORMAL VALUE

A. Home Market Viability

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

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

B. Affiliated Party Transactions and Arm’s-Length Test

Pursuant to the Act and the Department’s regulations, the Department examines whether inputs purchased from or sales made to an affiliate were made at arm’s-length before relying on reported costs and sales prices in its margin calculation. Portucel reported that it had a small volume of sales of merchandise under consideration to one affiliated party in the home market

⁴² See, e.g., Portucel SAQR at 21-22.

⁴³ See, e.g., Portucel SCQR at 52.

⁴⁴ See Portucel SuppA at 27-28 and Exhibit SA-22.

⁴⁵ See, e.g., *Ipsco, Inc. v. United States*, 714 F. Supp. 1211, 1217 (CIT 1989), reversed on other grounds, 965 F.2d 1056 (Fed. Cir. 1992).

during the POI.⁴⁶ Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length.⁴⁷ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.⁴⁸

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).⁴⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵⁰ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (i.e., the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (i.e., NV based on either home market or third country prices),⁵¹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁵²

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.⁵³

⁴⁶ See Portucel SBQR at 13.

⁴⁷ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value calculation).

⁴⁸ See 19 CFR 351.102(b).

⁴⁹ See 19 CFR 351.412(c)(2).

⁵⁰ 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 ("Orange Juice from Brazil").

⁵¹ 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).

⁵² See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁵³ See, e.g., Orange Juice from Brazil, at Comment 7.

Portucel reported that its home market sales were all made through one channel of trade directly to unaffiliated distributors, wholesalers, superstores, and a few large folio printers.⁵⁴ Therefore, we consider Portucel’s home market sales to constitute one LOT. In the U.S. market, Portucel sold the merchandise to its U.S. affiliate, Portucel NA, and the goods were then sold to unaffiliated distributors and wholesalers;⁵⁵ therefore, we considered these CEP sales to constitute one LOT. We compared the selling activities reported by Portucel at the CEP LOT with its selling activities at the comparison market LOT. We found that sales at the CEP level involved no sales forecasting, strategic planning, personnel/dealer training, advertising/promotion, inventory maintenance, direct sales personnel, sales support, market research, technical assistance, rebates/discounts, post-sale services, and repacking, and less freight and delivery compared to the sales in the comparison market.⁵⁶ Therefore, we considered the comparison market sales to be at a different LOT and at a more advanced stage of distribution than the CEP LOT.

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

D. *Cost of Production Analysis*

As noted above, based on our analysis of an allegation from Petitioners,⁵⁷ we found that there were reasonable grounds to believe or suspect that Portucel’s sales of uncoated paper in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a company-specific sales-below-cost investigation to determine whether Portucel’s sales were made at prices below their respective COPs.⁵⁸ We examined Portucel’s cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (“G&A”) and interest expenses.⁵⁹

We relied on the COP data submitted by Portucel, except as follows:⁶⁰

⁵⁴ See Portucel SAQR at 13-14.

⁵⁵ Id.

⁵⁶ See Portucel SuppA at 15-19 and Exhibit SA-7.

⁵⁷ See Letter to the Secretary of Commerce from Petitioners “Allegation of Sales Below Cost” (May 27, 2015).

⁵⁸ See Memorandum to James Doyle, Director, Office V “Petitioners’ Allegation of Home Market Sales at Prices Below the Cost of Production for Portucel S.A.” (June 16, 2015).

⁵⁹ See “Test of Comparison Market Sales Prices” section, below, for treatment of home market selling expenses.

- We adjusted the reported cost of manufacturing (“COM”) to account for an unreconciled difference between the total costs in the accounting system and the total extended COM in the database.
- We revised the reported G&A expenses to include certain depreciation expenses that were excluded from the reported costs.

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.

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

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

We calculated NV based on delivered or ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and discounts in

⁶⁰ See Memorandum to Neal M. Halper, Director, Office of Accounting, from Stephanie Arthur, Senior Accountant “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Portucel S.A” dated concurrently with this memorandum.

accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁶¹

XIII. FACTS AVAILABLE

Section 776(a) 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.

Section 776(b) of the Act further 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. Such 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 information placed on the record.⁶²

A. Use of Facts Available

As noted in the “Background” section, above, in June 2015, the Department initiated an investigation to determine whether Portucel’s sales of uncoated paper were made at prices below COP, and, on July 10, 2015, Portucel submitted its initial response.⁶³ On August 10, 2015, Portucel provided a partial response to an extensive supplemental Section D questionnaire that attempted to remedy many of the Department’s concerns.⁶⁴ However, Portucel’s revised cost

⁶¹ See 19 CFR 351.411(b).

⁶² See also 19 CFR 351.308(c).

⁶³ See Portucel Section D Response.

⁶⁴ See Letter to the Secretary of Commerce from Portucel “Portucel’s Partial Supplemental Section D Response” (August 10, 2015) (“Portucel SuppD Response”). The response to the remainder of the supplemental questionnaire

database lacked data corresponding to certain sales in the U.S. sales database.⁶⁵ Accordingly, necessary information is not on the record and Portucel failed to provide requested information by the deadlines for submission or in the form and manner requested by the Department. Accordingly the use of facts available is warranted in determining Portucel's costs for certain U.S. CONNUMs, pursuant to sections 776(a)(1) and (2) (B) of the Act.

B. *Application of Facts Available with an Adverse Inference*

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 requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.⁶⁶ In addition, 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."⁶⁷ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁶⁸

We preliminarily find that Portucel failed to cooperate by not acting to the best of its ability to comply with requests for information in this investigation, within the meaning of section 776(b) of the Act, because it failed to provide corresponding cost data for each CONNUM sold in the U.S. market, as instructed.⁶⁹ Specifically, Portucel confirmed that "all CONNUMs in the sales files have corresponding matchings in the revised cost files submitted with this response,"⁷⁰ which is not the case. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to Portucel.⁷¹ As adverse facts available, we are assigning to Portucel's U.S. sales with no corresponding cost data the highest costs calculated for any CONNUM reported in Portucel's cost database.⁷²

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on 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

was extended based on a timely extension request from Portucel. See Memo to the File from Kabir Archuleta "Portucel S.A. Supplemental Section D Extension" (August 7, 2015).

⁶⁵ See Portucel Preliminary Calc Memo.

⁶⁶ See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 70295, 70297 (December 11, 2007).

⁶⁷ 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 page 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).

⁶⁸ See Preamble, 62 FR at 27340.

⁶⁹ See Portucel SuppD Response at 32-33.

⁷⁰ Id., at 33.

⁷¹ See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁷² See also Portucel Preliminary Calc Memo.

disposal.⁷³ As we are not relying on secondary information because it is information obtained from Portucel in this investigation, no corroboration is necessary.

XIV. CURRENCY CONVERSION

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

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

19 AUGUST 2015
Date

⁷³ See also 19 CFR 351.308(d).