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Investigation
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January 8, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (“the Department”) 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”). We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification,¹ we made certain changes to the margin calculations for the mandatory respondent, Portucel, S.A (“Portucel”).² The estimated weighted-average dumping

¹ See Memorandum to the File through Neal M. Halper, through Taija A. Slaughter, Lead Accountant, from Stephanie C. Arthur, Senior Accountant “Verification of the Cost Response of Portucel S.A. in the Antidumping Duty Investigation of Uncoated Paper from Portugal” (November 12, 2015) (“Portucel Cost Verification Report”); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Kabir Archuletta and Frances Veith, Senior International Trade Analysts, “Verification of Home Market Sales of Portucel S.A. (‘Portucel’) in the Antidumping Duty Investigation of Certain Uncoated Paper from Portugal” (November 24, 2015) (“Portucel Home Market Verification Report”); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Kabir Archuletta and Frances Veith, Senior International Trade Analysts, “Verification of U.S. Sales of Portucel S.A. (‘Portucel’) in the Antidumping Duty Investigation of Certain Uncoated Paper from Portugal” (November 24, 2015) (“Portucel CEP Verification Report”).

² In the Preliminary Determination we found that Portucel is affiliated with 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”), pursuant to sections 771(33)(B), (E) and (F) of the Act, and that Portucel, Fine Paper, Lusa, About the Future, Setubal and Soporcel are a single entity for purposes of the Department’s analysis in this investigation, in accordance with 19 CFR 351.401(f). See Certain Uncoated Paper From Portugal: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 51777 (August 26, 2015) (“Preliminary Determination”) and accompanying Decision Memorandum at 4-5; Memorandum to the File from



margins are shown in the “Final Determination” section of the accompanying Federal Register notice.

II. BACKGROUND

On August 26, 2015, the Department published in the Federal Register the Preliminary Determination of this antidumping duty (“AD”) investigation.³

Between September and December 2015, the Department received supplemental questionnaire responses and revised databases from Portucel. In September and October 2015, the Department verified the sales and cost data reported by Portucel, pursuant to section 782(i) of the Act.

On October 19, 2015, American Greetings Corporation (“American Greetings”) submitted its case brief regarding the scope of the investigations.⁴ On October 29, 2015, Petitioners⁵ submitted their rebuttal brief regarding the scope of the investigations.⁶

On December 4, 2015, Petitioners and Portucel submitted properly filed case briefs.⁷ On December 9, 2015, Petitioners and Portucel submitted properly filed rebuttal briefs.⁸

The Department is issuing a scope comments decision memorandum for the final determinations of the AD investigations of certain uncoated paper, which is incorporated by reference in, and hereby adopted by, this final determination.⁹

We have conducted this investigation in accordance with section 733(b) of the Act.

Kabir Archuleta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Preliminary Affiliation Memorandum” (August 19, 2015). Because no interested parties submitted comments on this issue, the Department’s determination remains unchanged for this final determination.

³ See Preliminary Determination.

⁴ See Letter to the Secretary of Commerce from American Greetings “Certain Uncoated Paper From Australia, Brazil, The People’s Republic of China, Indonesia, and Portugal: Case Brief of American Greetings Corporation” (October 19, 2015).

⁵ Petitioners are United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; Finch Paper LLC; P.H. Glatfelter Company; and Packaging Corporation of America.

⁶ See Letter to the Secretary of Commerce from Petitioners “Certain Uncoated Paper From Australia, Brazil, The People’s Republic of China, Indonesia, and Portugal: Scope Rebuttal Brief” (October 29, 2015).

⁷ See Letter to the Secretary of Commerce from Petitioners “Case Brief Submitted on behalf of Petitioners” (December 7, 2015, 2015) (“Petitioners’ Case Brief”); Letter to the Secretary of Commerce from Portucel “Case Brief of Portucel, S.A. and Portucel Soporcel N.A.” (December 4, 2015) (“Portucel’s Case Brief”).

⁸ See Letter to the Secretary of Commerce from Petitioners “Rebuttal Brief Submitted on behalf of Petitioners” (December 9, 2015) (“Petitioners’ Rebuttal Brief”); Letter to the Secretary of Commerce from Portucel “Portucel’s Rebuttal Brief” (December 1, 2015) (“Portucel’s Rebuttal Brief”).

⁹ See Memorandum to the File “Less-Than-Fair-Value Investigations of Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal; and Countervailing Duty Investigations of Certain Uncoated Paper from the People’s Republic of China and Indonesia: Scope Comments Decision Memorandum for the Final Determinations” (January 8, 2016).

