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October 16, 2019

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping Duty Order on Certain Uncoated Paper from Brazil:
Issues and Decision Memorandum for the Final Results of
Administrative Review; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) determines that certain uncoated paper (uncoated paper) from Brazil is being sold at less than normal value during the period of review (POR) March 1, 2017 through February 28, 2018. We analyzed the comments of the interested parties. As a result of this analysis, we made certain changes to the margin calculations for the respondent, Suzano Papel e Celulose S.A./Suzano Pulp and Paper America, Inc. (collectively, Suzano). The weighted-average dumping margin is shown in the “Final Determination” section of the accompanying *Federal Register* notice. Below is the complete list of issues for which we received comments from the interested parties:

Comment 1: Adjustment for Home Market Credit Expenses
Comment 2: Treatment of Certain Taxes
Comment 3: Programming Issue in Suzano’s Margin Calculation

II. BACKGROUND

On May 17, 2019, Commerce published in the *Federal Register* the *Preliminary Results* of this antidumping duty (AD) administrative review.¹ We received case briefs from the petitioners and the mandatory respondent (Suzano) on June 17, 2019.² On June 24, we received a rebuttal brief

¹ See *Certain Uncoated Paper from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 22440 (May 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Petitioner’s Letter, “Certain Uncoated Paper from Brazil: Petitioners’ Case Brief,” dated June 17, 2019; see also Suzano’s Letter, “Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Suzano’s

from the mandatory respondent.³ On September 10, 2019, Commerce extended the time period for issuing the final results of this review by 30 days.⁴

III. SCOPE OF THE ORDER

The merchandise covered by this 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 level⁵ 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 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.

Case Brief,” dated June 17, 2019 (Suzano’s Case Brief).

³ See Suzano’s Letter, “Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Suzano’s Rebuttal Case Brief,” dated June 24, 2019.

⁴ See Memorandum\, “Certain Uncoated Paper from Brazil: Extension of Deadline for Final Results of Second Antidumping Duty Administrative Review”, dated September 10, 2019.

⁵ 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.

IV. DISCUSSION OF COMMENTS

Comment 1: Adjustment for Home Market Credit Expenses

The petitioners' Comments:

- No adjustment should be made for home market credit expenses (CREDITH), or at the very least, for any home market sales without a reported payment date (PAYDATEH).
- Suzano failed to provide payment dates and instead provided a “clearing date” from its internal accounting system. The burden of providing the necessary information to support a favorable CREDITH adjustment falls squarely on Suzano, in accordance with 19 CFR 351.401(b)(1).
- In the immediately preceding administrative review, Commerce found that Suzano’s reported home market payment dates, and CREDITH calculated therefrom, were unreliable and should be disregarded. The circumstances of this review are not materially different, because Suzano remains unable to report complete and accurate payment dates in the comparison market.
- If an adjustment is allowed for such sales, however, CREDITH should be recalculated such that payment days are based on Suzano’s reporting of the clearing date of such sales (CLEARDATEH) instead of the October 26, 2018, supplemental response date used in the preliminary results.
- Although Suzano claims to have calculated payment days based on the October 26, 2018, response date only for a portion of the home market sales that remained open as of that date, in fact it used October 26, 2018, for those home market sales without a PAYDATEH - even for those sales which have a reported CLEARDATEH. This significantly overstates CREDITH because it assumes home market sales remained unpaid for extremely long periods of time.
- In calculating CREDITH, Suzano multiplied its short-term borrowing rate by the payment days and by the “GRSUPRH + BILLADJH - DISCOUNTS.” This methodology overstates CREDITH, because GRSUPRH (gross unit price) includes VAT that Suzano collects on behalf of the government. To the extent that CREDITH is allowed for any sales, it should be recalculated such that VAT is deducted from GRSUPRH.

Suzano's Rebuttal Comments:

- The petitioners’ principal argument is that Commerce should disallow any of Suzano’s credit expenses reported on its sales in Brazil.
- Suzano’s home market database includes a large number of transactions. The size of the file alone makes a manual extraction of invoice-specific data impossible within the time available for an administrative review. At the petitioners’ request, Commerce requested that Suzano provide supporting documentation to demonstrate the accuracy of the dates on the file. Suzano provided such documentation. Thus, the submitted payment date data provide a reasonable basis on which to calculate a credit expense if Commerce were to reject the submission date methodology used by Suzano in its response.
- If Commerce makes any modification to the reported expense, Commerce should use customer-specific averages as the most appropriate revision, or less preferably, Commerce could rely on clearing date.

