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May 10, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the Second  
Antidumping Duty Administrative Review: Certain Uncoated  
Paper from Brazil; 2017-2018

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting the second administrative review of the antidumping duty (AD) order on certain uncoated paper (uncoated paper) from Brazil. The review covers one producer/exporter of the subject merchandise: Suzano Papel e Celulose S.A. (Suzano Brazil) and Suzano Pulp and Paper America, Inc. (SPPA) (collectively, Suzano). The period of review (POR) is March 1, 2017, through February 28, 2018. We preliminarily find that sales of subject merchandise by Suzano were made at prices less than normal value during the POR.

## II. BACKGROUND

On March 5, 2018, Commerce published a notice of opportunity to request an administrative review of the AD order on uncoated paper from Brazil.<sup>1</sup> On April 2, 2018, Domtar Corporation and P.H. Glatfelter Company (the petitioners) requested that Commerce conduct a review of Suzano's exports during the POR.<sup>2</sup> Pursuant to this request, on May 2, 2018, Commerce published in the *Federal Register* the *Initiation Notice*.<sup>3</sup> On June 18, 2018, Commerce issued the AD questionnaire to Suzano. Between June 2018, and November 2018, Suzano timely responded to Commerce's original and supplemental questionnaires. On November 27, 2018,

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<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 9284 (March 5, 2018).

<sup>2</sup> See the Petitioner's Letter, "Uncoated Paper from Brazil: Request for Administrative Review," dated April 2, 2018.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 19215 (May 2, 2018) (*Initiation Notice*).



we extended the preliminary results until January 30, 2019.<sup>4</sup> However, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>5</sup> As a result, the revised deadline for the preliminary results of this administrative review became March 11, 2019. On March 7, 2019, we extended the preliminary results until April 11, 2019.<sup>6</sup> On April 9, 2019, we extended the preliminary results until May 10, 2019.<sup>7</sup>

### III. SCOPE OF THE ORDER

The merchandise covered by the order includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level<sup>8</sup> of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered “printed with final content” where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and

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<sup>4</sup> See Memorandum, “Second Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated November 27, 2018.

<sup>5</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>6</sup> See Memorandum, “Second Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated March 7, 2019.

<sup>7</sup> See Memorandum, “Second Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Third Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated April 9, 2019.

<sup>8</sup> One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. “Colored paper” as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### IV. DISCUSSION OF THE METHODOLOGY

##### Comparisons to Normal Value

Pursuant to section 773(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.414(c)(1) and (d), to determine whether Suzano's sales of the subject merchandise from Brazil to the United States were made at less than normal value, Commerce compared the export price (EP) or constructed export price (CEP) to the normal value as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this memorandum.

##### A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average normal values to weighted-average EPs (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.<sup>9</sup>

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>10</sup> Commerce finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

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<sup>9</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010–2011, 77 FR 73415 (December 10, 2012) and accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

<sup>10</sup> See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs, (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes or city and state names) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the

results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## B. Results of the Differential Pricing Analysis

For Suzano, based on the results of the differential pricing analysis, Commerce preliminarily finds that 27.53 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>11</sup> which does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method.<sup>12</sup> Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Suzano.

### Date of Sale

Section 351.401(i) of Commerce's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or

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<sup>11</sup> See Memorandum, "Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Preliminary Results Analysis Memorandum for Suzano Papel e Celulose S.A.," dated concurrently with this memorandum (Preliminary Analysis Memorandum) at 2-3.

<sup>12</sup> *Id.*

producer establishes the material terms of sale.<sup>13</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>14</sup>

Suzano reported the date of invoice to the first unaffiliated customer as the date of sale for both its home market sales and U.S. sales (EP).<sup>15</sup> As explained above, 19 CFR 351.401(i) states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. In this case, Suzano reported that the invoice date best represents the date of sale because, at that point, the material terms of the sale cannot be altered. Therefore, Commerce preliminarily has used the invoice date as the date of sale for Suzano, in accordance with our practice.

### Product Comparisons

In accordance with section 771(16) of the Act, Commerce considered all products produced and sold by Suzano in Brazil, as described in the "Scope of the Order" section of this notice, above, that were in the ordinary course of trade. Commerce compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, Commerce compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

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

### Export Price/Constructed Export Price

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

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<sup>13</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>14</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) and accompanying IDM at Comment 2.