III. PERIOD OF INVESTIGATION

The period of investigation (“POI”) is January 1, 2014, through December 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was January 2015.¹⁰

IV. MARGIN CALCULATIONS

The Department calculated constructed export price (“CEP”) and normal value using the same methodology stated in the Preliminary Determination.¹¹ Further, we made the following changes to our calculations based on findings at verification and our analysis of case and rebuttal briefs:

1. We requested, and Portucel submitted, revised cost and sales databases that incorporated Portucel’s minor corrections submitted at verification, which we used for this final determination.¹²
2. We added advertising expenses to sales of merchandise under consideration for certain customers that were not accounted for in the U.S. sales database used in the Preliminary Determination.
3. We adjusted Portucel’s allocation of insurance and marine insurance expenses to reflect findings at verification.
4. We adjusted Portucel’s reported billing adjustments for certain observations.
5. We adjusted Portucel’s reported pulp costs as a result of our major input analysis.
6. We adjusted Portucel’s reported variable overhead as a result of our transactions disregarded analysis.
7. We revised labor and fixed overhead to include production cost variances that had been reported as general and administrative (“G&A”) expenses.
8. We revised the G&A ratios to remove the production costs variances reclassified to labor and fixed overhead. We also added to G&A expenses an amount for headquarter expenses incurred by Portucel S.A., the parent company.¹³

V. LIST OF COMMENTS

Comment 1: Water Supplied by Portucel’s Affiliated Pulp Mills

Comment 2: Purchases of Eucalyptus Pulp from Affiliates

Comment 3: Critical Circumstances

¹⁰ See 19 CFR 351.204(b)(1).

¹¹ See Preliminary Determination.

¹² See Memo to the File from Kabir Archuletta, Senior International Trade Analyst “Sales and Cost Databases for Portucel S.A.” (November 24, 2015); Letter to the Secretary of Commerce from Portucel “Revised Sales and Cost Databases” (November 25, 2015).

¹³ For further details regarding these adjustments, see Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, through Catherine Bertrand, Program Manager, Office V “Final Determination Calculation for Portucel S.A. in the Antidumping Duty Investigation of Certain Uncoated Paper from Portugal” dated concurrently with this memorandum (“Portucel Final Analysis Memo”); Memorandum to Neal M. Halper from Stephanie C. Arthur “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Portucel S.A.” dated concurrently with this memorandum (“Final Cost Calculation Memorandum”).

- Comment 4: Advertising Expenses
- Comment 5: Insurance Expenses
- Comment 6: Other Data Revisions based on Verification Findings
- Comment 7: Minor Corrections Presented at Verification
- Comment 8: Portucel's Transposition Error

VI. DISCUSSION OF COMMENTS

Comment 1: Water Supplied by Portucel's Affiliated Pulp Mills

Background: Although Portucel did not report in its section D questionnaire responses that it obtained water from any affiliates during the POI, the company clarified in its cost verification minor corrections that its affiliated pulp mills pump water from nearby wells and rivers to the paper mills for use in paper production, and that the pulp mills invoiced the paper mills for this service at cost (i.e., depreciation and electricity expenses, etc. on the pumps).¹⁴

Petitioners' Comments:

- It would be inappropriate for the Department to value Portucel's water costs for the transactions disregarded analysis under section 772(f)(2) of the Act based solely on the cost of the pulp mills for pumping the water from the wells and rivers and not based on the cost of the water itself.
- In Taian Ziyang Food Co. Ltd. v. United States, 783 F. Supp.2d 1292, 1306-7 (CIT 2011), the CIT found that when undisputed record evidence indicates that respondents are not obligated to pay "civil or private authorities" for water pumped from a well or river, it is not appropriate to value the water itself, only the energy used to pump the water.
- In this case, however, there is no evidence to support a finding that Portucel's pulp mills are not obligated to pay civil or private authorities for water pumped from wells and rivers, and Portucel has never claimed that the pulp mills are not obligated to pay for the water itself.
- The Department should not assume that Portucel's pulp mills are not obligated to pay for the water pumped because it would reward Portucel for not providing the Department with complete and accurate answers in a timely fashion (i.e., in not disclosing such transactions until verification).
- Section 776(a) of the Act provides that the Department will use facts otherwise available if necessary information is not on the record or an interested party withholds information that has been requested, fails to provide information within established deadlines, significantly impedes a proceeding, or provides information that cannot be verified.
- Portucel failed to provide the Department with necessary information to determine whether the pulp mills were obligated to pay civil or private authorities for the water pumped, and the Department should therefore use additional evidence available.
- In determining whether the prices used to value the affiliated sales "fairly reflect the amount usually reflected in sales of merchandise under consideration," the Department should use

¹⁴ See Portucel Cost Verification Report at 4-5.

the municipal water rates provided by Petitioners in their October 8, 2015 submission, as these are the only market prices available.

- Alternatively, the Department could ask the parties to submit additional factual information and allow parties to comment.

Portucel's Comments:

- Portucel did not fail to provide the Department with the necessary information regarding water obtained from the pulp mills as alleged by Petitioners.
- Portucel provided the Department with significant documentation regarding this issue at verification, and that information was verified.
- There is no information missing from the record and the Department does not need to rely on facts available.
- There is no evidence on the record that Portucel's affiliated pulp mills must pay for water pumped from rivers and wells to the paper mills, and the Department may not assign a cost to water when the record does not support that such an expense exists.

Department's Position:

We disagree with Petitioners that the cost of the water itself should also be considered for purposes of conducting the transactions disregarded analysis in this case. As discussed above, during the POI, Portucel's paper mills obtained water from affiliated pulp mills for use in paper production. The affiliated pulp mills pumped water from wells and rivers to the paper mills, and invoiced the paper mills based on the cost of maintaining the pumps (*i.e.*, depreciation and electricity, *etc.*).¹⁵ In reporting its costs to the Department, the paper mills included the invoiced amounts for this service in their reported variable overhead expenses. During verification, as part of our review of the reported cost of production ("COP") for pulp inputs and of the cost for pumping water to the paper mills, we examined the audited financial statements and supporting accounting records of the affiliated pulp mills. With respect to water, while we were able to trace the costs incurred by the pulp mills for maintaining the pumps to their respective accounting records,¹⁶ we found no evidence that the affiliated pulp mills were obligated to "pay civil or private authorities" for water or that they incurred any expenses for water itself. Consequently, the only expenses incurred by the affiliated pulp mills for the service of pumping water to the paper mills were the costs related to maintaining the pumps, inclusive of selling and administrative ("SG&A") expenses. Accordingly, we do not find it appropriate in this instance to assign a cost to the water itself when only a service was provided in obtaining the water.¹⁷

For the final determination, in conducting our transactions disregarded analysis under section 772(f)(2) of the Act, we have compared the price paid by the paper mills to obtain water to the

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at Exhibits 1 and 13.

¹⁷ *See, e.g., Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) (where, albeit within the context of a non-market economy case, the Department declined to value water FOPs because there was no evidence that the respondent incurred such a charge).

cost incurred by the affiliated pulp mills for providing this service (*i.e.*, the cost incurred to maintain the pumps).¹⁸ In doing so, we have added an amount for SG&A to the affiliates' service cost. Based on this analysis, we found that the affiliated suppliers' per-unit cost for providing this service was higher than the per-unit transfer price, and we have accordingly made an adjustment to Portucel's reported costs to account for the difference between these two values.¹⁹

Further, we do not agree with Petitioners that Portucel failed to provide the Department with necessary information. On the first day of the cost verification, Portucel clarified in its minor corrections letter that it had mistakenly misclassified water purchases, which accounts for a negligible percentage of total costs, as unaffiliated transactions.²⁰ In support, the company provided the Department with affiliated invoices, general ledger printouts, and schedules demonstrating how the cost for operating the pumps was incurred and recorded, and the Department was able to verify this information.²¹

Comment 2: Purchases of Eucalyptus Pulp from Affiliates

Background: During the POI, Portucel's three paper mills obtained all eucalyptus pulp, a major input into the merchandise under consideration, from affiliated pulp mills. Portucel reported a market price for this input based on sales of pulp produced by one of the affiliated pulp mills through Fine Paper (an invoicing entity for the Portucel Group) to customers in Portugal and other markets.

Petitioners' Comments:

- The Department's regulations define market price as "the amount usually reflected in sales of the major input in the market under consideration," and section 773(f)(2) of the Act specifically refer to transactions "in the market under consideration."
- As such, using market prices for this input based on sales by Fine Paper outside of Portugal would be contrary to the regulations and statute.
- There is nothing on the record to suggest the pulp sales by Fine Paper to Portuguese customers are not consistent with market prices or are not at commercial quantities, and the Department should use them to establish the market value for eucalyptus pulp in this case.
- In addition to relying only on sales in Portugal in conducting its major input analysis, the Department should use the market prices on the record which include logistics costs.
- The "amount usually reflected" in sales of pulp is a delivered price, and Portucel has explained that "{1}ogistics costs are reflected in the final agreed price and delivery terms."
- If the Department decides to rely on a market price that does not include logistics costs for purposes of the major input analysis, it should only deduct the average logistics cost reflected

¹⁸ There is no comparable "market price" on the record for this service (*i.e.*, for pumping water) that may be used in the transactions disregarded analysis, and we have therefore used the affiliated pulp mills' cost for providing this process in determining whether the transfer price is fairly valued.

¹⁹ See Final Cost Calculation Memorandum at 2.

²⁰ See Portucel Cost Verification Report at Exhibit 1.

²¹ *Id.*

in sales by Fine Paper in Portugal (*i.e.*, rather than on the average logistics cost for worldwide sales), which is the “market under consideration.”

- In addition, the Department should at least use a logistics-inclusive market price when evaluating purchases of pulp from certain affiliated pulp mills that are not located adjacent to the paper mills to reflect the fact that these purchases incurred logistics.

Portucel’s Comments:

- The Department should not base market price only on the unaffiliated pulp sales by Fine Paper to customers in Portugal.
- Such a comparison would ignore the purpose of the major input rule because it fails to consider the quantity discount that would be given to Portucel had it purchased pulp from an unaffiliated supplier.
- The Department’s hierarchy when determining the proper comparison market price includes i) the prices paid by the respondent to an unaffiliated supplier for the input, ii) the amount by which the affiliated party sold the other input to unaffiliated purchasers in the market under consideration, or iii) other market values that are available on the record.
- As set forth in Final Results of Antidumping Duty Administrative Review Silicomanganese from Brazil, 69 FR 13813, (March 24, 2004) (“Silicomanganese from Brazil”), this hierarchy is based upon the desire to select a price which “best represents the respondent’s own experience.”
- As neither the first or second alternatives for a market price are available, the Department should rely on its third-tier preference and use Fine Paper’s worldwide sales to all customers as a market value that is reasonably available on the record, as this best reflects what Portucel would have paid if the eucalyptus pulp were purchased from an unaffiliated producer.
- Basing the market price only on sales to the Portuguese customers does not reflect Portucel’s experience and ignores Portucel’s reality because this price does not reflect quantity discounts that Portucel (which purchases large quantities of pulp) would have received.
- If the Department decides to limit its comparison to the Portuguese customers, it should only use the sales made to one particular customer because the others were experiencing a poor credit period during the POI.
- Further, contrary to Petitioners’ arguments, the Department should deduct logistics costs in determining a market price for use in the major input analysis.
- Portucel purchases the vast majority of its pulp from affiliated mills located adjacent to the paper mills, and because the company does not incur logistics expenses when it purchases liquid pulp from its affiliated pulp mills, its price may not therefore be compared to a market price that includes such expenses.
- In addition, while Petitioners argue that the Department should at least use a logistics-inclusive market price when evaluating purchases of pulp from those affiliated pulp mills that are not located adjacent to the paper mills, it is unclear how the Department would account for the small amount of affiliated sales Petitioners claim incur logistics.

Department's Position:

In applying the major input rule under section 773(f)(3) of the Act, the Department normally will determine the value of a major input purchased from an affiliated person based on the higher of i) the price paid by the exporter or producer to the affiliated person for the major input, ii) the amount usually reflected in sales of the major input in the market under consideration (*i.e.*, the market price), or iii) the cost to the affiliated person of producing the major input.²² Section 773(f)(3) of the Act does not explicitly direct the Department to apply a particular methodology in determining market price. Thus, because the statute is silent and Congress has not directly spoken to the issue, the Department is permitted to determine a reasonable methodology for establishing market price.²³ In determining a market price for use in this comparison, the Department prefers to use the prices paid by the respondent to an unaffiliated supplier for the input. If such prices are not available, the Department will then look to sales by the affiliated supplier to other unaffiliated customers in the market under consideration. In the absence of either of these options, the Department may consider other market values that are available on the record.²⁴

Our preferred source for a market price in this case is not available because Portucel obtained all eucalyptus pulp from affiliated suppliers. We must therefore rely on sales by Fine Paper to determine a market price for use in our comparison. While Portucel provided information on Fine Paper's sales of pulp to all markets (including to Portuguese customers), we agree with Petitioners that it is appropriate to base market price solely on the affiliate's sales to customers located in Portugal.²⁵ Contrary to Portucel's argument, we do not need to resort to the third-tier preference (*i.e.*, other market values that are reasonably available) in this case because our second preference (*i.e.*, the amount by which the affiliated party sold the input to other unaffiliated purchasers in the market under consideration) is available on the record.

Portucel argues that the comparatively low quantities sold to Portuguese customers means that the prices do not reflect the discounted price Portucel would receive had it purchased from an unaffiliated pulp supplier in Portugal. The company clarifies that it is not arguing that the quantities *per se* disqualifies these transactions from consideration, but that the low quantities result in a smaller discount than would normally be granted. In our view, however, there is no distinction here, and Portucel's argument is one of how the price of an input is affected by the relative quantities purchased. The Department has previously explained, however, that the relative quantity of unaffiliated purchases should not necessarily be a disqualifying factor in considering such purchases for the purpose of the major input rule and that, as long as these transactions occurred in commercial quantities, we may rely on them to determine market

²² See 19CFR 351.407(b).

²³ See Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 54264 (September 11, 2014) ("Steel Plate from Korea") and accompanying Issues and Decision Memorandum at Comment 6.

²⁴ See Silicomanganese from Brazil at 13813.

²⁵ While we have on the record of this case information regarding sales of the input to unaffiliated customers in the market under consideration, we note that the available data for use in establishing a market price will vary from case to case. In cases where a market price in the market under consideration is not available, we will evaluate other possible options as needed.

price.²⁶ In this case, the transactions with unaffiliated customers in Portugal occurred in commercial quantities and there is no evidence linking the quantities of these transactions to larger or smaller discounts. Accordingly, we find that these transactions are therefore an appropriate measure for market value.

Portucel further asserts that, if the Department decides to undertake its analysis based only on sales to Portuguese customers, it should only use the sales made to one particular customer because the others were experiencing poor credit during the POI. According to Portucel, the Department may consider unusual circumstances surrounding sales when determining the correct market price. To support its argument, Portucel relies on Pasta from Italy, wherein the Department explained that “{i}n deciding whether to exclude prices paid to the unaffiliated supplier in question, the Department must determine whether information is on the record which shows that those prices were unusual.”²⁷ Here, while Portucel has asserted as much, there is nothing on the record which demonstrates that these particular transactions were in fact “unusual.”

For the final determination, for the foregoing reasons, we have therefore based market price on transactions between Fine Paper and all unaffiliated customers in the Portuguese market. These transactions represent the amount “usually reflected in sales of the major input in the market under consideration” (i.e., Portugal). Further, the sales were made in commercial quantities and reflect what unaffiliated customers actually paid for this input in Portugal during the POI. As such, we find that they provide an appropriate benchmark and are the best available source for determining market value for purposes of our major input analysis.

Petitioners also argue that the Department should use the market prices on the record which include logistics costs. In conducting our major input analysis under section 773(f)(3) of the Act, the Department where possible attempts to base its comparisons on prices that are on the same basis.²⁸ For purchases from pulp mills located adjacent to the paper production sites (where liquid pulp is transmitted via pipeline), Portucel does not include logistics charges in the transfer price recorded in its normal books and records. However, Portucel also purchases eucalyptus pulp from affiliated suppliers that are not located next to the paper mills, and in those instances the record shows that the company books logistics charges as part of the transfer price for these transactions.²⁹ Therefore, in order to keep our comparisons on the same basis, for purchases of pulp from adjacent pulp mills, we have relied on a market price (i.e., Fine Paper’s sales in Portugal) that is net of logistics charges. Similarly, where the paper mills obtained pulp

²⁶ See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 70 FR 54359 (September 14, 2005) and accompanying Issues and Decision Memorandum at Comment 5.

²⁷ See Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 72 FR 7011 (February 14, 2007) (“Pasta from Italy”) and accompanying Issues and Decision Memorandum at Comment 6.

²⁸ See Steel Plate from Korea at Comment 6 (wherein we noted that, in applying the major input rule, “the key is that the comparison should be an apples-to-apples comparison”). See also Certain Steel Nails from Malaysia; Final Determination of Sales at Less Than Fair Value, 80 FR 28969 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 4.

²⁹ See Cost Verification Exhibit 13 at page 41 (showing a per-unit logistics charge recorded by the paper mills for purchases from off-site affiliated pulp mills but no such charge for purchases from adjacent pulp mills).

from affiliated pulp mills that were not located within the same complex, we have used the logistics-inclusive market price in conducting our major input analysis.

We have conducted our major input analysis as described above (*i.e.*, using a market price based on Fine Paper's sales to unaffiliated customers in Portugal, net of logistics where appropriate). Based on that analysis, we found that the market price exceeded both the transfer price and the affiliated suppliers' cost of production. Therefore, for this final determination, we adjusted Portucel's reported costs to reflect the market price.³⁰

Comment 3: Critical Circumstances

Petitioners' Comments:

- The Department should affirm its preliminary finding of critical circumstances in the final determination.
- The Department should reject Portucel's argument that the merchandise under consideration is subject to seasonal variability as the comparison data provided by Portucel do not demonstrate predictable fluctuation, which is required by the Department in order to deem the volume trends of the merchandise as seasonal.

Portucel's Comments:

- In the Preliminary Determination the Department imputed importer knowledge of sales at LTFV based on preliminary margins exceeding 15 percent.
- Portucel's high preliminary margin was the direct result of a transposition error in Portucel's data.
- Correcting this transposition error and other changes briefed for this final determination should result in a final margin for Portucel less than 15 percent.
- Even if the Department determines that knowledge of dumping existed, the Department's preliminary finding of massive imports over a relatively short period did not take into account the seasonal nature of the merchandise under consideration.
- The record demonstrates that shipments of paper tend to increase at the beginning of the year and drop toward the end of the year.
- The rise in shipments between the Department's base and comparison periods was not a result of a surge following the petition, but rather, typical annual shipment patterns.
- Consequently, the Department should reverse its preliminary affirmative finding of critical circumstances.

Department's Position:

As described in further detail below, the Department finds for this final determination that the statutory criteria for a final affirmative finding of critical circumstances have not been met.³¹

³⁰ See Final Cost Calculation Memorandum at 2.

³¹ See below at section VII. NEGATIVE FINDING OF CRITICAL CIRCUMSTANCES.

Specifically, the Department normally considers margins of 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV, in accordance with section 733(e)(1)(A)(ii) of the Act. In this case, Portucel's final margin is 7.80, and does not provide a sufficient basis to impute knowledge that importers knew, or should have known, that Portucel's exports were being sold at LTFV. Given our final negative determination of critical circumstances based upon the above, we find Portucel's argument with respect to the seasonal nature of merchandise under consideration to be moot.

Comment 4: Advertising Expenses

Petitioners' Comments:

- The Department found at verification that Portucel neglected to report advertising expenses for certain U.S. customers in its U.S. sales database.
- Where the Department was able to verify Portucel's allocated advertising expenses, the Department should apply those expenses to those customers in the U.S. sales database.
- Where the Department was unable to verify Portucel's allocated advertising expenses, the Department should apply, as facts available, the highest allocated advertising expenses from the U.S. sales database to these customers.

Portucel's Comments:

- Portucel reported its advertising expenses correctly in its allocation worksheet and the Department verified the accuracy of Portucel's allocation methodology.
- The Department should revise Portucel's advertising expenses using Portucel's reported expenses in its worksheet.
- The Department should not use the highest advertising expense on record as there is no support for an adverse inference to any missing advertising expenses.
- If the Department must rely on facts available, it should average these expenses as a neutral surrogate.
- If the Department erroneously uses an adverse inference, it should apply the highest advertising expense from the allocation worksheet to the customers at issue and specific to the customer codes affected.

Department's Position:

We agree with Portucel that we should use the expense allocation calculated by Portucel and verified by the Department for this final determination.³² As noted by Portucel, the correct data were reported in the allocation worksheet verified by the Department.³³ Accordingly, we are using Portucel's reported data to revise advertising expenses for certain customers in Portucel's U.S. sales database.³⁴

³² See, e.g., Portucel Home Market Verification Report at 19-20.

³³ See Portucel's Rebuttal Brief at 16-17.

³⁴ This calculation contains business proprietary information. For further details, see Portucel Final Analysis Memo.

Comment 5: Insurance Expenses

Petitioners' Comments:

- The Department found errors at verification in Portucel's allocation of insurance (INSUREU) and marine insurance (MARNINU) expenses.
- The Department should correct Portucel's allocation errors for these expenses.

Portucel's Comments:

- The Department should correct the error, verified by the Department, in Portucel's reported marine insurance expense.
- The data reported in regards to INSUREU are correct and require no further adjustment.

Department's Position:

We agree with Petitioners that errors in Portucel's allocation of INSUREU and MARNINU should be corrected for this final determination. With respect to MARNINU, both Portucel and Petitioners agree that the Department should correct the error found at verification.³⁵ As conceded by Portucel, the numerator of Portucel's MARNINU calculation incorrectly excluded premiums paid on shipments to Puerto Rico,³⁶ whereas the denominator included the total tonnage sold to the U.S. market.³⁷ However, Portucel proposes to use one month of insurance premiums paid on shipments to Puerto Rico multiplied by 12 months, which we disagree would be an appropriate method by which to estimate the marine insurance expenses Portucel neglected to report. Accordingly, we used facts available to calculate a marine insurance expense to fill the gap in the record where actual expenses were not reported by Portucel.³⁸

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.

Because Portucel neglected to report marine insurance expenses incurred on shipments to Puerto Rico, and the record only contains one month of such insurance premiums, the Department finds that necessary information is not on the record and the use of facts available is necessary. As facts available, the Department has extrapolated the ratio of insurance premiums paid on shipments to Puerto Rico and the United States, using the sole month for which the record contains both expenses, across each month of the POI to calculate a marine insurance expense

³⁵ See Petitioners' Case Brief at 12-13; Portucel's Rebuttal Brief at 17-18.

³⁶ See Portucel's Rebuttal Brief at 17-18.

³⁷ See Portucel CEP Verification Report at 13.

³⁸ This calculation contains business proprietary information. For further details, see Portucel Final Analysis Memo.

specific to shipments to Puerto Rico. Further, we removed shipments to Puerto Rico from the denominator of Portucel's reported marine insurance expense to arrive at two specific rates based on destination market. For proprietary details regarding this calculation, see Portucel Final Analysis Memo.

With respect to INSUREU, Portucel argues that this expense is correct as reported because there were no Puerto Rico expenses omitted from the per-unit calculation.³⁹ However, Department officials noted at verification a discrepancy in the denominator (i.e., tonnage shipped to the U.S. market during the POI), not in the expenses reported, as claimed by Portucel. Accordingly, we have adjusted the denominator of Portucel's allocation of INSUREU for this final determination.⁴⁰

Comment 6: Other Data Revisions based on Verification Findings

Petitioners' Comments:

- Although some data inaccuracies should be corrected, the Department should only correct inaccuracies with reported data that have been verified by the Department.

Portucel's Comments:

- The vast majority of Portucel's reported data were verified without discrepancy.
- Although the Department noted a few minor discrepancies in Portucel's data, they would have little combined effect upon the Department's calculation and should be disregarded under 19 CFR 351.413.
- Should the Department decide to adjust Portucel's data based on its findings at verification all necessary information is available on the record and there is no justification for adjustments based upon facts available or using an adverse inference.
- The Department should carry out the cost verification findings, making adjustments as described in the cost verification report.
- The Department should add Portucel's calculated, and verified, advertising expenses from its allocation worksheet to certain customer codes in its U.S. sales database.
- The Department should adjust the return quantity reported in the home market sales database on one sale that was discovered after Portucel's presentation of minor corrections.
- The Department should correct Portucel's reported billing adjustments for certain observations that relate to a return quantity and should not have resulted in a downward billing adjustment, only an adjustment to quantity.
- Although the Home Market Verification report stated that Portucel failed to report early pay discounts on sales to one home market customer, this discount was included for this customer in Portucel's minor corrections. As a result, this discount was included in Portucel's revised database and no further revision is necessary.

³⁹ See Portucel's Rebuttal Brief at 18-19.

⁴⁰ This calculation contains business proprietary information. For further details, see Portucel Final Analysis Memo.

Department's Position:

While the discrepancies noted in the verification reports are, in the aggregate, of negligible effect, we determine for this final determination, that certain adjustments to Portucel's reported data are appropriate. However, we agree with Portucel that adverse inferences are not warranted and are using record data readily available to the Department in carrying out these adjustments. Specifically, we made adjustments for the Department's findings at the cost verification described elsewhere in this memorandum and in the Final Cost Calculation Memorandum.⁴¹ As explained above, we are adjusting Portucel's reported advertising expenses in the U.S. market for certain customers.⁴²

With respect to billing adjustments that relate to return quantities, we agree with Portucel that certain billing adjustments should be removed from the U.S. sales database. Specifically, we observed at verification that Portucel had reported downward billing adjustments related to return quantities that should only result in an adjustment to quantity, not gross unit price.⁴³ At verification, Portucel identified the affected observations and we have corrected those observations for this final determination.⁴⁴

With regard to the return quantity identified by the Department after Portucel's presentation of minor corrections,⁴⁵ we agree with Portucel that the miniscule quantity associated with this discrepancy does not warrant any revision for this final determination. Further, we note that even if the Department determined that a revision were necessary, the record lacks the information required to tie the quantity discrepancy to a specific transaction.⁴⁶ Accordingly, we are not revising this insignificant return quantity for this final determination.

Finally, with respect to the early payment discount on sales to one home market customer, we have revisited the verification exhibits and confirmed Portucel's contention that its early payment discounts were included in Portucel's minor correction.⁴⁷ Further, we examined Portucel's allocation methodology in detail at verification and traced the relevant documents to each transaction selected for review and noted no discrepancies.⁴⁸ Accordingly, and as noted below at Comment 7, we are using Portucel's revised early payment discounts for one home market customer for this final determination.

⁴¹ See Final Cost Calculation Memorandum and Comments 1 and 2, above.

⁴² See Comment 4, above.

⁴³ See Portucel's Case Brief at 14; Portucel CEP Verification Report at 10-11.

⁴⁴ This adjustment contains business proprietary information. For further details, see Portucel Final Analysis Memo.

⁴⁵ See Portucel's Case Brief at 13.

⁴⁶ This discussion contains business proprietary information. For further details, see Portucel Final Analysis Memo.

⁴⁷ See Letter to the Secretary of Commerce from Portucel "Submission of Minor Corrections to Sales Information" (October 19, 2015) at Exhibit 1, Attachment 5.

⁴⁸ See Portucel Home Market Verification Report at 18.

Comment 7: Minor Corrections Presented at Verification

Portucel's Comments:

- The Department accepted and verified Portucel's minor corrections presented at verification.
- The Department should apply Portucel's corrections for purposes of the final determination.

We received no rebuttal comments from Petitioners on this issue.

Department's Position:

In accordance with the Department's instructions in the verification agenda provided to Portucel prior to verification,⁴⁹ Portucel submitted corrections found in preparing for verification to Department officials at the start of verification.⁵⁰ We reviewed with company officials Portucel's minor corrections,⁵¹ and instructed Portucel to submit revised databases that incorporated the corrections reviewed at verification.⁵² Accordingly, we are relying on Portucel's revised databases for this final determination.

Comment 8: Portucel's Transposition Error

Portucel's Comments:

- The Department should correct the transposition error that resulted in the application of partial adverse facts available at the Preliminary Determination for this final determination.

We received no rebuttal comments from Petitioners on this issue.

Department's Position:

As noted above, we are relying upon Portucel's revised databases for this final determination. Because Portucel's revised databases incorporate Portucel's correction of the transposition error affecting the databases relied upon for the Preliminary Determination,⁵³ we find this issue to be moot.

⁴⁹ See Letter to Portucel from Catherine Bertrand, Program Manager, Office V "Verification Agenda" (October 5, 2015).

⁵⁰ See Letter to the Secretary of Commerce from Portucel "Submission of Minor Corrections to Sales Information" (October 19, 2015).

⁵¹ See Portucel Home Market Verification Report; Portucel CEP Verification Report; Portucel Cost Verification Report.

⁵² See Memo to the File from Kabir Archuletta, Senior International Trade Analyst "Sales and Cost Databases for Portucel S.A." (November 24, 2015).

⁵³ See Preliminary Determination and accompanying Decision Memorandum at 14-16.

VII. NEGATIVE FINDING OF CRITICAL CIRCUMSTANCES

On September 28, 2015, Petitioners filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of the merchandise under consideration.⁵⁴

On November 4, 2015, we published in the Federal Register an affirmative preliminary determination of critical circumstances, stating that importers of uncoated paper from Portugal knew or should have known that the exporter was selling the merchandise under consideration at LTFV and that there was likely to be material injury in accordance with section 733(e)(1)(A)(ii) of the Act.⁵⁵ We further stated that Portucel had massive imports of merchandise under consideration during a relatively short period, in accordance with section 733(e)(1)(B) of the Act, and that our practice with respect to the “all-others” rate is to base our critical circumstances analysis on the experience of the investigated companies.⁵⁶

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

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

As explained in the Preliminary Critical Circumstances Determination, the Department previously has not imposed an AD order on the merchandise under consideration and the Department is not aware of any AD orders on uncoated paper from Portugal in another country.⁵⁷

⁵⁴ See Letter to the Secretary of Commerce from Petitioners “Petitioners’ Critical Circumstances Allegation” (September 28, 2015) .

⁵⁵ See Certain Uncoated Paper From Portugal: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 80 FR 68293, 68294-5 (November 4, 2015) (“Preliminary Critical Circumstances Determination”).

⁵⁶ Id.

⁵⁷ Id.

Therefore, we found no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.⁵⁸

Turning to section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.⁵⁹ The final dumping margins we calculated of 7.80 percent for Portucel does not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 15 percent for CEP sales).⁶⁰ Therefore, we determine that there is insufficient evidence to find that importers knew or should have known that the exporters were selling the merchandise under consideration at LTFV in accordance with section 733(e)(1)(A)(ii) of the Act.⁶¹ Further, as stated in the Preliminary Critical Circumstances Determination, our practice with respect to companies subject to the “all-others” rate is to base our critical circumstances analysis on the experience of the investigated companies.⁶² Therefore, the record does not support imputing importer knowledge of sales at LTFV to imports of exporters subject to the “all-others” rate.

Because the statutory criteria of section 733(e)(1)(A) of the Act have not been satisfied, we did not examine whether imports from Portucel or from all other companies were massive over a relatively short period pursuant to section 733(e)(1)(B) of the Act. Accordingly, we find that the statutory criteria necessary for determining affirmative critical circumstances have not been met and, therefore, we determine that critical circumstances do not exist for imports of uncoated paper from Portugal.

⁵⁸ Id.

⁵⁹ See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005).

⁶⁰ Portucel classified all sales 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. See Preliminary Determination and accompanying Decision Memorandum at 9.

⁶¹ See, e.g., Certain Oil Country Tubular Goods From the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 10484, 10485-86 (February 25, 2014), unchanged for one respondent in Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part, 79 FR 41971 (July 18, 2014) and accompanying Issues and Decision Memorandum at 4-5 (“Because the Department calculated a *de minimis* rate for Borusan, we find that there is not a sufficient basis pursuant to section 735(a)(3)(A)(ii) of the Act to find that importers should have known that Borusan was selling the merchandise under consideration at LTFV, leading us to determine that critical circumstances do not exist for Borusan.”); Grain-Oriented Electrical Steel From the Czech Republic: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 26717 (May 9, 2014), unchanged for one respondent and companies covered by the all-others rate in Grain-Oriented Electrical Steel From the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 58324, 58325 (September 29, 2014) (“For AMFM and the companies covered by the all others rate, we made no changes to our critical circumstances analysis announced in the Preliminary Determination...”).

⁶² See Preliminary Critical Circumstances Determination, 80 FR at 68295.

Conclusion

We recommend applying the above methodology for this final determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 JANUARY 2016
(Date)