Commerce’s Position: Commerce disagrees that no adjustment should be made for Suzano’s reported home market credit expenses for these final results. As an initial matter, pursuant to 19 CFR 351.401(b), in making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the principle that the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment. While Suzano did not provide the requested payment date for all home market sales in order to calculate their home market credit expenses, for the majority of sales, Suzano did provide what they refer to as a “clearing date.”⁶ For those sales that had both a reported payment date and a clearing date, the two reported dates were identical for 98 to 99 of the relevant sales. Thus, record information shows that the “clearing date” represents a reasonable proxy for the payment date when the actual payment date could not be determined from Suzano’s books and records.

Normally, there is a period of time between the shipment of merchandise to a customer and the payment for the merchandise. The imputation of credit cost reflects the time value of money and should be reasonably calculated to account for such value during the period between shipment and payment. If actual expenses are unavailable, we impute the cost of credit to account for the opportunity cost associated with the loss of the use of the monies for sales in both the United States and the comparison market by calculating the number of days between the shipment date and the payment date. Accordingly, Commerce will adjust Suzano’s home market credit expenses for those sales with missing payment dates, but for which Suzano was able to report a clearing date, and will instead use the clearing date as the date of payment. For those sales without a reported payment or clearing date, Commerce will continue to use October 26, 2018, the date of the supplemental response, as the date of payment; we find that this date represents a reasonable approximation of payment date in lieu of an actual payment date or Suzano’s reported clearing date, and it is consistent with our approach in other cases (*e.g.*, *Certain Lined Paper Products from India*).⁷ Regarding VAT taxes, Suzano calculated its credit expenses by adding the gross unit price, which already includes VAT, and billing adjustments, minus any discounts, thus overstating the credit expenses CREDITH field. For these reasons, Commerce is making an adjustment to deduct VAT taxes from the GRSUPRH in the recalculation of credit expenses, because Suzano does not incur any actual, or imputed, credit expenses on the VAT taxes that are included in the gross unit price.⁸

Comment 2: Treatment of Certain Taxes

The petitioners’ Comment:

- Suzano reported INSS taxes as indirect selling expenses in the field INDIRS2H. No adjustment should be made, however, for INSS taxes, for the reasons explained in the final results of the first administrative review of this proceeding where Commerce rejected Suzano’s argument that INSS taxes should be deducted as indirect selling expenses.

⁶ In its supplemental response, Suzano explained that the “clearing date” was recorded in its SAP system when a receivable was recognized as having cleared.

⁷ See *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 77 FR 14729 (March 13, 2012), and accompanying IDM at Comment 3 (*Lined Paper from India*).

⁸ See Memorandum, “Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Final Results Analysis Memorandum for Suzano Papel e Celulose S.A.,” dated concurrently with this memorandum (Final Analysis Memorandum).

Suzano's Comments and Rebuttal Comments:

- The petitioners are relying on Commerce's final results from the first administrative review. The petitioners argue that the payment of the INSS taxes by Suzano does not constitute a selling expense for Suzano. The final results of the first administrative review are incorrect and should not be followed in this review. This expense should be deducted as an indirect selling expense as part of a CEP offset by deducting INDIRS2H from normal value.
- INSS tax is an expense incurred by Suzano on the sale of subject merchandise in Brazil, and it is no different than any of the other selling-related expenses incurred by Suzano on the sales of subject merchandise in Brazil. Not only is the amount of the INSS tax recorded and a provision made at the time of sale, but according to Brazilian law, the provision for the INSS reduces the gross sales composing the net sales. INSS taxes are incurred only on revenue associated with sales in Brazil; they are not incurred or paid on revenue associated with export sales. Even if Commerce continues to conclude that the INSS expense does not qualify as a circumstance of sale adjustment, there can be no doubt that this is a selling expense incurred on Suzano's sales in Brazil. At the very least, it should be deducted as an indirect selling expense as part of a CEP offset.
- As to other types of taxes, in the *Preliminary Results*, Commerce accurately granted the deduction of certain taxes as selling expenses in its calculations, then seems to have mistakenly stated that it would not grant the corresponding deductions in the accompanying I&D Memo.
- Commerce then stated that it "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." This is incorrect. The IPI and ICMS ST operate identically to the ICMS, PIS, and COFINS taxes and Commerce has always deducted them from the gross unit price.
- Similar to the ICMS, PIS, and COFINS taxes, and as recognized by Commerce in the investigation and the first review of this proceeding, IPI and ICMS ST taxes are directly listed in the invoice to the customer, and it is clear that they are imposed directly on sales of the foreign like product and should be deducted as a direct selling expense.
- Commerce deducted IPI and ICMS ST taxes in its calculations but noted in the preliminary decision memorandum that it would not deduct them. Commerce should revise the language describing these deductions in the decision memorandum to match its calculations and prior treatment of these taxes and confirm that these IPI and ICMS ST taxes should be considered direct selling expenses.

Commerce's Position: Pursuant to section 773(a)(6)(B)(iii) of the Act, Commerce adjusts for any taxes imposed directly upon the foreign like product, which have been rebated or not collected on subject merchandise, to the extent that such taxes are added to or included in the price of the foreign like product.⁹ Additionally, 19 CFR 351.102(b)(28) defines an "indirect tax" as a tax on "sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge." Commerce notes that it has previously regarded other taxes included in Suzano's invoice to the home market customer, such as PIS and COFINS, by considering them as "indirect taxes" that

⁹ See *Lined Paper from India* at Comment 6.

should be deducted from the home market price charged to the customer because they are paid directly by the buyer as part of the sales price.¹⁰ In *Cold-Rolled Carbon Steel Flat Products from Brazil*, Commerce clarified that “indirect taxes” are similar to sales taxes or value-added taxes because “indirect taxes” are paid directly by the buyer as part of the sales price.¹¹ Commerce disagrees with Suzano that the INSS taxes are imposed directly upon the foreign like product and included in the reported gross unit price in its home market sales and should, therefore, be deducted as an “indirect tax,” pursuant to section 773(a)(6)(B)(iii) of the Act, for these final results.

As Commerce found during the investigation and in the first administrative review, the Brazilian tax authority assesses INSS taxes on a gross revenue basis.¹² Commerce notes that Suzano paid the INSS taxes to the Brazilian government on the gross revenue of its domestic sales and that this tax was not directly paid by the buyer as part of the sales price.¹³ Suzano’s arguments in this review confirm that the INSS tax is a “direct tax” on Suzano’s gross revenue of domestic sales.¹⁴ Specifically, Suzano describes that the INSS taxes are accrued internally in Suzano’s accounting system and are reconciled internally in its bookkeeping, rather than directly collected from sales of foreign like product and passed onto the government.¹⁵ In addition, Suzano conceded in the first administrative review that the INSS taxes were not included in the commercial invoice paid by the home market customer, where the commercial invoice included the other taxes and Commerce made adjustments for these other taxes.¹⁶ Pursuant to 19 CFR 351.102(b)(16), “direct taxes” are taxes on “wages, profits, interests, rents, royalties, and other forms of income.” In *Cut-to-Length Carbon Steel Plate From Brazil*, Commerce explained that a tax on total gross monthly revenue, which is similar to profit and wages as listed in examples in 19 CFR 351.102(b)(16), constituted a direct tax and not an indirect tax imposed directly on the sale of the foreign like product.¹⁷ Similarly, in this review, the record demonstrates that it is Suzano that pays the INSS taxes on its gross revenue.¹⁸ Based on the record of this review, Suzano has not imposed the INSS taxes directly upon its sales of the foreign like product, such that INSS taxes are added to or included in the price of the foreign like product and then collected from the domestic buyers.

¹⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 62134 (October 3, 2002), and accompanying IDM at Comment 2 (*Cold-Rolled Carbon Steel Flat Products from Brazil*).

¹¹ See *Cold-Rolled Carbon Steel Flat Products from Brazil* at Comment 2.

¹² See *Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115 (January 20, 2016) (*Investigation Final*) and accompanying IDM at Comment 6; see also *Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2015-2017*, 83 FR 52804 (October 10, 2018), and accompanying IDM at Comment 3.

¹³ *Id.*

¹⁴ See Suzano’s Case Brief at 5-6.

¹⁵ *Id.* at 3.

¹⁶ See *Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2015-2017*, 83 FR 52804 (October 10, 2018), and accompanying IDM at Comment 3.

¹⁷ See *Certain Cut-To-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744 (March 16, 1998), and accompanying IDM at Comment 1.

¹⁸ See Suzano’s August 6, 2019 Initial Section B Response at 28-33.

Commerce also disagrees with Suzano's suggestion that the INSS taxes should be deducted as a circumstance of sale adjustment for its reported home market sales, pursuant to section 773(a)(6)(C)(iii) of the Act, as we also did in the investigation.¹⁹ Specifically, 19 CFR 351.401(b) provides that a circumstance of sale adjustment may be made only for direct selling expenses, such as commissions, credit expenses, etc., and assumed expenses that are selling expenses assumed by the seller on behalf of the buyer, such as advertising expenses. Commerce notes that the INSS taxes that Suzano reported for its home market sales are a tax on gross sales revenue paid by Suzano directly to the Brazilian government and are not a direct selling expense or assumed expense.²⁰ Additionally, Suzano failed to provide any Court or Commerce precedent in support of its argument to treat its reported INSS taxes as a circumstance of sale adjustment.

Commerce additionally disagrees with Suzano that the INSS taxes should be deducted as an indirect selling expense for its reported home market sales in the final results. As determined in the investigation, and now in the current review of this proceeding, Commerce notes that the INSS taxes that Suzano reported for its home market sales are a tax on gross sales revenue paid by Suzano directly to the Brazilian government and not a selling expense.²¹ Suzano provided no explanation or record evidence as to how the INSS taxes meet Commerce's statutory or regulatory requirements to qualify as an appropriate adjustment as an indirect selling expense. Therefore, we have not deducted INSS taxes from Suzano's gross unit price of home market sales for these final results.

Finally, in the *Preliminary Results*, we stated in the preliminary decision memorandum that we would not deduct ICMS, PIS, and COFINS taxes from the gross unit price; this was at odds with our calculations.²² Our intent was to deduct these taxes from gross unit price. As such, we are correcting our language in these final results in order to accurately reflect our calculations. Similarly, Commerce is revising its statement from the *Preliminary Results* regarding IPI and ICMS ST taxes to reflect our calculations in which we deducted certain taxes such as the IPI and ICMS ST. Therefore, Commerce will continue to deduct ICMS, PIS and COFINS taxes from the gross unit price, as a direct selling expenses, in the margin calculation, consistent with the investigation and the first administrative review.²³

¹⁹ See *Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115 (January 20, 2016) (*Investigation Final*), and accompanying IDM at Comment 6.

²⁰ See Suzano's Initial Section B Response at 28-33; see also *Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2015-2017*, 83 FR 52804 (October 10, 2018), and accompanying IDM at Comment 3.

²¹ *Id.*

²² See *Preliminary Results*.

²³ See *Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115 (January 20, 2016) (*Investigation Final*) and accompanying IDM at Comment 6; see also *Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2015-2017*, 83 FR 52804 (October 10, 2018), and accompanying IDM at Comment 3.

Comment 3: Programming Issue in Suzano's Margin Calculation

The petitioners' Comment:

- In the *Preliminary Results*, Commerce incorrectly set February 28, 2017 as the first day of the window period in the margin calculation, causing U.S. and home market sales to match in the wrong months. The correct date for the first day of the window period is December 1, 2016. Commerce should correct this error in the margin program.

Suzano did not comment on this issue.

Commerce's Position: Commerce agrees with the petitioners that the first day of the window period was inadvertently set to the wrong date. For the final results, Commerce corrected this error in the margin calculation.²⁴

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margin in the *Federal Register*.



Agree



Disagree

10/16/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²⁴ See Final Analysis Memorandum.