<sup>15</sup> See Sections B and C Questionnaire Response, (August 6, 2018) at B-19 and C-16.

For certain of Suzano's U.S. sales, Commerce calculated EP based on a packed price to the first unaffiliated purchaser in the United States. Commerce also made adjustments for billing adjustments, credit expenses, and other direct selling expenses, as appropriate. Commerce made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling, and international freight.<sup>16</sup>

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

Suzano classified some of its sales of uncoated paper to the United States as CEP sales. Suzano reported that it sold the subject merchandise to its affiliated U.S. importer, Suzano Pulp and Paper America, Inc. (SPPA), which then re-sold the merchandise to the unaffiliated U.S. customer. Further, Commerce concluded that EP, as defined by section 772(a) of the Act, was not otherwise warranted. Commerce calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States.<sup>17</sup> Commerce made adjustments to the prices for billing adjustments, early payment discounts, and rebates. Commerce adjusted these prices for movement expenses, including foreign inland freight, foreign inland insurance, brokerage and handling incurred in the country of manufacture, U.S. brokerage and handling, international freight, U.S. inland freight, U.S. warehousing, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, Commerce also deducted selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (credit expenses, advertising expenses, and other direct selling expenses) and indirect selling expenses (inventory carrying costs and indirect selling expenses). In accordance with section 772(f) of the Act, Commerce calculated the CEP profit rate using the expenses incurred by Suzano and its U.S. importer/affiliate, SPPA, related to their sales of the foreign like product in the comparison market and their sales of the merchandise under consideration in the United States and the profit associated with those sales.<sup>18</sup>

## Normal Value

### A. Home Market Viability

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

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this review, Commerce determined that the aggregate volume of home market sales of the foreign like product for Suzano was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, Commerce used home market sales as the basis for NV for Suzano, in accordance with section 773(a)(1)(B) of the Act.<sup>19</sup>

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>20</sup>

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "{Commerce} may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."<sup>21</sup>

To test whether Suzano's home market sales to affiliated customers were made at arm's-length prices, Commerce compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, Commerce determined that the sales to that affiliated customer were at arm's-length prices.<sup>22</sup> Commerce excluded from its analysis all of Suzano's sales made to an affiliated customer for consumption in the home market where Commerce determined that these sales, on average, were not sold at arm's-length prices.<sup>23</sup>

#### C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>24</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

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<sup>19</sup> See Section A Questionnaire, (June 18, 2018) at Appendix A-1.

<sup>20</sup> See 19 CFR 351.403(c).

<sup>21</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

<sup>22</sup> See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

<sup>23</sup> See Preliminary Analysis Memorandum for a detailed discussion of the Arm's-Length-Test.

<sup>24</sup> See 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.<sup>25</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, Commerce examined the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>26</sup> Commerce considered the starting prices before any adjustments. For CEP sales, Commerce considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>27</sup>

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>28</sup>

In this review, Commerce obtained information from Suzano regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution.<sup>29</sup> Our LOT findings are summarized below.

Suzano reported that it made its home market sales through two channels-of-distribution, which are distinguished by the two sales divisions which made the sale: 1) Home Market Channel 1: Sales Office A sells directly to small retailers and end-users; and 2) Home Market Channel 2: Sales Office B sells directly to distributors and merchants.<sup>30</sup> As an initial matter, we note that the distinction for the two channels proposed by Suzano is by the sales office which made the sales, not based on commercial differences specific to these proposed channels.<sup>31</sup> Moreover, in examining Suzano's questionnaire responses in this review and based on Commerce's prior verification of Suzano from the underlying investigation, Commerce finds that the selling activities performed by Suzano to its customers in the home market in Channels 1 and 2 do not

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<sup>25</sup> See *id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 ("*OJ from Brazil*").

<sup>26</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>27</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>28</sup> See, e.g., *OJ from Brazil*, at Comment 7.

<sup>29</sup> See Sections B and C Questionnaire Response, (August 6, 2018) at B-38.

<sup>30</sup> The names of these selling units are proprietary. See Section A Response at 17.

<sup>31</sup> *Id.*

differ significantly.<sup>32</sup> Suzano has added no additional information on the record of this review which would disturb our prior finding. Therefore, as the selling activities are essentially the same in the two channels of distribution, Commerce continues to find that Suzano's home market sales are at a single level of trade.

In the U.S. market, Suzano made EP and CEP sales. For EP sales, Suzano sold the merchandise through one channel of distribution, sales to trading companies.<sup>33</sup> For EP sales, which are made on a Free on Board (FOB) Brazil or Cost and Freight (CFR) basis, Suzano's selling activities end at the port in Brazil. For CEP sales, Suzano sold the merchandise to its U.S. importer/affiliate, SPPA, through one channel of distribution, sales to distributors.<sup>34</sup> In contrast to the selling activities performed by Suzano for sales in Brazil, the record shows the relatively limited selling functions that Suzano performs for sales to its U.S. affiliate, SPPA. For CEP sales, which are sold to SPPA typically on a Cost, Insurance and Freight (CIF) basis, the selling activities of Suzano ends at the port in the United States. Suzano contends that sales to the United States constitute one level of trade because its selling functions for U.S. sales are minimal.<sup>35</sup> Therefore, Commerce considered Suzano's EP and CEP sales in the United States to constitute only one LOT.

Commerce compared the selling activities reported by Suzano at the EP and CEP LOT with its selling activities at the comparison market LOT. Commerce finds that the selling functions Suzano performed for its home market customers are virtually the same as those performed for its U.S. customers at the same relative level of intensity. The only difference is that Suzano provides loyalty rewards for home market customers and does not provide this service for EP/CEP sales. This difference is not sufficient to determine that Suzano's EP/CEP LOT is different from the home market LOT. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POR were made at the same LOT as Suzano's EP/CEP sales through all channels and determined no LOT adjustment was warranted.

Because of the totality of the facts and circumstances, we preliminarily determine that Suzano's home market LOT is not at a more advanced stage of distribution than its EP/CEP LOT through Channels 1 and 2, and thus, no LOT adjustment is necessary. Consequently, there is no basis for considering a CEP offset with respect to Suzano. Accordingly, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

#### D. Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request constructed value and cost of production (COP) information from respondent companies in all antidumping duty proceedings.<sup>36</sup> Accordingly, Commerce requested this information from Suzano in this review.

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<sup>32</sup> Because of the business proprietary information related to this analysis, for further discussion, *see* Preliminary Analysis Memorandum.

<sup>33</sup> *See* Section C Response at 33-34.

<sup>34</sup> *Id.* at 34.

<sup>35</sup> *Id.*

<sup>36</sup> *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015).

We examined Suzano's cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

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

We relied on the COP data provided by Suzano in its most recently submitted cost database for the COP calculation.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

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

#### E. Calculation of Normal Value Based on Comparison Market Prices

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

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, Commerce also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Commerce based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the merchandise under consideration.<sup>37</sup>

Commerce calculated the NV based on prices to unaffiliated customers. Commerce increased, where appropriate, the starting price to account for billing adjustments, in accordance with 19 CFR 351.401(c).<sup>38</sup> Commerce also made a deduction from the starting price for early payment discounts and rebates, pursuant to 19 CFR 351.401(c). Next, pursuant to section 773(a)(6)(B)(iii) of the Act, Commerce made further deductions for certain taxes, (*i.e.*, ICMS, PIS, and COFINS taxes) that were imposed directly on sales of the foreign like product, but not collected on sales of the merchandise under consideration.<sup>39</sup> Commerce did not deduct taxes, such as the IPI, ICMS ST, or INSS taxes, that were not imposed directly on sales of the foreign like product.

Commerce then adjusted the starting price for foreign inland freight to the distribution warehouse, foreign inland freight from distribution warehouse to the customer, inland insurance, and warehousing expenses, pursuant to section 773(a)(6)(B) of the Act. Next, Commerce made deductions pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410 for differences in circumstances of sale for home market credit expenses, royalties, bank charges, and other direct selling expenses. In accordance with 19 CFR 351.410(e), Commerce also made adjustments to Suzano's NV for indirect selling expenses and inventory carrying costs incurred in the comparison market. In accordance with sections 773(a)(6)(A) and (B) of the Act, Commerce also deducted home market packing costs, and added U.S. packing costs.

#### V. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

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<sup>37</sup> See 19 CFR 351.411(b); *see also* Preliminary Analysis Memorandum.

<sup>38</sup> See Preliminary Analysis Memorandum.

<sup>39</sup> See *Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 24524, 24526 (May 10, 2005) (where Commerce deducted PIS and COFINS taxes from home market prices that were compared to COP figures).

## VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

5/10/2019

**X** 

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Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance