A-351-842
Remand
Slip Op 22-95
POR: 03/01/2018 – 02/28/2019
Public Document
E&C/OV: SF

***Suzano S.A. v. United States*, 589 F. Supp. 3d 1225 (CIT 2022)**
Certain Uncoated Paper from Brazil

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The U.S. Department of Commerce (Commerce) has prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (the Court) in *Suzano S.A. v. United States*, 589 F. Supp. 3d 1225 (CIT 2022) (*Remand Order*). These final results of redetermination concern the *Final Results* in the third administrative review of the antidumping duty (AD) order on certain uncoated paper from Brazil[1] covering the period of review (POR) March 1, 2018, through February 28, 2019.[2]

The Court remanded to Commerce for further explanation and consideration of its decision not to modify the cost of production (COP) calculations for Suzano S.A. (formerly known as Suzano Papel e Celulose S.A.) (Suzano) to exclude certain derivative expenses from the financial expense ratio. Consistent with the *Remand Order*, Commerce has provided further explanation of its decision and analysis of the administrative record regarding this issue, as discussed below.

[1] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders*, 81 FR 11174 (March 3, 2016) (*Order*).
[2] *See Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2018–2019*, 86 FR 7254 (January 27, 2021) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

II. BACKGROUND

A. Commerce's *Final Results*

On May 29, 2019, Commerce initiated the third administrative review of the *Order*[3] with respect to the following companies: International Paper do Brasil Ltda. and its affiliate International Paper Exportadora Ltda. (collectively, International Paper), and Suzano. On July 19, 2019, we issued AD questionnaires to International Paper and Suzano.[4]

In January 2019, shortly before the end of the POR, Suzano acquired a 100 percent ownership stake in Fibria Celulose S.A. (Fibria), a producer of eucalyptus pulp,[5] and reported that the "merger" was finalized and approved by the shareholders in April 2019.[6] In the months leading up to the acquisition, Suzano secured loans and credit facilities while also acquiring numerous derivatives to protect itself against adverse exchange rate fluctuations.[7]

On August 21, 2019, Suzano submitted to Commerce a calculation of its financial expense ratio based on consolidated 2018 financial statements for both Suzano and Fibria.[8] The calculation included Suzano's derivative losses in the numerator of the financial expense ratio and combined the cost of sales of both companies in the denominator.[9]

On February 26, 2020, at Commerce's request, Suzano submitted the calculation of its financial expense ratio based exclusively on Suzano's audited 2018 consolidated financial

---

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 24743 (May 29, 2019).
[4] *See* Commerce's Letters, "Request for Information," both dated July 1, 2019.
[5] *See* Suzano's Letters, "Suzano's Response to Questionnaire for Section A," dated July 26, 2019 (Suzano's Initial Section A Questionnaire Response), at n.1; and "Suzano's Response to Questionnaire for Section D," dated August 21, 2019 (Suzano's Initial Section D Questionnaire Response), at Exhibit D-19a.
[6] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-27.
[7] *See* Suzano's Initial Section D Questionnaire Response at D-31, D-38-39, and Exhibits D-19-19a.
[8] *Id*. at D-30-31.
[9] *Id*. at Exhibit D-19.

statements that included all of Suzano's derivative losses.[10] In addition to this calculation, Suzano also submitted a second calculation of its financial expense ratio based exclusively on Suzano's audited 2018 consolidated financial statements that excluded the derivative losses associated with the Fibria acquisition.[11] As Suzano's unaudited quarterly reports associate the company's derivative losses with the Fibria acquisition (thus excluding those losses from normal operations),[12] Suzano requested that we adopt the second of the two methods in our COP calculations.[13]

On April 2, 2020, Commerce published its *Preliminary Results*,[14] in which we relied on the first of Suzano's submitted financial expense ratio calculations from its February 26, 2020 response (and, therefore, included expenses related to the acquisition of Fibria in the ratio calculations). On May 28, 2020, Suzano submitted a case brief requesting that Commerce adjust its calculation of Suzano's financial expense ratio to exclude its net derivative losses related to its acquisition of Fibria on the grounds that the expenses tied to the acquisition were "extraordinary" and not related to Suzano's normal operations or cash management.[15]

On January 27, 2021, Commerce published its *Final Results*,[16] in which we again declined to use Suzano's proposed expense ratio that excluded the derivative losses associated with the Fibria acquisition.[17] As support for our decision, we explained:

---

[10] *See* Suzano's Letter, "Suzano's Supplemental Section D Questionnaire Response," dated February 26, 2020 (Suzano's Supplemental Section D Questionnaire Response), at Exhibit SD-2; *see also* Commerce's Letter, "Supplemental Questionnaire for Section D," dated February 14, 2020, at 3.
[11] *See* Suzano's Supplemental Section D Questionnaire Response at Exhibit SD-2.
[12] *Id*.
[13] *Id*. at 3-4.
[14] *See Certain Uncoated Paper from Brazil: Preliminary Results of the Administrative Review of the Antidumping Duty Order; 2018-2019*, 85 FR 18550 (April 2, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.
[15] *See* Suzano's Letter, "Suzano's Case Brief," dated May 28, 2020, at 1-3.
[16] *See Final Results*, 86 FR at 7254.
[17] *See Final Results* IDM at 4-5.

> While it is Commerce's practice to exclude only investment-related gains or losses from the calculation of {COP}, the capital management mechanisms practiced by Suzano by way of these derivative transactions are reasonably associated with the company's cost of borrowing … . Moreover, we disagree with Suzano's claim that these derivative expenses are extraordinary and stem from an isolated event … . Here, the auditors who issued an unqualified opinion on Suzano's financial statements did not classify the derivative expenses as extraordinary.[18]

B. *Remand Order*

On appeal, the Court held that Commerce's determination (that Suzano's derivative expenses related to its acquisition of Fibria expenses were: (1) not investment-related; and (2) not extraordinary) was not supported by substantial evidence.[19] Accordingly, the Court remanded to Commerce for further explanation and consideration, and, if appropriate, reconsideration of the agency's cost analysis pursuant to section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act).[20]

C. *Draft Results of Redetermination*

Commerce released the Draft Results of Redetermination on October 13, 2022,[21] finding that it properly included all losses attributable to Suzano's financial derivatives in its calculations of Suzano's COP. Domtar Corporation (the petitioner) and Suzano submitted timely comments on the Draft Results of Redetermination on October 24, 2022.[22]

---

[18] *Id*. at 5.
[19] *See Remand Order* at 1233.
[20] *Id.* at 1237-38.
[21] *See* Draft Results of Redetermination Pursuant to Court Remand, *Suzano S.A. v. United States*, Court No. 21-00069, Slip Op. 22-95 (CIT August 16, 2022), dated October 13, 2022 (Draft Results of Redetermination).
[22] *See* Petitioner's Letter, "Comments on Draft Results of Redetermination," dated October 24, 2022 (Petitioner's Comments); *see also* Suzano's Letter, "Suzano's Comments on Commerce's Draft Results of Redetermination," dated October 24, 2022 (Suzano's Comments).

III. ANALYSIS

A. Treatment of Suzano's Derivative Losses as Non-Investment-Related

We continue to find that the derivative losses incurred by Suzano are not investment-related. As such, we continue to find it reasonable and appropriate to include the derivative losses in Suzano's financial expense rate calculation. To comply with the Court's order, we provide further discussion below of Commerce's consideration of the record evidence.

Regarding the Court's question as to whether section 773(f)(1)(A) of the Act gives Commerce the license to rely on (or not rely on) the records of a producer or exporter where those records comply with one but not both of the statutory requirements for cost calculation, we find that, in this instance, Suzano's audited financial statements meet both statutory requirements. Section 773(f)(1)(A) of the Act requires Commerce to rely on the books and records of the respondent, provided that those records are compliant with the respondent's home country generally accepted accounting principles (GAAP) and reasonably reflect the COP.[23] Here, Suzano's audited financial statements (normal books and records) are compliant with the GAAP of Brazil.[24] As explained in detail below, Suzano's unaudited quarterly earnings (QE) releases and other record evidence cited by the Court in its *Remand Order* support the reasonableness of the Brazilian GAAP classification of the derivative expenses related to the acquisition of Fibria as operating expenses, rather than investment costs.[25]

---

[23] *See* section 773(f)(1)(A) of the Act; *see also Remand Order* at 1235 ("Statute requires a producer's records be used if they are kept in accordance with GAAP <u>and</u> reasonably reflect the costs associated with the production and sale of the merchandise, not if they are GAAP-compliant alone.") (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-169 (1962) (internal quotations removed)).

[24] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17 at "Independent auditor's report."

[25] Because we conclude that both the audited financial statements and the QE releases support Commerce's position, we find the argument of whether the reliance on an audited source precludes reliance on the producer or exporter's unaudited records to be moot.

Suzano is a producer of pulp, paper, and tissue products.[26] As explained above, Suzano acquired a 100 percent share ownership of Fibria, a pulp producer, in January 2019,[27] and the "merger" between the two companies was finalized and approved by the shareholders in April 2019.[28] At that time, Suzano Papel e Celulose S.A. and Fibria underwent a change in company name to Suzano S.A, and both former companies have since been operating under this single name.[29] The QE releases and other record evidence support the finding that the acquisition of Fibria was not an investment for profit sharing purposes[30] but, rather, an expansion of Suzano's pulp operations.[31] Suzano management's discussion accompanying the audited financial statements specifically stated with respect to the Fibria acquisition that "the combination of two successful and globally relevant companies effectively creates opportunities to build a future with even greater capacity."[32]

As part of the planned expansion of its operations, Suzano obtained significant amounts of foreign denominated debt to meet the cash requirements of the acquisition.[33] Additionally, as the company's 2Q18 Earnings Release indicates:

---

[26] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17. Suzano stated in n.1 of its audited financial statements that the company's operations include pulp, paper, and tissue production.

[27] *See* Suzano's Initial Section A Questionnaire Response at n.1; *see also* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a at "2Q18 Earnings Release: Transaction with Fibria."

[28] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-27.

[29] *Id.* at n.1 and Exhibit A-27.

[30] *See, e.g.*, *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*Steel Flat Products from Korea*), and accompanying IDM at Comment 14 (where Commerce defines investment activities as those activities that are not related to production but, rather, a separate profit-making activity).

[31] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17 at "Management Report" (where Suzano states that with the merger of Fibria and Suzano, "Suzano is transformed into an even more competitive and robust company"); *see also* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a at "Earnings Release 3Q18," where Suzano refers to the acquisition of Fibria as a "business combination." While Suzano asserts that the pulp produced by Fibria would not specifically be used in the production of the product under review, we find that this distinction does not exclude the pulp produced by Fibria to be part of its normal operations.

[32] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17 at "Management Report."

[33] *See, e.g.*, Suzano's Initial Section D Questionnaire Response at Exhibit D-19a ("Earnings Release 4Q18: Indebtedness") (where Suzano states: "At December 31, 2018, gross debt amounted to R$35.7 billion, composed of 90.4% long-term maturities and 9.6% short-term maturities, with 73.8% denominated in foreign currency and 26.2% in local currency.").

> Suzano carries out derivatives transactions exclusively for hedging purposes. {Suzano's} currency exposure policy seeks to minimize the volatility of its cash generation and to impart greater flexibility to cash flow management. The policy currently stipulates that surplus dollars may be partially hedged … and matched with dollar inflows.[34]

Consequently, as part of its overall cash management, Suzano used the derivative instruments to hedge its company-wide exposure to foreign currency risk.[35] Commerce has previously found that derivative instruments used for cash management purposes are typically included in the financial expense rate computation.[36]

B. Treatment of Suzano's Derivative Losses as Financing Expenses Related to Normal Operations

Regarding the Court's question of what evidence is a sufficient basis to conclude that an expense is not extraordinary, we assert that Suzano's audited financial statements and QE releases *together* support Commerce's finding that the derivative losses are not extraordinary but, rather, represent financing expenses related to Suzano's normal operations. Furthermore, Commerce's past practice supports the reasonableness of including the derivative losses in question as part of the costs of the subject merchandise.

As Commerce has previously explained, the classification for the purposes of financial statements of an expense as either extraordinary or not extraordinary is not dispositive.[37] Section 773(f)(1)(A) of the Act mandates that Commerce rely on data from a respondent's normal books and records, where those records are prepared in accordance with home market GAAP and reasonably reflect the cost of producing the merchandise. Commerce tests the reasonableness of

---

[34] *See* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a.
[35] *Id*. at "2Q18 Earnings Release: Derivative Transactions."
[36] *See Polyethylene Terephthalate Resin from the Republic of Korea: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48283 (September 24, 2018) (*Polyethylene Terephthalate Resin from Korea*), and accompanying IDM at Comment 3.
[37] *See Carbon and Alloy Steel Wire Rod from Spain: Final Determination of Sales at Less Than Fair Value, and Final Determination of Critical Circumstances, in Part*, 83 FR 13233 (March 28, 2018) (*Wire Rod from Spain*), and accompanying IDM at Comment 2.

the classification of expenses as extraordinary in accordance with U.S. GAAP, which prescribes that only events that are unusual in nature and infrequent in occurrence are classified as extraordinary.[38] Commerce has defined an event as "unusual in nature" if it is "highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the entity, in light of the entity's environment."[39] An event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future.[40]

Suzano's normal business operations include the production of pulp, paper, and tissue.[41] The acquisition of Fibria, a pulp producer, was an expansion of the company's normal pulp operations.[42] Suzano's derivative losses associated with the financing of the Fibria acquisition were not extraordinary (*i.e.*, unusual in nature and infrequent in occurrence). Suzano concedes that hedging against exposure to foreign currency fluctuations is a normal part of doing business in multiple currencies.[43] The more foreign denominated monetary assets and liabilities a company holds, the greater exposure to fluctuations against its home currency. In this case, Suzano is a highly leveraged company with large amounts of foreign denominated debt in its financing portfolio.[44] Suzano's use of derivative instruments to hedge its foreign currency exposure is not unusual in nature or infrequent in occurrence. Rather, it is a strategic part of

---

[38] *See Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005) (*Pasta from Italy*), and accompanying IDM at Comment 11.
[39] *See Wire Rod from Spain* IDM at Comment 2 (citing *Pasta from Italy* IDM at Comment 11); *see also, e.g.*, *Floral Trade Council of Davis, Cal. v. United States*, 16 CIT 1014, 1016 (1992) (*Floral Trade Council*).
[40] *Id*.
[41] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17. Suzano stated in n.1 of its audited financial statements that the company's operations include pulp, paper, and tissue production.
[42] *Id*. at "Management Report" (where Suzano states that with the merger of Fibria and Suzano, "Suzano is transformed into an even more competitive and robust company"); *see also* Suzano's Initial Section D Questionnaire Response at D-31.
[43] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17 at "Management Report"; *see also* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a ("1Q18 Earnings Release") (where Suzano states that "the current volatility in the BRL/USD exchange rate makes {derivatives} the most adequate strategy for protecting the Company's cashflow.").
[44] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17 at "Management Report."

capital management used by Suzano on a normal and frequent basis, evidenced by the fact that Suzano has a currency exposure policy which states that "Suzano carries out derivatives transactions exclusively for hedging" surplus cash.[45] If the company did not carry out these types of transactions on a normal and frequent basis, there would be no need for such a policy.

Suzano argues that because its acquisition of Fibria was unusual in nature and would not occur again, the derivative losses associated with the financing of the acquisition should also be considered unusual and infrequent.[46] We disagree. Although the acquisition of Fibria will not occur again (because the company was merged into Suzano), we find the acquisition of Fibria for expanding Suzano's normal operations is not unusual. Fibria's pulp operations are directly related to Suzano's normal and typical operations.[47] In addition, the hedging activities conducted by Suzano related to the financing of the acquisition are normal activities conducted by Suzano to hedge its foreign denominated assets and liabilities.[48] Commerce has previously found that costs related to mergers, un-mergers, and restructuring of a company's operations are not unusual in nature and, as such, has included those costs in the calculation of the products under review.[49] Moreover, Commerce has found that expenses related to a merger are not extraordinary, even in instances where such expenses are classified as exceptional or extraordinary in a respondent's financial statements.[50] Furthermore, Commerce's inclusion of restructuring costs related to a merger in a respondent's costs has been upheld by the Court.[51]

---

[45] *See* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a ("2Q18 Earnings Release" at "Derivative Transactions").
[46] *See Remand Order* at 1236.
[47] *See* Suzano's Initial Section D Questionnaire Response at D-31.
[48] *Id.* at Exhibit D-19a ("2Q18 Earnings Release: Derivative Transactions").
[49] *See, e.g.*, *Final Results of Antidumping Duty Administrative Review of Chlorinated Isocyanates from Spain*, 74 FR 50774 (October 1, 2009) (*Chlorinated Isocyanates from Spain*), and accompanying IDM at Comment 1; and *Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*Softwood Lumber from Canada 2002*), and accompanying IDM at Comment 16.
[50] *See Pasta from Italy* IDM at Comment 11.
[51] *See Corus Engineering Steels Ltd. v. United States*, 27 CIT 1286, 1298-1300 (2003) (*Corus*).

Despite Suzano's claims that the significant increase in its financial expenses makes those expenses extraordinary,[52] we submit that Commerce's definition of extraordinary (*i.e.*, unusual in nature and infrequent), as upheld by the Court, relates not to the *amount* of gain or loss but, rather, the *underlying event*, which caused the gain or loss.[53]

IV. INTERESTED PARTY COMMENTS

As noted above, Commerce released the Draft Results of Redetermination on October 13, 2022.[54] The petitioner and Suzano submitted comments on October 24, 2022.[55] The arguments of both parties are addressed below.

Petitioner Comments[56]

- In determining whether gains or losses should be considered investment-related, Commerce must look to the nature of the assets generating the gains or losses, not the nature of what the respondent intends to purchase with the proceeds therefrom.
- Commerce's finding that Suzano's acquisition of Fibria was not investment-related because Suzano is in the pulp and papermaking business and the acquisition represented an expansion of Suzano's pulp operations was unnecessary for Commerce's conclusion.
- Commerce's established practice has been to evaluate the nature of the assets being traded and how gains and losses from such trading are characterized under the GAAP of

---

[52] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17; *see also* Suzano's Initial Section D Questionnaire Response at Exhibit D-19. We note that although the Court states in its opinion that the derivative losses in question, "were more than one and a half times the sum of Suzano and Fibria's total expenses for the preceding year," the Court's reference to "total expenses" is unclear. While the derivative expenses did increase significantly, the derivative losses did not exceed Suzano's and Fibria's total expenses in 2018 (the sum of the companies cost of sales plus operating expenses and financial expenses) as reflected in the companies' financial statements.
[53] *See Floral Trade Council*, 16 CIT at 1016.
[54] *See* Draft Results of Redetermination.
[55] *See* Petitioner's Comments; *see also* Suzano's Comments.
[56] *See* Petitioner's Comments at 2-4.

the exporting country.[57] The relevant question in Commerce's prior administrative decisions has been whether the derivatives are investments or financial tools to manage cash, not whether any cash raised from derivatives trading was dedicated to finance manufacturing activity or, alternatively, equity investments in other companies.[58]

- In a previous case where derivative gains and losses were found by Commerce to be investment-related, the decision was based on Commerce's evaluation of the nature of the particular derivative instruments in question – not the respondent's intent to use the funds generated thereby to purchase equities or acquire other companies.[59]
- Linking financing expenses with particular activities or purchases is contrary to established practice.[60]
- The losses at issue here were incurred through Suzano's derivatives trading during 2018, not due to some decline in the value of Fibria (which had not even been acquired by the end of that fiscal year).

[57] *Id.* at 2 (citing, *e.g., Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review: 2019*, 86 FR 68471 (December 2, 2021), and accompanying IDM at Comment 15; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 35060 (July 1, 2021), and accompanying IDM at Comment 13; *Phosphor Copper from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 69720 (December 19, 2019), and accompanying IDM at Comment 4; *Polyethylene Terephthalate Resin from Korea* IDM at Comment 3; *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018), and accompanying IDM at Comment 7; *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017) (*Softwood Lumber from Canada 2017*), and accompanying IDM at Comment 32; and *Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017), and accompanying IDM at Comment 2).
[58] *Id*.
[59] *Id*. at 3 (citing *Softwood Lumber from Canada 2017* IDM at Comment 32).
[60] *Id*. (citing *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004) (*Softwood Lumber from Canada 2004*), and accompanying IDM at Comment 10 ("{B}ecause money is fungible, financing costs need not be allocated with respect to the specific purposes for which funds are used. This is one reason financial accounting does not typically associate financial expenses, such as interest expense, with particular activities, nor does it associate corporate debt with particular assets.")).

- Suzano's auditors properly classified the derivatives in question as financial instruments (rather than as investments) and appropriately characterized the relevant trading losses as financial expenses (rather than as investment expenses) under Brazilian GAAP. As such, section 773(f)(1)(A) of the Act requires that such losses also be captured within the financial expense component of COP for antidumping purposes.
- Suzano's derivatives trading was, by the company's own admission, a cash management tool – regardless of what purpose the cash generated thereby would later serve.

Suzano's Comments[61]

- Commerce's redetermination fails to consider the evidence that the Court instructed Commerce to review and is inconsistent with the agency's established practice and policies in identifying and excluding investment-related expenses and extraordinary expenses.
- Commerce now concedes that Suzano's audited financial statements and its quarterly earnings releases are consistent with each other and that both documents identify and quantify the specific derivative losses at issue are tied to the acquisition of Fibria.
- The audited financial statements and the quarterly earnings releases report the derivatives related to the Fibria acquisition separately from other derivatives because the Fibria-related derivatives were not part of the general financial operations of the company but were, instead, investment-related.[62]

---

[61] *See* Suzano's Comments at 4-12.

[62] *Id.* (citing *Remand Order* at 1234 ("Suzano's quarterly reports explicitly separated the incurred expenses related to the Fibria acquisition, including derivative losses.")).

- If the derivatives in question were part of the overall cash management operations of Suzano, as Commerce contends, there would have been no reason for Suzano's auditors to separately identify and segregate those amounts.
- Merely characterizing the losses at issue as related to hedging activities does not address the question of whether the hedging activities and related losses are related to an investment activity rather than the general operation of the company.
- The hedging activities and losses at issue here are related to a specific activity, the purchase for a very large sum of money of an entire company (Fibria) with a completely separate and independent business.
- Commerce has, for purposes of this remand, contrived a new argument concerning the nature of the Fibria acquisition itself. Commerce now claims that the acquisition of Fibria was not an investment for profit sharing purposes but, rather, an expansion of Suzano's pulp operations.
- Suzano's acquisition of Fibria was not an expansion of existing facilities and operations but, rather, a wholesale investment to acquire a separate company that is not even engaged in the production of subject merchandise.
- Commerce and the Courts have consistently recognized that transactions involving the gain or loss of entire companies or facilities are outside of a respondent's general operations.[63]
- In *Chlorinated Isocyanurates from Spain*, Commerce distinguished between the shutdown or disposal of certain product lines or assets within a facility or entity, and the closure of an entire facility. Commerce considered the former restructuring costs to be

[63] *Id*. at 6 (citing *Chlorinated Isocyanates from Spain* IDM at Comment 1).

related to the general operations of the company, whereas the latter sale of an entire facility or entity was unrelated to the company's general operations.[64]

- Commerce further clarified in *Chlorinated Isocyanurates from Spain* that respondents are not in the business of manufacturing and selling or disposing of entire production facilities and, therefore, the resulting gain or loss from the sale of disposal of an entire production facility generates non-recurring income or losses that are not part of a company's normal business operations and are unrelated to the general operations of the company.[65]
- In *Chlorinated Isocyanurates from Spain,* Commerce went a step further still in recognizing that the sale (or purchase) of a facility, much less an entire company, is not reasonably considered a part of the company's general operations.[66] As such, *Chlorinated Isocyanurates from Spain* supports the opposite conclusion to the one drawn by Commerce. Suzano's expenses related to the acquisition of an entirely separate company and business must, consistent with Commerce practice, be excluded from Suzano's COP.[67]
- The facts in *Corus* are easily distinguishable from this case. In *Corus*, the Court found that Commerce's determination to include restructuring costs resulting from the closure of a single furnace and a rolling mill (not an entire business or facility, but part of a facility) in the respondent's financial expenses was reasonable.[68] In acquiring Fibria, Suzano was not purchasing a single production line, or even a single facility but, rather,

[64] *Id*.
[65] *Id*. at 7.
[66] *Id*.
[67] *Id*. (citing *Softwood Lumber from Canada 2002* IDM at Comment 33; and *Chlorinated Isocyanates from Spain* IDM at Comment 1).
[68] *Id*. at 7-8 (citing *Corus*, 27 CIT at 1286, 1298-1300).

acquiring a different company in its entirety (in fact a company substantially larger than itself) with its own separate operations and facilities.

- Commerce does not explain how or why the subsequent merger of the acquired company alters the investment-related nature of the transaction. What has always been dispositive in Commerce's practice is whether a company (or facility) was purchased (or sold) in its entirety, not the corporate form of the acquisition.
- Commerce should treat Suzano's acquisition of Fibria the same way it consistently treats a closure of an entire facility, as a financial activity that is not part of the company's normal business operations but, rather, an investment activity properly excluded from Suzano's COP for the period.
- The acquisition of Fibria was a singular activity of enormous magnitude and significance that completely altered the size, scope, and nature of the combined entity's operations.
- While Suzano uses derivatives in the context of its general operations to hedge its foreign currency exposure, the mere existence of its hedging policy does not mean that every use of derivatives by Suzano is within Suzano's normal course of business or that such use is frequent or normal in occurrence.
- Even if Suzano specifically acquired currency hedges to reduce risk in a particular currency-denominated investment, that currency hedge would, under Commerce's proposed rule, *ipso facto* be considered part of Suzano's ordinary operations. This cannot be reconciled with Commerce's stated policy of evaluating whether the event at issue is infrequent in occurrence and is either abnormal or unrelated or incidentally related to the ordinary and typical activities of the entity in light of the entity's environment.[69]

[69] *Id*. at 10 (citing *Wire Rod from Spain* IDM at Comment 2).

- Notwithstanding the complementary nature of the investment in Fibria, Fibria and Suzano were separate legal entities and the primary businesses of the two companies remain separate.
- Commerce relies on Suzano's management statement that says, "the combination of two successful and globally relevant companies effectively creates opportunities to build a future with even greater capacity." This does not prove, in any form, that Suzano's acquisition of Fibria amounted to a simple expansion of Suzano's pre-existing business.
- Suzano's management statement refers to its operations as "the world's leading producer of eucalyptus pulp and Latin America's leading producer of printing & writing paper," properly characterizing the two businesses as distinct.
- While Suzano agrees the nature of the underlying event is directly relevant to Commerce's determination of whether an expense is extraordinary, the magnitude of the expenses in question compared to Suzano's normal business is an important measure of the significance of the event itself.
- Incentives paid to management after the merger of two companies, as in *Pasta from Italy*, are clearly distinct from Suzano's acquisition of the world's largest pulp manufacturer.[70]
- The acquisition of Fibria required an extraordinarily large value of financial resources dedicated to the transaction and Suzano incurred substantial derivative losses in the reporting period as a direct result of that financing. These specific and identifiable financial losses dwarf the financial expenses actually incurred by Suzano in the normal course of its papermaking business operations in this period, and Commerce's proposed inclusion of these extraordinary investment-related expenses would unquestionably

[70] *Id*. at 11 (citing *Pasta from Italy* IDM at Comment 11).

distort the calculation of Suzano's COP contrary to Commerce's statutory mandate that such expenses reasonably reflect the costs associated with production and sale of the merchandise.

- Commerce would not allow an extraordinary windfall that is unrelated to Suzano's ordinary operations to be used to offset actual current production costs; Commerce cannot reasonably include these extraordinary expenses in Suzano's costs.

Commerce's Position: We continue to find that the derivative losses incurred by Suzano are neither investment-related nor extraordinary in nature. Thus, we find it reasonable and appropriate to include the derivative losses in Suzano's financial expense rate calculation.

As an initial matter, we agree with the petitioner that Commerce considers money to be fungible.[71] As such, Commerce's practice in calculating the financial expense is to examine the nature of the financial assets and liabilities that generated the financial expenses, rather than the association of specific financial expenses with particular uses of the funds or activities.[72] Our discussion regarding Suzano's derivative losses and the association of the Fibria acquisition are in direct response to the Court's instructions that Commerce explain how Suzano's QE releases demonstrate the reasonability of Commerce's reliance on the Brazilian GAAP requirement that the derivative losses in question are ordinary operating expenses rather than extraordinary investment costs.

Section 773(f)(1)(A) of the Act mandates that costs shall normally be calculated based on the records of the exporter or producer, as long as those records are maintained in accordance with the home country GAAP and reasonably reflect the COP. Suzano's records, which reflect

---

[71] *See, e.g.*, *Stainless Steel Wire Rod from Taiwan; Final Results of Antidumping Duty Administrative Review*, 66 FR 52587 (October 16, 2001), and accompanying IDM at Comment 1; *see also Camargo Correa Metais, S.A. v. United States*, 17 CIT 897, 902 (1993) (where the Court has recognized the fungibility of financing funds).

[72] *See, e.g.*, *Softwood Lumber from Canada 2004* IDM at Comment 10.

the derivative losses as ordinary operating expenses, comply with Brazilian GAAP.[73] As discussed in detail in our response to the Court's order above, Suzano's QE releases support the Brazilian GAAP classification of the derivative losses as ordinary operating expenses, and the reasonability of such classification as ordinary operating expenses rather than investment-related expenses.

Suzano now argues that: (1) Commerce did not consider the evidence as directed by the Court; (2) the losses associated with the derivatives in question are investment-related because they are reported separately from other derivatives in Suzano's QE releases and financial statements; (3) its hedging policy does not indicate that every use of derivatives by Suzano is within Suzano's normal course of business or that its use is frequent or normal in occurrence; (4) characterizing the derivative losses at issue as related to hedging activities does not address the question of whether the hedging activities and related losses are related to an investment activity, rather than the general operation of the company; (5) the Fibria acquisition was the acquisition of a separate company and business and, as such, derivative losses in question should be excluded from Suzano's financial expenses; and (6) its derivative losses are extraordinary.

We disagree with Suzano's claim that Commerce's redetermination fails to consider the evidence that the Court instructed Commerce to review. Commerce's Draft Results of Redetermination specifically address Suzano's audited financial statements, QE releases, and other record evidence, as instructed by the Court.[74] Contrary to Suzano's allegations, after considering the evidence as required by the Court, our findings in the Draft Results of Redetermination are consistent with Commerce's practice regarding the classification of

[73] *See, e.g.*, Suzano's Initial Section A Questionnaire Response at Exhibit A-17.
[74] *See* Draft Results of Redetermination at 4-6.

expenses as either operating or investment expenses, as well as the classification of expenses as either ordinary or extraordinary.[75]

Next, Suzano claims that because the derivatives and the related losses in question are reported separately from other derivatives and the related losses in Suzano's financial statements and QE releases, the losses associated with the derivatives in question are investment related.[76] Suzano's claims misconstrue the record evidence. While the QE releases segregate Suzano's derivative losses, Suzano's audited financial statements do not segregate the losses.[77] The QE releases are not audited and, as such, the classification of the derivative losses in the QE releases cannot, therefore, be assumed to be accomplished by or substantiated by Suzano's auditors.[78] In addition, the fact that derivative instruments and the resulting gains or losses may be reported separately in the QE releases does not mean that some are related to normal operations while the others are investment-related. It simply means that the company may hold different derivative instruments.

Suzano then alleges that the mere existence of a hedging policy does not mean that every use of derivatives by Suzano is within Suzano's normal course of business or that its use is frequent or normal in occurrence. However, Suzano has not pointed to any evidence that states that the hedging policy cited in its QE releases is only used for specific purposes. Further, we find that evidence of hedging practices in all of the QE releases and Suzano's audited financial statements supports Commerce's conclusion that gains and losses on hedging activities is

---

[75] *See, e.g.*, *Steel Flat Products from Korea* IDM at Comment 14 (where Commerce defines investment activities as those activities that are not related to production but, rather, a separate profit-making activity); *see also Pasta from Italy* IDM at Comment 11.

[76] *See* Suzano's Comments at 5.

[77] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17; and Suzano's Initial Section D Questionnaire Response at Exhibit D-19a (QE releases).

[78] *See* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a. There is no auditor's report accompanying the QE releases nor is there any reference to Suzano's auditor in the QE releases.

frequent and normal in occurrence.[79] Suzano alleges that if it were to specifically acquire currency hedges to reduce risk in a particular currency-denominated investment, that currency hedge would, under Commerce's proposed rule, *ipso facto* be considered part of Suzano's ordinary operations. Suzano's hypothetical scenario is inapposite of Suzano's established policy for using derivative transactions. As the company's 2Q18 Earnings Release indicates:

> Suzano carries out derivatives transactions exclusively for hedging purposes. {Suzano's} currency exposure policy seeks to minimize the volatility of its cash generation and to impart greater flexibility to cash flow management. The policy currently stipulates that surplus dollars may be partially hedged … and matched with dollar inflows.[80]

Suzano itself has plainly indicated that it uses derivatives for the purpose of cash flow management, not to reduce risk in a particular currency-denominated investment as it hypothesized.

Suzano also claims that characterizing the derivative losses at issue as related to hedging activities does not address the question of whether the hedging activities and related losses are related to an investment activity rather than the general operation of the company. The record clearly establishes that the derivative losses at issue relate to currency hedging activity and Suzano's policy is to minimize its exposure to company-wide foreign currency risk. It is not tied to a specific activity or acquisition, rather, it is tied to the company-wide net exposure to holding foreign currency monetary assets or liabilities. As noted by the petitioner, while Commerce's practice is to look to the company-wide hedging activities themselves as part of the company's overall cash management, rather than the resulting reason for obtaining the debt against which the hedging is related, pursuant to the *Remand Order* we considered the QE releases and the

---

[79] *See* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a; *see also* Suzano's Initial Section A Questionnaire Response at Exhibit A-17 at Footnote 4. Footnote 4 shows evidence of derivative transactions for 2017 and 2018.

[80] *See* Suzano's Initial Section D Questionnaire Response at Exhibit D-19a.

facts therein.[81] As discussed extensively in the Draft Results of Redetermination, Suzano's acquisition of Fibria was an expansion of Suzano's current operations that include pulp production. Suzano asserts that as "Latin America's leading producer of printing & writing paper," Suzano's operations are different from Fibria, "the world's leading producer of eucalyptus pulp."[82] We do not find this argument to be persuasive or supported by the record. Suzano's audited financial statements specifically state that the company's operations include pulp, paper, and tissue production.[83] Moreover, the management report relied on by Suzano to support its argument, states that, "{w}ith 95 years of history, Suzano is a bio-based company that uses renewable resources to make pulp and paper from eucalyptus forests…"[84] The management report also states that, "{i}n 2018, net revenue from Suzano's pulp sales amounted to R$8.8 billion, advancing 27.4% on 2017."[85] This evidence supports the conclusion that Suzano and Fibria's pulp operations are comparable. We disagree with Suzano's claim that the management report cited by Commerce does not support the fact that the Fibria acquisition was an expansion of its operations. The management report clearly identifies Suzano as a pulp producer that also sells pulp, similar to the operations of Fibria.[86]

Suzano claims that Commerce has failed to explain how the resulting merger of Fibria alters the investment-related nature of the transaction. As we discussed in the Draft Results of Redetermination, Commerce defines investment activities as those activities not related to production but, rather, a separate profit-making activity.[87] Here, as discussed above, the merger

---

[81] *See, e.g.*, *Softwood Lumber from Canada 2004* IDM at Comment 10.
[82] *See* Suzano's Comments at 10-11.
[83] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17. Suzano stated in n.1 of its audited financial statements that the company's operations include pulp, paper, and tissue production.
[84] *Id*. at "Management Report: Innovation."
[85] *Id*. at "Management Report: Pulp Business Unit."
[86] *See* Suzano's Initial Section A Questionnaire Response at Exhibit A-17 at "Management Report: Innovation" and "Management Report: Pulp Business Unit."
[87] *See, e.g.*, *Steel Flat Products from Korea* IDM at Comment 14.

of Fibria is an expansion of Suzano's normal production operations, not a separate profit-making activity. Therefore, contrary to Suzano's characterization, Commerce has consistently stated that Fibria's acquisition was not investment related. Suzano relies on *Chlorinated Isocyanurates from Spain* as support for its argument that the Fibria acquisition was the acquisition of a separate company and business and, as such, Commerce should exclude the derivative losses in question from Suzano's financial expenses. We disagree. In *Chlorinated Isocyanurates from Spain*, Commerce denied the respondent's request to exclude certain gains and losses associated with the closure of a facility.[88] In that case, Commerce acknowledged that in instances where a respondent's entire production facility no longer exists or completely closed, the resulting gain or loss from the closure is unrelated to the general operations of the company.[89] Commerce denied the respondent's request because Commerce found that the facility was still being used for production purposes.[90] The facts here differ from *Chlorinated Isocyanurates from Spain.* Here, the losses in question are not associated with the closure of production facility but, rather, are derivative losses related to Suzano's hedging activities associated with the financing of Suzano's expansion of operations.

Suzano also tries to blur the lines with regards to Commerce's practice of not including gains or losses associated with the sale of an entire plant or facility in the general and administrative expense rate calculation with whether to include costs associated with acquiring a company or a new production facility. As explained in *Chlorinated Isocyanurates from Spain*, there is a substantial difference between selling facilities that are no longer operating and acquiring new production facilities to expand existing operations. Companies are "in the

---

[88] *See Chlorinated Isocyanates from Spain* IDM at Comment 1.
[89] *Id*. (citing *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005), and accompanying IDM at Comment 8).
[90] *See Chlorinated Isocyanates from Spain* IDM at Comment 1.

business of producing and selling commercial goods to consumers; they are not in the business of manufacturing and selling or disposing of entire production facilities."[91] A disposal or sale of an entire facility represents non-recurring income that is entirely separate from a company's normal business operations.[92] However, companies purchase production assets, whether it be through the acquisition of an established company like Fibria, or a new factory, with the intent to expand normal business operations. The cost of acquiring such production assets is clearly related to the general operations of the acquiring company and are different from any gain or loss resulting from the sale of a plant or facility. In this case the merger of Suzano and Fibria resulted in an expansion of Suzano's general operations.[93] More importantly, even though we continue to find Suzano's purchase of Fibria to be an expansion of its general operations, the derivative losses in question relate to Suzano's hedging activities and the financial derivatives (assets) used by Suzano as part of those activities and not to the acquisition of Fibria.[94]

Suzano then questions Commerce's determination that its derivative losses were not extraordinary. Suzano asserts that when determining whether an expense is extraordinary, Commerce must consider the magnitude of the event as an equally important measure of the significance of the event itself. Suzano also alleges that the facts in *Pasta from Italy*[95] do not relate to this case because incentives paid to management resulting from a merger cannot be

---

[91] *Id.* (citing *Softwood Lumber from Canada 2004* IDM at Comment 8).
[92] *Id.*
[93] *See, e.g.*, Suzano's Initial Section D Questionnaire Response at Exhibit D-19a.
[94] *Id.* Suzano also asserts that the facts in *Corus* are different from this case because the costs in question here relate to the purchase of an entire company where in *Corus* the restructuring expenses related to an electric arc furnace and a single rolling mill. Commerce's reliance on *Corus* as evidence that the Court has upheld Commerce's inclusion of restructuring costs related to mergers in the Draft Results of Redetermination was misplaced. The restructuring costs at issue in *Corus* related to the decommissioning of an electric arc furnace and rolling mill that produced non-subject merchandise. While the decision in *Corus* centers on the decommissioning of assets, Commerce's practice related to restructuring costs as a result of a merger is to include such expenses in a respondent's costs. *See Granular Polytetrafluoroethylene Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 87 FR 3722 (January 25, 2022), and accompanying IDM at Comment 5.
[95] *See Pasta from Italy* IDM at Comment 11.

compared to the acquisition of the "world's largest pulp producer." We disagree. As discussed in detail in the Draft Results of Redetermination, Commerce's definition of extraordinary (*i.e.,* unusual in nature and infrequent in occurrence), as upheld by the Court, relates not to the significance of the gain or loss but, rather, the underlying event, which caused the gain or loss.[96]

Suzano argues that the inclusion of its derivative losses would distort the calculation of Suzano's COP contrary to Commerce's statutory mandate that such expenses reasonably reflect the costs associated with the production and sale of merchandise. Suzano's argument is not based on the statute's requirement of reasonably reflecting the cost of producing merchandise as interpreted in Commerce's longstanding practices involving financial expenses, derivatives, investments, and extraordinary expenses discussed in the Draft Results of Redetermination. Instead, Suzano's argument is based on the magnitude of its derivative losses and the increase to its COP as a result of Commerce's inclusion of those derivative losses in the calculation the company's financial expenses. The statute does not quantify reasonableness.[97] The courts have mandated that where the statute is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to the discretion of Commerce.[98] Here, Suzano fails to establish where Commerce has interpreted the meaning of "reasonably reflect" to be based on the magnitude of an expense. Instead, Commerce has demonstrated in the Draft Results of Redetermination that it is reasonable to include Suzano's derivative losses based on Commerce's past precedent and the record in the underlying administrative review.

---

[96] *See Floral Trade Council*, 16 CIT at 1016.
[97] *See* section 773(f)(1)(A) of the Act.
[98] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012), and accompanying IDM at Comment 7.

Finally, we find Suzano's assertion that Commerce would not allow an extraordinary windfall that is unrelated to Suzano's ordinary operations to be used to offset actual current production costs to be unsupported conjecture by Suzano.

V. FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's *Remand Order*, and in consideration of the record evidence, Commerce has provided additional explanation and consideration regarding its decision not to modify Suzano's COP to exclude certain derivative expenses from the financial expense ratio. For the reasons explained above, we have made no changes to the *Final Results*, and Suzano's weighted-average dumping margin remains 32.31 percent.

11/14/2022

X

Signed by: LISA WANG

Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance