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December 28, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Negative Determination in the Less-Than-Fair-Value Investigation of Wood Mouldings and Millwork Products from Brazil

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I. SUMMARY

The Department of Commerce (Commerce) finds that wood mouldings and millwork products (millwork products) from Brazil are not being, or are not likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2019 through December 31, 2019.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

Comment 1: Whether Commerce Should Treat All Three Mandatory Respondents as Affiliates and Collapse Them into a Single Entity
Comment 2: Whether Commerce Should Revise Its CV Profit Calculation
Comment 3: Whether Araupel's Log Valuations Are Inaccurate and Do Not Reflect an Accurate Market Price
Comment 4: Whether Commerce Should Recalculate the Fair Value Adjustment for Araupel's Costs for Biological Assets Consumed during the POI
Comment 5: Whether Commerce Incorrectly Decreased Araupel's Costs for Biological Assets Not Consumed during the POI
Comment 6: Whether Commerce Should Apply the Major Input Rule to Araupel's Log Purchases

[1] *See Wood Mouldings and Millwork Products from Brazil: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 85 FR 48667 (August 12, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 7: Whether Unreconciled Costs Should Be Allocated to Production Costs
Comment 8: Whether Araupel's Non-Prime Merchandise Should Be Assigned Full Production Costs
Comment 9: Whether Commerce Should Use the Federal Reserve's Small Business Lending Survey Short-Term Interest Rate to Calculate Araupel's Credit Expenses
Comment 10: Whether Commerce Should Use the Earlier of the Shipment Date or Commercial Invoice as Braslumber/BrasPine's Date of Sale
Comment 11: Whether the Date of Sale Should Be Consistent Between the Mandatory Respondents
Comment 12: Whether Commerce Should Include Araupel's Reported Other Revenue

II. BACKGROUND

On August 12, 2020, Commerce published in the *Federal Register* its preliminary negative determination in the LTFV investigation of millwork products from Brazil.[2] On September 11, 2020, pursuant to 19 CFR 351.310(c), the petitioner,[3] Araupel S.A. (Araupel), Braslumber Industria de Molduras Ltda. (Braslumber), and Braspine Madeiras Ltda. (BrasPine) requested that Commerce hold a public hearing.[4]

Commerce was unable to conduct on-site verification in this investigation for reasons beyond its control. However, Commerce took additional steps in lieu of on-site verification and, on October 14, 2020, we issued a post-preliminary determination questionnaire to Araupel and Braslumber/BrasPine[5] to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[6] On October 22, 2020, we received a response from Araupel and Braslumber/BrasPine to our post-preliminary determination inquiry.[7] On November 4, 2020, we invited parties to comment on the *Preliminary Determination* and the October 22, 2020 responses to Commerce's in-lieu of on-site verification questionnaires.[8] On November 13, 2020, we received case briefs from the petitioner, Araupel, and Braslumber/BrasPine.[9] On

[2] *See Preliminary Determination.*
[3] The petitioner is the Coalition of American Millwork Producers, which is comprised of Bright Wood Corporation; Cascade Wood Products, Inc.; Endura Products, Inc.; Sierra Pacific Industries; Sunset Moulding; Woodgrain Millwork Inc.; and Yuba River Moulding.
[4] *See* Petitioner's Letter, "Wood Mouldings and Millwork Products from Brazil: Request for Hearing," dated September 11, 2020; Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Request for Hearing," dated September 11, 2020; and Braslumber/BrasPine's Letter, "Antidumping Duty Investigation of Wood Mouldings and Millwork Products from Brazil: BrasPine/Braslumber's Request for Hearing," dated September 11, 2020.
[5] We note that Braslumber and BrasPine presented themselves as a single entity in all their submissions to Commerce. Therefore, for ease of reference, we refer to these two mandatory respondents jointly as Braslumber/BrasPine in this decision memorandum. As explained in greater detail in Comment 1, we have collapsed Araupel, Braslumber, and BrasPine as a single entity in this final determination. We refer to the collapsed entity consisting of the three mandatory respondents as Araupel/Braslumber/BrasPine.
[6] *See* Commerce's Letters, dated October 14, 2020.
[7] *See* Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Verification Questionnaire Response," dated October 22, 2020 (Araupel In-Lieu-of Verification Response); and Braslumber/BrasPine's Letter, "Antidumping Duties on Imports of Wood Mouldings and Millwork Products from Brazil: BrasPine/Braslumber's Response to the Department's Questionnaire in Lieu of Verification," dated October 22, 2020.
[8] *See* Commerce's Letter, dated November 4, 2020.
[9] *See* Petitioner's Letter, "Wood Mouldings and Millwork Products from Brazil: Case Brief," dated November 13, 2020 (Petitioner Case Brief); Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Case Brief

November 23, 2020, we received rebuttal briefs from the petitioner, Araupel, and Braslumber/BrasPine.[10] On December 15, 2020, the petitioner, Araupel, and Braslumber/BrasPine withdrew their hearing requests.[11] On December 16, 2020, we held ex-parte meetings with the petitioner, Araupel, and Braslumber/BrasPine.[12]

III. CHANGES FROM THE PRELIMINARY DETERMINATION

We calculated export price (EP), constructed value (CV), and cost of production (COP) for Araupel/Braslumber/BrasPine using the same methodology as stated in the *Preliminary Determination*, except as follows:

1. We adjusted Araupel's fair value of wood cost field to account for an unreconciled difference between the total cost from the financial accounting system and the total reported cost.[13]

2. We adjusted the total costs that Araupel assigned to semi-finished blanks in its overall cost reconciliation to reflect the actual rather than estimated amounts and allocated the difference to finished products.[14]

3. We adjusted the total costs that Araupel assigned to non-prime products to reflect market values and allocated the difference to prime products.[15]

4. We adjusted the CV profit rate to exclude financial income that was generated on investments.[16]

for Araupel S.A.," dated November 13, 2020 (Araupel Case Brief); and Braslumber/BrasPine's Letter, "Antidumping Duty Administrative Investigation of Wood Mouldings and Millwork Products from Brazil: Case Brief for BrasPine/Braslumber," dated November 9, 2020 (Braslumber/BrasPine Case Brief).

[10] *See* Petitioner's Letter "Wood Mouldings and Millwork Products from Brazil: Rebuttal Brief," dated November 23, 2020 (Petitioner Rebuttal Brief); Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Rebuttal Brief for Araupel S.A.," dated November 23, 2020 (Araupel Rebuttal Brief); and Braslumber/BrasPine's Letter, "Antidumping Duty Administrative Investigation of Wood Mouldings and Millwork Products from Brazil: Rebuttal Brief for BrasPine/Braslumber," dated November 23, 2020 (Braslumber/BrasPine Rebuttal Brief).

[11] *See* Petitioner's Letter, "Wood Mouldings and Millwork Products from Brazil: Withdrawal of Hearing Request," dated December 15, 2020; Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Withdrawal of Request for Hearing," dated December 15, 2020; and Braslumber/BrasPine's Letter, "Antidumping Duty Investigation of Wood Mouldings and Millwork Products from Brazil: BrasPine/Braslumber's Withdrawal of Request for Hearing," dated December 15, 2020.

[12] *See* Memorandum, "Ex-Parte Meeting with the Petitioner's Counsel," dated December 17, 2020; Memorandum, "Ex-Parte Meeting with Counsel for Araupel S.A.," dated December 17, 2020; and Memorandum, "Ex-Parte Meeting with Counsel for Braslumber/BrasPine," dated December 17, 2020.

[13] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," dated December 28, 2020 (Araupel/Braslumber/BrasPine Final Cost Memo) at 1.

[14] *Id.* at 2.

[15] *Id.*

[16] *Id.*

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Treat All Three Mandatory Respondents as Affiliates and Collapse Them into a Single Entity

Braslumber/BrasPine's Case Brief:

- Commerce should not collapse Braslumber/BrasPine with Araupel in its final determination. In *Prosperity Tieh Enterprise*, the Federal Circuit stated that, "{w}hen Commerce promulgated 19 CFR 351.401(f), it emphasized that collapsing requires a 'significant' potential for manipulation: The suggestion that Commerce collapse upon finding any potential for price manipulation would lead to collapsing in almost all circumstances in which Commerce finds producers to be affiliated. This is neither the Department's current nor intended practice." Commerce should therefore ensure that it applies this regulation as directed by its reviewing court.[17]
- Commerce should continue to collapse Braslumber and BrasPine into a single entity. Braslumber and BrasPine are affiliated under the terms of section 771(33) of the Act. Both Braslumber and BrasPine have virtually identical ownership structure with four family holding companies owning a majority of Braslumber and BrasPine. Braslumber and BrasPine also produce subject merchandise and there is no substantial retooling of the production facilities. Braslumber and BrasPine also have a high degree of overlap with both companies sharing the same Board of Directors, Management team, and Plant Director. Additionally, Braslumber and BrasPine's sales and operations are closely intertwined and effectively act as a single entity.[18]
- The level of common ownership between Braslumber/BrasPine and Araupel does not support collapsing these companies. Braslumber/BrasPine does not directly own any shares of Araupel, nor does Araupel own any direct shares of Braslumber/BrasPine, nor does it own any of the shares of the four holding companies that own Braslumber/BrasPine.[19] Additionally, no individual shareholders in Braslumber/BrasPine own any shares in Araupel, and no individual shareholders of Araupel own shares in Braslumber/BrasPine.[20] The only way that Commerce could make a finding of meaningful "common ownership" is by expanding the analysis to include the entire family, but this analysis is not supported by the purpose of the regulation.[21]
- Braslumber/BrasPine have no overlapping board members or management teams. The plain language of Commerce's regulation does not ask whether members of the same extended family sit on the boards of the companies to be collapsed, or share management

[17] *See* Braslumber/BrasPine Case Brief at 2-3 (citing *Prosperity Tieh Enter. Co. v. United States*, 965 F.3d 1320, 1323-24 (CAFC 2020)).
[18] *See* Braslumber/BrasPine Case Brief at 4 (citing Braslumber/BrasPine's Letters, "Antidumping Duty Investigation of Wood Moulding and Millwork from Brazil: BrasPine/Braslumber's Response to Section A of the Department's Questionnaire," dated April 8, 2020 (Braslumber/BrasPine AQR) at 9, 13-14, and Exhibits A-2a, A-2c, and A-7c1).
[19] *Id.* at 6.
[20] *Id.*
[21] *Id.* at 7 (citing *Certain Corrosion-Resistant Steel Products From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 83 FR 39679 (August 10, 2018) and accompanying PDM at 1-2 and 7, unchanged in *Certain Corrosion-Resistant Steel Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018)).

responsibilities. Rather, Commerce's regulation is focused on whether the same specific individuals occupy these overlapping posts, "{t}he extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm."[22]

- The family members in the family group who serve on board and managerial positions at Braslumber/BrasPine and Araupel are not members of a direct nuclear family, but are distant cousins, and further, the business operations are completely separated, leaving no room for the manipulation of price and production by these family members.[23]
- Commerce accurately concluded that "Araupel does not appear to have intertwined operations with Braslumber and BrasPine," meaning that Commerce's determination to collapse these entities was made solely on the bases of common ownership, and shared management or board membership. Additionally, Araupel and Braslumber/BrasPine do not share pricing information, customer lists, or commercial strategies and do not jointly engage in sales calls with common customers. Furthermore, Braslumber/BrasPine are competitors, directly competing for the same major customers.[24]
- Treating Braslumber/BrasPine and Araupel as a single entity is contrary to Commerce's policy rationale for collapsing. The U.S. Court of International Trade (CIT) has stated, "{t}he policy rationale behind collapsing is to prevent affiliated exporters with same or similar production capabilities to channel production of subject merchandise through the affiliate with the lowest potential dumping margin and thereby circumvent the United States antidumping law."[25] BrasPine/Braslumber is largely if not exclusively dedicated to the production of the subject merchandise for export to the United States. Braslumber/BrasPine's capacity constraints would prevent it from increasing production to absorb Araupel's U.S. sales, and its concentration of sales in the United States would prevent it from shifting sales from its home or third country markets to the United States. to take over Araupel's U.S. sales.[26]

Petitioner's Case Brief:

- The record of this investigation fails to demonstrate that Araupel and Braslumber/BrasPine can exercise control over one another such that they are affiliated pursuant to section 771(33)(F) of the Act. Control does not exist simply because the companies have some minor familial relationships in common. Instead, Commerce is instructed to only find control where the corporate or family relationship impacts production, pricing, or cost decisions. The CIT has found that a family grouping cannot just exist, but it also has to impact the business decisions of entities in the family grouping.[27]
- Commerce's regulations also state that Commerce "will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product."[28]

[22] *Id.* at 8-9.
[23] *Id.* at 11.
[24] *Id.* at 12.
[25] *Id.* at 13 (quoting *Slater Steels Corp. v. United States*, 279 F. Supp. 2d 1370, 1376 (CIT 2003)).
[26] *Id.* at 13.
[27] *See* Petitioner Case Brief at 7 (citing *Echjay Forgings Private Limited v. United State*s, Court No. 18-00230, 2020 WL 5959911 at *9 (CIT 2020) (*Echjay Forgings*)).
[28] *Id.* (citing 19 CFR 351.102(b)(3)).

- The CIT in *Echjay Forgings* found that "Commerce must also find that family grouping to share a common interest or consist of relationships that could impact business decisions of family owned companies." The CIT further explained that "Commerce may not automatically find affiliated family members to be a person under subsection (F) but must instead address the evidence presented by {respondents}."[29]
- Braslumber/BrasPine consistently detailed throughout its questionnaire responses that despite the minority direct and indirect interests, the company retains complete control of its own operations.[30] Araupel also repeatedly described its business as being distinct from Braslumber/BrasPine throughout its questionnaire responses.[31] The record also demonstrates that Araupel and Braslumber/BrasPine make pricing and production decisions independently of each other, such that any ownership interest in the companies would not affect their business making decisions.[32]
- The lack of intertwined operations among the mandatory respondents show there is not a significant potential to manipulate prices or production. Araupel and Braslumber/BrasPine maintain clear operational and legal distinctions and share no production processes or employees that would indicate that they are under common control. Braslumber/BrasPine has reported that it does not share mangers or employees with Araupel, and it maintains separate facilities in different production locations from Araupel. Araupel has reported that it maintains separate financing with separate purchasing operations, sales and distribution operations. Araupel further reported that it "does not share sales information, customer lists, cost and production information, or research and development information with Braslumber/BrasPine and there is no shared involvement between the companies in production, pricing, and sales decisions."[33]
- Araupel and Braslumber/BrasPine are not controlled by a common interest, but rather are distinct companies that operate independently, and often against each other's interests, in the marketplace. Braslumber/BrasPine reported that it pursues entirely separate commercial strategies and does not share pricing information, customer lists or commercial strategies, and it does not make joint sales calls with common customers."[34] Braslumber/BrasPine further reported that in the U.S. market, Braslumber/BrasPine and Araupel are frequent competitors and that it "is routinely informed by major customers that its prices are being compared with those from Araupel, and has also been informed that it has lost sales to Araupel."[35] Accordingly, if Araupel and Braslumber/BrasPine

[29] *Id.* at 9 (citing *Echjay Forgings* at *9).
[30] *Id.* at 12-13 (citing Braslumber/BrasPine's AQR at 10 and 15-16.; Braslumber/BrasPine's Letters, "Antidumping Duties on Imports of Wood Mouldings and Millwork Products from Brazil: BrasPine/Braslumber's Section A of the Department's Supplemental Questionnaire," dated June 5, 2020 (Braslumber/BrasPine SAQR) at 2; and "Antidumping Duties on Imports of Wood Mouldings and Millwork Products from Brazil: BrasPine/Braslumber's Section A of the Department's Second Supplemental Questionnaire," dated July 16, 2020 (Braslumber/BrasPine 2AQR) at 2).
[31] *Id.* at 12, and 14-15 (citing Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Section A Initial Questionnaire Response of Araupel S.A.," dated April 8, 2020 (Araupel AQR) at A-8 ─ A-9 and A-13 ─ A-14).
[32] *Id.* at 15 (citing Memorandum, "Less-Than-Fair-Value Investigation of Wood Mouldings and Millwork Products from Brazil: Preliminary Affiliation and Collapsing Determination for Araupel S.A., Braslumber Industria de Molduras Ltda., and BrasPine Madeiras Ltda.," dated August 5, 2020 (Affiliation and Single Entity Memo)).
[33] *Id.* at 16-17 (citing Araupel AQR at A-14).
[34] *Id.* at 17 (citing Braslumber/BrasPine AQR at 16).
[35] *Id.*

were so closely intertwined that their pricing and production decisions were being controlled by a common interest, the companies would not be competitors.[36]

- The commercial relationship between Araupel and Braslumber/BrasPine is very limited with "no significant transactions between Araupel and Braslumber/BrasPine." Both companies reported only one small transaction between Araupel and Braslumber/BrasPine during the POI.[37]
- In *Certain Welded Carbon Standard Steel Pipes and Tubes from India*, Commerce stated that "in collapsing, we look at the 'level of inter-relatedness between parties' or the 'type and degree' of the parties' relationship or affiliation."[38] Similarly, in *Certain Welded Carbon Steel Pipes and Tubes from Thailand*, Commerce stated that "the Department may find two companies affiliated on the basis of an equity interest in deciding whether to collapse the affiliated parties…but absent other factors may be insufficient to warrant collapsing."[39]
- The record of this investigation does not demonstrate a significant potential for the manipulation of prices of production. The CIT has stated in *Hontex Enterprises, Inc. v. United States*, that finding "the potential for manipulation must be significant."[40]
- The level of common ownership, shared management, and shared board members among mandatory respondents does not demonstrate a significant potential to manipulate prices or production. Despite the common ownership among the mandatory respondents, Araupel has reported that none of its shareholding entities had business transactions with Araupel during the POI.[41] Araupel further reported that "{b}eyond the direct and indirect ownership interests described in response to the preceding questions, to the best of its understanding Araupel does not believe that it can be considered under 'common control' with another person by a third person (*e.g.*, a family group or investor group)."[42]
- Both the petitioner and all mandatory respondents believe Araupel and Braslumber/BrasPine should not be collapsed. Commerce should give considerable weight to the fact that neither the petitioner not the respondents in this case have argued for Araupel and Braslumber/BrasPine to be collapsed. Commerce should find it persuasive that the respondent companies themselves have not argued for collapsing—even though it is clearly beneficial for them to be collapsed for margin calculation purposes.[43]
- Commerce's preliminary affiliation and collapsing decision resulted in a negative preliminary determination, which if repeated in the final determination, would not only exclude Araupel and Braslumber/BrasPine from being covered under an antidumping duty order, but it would allow the numerous other Brazilian producers and exporters of subject wood mouldings and millwork products to avoid being covered by an order and allow them to continue to dump their merchandise in the U.S. market.[44] Further, in the preliminary phase of its investigation, the International Trade Commission "received

[36] *Id.* at 18.
[37] *Id.* (citing Braslumber/BrasPine AQR at 17; and Araupel AQR at A-14 ─ A-15).
[38] *Id.* at 20-21 (citing *Certain Welded Carbon Standard Steel Pipes and Tubes from India*, 62 FR 47632, 47638 (September 10, 1997)).
[39] *Id.* at 21 (citing *Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 63 FR. 55578, 55582 (October 16, 1998)).
[40] *Id.* at 19-21 (citing *Hontex Enterprises, Inc. v. United States*¸ 248 F. Supp. 2d 1323, 1344 (CIT 2003)).
[41] *Id.* at 26 (citing Araupel AQR at A-9).
[42] *Id.* (citing Araupel AQR at A-13).
[43] *Id.* at 30.
[44] *Id.* at 5 and 31-32.

responses to its questionnaires from 13 foreign producers of subject merchandise in Brazil."[45] This means there are at least ten other Brazilian producers that shipped subject merchandise to the United States yet would not be covered under a potential antidumping duty order if Araupel and Braslumber/BrasPine continue to be collapsed.[46]

Araupel's Rebuttal Brief*:*

- Commerce should continue to find that the mandatory respondents are affiliated.[47] The legal standard for finding affiliation is not whether the person (or family group) actually exercised control during the POI, but rather whether "the person is legally or operationally in a position to exercise restraint or direction over the other person."[48]
- Commerce should continue to collapse Araupel and Braslumber/BrasPine.[49] Araupel and Braslumber/BrasPine share a history of common customers, employees, transactions, and suppliers of lumber which not only demonstrates intertwined operations, but also significant potential for future price or production manipulation.[50] The record demonstrates that all three companies have virtually identical production capabilities and market identical or similar products to the United States and other export markets.[51] First, as Braslumber/BrasPine conceded in its case brief, Araupel and Braslumber/BrasPine "both can and do produce the subject merchandise."[52] Furthermore, Araupel and Braslumber/BrasPine share major customers, which significantly enhances the potential for price or product manipulation in the future.[53]
- In *Jinko Solar Co., Ltd. v. United States*, the CIT found that common control exists because the Li family grouping had large shareholdings and numerous senior management positions in the ReneSola and Jinko entities. Accordingly, Commerce concluded that those shareholdings and management positions created the potential to impact decisions concerning the production or pricing of subject merchandise, because "the role of members of the Li family grouping in both the Jinko entities and the ReneSola entities creates a potential for the family to act in concert with respect to manipulating pricing, production, and cost of subject merchandise."[54]
- The family grouping holds majority ownership at Araupel and Braslumber/BrasPine, which supports finding significant potential for price and production manipulation.[55] Commerce has stated that "…{w}here the family grouping is the majority owner of all the entities in question, Commerce finds that this ownership structure provides the family

[45] *Id.* at 31-32 (citing *Wood Mouldings and Millwork Products from Brazil and China: Investigation Nos.701-TA-636 and 731-TA-1469-1470 (Preliminary*), Publication 5030, February 2020 (ITC Publication 5030)).
[46] *Id.* at 32.
[47] Araupel Rebuttal Brief at 9-10.
[48] *Id.* at 13.
[49] *Id.* at 2.
[50] *Id.* at 25 and Exhibit 1 (citing Braslumber/BrasPine AQR at 16).
[51] *Id.* at 16-17.
[52] *Id.* at 25 (citing Braslumber/BrasPine Case Brief at 5).
[53] *Id.*
[54] *Id.* at 14 (citing *Jinko Solar Co., Ltd. v. United States*, 229 F. Supp. 3d 1333, 1341 (CIT 2017) (*Jinko Solar I*); and *Jinko Solar Co., Ltd. v. United States*, 279 F. Supp. 3d 1253, 1259-60 (CIT 2017) (*Jinko Solar II*) (affirming Commerce's remand determination for collapsing the entities)).
[55] *Id.* at 18-19.

grouping the ability and financial incentive to coordinate their actions to act in concert with each other."[56]

- Although Araupel and Braslumber/BrasPine may each have an independent board that is non-overlapping, there is still significant potential for price and production manipulation through the family grouping, because the family grouping holds decision-making management positions at all three companies.[57] In *Catfish Farmers of America vs. United States*, the CIT found that the presence of members of the QVD family group in senior leadership positions in all of the QVD companies supported a finding that there is a significant potential for manipulation.[58]
- There is nothing to prevent Braslumber/BrasPine from expanding its capacity either through acquisition of other companies or by simply adding production equipment. There is also significant potential for Braslumber/BrasPine to take over the entire U.S. market and to have its affiliate, Araupel, focus instead on their shared third country markets (*e.g.*, Europe). These are exactly the types of scenarios that underlie Commerce's collapsing regulation and policy.[59]

Commerce's Position:

We disagree with the petitioner and Braslumber/BrasPine that Commerce should treat Araupel as unaffiliated from Braslumber/BrasPine. There is one single Brazilian family that owns all three companies, and thus is in a position to exercise control over all three companies through its direct and indirect ownership of them. Additionally, we disagree with petitioner's and Braslumber/BrasPine's claim that the three companies should not be collapsed and treated as a single entity. First, there is common ownership of the three companies by a single Brazilian family. Second, members of this family serve as board members and managerial employees at all three companies. In this type of situation, Commerce's regulations and practice require that we collapse the three companies and treat them as one. The only factor weighing against a finding of collapsing – *i.e.*, the absence of intertwined operations between Araupel and Braslumber/BrasPine – is insufficient to overcome other evidence that establishes a significant potential for the manipulation of price or production.

Collapsing foreign companies, as provided under 19 CFR 351.401, is an important enforcement tool that enables Commerce to prevent foreign companies from potentially circumventing trade remedies by manipulating price and production decisions after the imposition of an order (*e.g.*, by channeling merchandise sales through affiliates with lower margins). Commerce must apply our collapsing regulation and practice consistently across all our proceedings.

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[56] *Id*. at 21 (citing *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011), and accompanying IDM) at Comment 4; S*tainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009), and accompanying IDM at Comment 1; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review*, 74 FR 68575 (December 28, 2009), and accompanying IDM at Comment 3; and *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 68575 (March 17, 2009), and accompanying IDM at Comment 5D).

[57] *Id.* at 22-23.

[58] *Id.* at 23 (citing *Catfish Farmers of America v. United States*, 641 F. Supp. 2d 1362, 1372 (CIT 2009) (*Catfish Farmers of America*)).

[59] *Id.* at 28.

Section 771(33) of the Act defines the categories of persons considered to be affiliated under the Act. For the *Preliminary Determination*, Commerce determined that Araupel, Braslumber, and BrasPine are affiliated under section 771(33)(F) of the Act because members of a family group have direct and indirect ownership interest in Araupel, Braslumber, and BrasPine.[60] Commerce made this decision in accordance with section 771(33) of the Act, which states that "members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants" and "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person" shall be considered to be "affiliated" or "affiliated persons."[61] Commerce further explained in the *Preliminary Determination* that the courts have upheld Commerce's interpretation of "any person" in section 771(33)(F) of the Act as encompassing a "family grouping," and the position of that "family" is not limited to the familial relationships enumerated in section 771(33)(A) of the Act, but rather is subject to Commerce's interpretation.[62]

The petitioner argues that Araupel and Braslumber/BrasPine are not affiliated because the family grouping does not control the production, pricing, or cost decisions at these companies, and that "{Commerce} will not find control to exist simply because the companies have some minor familial relationships in common."[63] However, in *Ferro Union*, the CIT upheld Commerce's longstanding interpretation of "person" to include a family group for purposes of section 771(33)(F) of the Act.[64] The CIT also held that section 771(33)(A) of the Act does not limit the definition of "family" to the members listed.[65] As explained in the *Preliminary Determination*, Araupel, Braslumber, and BrasPine are affiliated pursuant to section 771(33)(F) of the Act because they are under common control through the ownership of each of these companies by a family grouping comprised of family members that are affiliated under section 771(33)(A) of the Act.[66] Therefore, even if the relationship between the family members could be characterized as "minor," *i.e.*, even if some family members are only distant relations, Commerce nonetheless treats them as a single family grouping – treatment that is consistent with section 771(33) of the Act.

Furthermore, the connections between the three companies consist of more than "minor familial relationships." During the POI, members of the family grouping held direct and indirect ownership interest in each of the three mandatory respondents (*i.e.*, common ownership), and we find the level of common ownership to be significant.[67] Additionally, the record of this investigation demonstrates that members of the family grouping also serve as board members and managerial employees at Araupel, Braslumber, and BrasPine, and therefore can control

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[60] *See* PDM at 4-6; *see also* Affiliation and Single Entity Memo at 4-6.
[61] *See* Affiliation and Single Entity Memo at 4 (citing sections 771(33)(A) and (F) of the Act).
[62] *Id*. at 5 (citing *Ferro Union Inc. v. United States*, 44 F. Supp. 2d 1310, 1325 (CIT 1999) (*Ferro Union*) ("The word 'including' in section (A) of 19 U.S.C. § 1677(33) is an indication that Congress did not intend to limit the definition of 'family' to the members listed in this section. Had Congress intended this list to be definitive, it would have chosen different wording. The wording it did choose evinces an illustrative intent. Commerce's interpretation of this section is reasonable and therefore not subject to reversal by the court.")); *see also Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 887 F. Supp. 2d 1301, 1307 (CIT 2012) (*Zhongya Aluminum 2012*); *Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 70 F. Supp. 3d 1298, 1303-04 (CIT 2015) (*Zhongya Aluminum 2015*).
[63] *See* Petitioner Case Brief at 7.
[64] *See Ferro Union*, 44 F. Supp. 2d at 1326.
[65] *Id.* at 1325.
[66] *See Preliminary Determination* PDM at 5; *see also* Affiliation and Single Entity Memo at 4-6.
[67] *See* Affiliation and Single Entity Memo at 9.

pricing, production, or cost decisions at these companies.[68] Commerce's practice is to find that companies are affiliated when such companies have family members that are shareholders and serve as board members and/or managerial employees because the relationship between family members is such that the family group has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[69]

The petitioner further argues that in *Echjay Forgings*, the CIT found that "in order to consider a family grouping to be a person capable of collective control, Commerce must also find that family grouping to share a common interest or consist of relationships that could impact business decisions of family owned companies."[70] The CIT explained that while the word "person" in section 771(33)(F) can be interpreted to include a family group, Commerce's decision to find the companies affiliated based on the theory that the Doshi family was a "person" was not supported by substantial evidence on the record of that investigation.[71] The CIT acknowledged that according to *Ferro Union* Commerce should not be required to distinguish families due to estranged family members because of concerns that introducing an exception for estranged family members would invite parties to assert subjective criteria for determining familial relationships.[72] However, in *Echjay Forgings*, the record in that case contained legal documentation showing hostile family partitions among the Doshi family members who were owners of the companies.[73] According to the CIT, the evidence of "legal separation prevent{ed} various Doshi family members from interfering in, controlling, or participating in the business of other family members" and Commerce had to address such evidence before treating the Doshi family as a "person" under section 771(33)(F) of the Act. Crucially, the record of this investigation contains no evidence of legal separation agreements or any other type of estrangement between the members of the family group that have ownership interests in Araupel and Braslumber/BrasPine. The absence of objective evidence of legal separation distinguishes this case from *Echjay Forgings*. Accordingly, Commerce continues to find that Araupel, Braslumber, BrasPine are affiliated under section 771(33)(F) of the Act.

While no party contests Commerce's decision to collapse Braslumber and BrasPine, the petitioner and Braslumber/BrasPine argue that the evidence on the record does not support collapsing Araupel with Braslumber/Braspine and treating all three mandatory respondents as a

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[68] *See* Araupel's Letters, "Wood Mouldings and Millwork Products from Brazil: Section A and C Supplemental Questionnaire Response of Araupel S.A.," dated July 6, 2020 (Araupel SACQR) at Exhibit SAC-1; and "Wood Mouldings and Millwork Products from Brazil: Third Section A Supplemental Questionnaire Response of Araupel S.A.," dated July 16, 2020 (Araupel 3AQR) at Exhibit S3A-2; Braslumber/BrasPine 2AQR at Exhibit 2SA-1b.

[69] *See Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 31297 (July 1, 2019), and accompanying PDM at 6, unchanged in *Polyester Textured Yarn from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances* 84 FR 63850 (November 19, 2019); *see also Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 48116 (September 12, 2019), and accompanying PDM at 5-6, unchanged in *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Determination of No Shipments*; 2017– 2018, 85 FR 14635 (March 13, 2020); and *Rubber Bands from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 45220 (September 6, 2018), and accompanying PDM at 5, unchanged in *Rubber Bands from Thailand: Final Determination of Sales at Less Than Fair Value*, 84 FR 8304 (March 17, 2019).

[70] *See Echjay Forgings* at *9.

[71] *Id.* at 9-10.

[72] *Id.* at 10.

[73] *Id.* at 9-10.

single entity. In the *Preliminary Determination*, Commerce determined to treat Araupel, Braslumber, and BrasPine as a single entity based on the criteria outlined in 19 CFR 351.401(f).[74] In accordance with 19 CFR 351.401(f)(1) and (2), Commerce will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility and there is significant potential for the manipulation of price or production. All three mandatory respondents are affiliated pursuant to section 771(33)(F) of the Act, as explained above and in the *Preliminary Determination*.[75] Record evidence demonstrates that Araupel, Braslumber, and BrasPine produce the same or similar products (*i.e.*, subject merchandise) that undergo a similar production process in similar mill facilities.[76] In determining whether there is a significant potential for the manipulation of price or production, Commerce analyzed the factors set forth in 19 CFR 351.401(f)(2), which include: (i) level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. As stated above, the record of this investigation demonstrates that members of the family grouping held direct and indirect ownership interest in each of the three mandatory respondents (*i.e.*, common ownership), and we find the level of common ownership to be significant.[77] Araupel and Braslumber/BrasPine share management and board members, because members of the family grouping hold senior management positions and board positions at Araupel and Braslumber/BrasPine.[78] Although Commerce did not find that Araupel had intertwined operations with Braslumber/BrasPine during the POI, the totality of the record evidence regarding the family group's prominent role in the ownership, management, and boards in each of the three companies demonstrates a significant potential for the manipulation of price or production. Furthermore, the *Preamble* to Commerce's regulations states, "a standard based on the potential manipulation focuses on what may transpire in the future,"[79] and Commerce finds that although Araupel and Braslumber/BrasPine did not have intertwined operations during the POI, Araupel and Braslumber/BrasPine have the capability to intertwine their operations in the future. Accordingly, based on its analysis of the criteria in 19 CFR 351.401(f) and the totality of the circumstances, Commerce finds that there is a significant potential for the family group to manipulate the price or production of subject merchandise and that collapsing the three mandatory respondents is warranted.

Braslumber/BrasPine argue that the level of common ownership does not support collapsing Araupel and Braslumber/BrasPine, stating "{n}o individual shareholders in BrasPine/Braslumber own any shares in Araupel, and no individual shareholders of Araupel own shares in

[74] *See* Affiliation and Single Entity Memo; *see also* PDM at 4-5.
[75] *See* PDM at 5-6; *see also* Affiliation and Single Entity Memo at 3-6.
[76] *See* Araupel AQR at A-7 and A-30 and Exhibit A-10; Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Section D Initial Questionnaire Response of Araupel S.A.," dated May 14, 2020 (Araupel DQR) at D-5 and Exhibits D-2 and D-3; *see also* Braslumber/BrasPine AQR at 8 and 29 and Exhibit A-7d; and Braslumber/BrasPine's Letter, "Wood Mouldings and Millwork Products from Brazil: Braslumber Industria de Molduras Ltda. ("Braslumber") and BrasPine Madeiras Ltda. ("BrasPine")'s Response to Sections C and D of the Department's Questionnaire," dated May 6, 2020 (Braslumber/BrasPine CDQR) at 4-5 and Exhibits D-2 and D-3.
[77] *See* Affiliation and Single Entity Memo at 9.
[78] *See* Affiliation and Single Entity Memo at 3 (citing Araupel SACQR at Exhibit SAC-1; Araupel 3AQR at Exhibit S3A-2; Braslumber/BrasPine 2AQR at 2 and Exhibit 2SA-1b).
[79] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27346 (May 19, 1997) (*Preamble*)

BrasPine/Braslumber."[80] However, the relevant question is the common ownership by the family grouping, not by any single individual. In *Zhongya Aluminum 2012*, the CIT upheld Commerce's decision to collapse the three companies in question, including its finding that common ownership existed, because Commerce treats a family group as a single unit and examines a family group's ownership interest in the aggregate rather than on an individual shareholder basis. The record of this investigation demonstrates that members of the family group are direct and indirect shareholders of Araupel and Braslumber/BrasPine.[81] Accordingly, consistent with the CIT's determination in *Zhongya Aluminum 2012*, Commerce finds that the family group's aggregate direct and indirect shareholdings demonstrates a significant level of common ownership between Araupel and Braslumber/BrasPine.[82]

The petitioner and Braslumber/BrasPine also argue that the level of common ownership between Araupel and Braslumber/BrasPine does not demonstrate the significant potential to manipulate prices or production.[83] Additionally, Braslumber/BrasPine claims that Commerce's collapsing decision is based solely on common ownership, which it argues is not sufficient for collapsing.[84] However, as noted above, in addition to the significant level of common ownership, the record of this investigation demonstrates that members of the family group hold decision-making positions because they are managerial employees and board members at Araupel and Braslumber/BrasPine.[85] Accordingly, Commerce finds that these decision-making positions held by the family group can significantly influence and manipulate the pricing or production at Araupel and Braslumber/BrasPine. In *Jinko Solar II*, the CIT upheld Commerce's finding that there existed a significant potential for the manipulation of price or production across the companies via the Li family, because of the Li family group's prominent role in ownership and management of the companies.[86] Specifically, the CIT found it reasonable for Commerce to conclude that the Li family's shareholdings and management positions created a significant potential to impact decisions concerning the production or pricing of subject merchandise, because the Li family's prominent role enabled it to coordinate its actions to direct the companies to act in concert or out of common interest such that the family group could direct outcomes across the companies.[87] Similarly, in this investigation, the role of the members of the family group in both the ownership, management, and boards of Araupel, Braslumber, and BrasPine creates a significant potential for the family to act in concert with respect to manipulating the pricing, production, and cost of the subject merchandise.

The petitioner also argues that there is no potential for manipulation of prices or production, because Araupel reported that it did not have shared management with Braslumber/BrasPine.[88] However, Araupel's statement ignores the fact that the members of the same family grouping collectively held a significant ownership interest in both Araupel and Braslumber/BrasPine

[80] *See* Braslumber/BrasPine Case Brief at 6.
[81] *See* PDM at 4-6; *see also* Affiliation and Single Entity Memo at 2-3 and 5-6 (citing Araupel AQR at Exhibit A-4; Araupel 3AQR at Exhibit S3A-1; Araupel SACQR at Exhibit SAC-2; Braslumber/BrasPine SAQR at Exhibit SA-2; and Braslumber/BrasPine 2AQR at 4).
[82] *See* Affiliation and Single Entity Memo at 2-3 and 5.
[83] *See* Petitioner Case Brief at 25-27.
[84] *See* Braslumber/BrasPine Case Brief at 1 and 5-6.
[85] *See* Affiliation and Single Entity Memo at 9 (citing Araupel SACQR at Exhibit SAC-1; Araupel 3AQR at Exhibit S3A-2; and Braslumber/BrasPine 2AQR at Exhibit 2SA-1b).
[86] *See Jinko Solar II*, 279 F. Supp. 3d at 1259-60 (affirming Commerce's remand determination for collapsing the entities).
[87] *Id.* at 1259-60.
[88] *See* Petitioner Case Brief at 28.

through their direct and indirect shares of each company, and that members of the family grouping held senior decision-making positions at both Araupel and Braslumber/BrasPine during the POI. Thus, Araupel's statement fails to address the significant potential for price and production manipulation through the family grouping. In *Catfish Farmers of America v. United States*, the CIT found that the presence of members of the QVD family group in senior leadership positions in all of the QVD companies supported a finding that there is a significant potential for manipulation.[89] Similarly, in *Zhongya Aluminum 2012*, the CIT stated that Commerce is permitted to treat a family group as a single unit when considering overlap in the management and boards of two or more companies for purposes of the analysis under 19 CFR 351.401(f)(2).[90] In other words, Commerce does not have to find that specific individuals served in managerial or corporate governance at both companies. Additionally, the *Preamble* to Commerce's regulations states, "a standard based on the potential manipulation focuses on what may transpire in the future,"[91] and the totality of the evidence on the record demonstrates that the family grouping was in a position during the POI to control or manipulate future production and pricing decisions.[92]

The petitioner and Braslumber/BrasPine argue that Commerce should not collapse Araupel and Braslumber/BrasPine into a single entity, because Araupel and Braslumber/BrasPine are independent entities that operate separately from one another with no potential for control or manipulation.[93] However, the record of this investigation demonstrates that Araupel and Braslumber/BrasPine's operations are not entirely separate, because they share customers, had a transaction with one another during the POI, have common ownership, and share management employees and board members.[94] The petitioner and Braslumber/BrasPine also argue that Araupel and Braslumber/BrasPine do not have intertwined operations, and therefore cannot manipulate price and production and the evidence does not support collapsing.[95] However, as discussed above, the mere absence of intertwined operations is insufficient to establish that there is no potential for manipulation of price and production. Therefore, although Araupel and Braslumber/BrasPine did not share production or distribution processes, facilities, sales strategies, finances or non-managerial employees during the POI, the totality of the circumstances, as described above, weighs in favor of finding a significant potential for the manipulation of price or production.[96] As explained in the *Preliminary Determination*, the *Preamble* to the regulations states that the list of factors in 19 CFR 351.401(f)(2) is "non-exhaustive," and Commerce's practice is consistent with the statement in the *Preamble*.[97] In

[89] *See Catfish Farmers of America*, 641 F. Supp. 2d at 1372.
[90] *See Zhongya Aluminum 2012*, 887 F. Supp. 2d at 1310.
[91] *See Preamble*, 62 FR at 27346; *see also Jinko Solar II*, 279 F. Supp. 3d at 1261 ("The emphasis in the regulation is on the potential for, not actual, manipulation.").
[92] *See* Araupel AQR at Exhibit A-4; *see also* Araupel 3AQR at Exhibit S3A-1; Braslumber/BrasPine SAQR at Exhibit SA-2; and Braslumber/BrasPine 2AQR at 4.
[93] *See* Petitioner Case Brief at 15-16; *see also* Braslumber/BrasPine Case Brief at 16, and 24-26.
[94] *See* Araupel Rebuttal Brief at 3, 25-26, and Exhibit 1; *see also* Affiliation and Single Entity Memo at 9-10 (citing Araupel AQR at A-15 and Exhibit A-4; Araupel 3AQR at Exhibit S3A-1; Araupel SACQR at Exhibit SAC-1 and SAC-2; Braslumber/BrasPine AQR at 17; Braslumber/BrasPine SAQR at Exhibit SA-2; and Braslumber/BrasPine 2AQR at 4 and Exhibit 2SA-1b).
[95] *See* Petitioner Case Brief at 23-24; *see also* Braslumber/BrasPine Case Brief at 11-12.
[96] *See* Affiliation and Single Entity Memo at 10 (citing Araupel AQR at 14 – 16; Araupel SACQR at Exhibit SAC-1; and Braslumber/BrasPine AQR at 16).
[97] *See* Affiliation and Single Entity Memo at 6 (citing *Preamble*, 62 FR at 27345); *see also Jinko Solar II*, 279 F. Supp. 3d at 1259 ("Commerce may also consider non-enumerated factors when determining the existence of a significant potential for manipulation.").

Carbon Steel Pipes from India, Commerce stated that "{n}ot all of these criteria must be met in a particular case; the requirement is that {Commerce} determine that the affiliated companies are sufficiently related to create the potential of price or production manipulation."[98] Similarly, in *Nails from Taiwan Investigation*, while it addressed the section 351.401(f) criteria, Commerce made its determination to collapse based on the "totality of the circumstances":

> The totality of the circumstances presented by these facts indicate that the two companies operate under common control of the same individual/family with respect to sales and production decisions. Although both S&J's General Manager and New Lan Luang's Chairman {a father and son} are only minority shareholders in both companies, we conclude that their positions of legal and operational control in their respective companies create a significant potential for price or production manipulation. We therefore have treated S&J and New Lan Luang as a single entity for purposes of calculating a dumping margin in this Investigation.[99]

Furthermore, in *Zhongya Aluminum 2012*, the CIT acknowledged that the factors under 19 CFR 351.401(f)(2) are non-exhaustive and stated the following:

> Commerce also looks for relatively unusual situations, where the type and degree of relationship is so significant that it finds there is a strong possibility of price manipulation. *None of these factors alone are dispositive* {emphasis added}, and when Commerce evaluates them, it looks for actual price manipulation in the past and the possibility of future manipulation. A standard based on the potential for manipulation focuses on what may transpire in the future. Commerce considers these factors in light of the totality of the circumstances, when deciding whether collapsing is appropriate. When companies are deemed affiliated based on common family ownership, the court has recognized that the existence of the family group, and the significant controlling ownership by the family members, reasonably supports a decision to collapse entities.[100]

Moreover, in *Zhongya Aluminum 2015*, the CIT continued to recognize that "no one factor alone is dispositive" and that, because Commerce considers the factors in light of the totality of the circumstances, limited or no evidence of intertwined operations does not preclude Commerce from finding that there is a significant potential for the manipulation of price or production in accordance with 19 CFR 351.401(f)(2).[101] Commerce finds that the record of this investigation supports finding a significant potential for the manipulation of price or production because Araupel and Braslumber/BrasPine have common ownership, shared management and shared board membership, and these positions affect the pricing or production decisions at Araupel and

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[98] *See Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shipper Antidumping Duty Administration Review*, 62 FR 47632, 47638 (September 10, 1997) (*Carbon Steel Pipes from India*); *see also U.S. Steel Corp. v. United States*, 179 F. Supp. 3d 1114, 1139 (CIT 2016) ("Commerce need not find all of the factors in the regulation present to find a significant potential for manipulation of price or production.").
[99] *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997) (*Nails from Taiwan Investigation*); *see also Zhaoqing New Zhongya Aluminum Co., Ltd.*, 70 F. Supp. 3d at 1304 (citing *Koyo Seiko Co. Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007), *aff'd*, 551 F.3d 1286 (CAFC 2008)).
[100] *See Zhongya Aluminum 2012*, 887 F. Supp. 2d at 1397.
[101] *See Zhongya Aluminum 2015*, 70 F. Supp. 3d at 1306.

Braslumber/BrasPine. Additionally, Araupel, Braslumber, and BrasPine each have manufacturing facilities for similar or identical products (*i.e.*, subject merchandise); and therefore, no substantial retooling would be required in order to restructure manufacturing priorities. These facts combined demonstrate that there is significant potential for the manipulation of price or production between Araupel and Braslumber/BrasPine. Therefore, in accordance with section 771(33) of the Act, and based on our analysis of the criteria outlined in 19 CFR 351.401(f) and the totality of the circumstances, Commerce finds it appropriate to continue to collapse and treat Araupel, Braslumber, and BrasPine as a single entity in the final determination.

Braslumber/BrasPine claims that Commerce's decision to affiliate and collapse Araupel and Braslumber/BrasPine into a single entity is contrary to the purpose of collapsing.[102] Braslumber/BrasPine explains that, as stated by the CIT, "{t}he policy rationale behind collapsing is to prevent affiliated exporters with same or similar production capabilities to channel production of subject merchandise through the affiliate with the lowest potential dumping margin and thereby circumvent the United States antidumping law."[103] Braslumber/BrasPine argues that its operations are largely, if not exclusively, dedicated to the production of subject merchandise for export to the United States.[104] Braslumber/BrasPine further claims that its capacity constraints would prevent it from increasing its production to absorb Araupel's U.S. sales, and its concentration of U.S. sales would prevent it from shifting sales from its home or third country markets to the take over Araupel's U.S. sales.[105] We disagree that collapsing Araupel and Braslumber/Braspine is contrary to the purpose of the collapsing regulation. Braslumber/BrasPine's arguments regarding its capacity constraints and the proportion of its production of subject merchandise dedicated to U.S. sales are misguided. As explained above, we find that the criteria under 19 CFR 351.401(f) is satisfied, including the existence of significant potential for manipulation of pricing and production. Additionally, as noted above, the *Preamble* to Commerce's regulations states, "a standard based on the potential manipulation focuses on what may transpire in the future."[106] If mandatory respondents which satisfy Commerce's affiliation and collapsing criteria were not treated as a single entity, a potential loophole would be created whereby the company with the higher dumping margin could direct its production and sales through the company with the lower dumping margin and avoid application of the higher dumping margin under a potential order. Furthermore, Commerce finds that Braslumber/BrasPine's capacity constraints can change, and there is nothing preventing Braslumber/BrasPine from expanding its operations to increase capacity. If the mandatory respondents were not collapsed, Braslumber/BrasPine could potentially expand its future operations and manipulate its production and sales, as well as Araupel's production and sales, to avoid dumping duties under a potential order.

Braslumber/BrasPine's argument could be interpreted to mean that collapsing in this case does not serve the purpose of the regulation, because the result in this case is a negative final determination. Similarly, the petitioner argues that Commerce's decision to affiliate and collapse Araupel and Braslumber/BrasPine into a single entity could cause adverse consequences because the single entity determination results in a negative final determination in the LTFV investigation

[102] *See* Braslumber/BrasPine Case Brief at 13.
[103] *Id.* at 13 (quoting *Slater Steels Corporation v. United States*, 279 F. Supp. 2d 1370, 1376 (CIT 2003)).
[104] *Id*. at 13.
[105] *Id.*
[106] *See Preamble*, 62 FR at 27346.

that would allow other Brazilian producers and exporters of millwork products to dump their merchandise in the U.S. market. However, by law, Commerce may not base its collapsing determination on the resulting dumping margin. Rather, Commerce must apply 19 CFR 351.401(f). Commerce's regulations state that it "*will* treat two or more affiliated producers as a single entity" if the criteria under 19 CFR 351.401(f) are satisfied. Commerce cannot choose to disregard evidence that these criteria are met merely because doing so would lead to a dumping margin that a particular interested party favors. Accordingly, for this final determination, Commerce will continue to treat Araupel and Braslumber/BrasPine as a single entity pursuant to 19 CFR 351.401(f).

Comment 2: Whether Commerce Should Revise Its CV Profit Calculation

For purposes of the CV profit and selling expense ratio calculations in the instant case, interested parties placed six options on the record for Commerce's consideration: (1) the 2019 financial statements (FS) for Adami S.A. – Madeira (Adami), a Brazilian producer of packaging and wood products; (2) the 2019 FS for Duratex S.A. (Duratex), a Brazilian producer with a wood products division; (3) the 2019 FS for Compensados e Laminados Lavrasul S.A. (Lavrasul), a Brazilian trader and producer of wood products; (4) the 2019 FS for Eucatex S.A. Industria e Comercio (Eucatex), a Brazilian forester and producer of wood products; (5) the 2019 FS for Celuloso e Arauco Constitucion S.A. (Arauco), a Chilean sawmill and producer of wood products; and (6) the 2019 FS for Empressa CMPC S.A. (CMPC), a Chilean producer of lumber and wood products. In the *Preliminary Determination*, Commerce selected the Adami and Duratex FS as the best surrogates for the calculation of CV profit and selling expenses. Interested parties submitted comments on the selection of the Adami and Duratex FS, as well as the CV profit and selling expense ratio calculation. We address those comments below in Comment 2A (Selection of Surrogate Financial Statements), Comment 2B (Profit Cap), and Comment 2C (Calculation of CV Profit).

A. Selection of Surrogate Financial Statements

Araupel's Case Brief:[107]

- The Adami FS should be disqualified as a suitable surrogate because: (1) Adami is a highly diversified company of which wood products are a minor focus; and (2) contrary to Commerce's preliminary conclusion, Adami does not have significant sales in the Brazilian market, but rather primarily focuses on sales to international markets. In fact, the Adami website extracts submitted by the petitioner show no mention of the domestic market as a destination for Adami's wood products.
- Commerce should use the FS for Lavrasul, Eucatex, Arauco, and CMPC, which in contrast to Adami, are all predominately manufacturers of identical or similar wood products that are focused on the Brazilian market or region, and therefore are superior to the Adami and Duratex FS. At a minimum, if Commerce determines that Adami's export-oriented focus is not a disqualifying factor for Adami, there is no reason for Commerce to have rejected the Lavrasul, Arauco, or CMPC FS for lack of Brazilian sales.
- The Lavrasul and Eucatex FS are the only accurate and reliable Brazilian sources that meet all of the criteria listed in the PDM: complete audited FS that are publicly

[107] *See* Araupel Case Brief at 4-22.

available; Brazilian producers of wood products both identical and similar to merchandise under consideration (MUC); substantial home market sales; and, like Araupel and Braslumber/BrasPine, sell primarily to resellers and manufacturers rather than directly to end consumers.

- Commerce rejected the Lavrasul FS simply because the company's home market sales represented only 32 percent of all sales; however, there is no basis for this decision since Commerce has no specific threshold for the proportion of sales that must be in the home market. Even so, 32 percent represents a substantial share of all Lavrasul's sales.
- Commerce rejected Eucatex solely because the company's FS "were given a qualified opinion by its auditors". However, the auditor's qualification concerns the calculation of Brazilian social security taxes incurred during 1992 to 2017 and the associated tax credit; thus, this qualification has no relevance to CV profit and selling expenses because it does not impact Eucatex's 2019 sales revenue, cost of goods sold, or selling expenses.
- Commerce ignored the fact that the auditors' reports on the Adami and Duratex FS, while not qualified opinions, contained similar language that highlighted significant concerns regarding the ICMS tax credit. Since all three FS have the same issue there is no reason to reject the Eucatex FS because its auditor and the Adami and Duratex auditors have different narrative styles.
- Commerce rejected the Arauco and CMPC FS since they are Chilean producers. However, the statute does not expressly or implicitly preclude Commerce from using the FS of companies based on geography. In fact, Commerce can, and does, use FS from companies outside the country under investigation under appropriate circumstances.[108]
- The Arauco and CMPC FS meet Commerce's standards for acceptability and should be included in the CV profit and selling expense calculations - both companies are regional producers with sales in Brazil; complete and contemporaneous FS for Arauco and CMPC are publicly available; both companies manufacture and sell a similar range of products to those produced and sold by respondents; and, both companies target sales principally to resellers and manufacturers rather than directly to end consumers.
- Even if these FS are deemed less than perfect, the representativeness and accuracy of the CV profit and selling expense calculation is enhanced by averaging across more, rather than fewer, FS. Thus, where there are otherwise perfectly viable contemporaneous public FS on the record for producers of the identical product, and those producers operate in the same geographic region as the respondents, there is no reasonable basis not to include their data in the CV profit and selling expense average.

Braslumber/BrasPine's Case Brief:[109]

- Commerce should not rely on the Adami and Duratex FS for the reasons set forth in Araupel's case brief.

Petitioner's Rebuttal Brief:[110]

[108] *Id.* at 22 (citing *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 71371, (December 27, 2019) (*Nails from Oman*), and accompanying IDM at Comment 1).
[109] *See* Braslumber/BrasPine Case Brief at 16.
[110] *See* Petitioner Rebuttal Brief at 3-26.

- Commerce should not rely on the Arauco, CMPC, Lavrasul or Eucatex FS but rather should continue to rely on the Duratex and Adami FS for the final determination since they represent the closest options available to the preferred method for calculating CV profit and selling expenses *i.e.*, the sale of MUC in the home market.
- Araupel's reliance on *Nails from Oman* for using the Arauco and CPMC FS, two Chilean-based producers, is off point since in *Nails from Oman*, unlike here, there were no viable home market FS options on the record.
- Arauco and CMPC, the Chilean options proffered by respondents, are both large corporations with international operations that appear to predominantly produce non-subject wood products, and therefore, are not appropriate sources for CV profit and selling expenses.
- The Arauco FS show that only four percent of Arauco's total revenue comes from exported remanufactured wood products, which include a wide variety of non-subject products for the furniture, packing, construction and refurbishing industries. Further, with no remanufactured wood production facilities in Brazil, it is unlikely that any of the few moulding products produced by Arauco were sold in Brazil.
- The CMPC FS show that pulp is overwhelmingly CMPC's largest product type. In fact, if the non-subject product lines are excluded, MUC-like products are less than 8.7 percent of CMPC's total revenue and there is no indication that CMPC sells any MUC in Brazil.
- The Lavrasul FS are not the best available source since Lavrasul appears to predominantly produce non-subject products. Based on its website, Lavrasul refers to itself as a plywood and laminate producer, thus it is unclear how much of Lavrasul's production, which is comprised of plywood, doors, frames and other wood products, actually reflects MUC. In contrast, Adami and Duratex clearly produce MUC; therefore, there is likely a greater correlation between their profit experience and that of the respondents.
- The Lavrasul FS are also not the best source since the company's home market sales amount to less than half of its foreign market sales. In contrast, the Duratex FS show that 76 percent of its Wood Division sales occurred in Brazil and the Adami FS indicate that its sales are mainly concentrated in the Brazilian market.
- Notwithstanding Araupel's unsupported claim that Lavrasul has a similar customer base to respondents' customer base, similarity in business operations and products are more important factors in choosing a surrogate than similarity in customer base.
- The Lavrasul FS also do not provide a breakout of indirect selling expenses, which renders the Lavrasul FS unusable as a source of CV profit and selling expenses.
- The Eucatex FS do not represent the best available information since it is unclear whether Eucatex produces MUC at all. According to the Eucatex FS and its website, none of the products or product categories listed include MUC. While respondents describe Eucatex as the largest manufacturer of wood panels in Brazil and provided one minor example of comparable merchandise from Eucatex's website, Eucatex's FS show that the company's "paints segment" – which is not at all comparable merchandise – accounts for a significant percentage of the company's revenue.
- The financial calculations provided by respondents are based on Eucatex's consolidated FS which include a large number of direct and indirect subsidiaries involved in a wide range of activities unrelated to MUC.
- Araupel provides limited support for its assertion that Eucatex has a similar customer base to Araupel, but regardless, similarity in business operations and products is a more

important factor in choosing a surrogate source for CV profit than similarity in customer base – especially similarities as general as selling to "resellers."

- The Eucatex FS are an unreliable source since the auditor's opinion calls into question the accuracy of the company's revenue, expenses, and profit. Contrary to Araupel's contentions that this qualification does not undermine the reliability or accuracy of the Eucatex FS since other unqualified Brazilian FS contain similar criticisms, it is indeed very important to the measurement of a company's profit if an auditor affirmatively states that income may be significantly understated.

Commerce's Position:

For the *Preliminary Determination*, in calculating CV profit and selling expenses for Araupel and Braslumber/BrasPine under section 773(e)(2)(B)(iii) of the Act, Commerce used the 2019 audited FS of Adami and Duratex. After considering the record evidence and the arguments presented in the interested parties' case and rebuttal briefs, for the final determination, we continue to find that the 2019 Adami and Duratex audited FS constitute the best information on the record of this proceeding for calculating CV profit and selling expenses.

As noted in the *Preliminary Determination*, Araupel and Braslumber/BrasPine did not have a viable home or third-country market during the POI to serve as a basis for NV. Thus, for Araupel and Braslumber/BrasPine, we based normal value on CV consistent with section 773(a)(4) of the Act. Likewise, absent a viable home or third-country market, we are unable to calculate CV profit and selling expenses using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third-country sales made in the ordinary course of trade.

In situations where we cannot calculate CV profit and selling expenses under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act establishes three alternatives:

> (i) The actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review . . . for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,
> (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) . . . for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or
> (iii) the amounts incurred and realized . . . for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in a foreign country, of merchandise that is in the same general category of products as the subject merchandise {(*i.e.*, the "profit cap")}.

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.[111] Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."[112] Thus, Commerce has the discretion to select from any of the three alternative methods, depending on the information available on the record. We continue to find that Commerce cannot rely on alternatives (i) or (ii) because there is no general category of merchandise profit information on the record for either Araupel or Braslumber/BrasPine. Therefore, Commerce must resort to the alternative under subsection (iii), *i.e.*, any other reasonable method.

In conducting this analysis, we note that the specific language of both the preferred and alternative methods appear to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and, (2) the foreign like product, *i.e.*, the MUC. However, when selecting a profit rate from available record evidence, we may not be able to find a source that reflects both factors. In addition, there may be varying degrees to which a potential profit source reflects the MUC. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product, but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the MUC but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, *etc.*, judged against the above criteria, help to determine which profit source to rely on.

Interested parties have argued for the following possible sources from which to calculate CV profit and selling expenses for the final determination, all of which are contemporaneous with the POI: (1) 2019 FS of Duratex, a Brazilian producer with a wood products division; (2) 2019 FS of Adami, a Brazilian producer of packaging and wood products; (3) 2019 FS of Lavrasul, a Brazilian trader and producer of wood products; (4) 2019 FS of Eucatex, a Brazilian forester and producer of wood products; (5) 2019 FS of Arauco, a Chilean sawmill and producer of wood products; and (6) 2019 FS of CMPC, a Chilean producer of lumber and wood products.

To begin with, Arauco and CMPC are Chilean, not Brazilian producers; therefore, we have excluded them from our consideration and detailed discussions below. While we agree with Araupel that for purposes of CV profit Commerce has used surrogate FS for companies not located in the foreign country, we have only resorted to such FS where there are no viable surrogate FS for companies located in the foreign country.[113] In fact, in *Nails from Oman*, the example cited by Araupel, Commerce was unable to use either of the two Omani FS placed on the record for consideration since the companies did not produce or sell merchandise identical or comparable to the MUC.[114] In the instant case, we have on the record four potential surrogates that are FS of Brazilian producers, two of which we have found are suitable for the calculation of

[111] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, vol. 1, 103d Cong. (1994) (SAA) at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.").
[112] *Id.*
[113] *See, e.g.*, *Certain Steel Nails from Taiwan: Final determination of Sales at Less Than Fair Value*, 80 FR 28989 (May 20, 2015), and accompanying IDM at Comment 1.
[114] *See Nails from Oman* IDM at Comment 1.

CV profit. Thus, in this case it was not necessary to resort to a non-Brazilian alternative for the calculation of CV profit.

Next, we have also excluded the Eucatex 2019 FS due to the qualified opinion issued by its independent auditor. Because we have available on the record other FS issued with clean opinions from their independent auditors, *i.e.*, no material departures in the country's generally accepted accounting principles (GAAP), we find it unnecessary to resort to using FS that were found to have material GAAP departures. While Araupel contends that the Eucatex FS should be used since the Duratex and Adami FS are similarly flawed despite not receiving qualified opinions from their auditors, we disagree. It is not under Commerce's purview to opine on whether a company's published FS comply with GAAP.[115] Rather, Commerce relies on the assurances of the company's independent accountants and auditors to ascertain whether the company's FS are in accordance with the home country's GAAP.[116] In this case, Eucatex's independent auditor found that the company's FS included material misstatements, while Duratex's and Adami's independent auditors reported no GAAP departures. Contrary to Araupel's implication otherwise, the Adami and Duratex auditors merely list the measurement of the taxes as significant to the planning of each company's audit and do not conclude that these figures were significantly misstated, as evidenced by the fact that Adami and Duratex received clean audit opinions.[117] Eucatex's auditor listed two issues that contributed to the qualified opinion - the tax matter that has been raised by Araupel and the lack of external confirmations from Eucatex's financial institutions. Because there are other FS alternatives without qualified opinions available, we find it unnecessary to resort to FS with qualified opinions and attempt to discern the impact of such qualifications on the potential surrogate's profit and selling expenses.

In evaluating the three remaining alternatives under subsection (iii), we followed the analysis established in *Pure Magnesium from Israel*.[118] In *Pure Magnesium from Israel*, Commerce set out three criteria for choosing among surrogate financial data under section 773(e)(2)(B)(iii) of the Act: (1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; (2) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States; and, (3) the contemporaneity of the data to the POR.[119] In *CTVs from Malaysia*, Commerce added a fourth criterion of the extent to which the customer base of the surrogate and the respondent were similar (*e.g.*, original equipment manufacturers versus retailers).[120] These four criteria have been followed in subsequent cases to assess the appropriateness of using various FS on the record of a given case under subsection (iii).[121]

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[115] *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; *2016*-2017, 84 FR 76 (April 19, 2019), and accompanying IDM at Comment 3 (*LPTs Korea*); *Nucor Corp. v. United States.*, 371 Fed. Appx. 83 (CAFC 2010) (*Nucor CAFC*) ("Commerce's mandate does not include acting as the 'financial statement police' {;} it includes calculating only those costs that reasonably relate to cost of production during the period of review.").

[116] *Id.*

[117] *See* Petitioner CV Comments at Exhibits 1 and 3.

[118] *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001), and accompanying IDM at Comment 8 (*Pure Magnesium from Israel*).

[119] *Id*.

[120] *See Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004), and accompanying IDM at Comment 26 (*CTVs from Malaysia*).

[121] *See e.g.*, *Forged Steel Fluid End Blocks from Italy: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 239 (December 11, 2020), and accompanying IDM at Comment 2.

In the *Preliminary Determination*, we relied on the Adami FS and the Duratex FS for its wood division because these FS are contemporaneous with the POI, represent Brazilian producers of identical or comparable merchandise, and predominantly reflect sales (and thus profits) in the Brazilian market.[122] We then declined to include the Lavrasul FS in our preliminary calculations stating that the company's Brazilian market sales represented only 32 percent of all its sales, while the Adami and Duratex FS both predominantly reflect Brazilian market sales.[123]

For the final determination, Araupel contends that the Adami FS should be disregarded since the company does not focus on MUC production, but rather produces a highly diversified range of unrelated products that are destined for international markets and not for the Brazilian market. We disagree. These allegations are based on excerpts from the company's website that merely describe Adami's "recently" expanded production facilities for the "foreign market" and specially "developed" products as changes instituted to "meet the demanding international market."[124] However, while these website excerpts suggest a pursuit of international markets ,they provide no actual data regarding Adami's actual sales revenues in 2019 or the geographical location of those sales. Rather, with regard to its actual 2019 results, the Adami FS clearly state that "{t}he Company's sales revenue refers to the sale of paper and cardboard packaging, corrugated, wood processing products such as frames, pine panels, doors, door and pellet kits, which are mainly concentrated in the Brazilian market."[125] Consequently, based on Adami's FS, we find that Adami's financial data predominantly reflect sales in the home market and not in the United States.

The petitioner contends that the Lavrasul FS should continue to be disregarded since the company predominantly produces non-subject merchandise. In alleging that Lavrasul mainly produces non-subject plywood and laminates, the petitioner relies on a website excerpt that seemingly references the company's roots as a company named "Plywood and Laminates LAVRASUL SA" which was "founded in 1949."[126] However, the excerpt continues on to clearly state that "today, its production line includes plywood, doors, frames and other wood products." The Lavrasul FS also state that "{t}he Company is engaged in the production, industrialization, and trade of wood in general: raw, processed, laminated, plywood; the manufacture of frames and furniture; the export of the products of its manufacture and the extraction of wood in planted forests." Because there is no further indication in the Lavrasul FS or website excerpts to determine what product lines are predominant, we cannot conclude that Lavrasul predominantly produces non-subject merchandise as suggested by petitioner.

The petitioner also alleges that the Lavrasul FS fail to provide a breakout of the company's selling expenses; therefore, hindering Commerce's ability to calculate the CV profit and selling expense ratios. We disagree. Based on our examination of the notes to the Lavrasul FS, we find

[122] *See* PDM at 15.
[123] *Id*.
[124] *See* Petitioner's Letter, "Wood Mouldings and Millwork Products from Brazil: Comments and New Factual Information for CV Profit," dated May 27, 2020 (Petitioner CV Profit Comments) at Exhibit 4; and Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Rebuttal Comments Concerning Constructed Value Profit and Selling Expenses," dated June 3, 2020 (Araupel CV Profit Rebuttal Comments) at Exhibit 3.
[125] *See* Petitioner CV Profit Comments at Exhibit 3 (note 22 at page 44 of the Adami FS).
[126] *See* Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Factual Information Concerning Constructed Value Profit and Selling Expenses," dated May 27, 2020 at Exhibit 4.

that the company's financial data are sufficiently detailed to be used for the calculation of CV profit and selling expense.[127]

Finally, the petitioner contends that the Lavrasul FS should not be used since the company's Brazilian market sales amount to only half of its export market sales. At the same time, Araupel contends that at 32 percent of total revenues Lavrasul's home market sales are significant and do not disqualify the company as a surrogate. According to Araupel, Commerce does not have a specific threshold for what percentage of home market sales are necessary for a company to be used as a surrogate, thus, Lavrasul is a suitable surrogate. While we agree there is no specified threshold in this regard, in accordance with section 773(e)(2)(B) of the Act we generally seek a home market profit experience to the greatest extent possible.[128] Hence, where we have multiple options available, our preference is to rely on sources that predominantly reflect sales in the home market. The Adami 2019 audited FS, as noted above, state that "{t}he Company's sales revenue refers to the sale of paper and cardboard packaging, corrugated, wood processing products such as frames, pine panels, doors, door and pellet kits, which are mainly concentrated in the Brazilian market."[129] According to the company's FS and website, the Duratex wood division produces hardboard, panels, laminate flooring, baseboards, and semi-finished components for furniture.[130] During 2019, the Duratex wood division's domestic market sales comprised 76 percent of its total sales. However, the Lavrasul FS show only 32 percent of Lavrasul's total sales were in the Brazilian market. Thus, comparatively, the Adami and Duratex wood division financial data predominantly reflect sales of wood products in the home market and therefore, with regard to the representativeness of a home market profit experience, are superior to the Lavrasul data.

After weighing the quality of the data against the various factors, we continue to find that Adami and Duratex are the most similar potential surrogates for Araupel and Braslumber/BrasPine. Both companies sell merchandise that is identical or similar to MUC, furthermore, there is record evidence that the companies' 2019 wood product sales were predominantly to the Brazilian market. Therefore, we find the Adami and Duratex 2019 FS data to be the most representative information available on the record for the home market profit experience of a Brazilian producer of products identical and similar to MUC. For the final determination, after consideration of the record evidence and the arguments raised by interested parties in their case and rebuttal briefs, we have continued to use the Adami and Duratex financial data for the calculation of CV profit and selling expenses in the instant case.

B. Profit Cap

Braslumber/BrasPine's Case Brief:[131]

- Commerce should use the CV profit rate of Duratex as the basis for calculating the "profit cap" because Duratex satisfies the requirements more closely than Adami. Commerce has previously stated that "Congress intended the profit cap to be: (1) based on home market sales information of the same general category of products as the

[127] *Id.* at Exhibit 1 (note 19.b at pages 24-25 of the Lavrasul FS).
[128] *See, e.g.*, *Nails from Oman* IDM at Comment 1.
[129] *See* Petitioner CV Profit Comments at Exhibit 3 (note 22 at page 44 of the Adami FS).
[130] *See* Petitioner CV Profit Comments at Exhibits 1 and 2.
[131] *See* Braslumber/BrasPine Case Brief at 14-20.

merchandise; (2) non-aberrational to the industry under consideration (*i.e.*, 'the amount normally realized'); and (3) not based on the data of the respondent for which Commerce is calculating CV."

- Commerce's use of Adami's and Duratex's combined CV profit as the profit cap rate in the *Preliminary Determination* fails to recognize the significant differences between Duratex and Adami in terms of the markets in which they sell their products. As stated by Commerce in the *Preliminary Determination*, Duratex's production is the same general category of products as the subject merchandise and the majority of Duratex's sales were made in the home market; both key criteria for the selection of a CV profit cap.

Petitioner's Rebuttal Brief:[132]

- Braslumber/BrasPine's argument that Commerce must calculate a profit cap, and that only the Duratex profit rate should be used for the profit cap since it more closely satisfies the profit cap requirements than the Adami profit rate, is without merit.
- Commerce has repeatedly confirmed that it may apply a statutory alternative under section 773(e)(2)(B)(iii) of the Act on the basis of facts available and also that as facts available, Commerce may apply alternative (iii) without quantifying a profit cap.
- The SAA makes clear that Commerce may calculate CV profit without a profit cap, particularly, as is the case here, where there is no viable domestic market in the exporting country for merchandise that is in the same general category of products as the subject merchandise. The legislative history indicates that Congress recognized that there may be instances where, due to a lack of data, Commerce would need to use facts available and calculate a CV profit rate pursuant to section (iii) of the Act without quantifying a profit cap.
- In *Husteel*, the court upheld Commerce's selection of a facts available profit cap that was the same as the CV profit rate calculated by the agency without the cap. While the court opined that selecting as a "cap" the same rate without the "cap" is not a cap, it nonetheless sustained Commerce's CV profit calculation, stating that Commerce's failure to cap the profit rate was reasonable based on the record; the agency was faced with a difficult decision as all of the information on the record had imperfections; and the court was not persuaded that any of the "caps" suggested by the respondents in that proceeding fulfilled the statutory requirement any better than no cap.[133]
- Similarly, in *Mid Continent*, the court held that under certain circumstances, Commerce can decline to calculate a profit cap. While the court remanded Commerce's initial determination for further explanation, the court sustained Commerce's remand redetermination, finding that Commerce reasonably explained, with the support of substantial evidence, that none of the other possible profit cap sources fulfilled the statute any better than no cap. The CAFC affirmed the CIT's decision with respect to this issue.[134]
- Commerce appropriately concluded that Duratex's and Adami's respective profit information serves as a reasonable profit cap as the record contains no information on the

[132] *See* Petitioner Rebuttal Brief at 3-26.
[133] *See* Petitioner Rebuttal Brief at 23 (citing *Husteel Co. v. United States*, 180 F. Supp. 3d 1330 (CIT 2016) (*Husteel*)).
[134] *See* Petitioner Rebuttal Brief at 24 (citing *Mid Continent Steel & Wire, Inc. v. United States*, 273 F. Supp. 3d 1348, 1355 (CIT 2017); and *Mid Continent Steel & Wire, Inc. v. United States*, 941 F.3d 530 (CAFC 2019)).

profit normally realized by exporters or producers in connection with the sale, for consumption in Brazil, of merchandise that is in the same general category of products as the subject merchandise other than the Duratex and Adami FS.

- Braslumber/BrasPine's entire support for using only the Duratex CV profit rate as the basis for the profit cap is Commerce's statement in the *Preliminary Determination* that Duratex produced "baseboards and semi-finished components for furniture, which we preliminary find to be identical or comparable products to subject merchandise" and the fact that the majority of Duratex's sales were made in the home market.
- Braslumber/BrasPine ignores that in the *Preliminary Determination* Commerce also found that the Adami FS stated its "revenues include 'wood processing products such as frames, pine panels, doors, door and pellet kits, which are mainly concentrated in the Brazilian market" and Commerce therefore concluded that both "the Duratex and Adami information meet our criteria in that they are contemporaneous with the POI, represent Brazilian producers of identical or comparable merchandise, and appear to predominantly reflect sales (and thus profits) in the Brazilian market."
- Contrary to Braslumber/BrasPine's assertions, Commerce has concluded in numerous prior proceedings, that the FS used to calculate CV profit under "any other reasonable method" best fulfill the purpose of the profit cap.
- Braslumber/BrasPine fails to provide any factual or legal basis that would warrant excluding Adami's profit information for purposes of the profit cap when Adami's information, along with Duratex's profit information, are the best sources for determining CV profit and selling expenses.

Commerce's Position:

We do not agree with Braslumber/BrasPine's argument that Commerce should cap the CV profit rate using the Duratex FS. As discussed in the *Preliminary Determination*, Commerce considered whether information on the record could be useable as a facts available profit cap.[135] We determined that no information on the record of this proceeding would better fulfill the purpose of the profit cap than the FS we used to calculate CV profit under any other reasonable method. Congress recognized that there may be instances where, due to a lack of data, Commerce would need to use facts available and calculate a CV profit rate pursuant to section 773(e)(2)(B)(iii) of the Act without quantifying a profit cap.[136] Congress intended the profit cap to be: (1) based on home market sales information of the same general category of products as the subject merchandise; (2) non-aberrational to the industry under consideration (*i.e.*, "the amount normally realized"); and (3) not based on the data of the respondent for which Commerce is calculating CV.[137] We concluded in the *Preliminary Determination*, and continue to conclude for the final determination, that there is no information on the record that would meet these standards and we are unable to calculate the profit normally realized by producers other than Araupel and Braslumber/BrasPine in connection with domestic market sales of

[135] *See Preliminary Results* PDM at 15.
[136] *See* SAA at 841.
[137] *See Stainless Steel Plate in Coils from Belgium: Antidumping Duty Administrative Review, 2010-2011*, 77 FR 73013 (December 7, 2012), and accompanying IDM at Comment 3; *see also Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 10876 (February 28, 2011), and accompanying IDM at Comment 3; and *Notice of Final Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012), and accompanying IDM at Comment 26.

merchandise in the same general category as the subject merchandise. In a decision that has been affirmed by the CAFC, the CIT has upheld Commerce's decision not to use a profit cap when none of the other CV profit rates on the record of the investigation fulfill the statute better than no cap.[138] Accordingly, for the final determination, Commerce continues to calculate CV profit without a profit cap, which is consistent with Commerce's practice and *Mid Continent Steel*.[139]

C. Calculation of CV Profit

Petitioner's Case Brief:[140]

- Commerce should revise its CV profit calculations to include a portion of the "Equity in the results of investees" on the Duratex FS and the "Equity income" on the Adami FS since there is no information to support Commerce's conclusion that these items pertain to investment activities. Rather, since these companies own forests that are likely used in the production of MUC, it is likely that these subsidiary income items are related to those forests and therefore are related to the companies' normal operations.

Araupel's Case Brief:[141]

- If Commerce continues to rely on the Adami FS, Commerce should exclude the tax credits related to pre-POI business activities in accordance with Commerce's practice of only allowing income items that relate to the current period.[142]
- If Commerce continues to rely on the Duratex FS, Commerce should exclude the income from lawsuits on domestic tax liabilities as well as revenues recognized by Duratex for the sale of farms from the Duratex Forest because these items are not related to the general operations of Duratex during the POI.[143]
- Consistent with respondents' COP calculations and in accordance with its normal practice, Commerce should exclude the Adami and Duratex financial income that cannot be distinguished as short-term in nature or is identified as related to investments.[144] Because the financial income that can be distinguished on the surrogate FS includes amounts related to prior year tax credits (Adami), which are obviously long-term, and investments (Adami and Duretex), Commerce should exclude these amounts.

Braslumber/BrasPine's Case Brief:[145]

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[138] *See Mid Continent Steel & Wire, Inc. v. United States*, 273 F. Supp. 3d 1348 (CIT 2017), *aff'd*, 941 F.3d 530 (CAFC 2019) (*Mid Continent Steel*).
[139] *Id.*
[140] *See* Petitioner Case Brief at 33.
[141] *See* Araupel Case Brief at 4-22.
[142] *Id.* at 7 (citing *Certain Concrete Reinforcing Bars from Turkey*, 69 FR 64731 (November 8, 2004) (*Rebar from Turkey*), and accompanying IDM at Comment 20).
[143] *See* Araupel Case Brief at 8 (citing, *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes from Turkey*, 77 FR 72818 (December 6, 2012) (*CWP from Turkey*), and accompanying IDM at Comment 3).
[144] *See* Araupel Brief at 10 (citing, *e.g.*, *Silicon Metal from Brazil*, 67 FR 6488 (February 12, 2002) (*Silicon Metal from Brazil*), and accompanying IDM at Comment 5; *Citric Acid and Certain Citrate Sales from the People's Republic of China*, 76 FR 77772 (December 14, 2011) (*Citric Acid from China*), and accompanying IDM at Comment 9).
[145] *See* Braslumber/BrasPine Case Brief at 14-20.

- If Commerce continues to rely on the Adami and Duratex FS, Commerce should exclude the tax credits that are a result of litigation since they likely constitute all taxes paid from the April 2007 filing of the lawsuit up to the April 2019 judgement. Because the purpose of the CV profit rate is to simulate a reasonable profit on hypothetical home market sales of MUC during the POI, it is therefore unreasonable to include income that bears no relationship to sales of MUC nor to profits earned during the POI on sales of similar products.
- Additionally, in calculating general and administrative expenses (G&A) expenses, Commerce normally excludes non-operating income that is unrelated to the manufacturing operations of the company, thus, consistent with this practice, Commerce should deduct the tax credits from both the numerator and denominator of the profit calculation.
- Commerce should use a weighted rather than simple average of the Adami and Duratex CV profit and selling expense ratios. If Commerce's goal is to determine CV profit and selling expense ratios using a "reasonable" method, it is not reasonable to give Adami and Duratex equal weight in the calculation of CV profit and selling expenses when Duratex is nearly three and a half times larger than Adami on a sales value basis.
- Commerce's dumping calculations are replete with instances where Commerce uses weighted averages, not straight averages, presumably in an effort to achieve a more accurate calculation. Commerce should similarly calculate a weighted average of the Adami and Duratex CV profit and selling expense ratios for the final determination.

Petitioner's Rebuttal Brief:[146]

- Contrary to respondents' allegations, there is nothing in the Duratex FS that states the other income described as "ICMS based on PIS and COFINS" in note 28 to the FS was actually received from the pre-POI domestic tax lawsuit described at note 22 to the FS.
- There is insufficient evidence to support respondents' claim that the lawsuit proceeds on the Adami 2019 FS are related to prior years. Rather, the 55,060 BRL in income is likely related to 2019 since note 9 to the FS states that the income pertained to credits updated "until November 2019" which covers most of the POI; and further, the amount recognized on the Adami FS is likely related to 2019 since the lawsuit totaled 92,667 BRL which is much greater than the 55,060 BRL recognized on the Adami 2019 FS.
- Araupel's citation to Commerce's practice of requiring respondents to demonstrate that their claimed interest income is short-term in nature is not instructive for calculating CV profit. Whereas mandatory respondents are obligated to demonstrate they are entitled to their claimed offsets, the financial data used for CV profit cannot be scrutinized by Commerce nor does Commerce have the ability to ask for additional documentation. Therefore, Commerce correctly included the financial income in its CV profit calculations.

Araupel's Rebuttal Brief:[147]

- Commerce should continue to exclude "Equity in the results of investees" from Duratex's FS and "Equity income" in Adami's FS from the CV profit calculations because these

[146] *See* Petitioner Rebuttal Brief at 3-26.
[147] *See* Araupel Rebuttal Brief at 28-32.

amounts reflect income from investments in subsidiaries that do not manufacture or sell identical or similar products in the Brazilian market. The Duratex figure reflects the net results for fifteen different subsidiaries with operations unrelated to wood products and located outside of Brazil, while the Adami figure is related to investments in three hydroelectric generation plants.
- Commerce has been very clear in its practice that it treats sharing of profits (or losses) from investments in subsidiaries booked under the equity method as "investment-related income" which are "normally excluded from the reported costs."[148]

Braslumber/BrasPine's Rebuttal Brief:[149]

- Commerce should reject the petitioner's request to include "Equity in the results of investees" from Duratex's FS and the "Equity income" in Adami's FS in the CV profit calculation, as these are investment-related amounts and Commerce has a long-established and consistent practice of excluded investment-related activities.[150]
- Contrary to the petitioner's assertions, the Adami FS show that the equity income comes from investments in hydroelectric power plants and is not related to Adami's own forests or its normal business operations.
- For Duratex, the "Equity in the Results of Investees" information referenced by the petitioner is not from note 35, *i.e.*, the wood division financial data used in the CV profit calculations, but from the income statement which shows that while there may have been such investments on a parent company basis, on a consolidated basis the line item is zero. This means that any investments in affiliated companies were netted out in the consolidation process.
- In addition, a review of note 12 to the Duratex FS shows that the income was largely realized on investments outside Brazil and/or on activities unrelated to MUC, *i.e.*, eucalyptus farm or water treatment.

Commerce's Position:

Consistent with the *Preliminary Determination*, and as explained above in Comment 2A, we have continued to rely on the Adami and Duratex FS for the calculation of CV profit and selling expenses in the final determination. We have reexamined our preliminary calculations in light of the parties' comments in their case and rebuttal briefs. In summary, the parties have argued whether it is appropriate to include the following types of income in the calculation of CV profit and selling expenses: (1) equity income/equity in the results of investees; (2) tax credits; (3) gain on the sale of land; and (4) financial income. The following outlines our determinations on each of these issues.

We have continued to exclude the income figures described as "equity income" and "equity in the results of investees" from the CV profit and selling expense ratios. First, as a general rule,

[148] *Id.* at 31 (citing *Finished Carbon Steel Flanges from Spain*, 85 FR 7919 (February 12, 2020) (*Flanges from Spain*), and accompanying IDM at Comment 3; and *Emulsion Styrene-Butadiene Rubber from the Republic of Korea*, 82 FR 33045 (July 19, 2017) (*Rubber from Korea*), and accompanying IDM at Comment 3.
[149] *See* Braslumber/BrasPine Rebuttal Brief at 1-6.
[150] *Id.* at 1 (citing *Certain Steel Nails from Taiwan*, 84 FR 11506 (March 27, 2019) (*Nails from Taiwan 2016-2017 AR*), and accompanying IDM at Comment 2; *Certain Oil Country Tubular Goods from Korea*, 83 FR 17146 (April 28, 2018), and accompanying IDM at Comment 7).

we consider a company's share of its subsidiaries' profit and losses reported under the equity method to be an investment-related activity unrelated to the investing company's normal business operations.[151] It is the profit or loss of the entity put forward as a surrogate for the production and sale of MUC (or products in the same general category as MUC) that we strive to use in our surrogate calculations and not those of the surrogate's minority-owned investments that are likely involved in unrelated industries. Furthermore, even if the unconsolidated investees were involved in a related industry, we have no ability to review the revenues, cost of goods sold, and SG&A expenses of minority-held companies since, as with the "equity income" on the Adami FS, the net result attributable to Adami is presented as a single line item on Adami's income statement.

Second, in the case of Duratex, we agree with Braslumber/BrasPine that the "equity in the results of investees" line item appears on the parent company income statement but is in fact zero on Duratex's consolidated income statement since the results for these subsidiaries are incorporated in the consolidated results. To explain, the Duratex audited FS placed on the record include the separate results for the individual parent company, for the consolidated Duratex Group, and for the business segments under the consolidated group.[152] These business segments, whose results tie in total to the consolidated results, are the wood division, deca (ceramic and metal) division, and ceramic tiles division.[153] For purposes of the CV profit calculation, we relied on the wood division income statement that includes the results on the production and sale of the Duratex products that are identical or most similar to MUC.[154] Thus, under Duratex's consolidated FS, any wood-related activities of the company's consolidated subsidiaries, such as forests that may have been used in the production of wood products, have already been incorporated in the wood division income statement that we are using in our CV profit and selling expense calculations. Accordingly, no adjustment is necessary.

Regarding the income from tax credits which were the result of certain litigation, we have continued to include these items in our calculations. We normally consider tax-related expenses or income of this nature as period expenses that relate to the general operations since they represent a cost of doing business and are not taxes on income.[155] Further, the tax credits became probable or reasonably estimable during the current period. In such instances, it is Commerce's consistent practice to follow the FS treatment and include the costs or income in our calculations.[156] In *Rebar from Turkey*, the case cited by Araupel, at issue were the reversals of income and expenses initially recorded in prior periods, unlike here where the tax credits became probable and were initially recognized during the current period.

Consistent with our preliminary calculations, we have continued to exclude the gain on the sale of land. While respondents argue that this gain should be excluded, we note that this amount was already excluded in the *Preliminary Determination.*[157] It is Commerce's normal practice to consider sales of land or entire production facilities as significant transactions, both in form and

[151] *See, e.g.*, *Nails from Taiwan 2016-2017 AR* IDM at Comment 2
[152] *See* Petitioner CV Profit Letter at Exhibit 1.
[153] *Id*.
[154] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated August 5, 2020 (Araupel/Braslumber/BrasPine Preliminary Cost Calculation Memo).
[155] *See, e.g.*, *Polyethylene Retail Carrier Bags from Indonesia: Final Determination*
[156] *See, e.g.*, *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review;* 2011-2012, 79 FR 37284 (July 1, 2014), and accompanying IDM at Comment 4.
[157] *See* Araupel/Braslumber/BrasPine Preliminary Cost Calculation Memo at Attachment 1.

value, and the resulting gain or loss generates non-recurring income or losses that are not part of a company's normal business operations.[158] Accordingly, we have excluded the gain on the sale of land from the CV profit and selling expense calculations.

With regard to the financial income items that may not be short-term in nature and those that are related to investments, we are revising our preliminary calculations, in accordance with Commerce's practice, to exclude the financial income items that are clearly related to investments.[159] However, we did not attempt to adjust the profit calculation to estimate what portion of the surrogates' interest income may have been generated from long-term assets. While it is Commerce's practice to allow only interest income generated from short-term sources to offset a respondent's financial expenses, Commerce would rarely have the information necessary to make such an adjustment when using surrogate FS for the calculation of CV profit. The suggestion to exclude all financial income because the calculation cannot be perfected unreasonably raises the level of precision for a situation where Commerce is resorting to any other reasonable method. We find Araupel's citation to *Citric Acid from China*, where surrogate ratios were calculated in the context of an NME methodology, unpersuasive. In such cases, Commerce is calculating the overhead, SG&A and profit ratios from the same set of surrogate FS. Thus, if an attempt is made to dissect a company's short- and long-term interest income, it is a balanced adjustment that impacts both SG&A (increasing ratio) and CV profit (decreasing ratio). Here, we have only excluded the financial income from the Adami and Duratex FS that is demonstrably generated from investment activities.

Finally, consistent with prior practice, we have continued to rely on a simple rather than weighted-average of the CV profit and selling expenses from the FS of Duratex and Adami.[160] There is no reason to believe that one surrogate is more similar to the respondents than the other and therefore should be afforded more weight in the CV profit and selling expense ratio calculations. Weight averaging figures makes sense if the population is known and certain variables represent a more significant portion of the population. Here, we are resorting to any other reasonable methodology and selecting the best available information placed on the record by the parties, which certainly do not individually represent their entire respective industries.

Comment 3: Whether Araupel's Log Valuations are Inaccurate and Do Not Reflect an Accurate Market Price

Petitioner's Case Brief:[161]

- Araupel has reported inaccurate values for the logs harvested from its own forests (self-produced logs) as evidenced by a comparison of Araupel's self-produced and purchased log costs which shows that the self-produced logs, even with the addition of the fair value

[158] *See, e.g.*, *Certain Softwood Lumber Products from Canada: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 73437 (December 12, 2005), and accompanying IDM at Comment 8; *CWP from Turkey* IDM at Comment 3.
[159] Commerce's practice is to exclude investment-related activity from the calculation of financial expenses. *See, e.g.*, *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 16.
[160] *See Carbon and Alloy Steel Threaded Rod from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 8818 (February 18, 2020), and accompanying IDM at Comment 1.
[161] *See* Petitioner Case Brief at 34-42.

adjustments, fail to reflect their fair market values and therefore, Araupel's books and records are not compliant with Brazilian GAAP.

- Araupel's two explanations for the significant differences between the costs reported for self-produced logs and the market prices paid for purchased logs fail to demonstrate that self-produced logs have been accurately valued.
  - First, Araupel's contention that its self-produced logs were harvested prematurely, which resulted in smaller, lower quality logs, is not supported by the harvesting cycles and production yield data on the record, which instead show that these logs were harvested within Araupel's average harvesting time frames and were reported with production yields similar to purchased logs.
  - Second, Araupel's explanation that the costs vary because there are different valuation methodologies for self-produced and purchased logs, *i.e.*, historical cost and market price, respectively, does not address the fact that there should be no significant differences because under Brazilian GAAP the historical cost of self-produced logs must be adjusted annually to reflect fair market value.
- Under section 773(f)(1)(A) of the Act, Commerce has the authority to deviate from a company's normal books and records when the reported costs do not reasonably reflect the costs associated with the production and sale of the MUC. Consequently, because Araupel's self-produced log costs are unreasonable and non-compliant with home country GAAP, Commerce should revise Araupel's costs for self-produced logs to reflect the average log prices that Araupel paid to unaffiliated parties.

Araupel's Rebuttal Brief:[162]

- The petitioner has pointed to no flaw in the methods used to value the self-produced logs, a valuation which was performed prior to the commencement of this investigation and is fully in accordance with Brazilian GAAP which follows International Financial Reporting Standards (IFRS).
- The petitioner's entire argument is based on the fact that Araupel's self-produced logs had a lower per-unit value than its purchased logs. However, Araupel has explained that the lower per-unit value for self-produced logs was due to two factors: (1) the differences in the size and quality of the self-produced versus purchased logs; and, (2) the differences in the valuation methodologies for self-produced versus purchased logs.
  - Araupel has been forced to harvest significantly smaller and lower-quality logs than in other regions because of the unique political circumstances whereby local indigenous persons have invaded and occupied certain Araupel-owned forest lands.
  - Araupel has been precluded from physically accessing the land and has therefore been unable to perform the appropriate silviculture management activities necessary to maintain healthy and high-quality trees.
  - The typical harvesting cycles of ten to thirteen years referenced by the petitioner are general averages that vary based on the type of forest and are not reflective of the forests at issue here, which were harvested at twelve years but have an ideal maturity of eighteen years.
  - The relative yield data for self-produced and purchased logs, while downplayed by the petitioner, actually show a percentage point differential that translates to a very significant economic impact on Araupel's operations and profitability.

[162] *See* Araupel Rebuttal Brief at 32-37.

- Once the fair value adjustment is added to the historical costs of the self-produced logs, the result is consistent with the lower size, quality, and yield of these prematurely harvested logs.
- Commerce faces a high hurdle in disregarding costs that are booked in the normal course of business and in accordance with home country GAAP.[163] This standard has not been met in the instant case, therefore, no adjustment to the self-produced logs costs should be made in the final determination.

Commerce's Position:

While we have continued to include the fair value of wood cost adjustment in the reported costs, we do not find it appropriate to increase the self-produced log costs from Araupel's normal books and records to reflect the average costs that Araupel paid to third parties for purchased logs for this final determination. Section 773(f)(1)(A) of the Act stipulates that costs shall normally be calculated based on a company's books and records, if such records reflect home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. Under this guidance, Commerce has established a long-standing preference for following a company's GAAP-based records unless the reliance on such records prove distortive to the per-unit cost allocations.[164] Moreover, Commerce has stated that the burden of justifying a departure from normal books and records falls to the party arguing for the departure, which in this case, is the petitioner.[165] In the instant case, we do not find that the petitioner has provided sufficient reasoning or support for deviating from Araupel's normal books and records with regard to its self-produced logs costs.

The petitioner contends that Araupel's self-produced log costs do not reflect market values and are therefore not compliant with Brazilian GAAP. We disagree. First, for the year ended December 31, 2019, which corresponds precisely with the POI for this case, Araupel's independent auditor found that the company's FS were, in all material respects, presented in accordance with Brazilian GAAP.[166] Second, the accounting standard at issue, International Accounting Standard (IAS) 41, addresses the value of biological assets, *i.e.*, the living trees in Araupel's forests, and not the harvested logs. IAS 41 requires biological assets to be measured at each balance sheet date at their fair value less costs to sell.[167] Thus, contrary to the petitioner's arguments, this accounting standard addresses the value of the forest at the balance sheet date, *i.e.*, December 31, and not the harvested logs at the various dates that they were consumed throughout the year. Moreover, it is not under Commerce's purview to opine on whether a company's published FS comply with GAAP.[168] Rather, Commerce relies on the assurances of

[163] *See* Araupel Rebuttal Brief at 33 (citing, *e.g.*, *Polyethylene Terephthalate Resin from the Republic of Korea*, 83 FR 48283 (September 24, 2018), and accompanying IDM at Comment 2).
[164] *See, e.g.*, *Polytetrafluoroethylene Resin from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 48594 (September 26, 2018), and accompanying IDM at Comment 5 (*PT Resin India*); *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010), and accompanying IDM at Comment 18.
[165] *See, e.g.*, *PT Resin India* and accompanying IDM at Comment 5; *Large Power Transformers from the Republic of Korea*, 84 FR 16461 (April 19, 2019), and accompanying IDM at Comment 1.
[166] *See* Araupel AQR at Exhibit A-8-B.
[167] *See* Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Section D Supplemental Questionnaire Response of Araupel S.A. – Questions 1 through 25 and 31 through 43," dated July 1, 2020 (Araupel SDQR) at SD-3; Araupel AQR at Exhibit A-8-B, and IAS 41.
[168] *See LPTs Korea* IDM at Comment 3; *Nucor CAFC*, 371 Fed. Appx. 83 (*Nucor CAFC*) ("Commerce's mandate

the company's independent accountants and auditors to ascertain whether the company's FS are in accordance with home country GAAP.[169] In this case, Araupel's independent auditors reported no GAAP departures in the company's 2019 FS. Thus, we find that during the POI Araupel's normal books and records were in compliance with home country GAAP.

Still, the statute acknowledges that a respondent's normal books and records that overall are compliant with GAAP may yet result in per-unit costs that are unreasonable.[170] In this regard, we do not find that Araupel's allocation of costs to its self-produced logs, as adjusted by Commerce in the *Preliminary Determination*, to be unreasonable. As background, we note that the annual fair value assessments of the forests are performed by an independent third party and the annual changes in the unharvested forest values (increase or decrease in asset balance for forests) are recognized as a gain or loss in the income statement during the period in which they occur.[171] When self-grown forests are harvested, the logs are valued in raw material inventory at their annually-established exhaustion value, *i.e.*, the total of the historical cost of the forest plus its associated fair value adjustment, plus harvesting and delivery costs.[172] Thus, the fair value adjustments to the forests then attach to the logs harvested from the forests as additional inventoried log costs. For reporting purposes, Araupel submitted the fair value adjustments assigned to the harvested logs as a separate cost field, fair value of wood (WOODFV), that was not incorporated in the total cost of manufacturing (TOTCOM). For the *Preliminary Determination*, we revised Araupel's costs to include the costs reported in this field, and, for the final determination, we are continuing to include the costs in this field.

The petitioner argues that even with the inclusion of the WOODFV costs, Araupel's normally recorded self-produced log costs are inaccurate and should be adjusted upward to reflect the average POI purchase price paid to unaffiliated third parties for harvested logs. Thus, at issue is not whether Araupel's normally recorded costs have been properly allocated to the products produced. Rather, the petitioner suggests that Araupel should have recognized and reported costs that were not incurred and do not exist on Araupel's normal books and records. This is akin to adjusting the cost of an intermediate product produced by an integrated producer, where its COP is lower than if it had purchased the input. We find the petitioner's rationale for this adjustment, that the self-produced logs should reflect the same market values as the purchased logs, unpersuasive.

The petitioner has provided no statutory or precedential support for the notion that a company's self-produced or self-grown raw material costs should be written up to reflect the market values that would have been paid if the raw materials had been purchased from unaffiliated parties. Rather, the petitioner's argument relies on the fact that the self-produced log costs are lower than the purchased log costs and a misconstrued interpretation that under Brazilian GAAP the self-produced and purchased logs should reflect the same market values. However, the fair value assessments required by Brazilian GAAP are of the biological assets, *i.e.*, the trees in the forest, at a specific point in time and are not fair value assessments of the delivered log costs each time Araupel harvests its own forests. Araupel has also provided plausible evidence that the logs from its own forests may be of inferior size and quality as opposed to logs purchased from third

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does not include acting as the 'financial statement police' {;} it includes calculating only those costs that reasonably relate to cost of production during the period of review.").

[169] *Id.*

[170] *See* section 773(f)(1)(A) of the Act.

[171] *See* Araupel SDQR at SD-3.

[172] *Id*.

parties.[173] Furthermore, the fair value assessments were performed by independent third parties, assumedly knowledgeable in this industry, and resulted in biological asset valuations on Araupel's balance sheet and log costs on its income statement that the company's auditor found to be in compliance with home country GAAP. Hence, we do not find it appropriate to overturn the assessments performed and opined on by independent third parties. Therefore, for the final determination, we have not adjusted the costs of Araupel's self-produced logs to reflect the prices paid to unaffiliated parties for purchased logs.

Comment 4: Whether Commerce Should Recalculate the Fair Value Adjustment for Araupel's Costs for Biological Assets Consumed during the POI

Petitioner's Case Brief:[174]

- Araupel failed to explain how it derived the costs reported in cost field WOODFV and failed to reconcile the wood fair value adjustment costs from its financial accounting system to the total WOODFV costs reported in the cost database.
- Commerce should increase Araupel's costs for the unreconciled difference between the wood fair value adjustment costs from Araupel's financial accounting system and the WOODFV costs reported in the cost database.

Araupel's Rebuttal Brief:[175]

- No adjustment is warranted since Araupel explained and demonstrated how it derived the reported WOODFV costs as well as documented that the difference between the wood fair value adjustment costs in the company's financial accounting records and those reported in the cost database pertains to out-of-scope merchandise such as raw wood and logs.

Commerce's Position:

In its normal books and records, Araupel recognized two amounts related to its fair value adjustments for biological assets: (1) the year-end change in the fair value of Araupel's biological assets (the "unharvested forest fair value adjustment," which was a net gain on the 2019 income statement); and, (2) the cumulated fair value adjustments assigned to logs harvested and consumed from Araupel's own forests (the "wood fair value adjustment" which was a net expense on the 2019 income statement). In reporting to Commerce, Araupel included a separate informational cost field, WOODFV, that was not included in the TOTCOM cost field but represented the wood fair value adjustments assigned to the logs consumed in the production of the MUC.[176] In the *Preliminary Determination*, Commerce revised Araupel's TOTCOM to include the WOODFV costs.[177]

[173] *See* Araupel SDQR at SD-9 to SD-11.
[174] *See* Petitioner Case Brief at 44-45.
[175] *See* Araupel Rebuttal Brief at 44-47.
[176] *See* Araupel DQR at D-48.
[177] *See* PDM at 13.

For the final determination, we agree with the petitioner, in part. Although we disagree that Araupel failed to explain how it derived the reported WOODFV cost field,[178] we do find that Araupel has not fully reconciled the wood fair value adjustment costs from its financial accounting system to those reported in the cost database. Therefore, for the final determination, we have adjusted Araupel's reported WOODFV cost field to account for the unreconciled difference between the total wood fair value adjustments from Araupel's financial accounting system and the total WOODFV costs reported in the cost database.[179] To calculate the unreconciled difference, we commenced with the POI total fair value adjustments assigned to wood products sold and excluded amounts for out-of-scope raw wood ("madeira bruta") and logs ("toras"). We also adjusted for the change in finished goods inventory as it pertains to the wood fair value adjustment costs. We compared the result to the total of the per-unit WOODFV costs in the database to calculate the unreconciled difference.

Comment 5: Whether Commerce Incorrectly Decreased Araupel's Costs for Biological Assets Not Consumed during the POI

Petitioner's Case Brief:[180]

- Commerce should not include the fair value adjustment pertaining to unharvested forests in Araupel's G&A expenses since this increase in value is unrelated to the cost of producing the MUC.
- Araupel's two biological asset fair value adjustments are completely separate from one another and adjust different items - harvested and unharvested logs. Therefore, the harvested and unharvested fair value adjustments do not need to be made in tandem.
- The current year increase in the fair value of Araupel's forests merely reflects an increase in the future realizable value of unharvested logs and is unrelated to the cost of logs consumed during the POI.
- Araupel does not treat the fair value adjustments as G&A expenses in its normal books and records, but regardless of where the amounts were actually recorded, Commerce must deviate from a company's normal books and records when the resulting costs do not reasonably reflect the costs associated with the production and sale of the merchandise. The fair value adjustments for unharvested logs are unrelated to the cost of producing MUC and should therefore be excluded from COP entirely.

Araupel's Rebuttal Brief:[181]

- Both fair value adjustments are recognized on Araupel's normal books and records, yet the petitioner requests that Commerce include only the fair value adjustment for logs consumed in production but ignore the fair value adjustment pertaining to unharvested forests because it is unreasonable.

[178] *See, e.g.*, Araupel SDQR at SD-3 and SD-25 to SD26; and Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Section D Supplemental Questionnaire Response of Araupel S.A. – Questions 26 through 30," dated July 2, 2020 at SD-2 to SD-6 and Exhibits SD-24 to SD-27.
[179] *See* Araupel/Braslumber/BrasPine Final Cost Memo at Attachment 1.
[180] *See* Petitioner Case Brief at 45-47.
[181] *See* Araupel Rebuttal Brief at 50-54.

- Simply labeling an amount as "unreasonable" does not meet the standard for disregarding a company's normal books and records that have been found to be compliant with GAAP.
- Araupel's classification of the fair value adjustments on its FS does not support its exclusion from the reported costs since Commerce routinely includes amounts in G&A expenses that are not classified as such by the respondent.
- The petitioner inconsistently argues that forest-related income items should be included in the CV profit calculation, *i.e.*, when it would increase normal value, but Araupel's forest-related income associated with the unharvested forest fair value adjustment should not be included in the G&A expense rate calculation, *i.e.*, when it would decrease COP.
- If, as the petitioner alleges, the forests are raw materials, Commerce has a well-established practice of including in the reported costs all gains and losses pertaining to raw materials and work-in-process.[182] Therefore, if Commerce does not include the unharvested forest fair value adjustment in G&A expenses, it should apply the adjustment to Araupel's raw material costs.

Commerce's Position:

In the *Preliminary Determination*, Commerce adjusted Araupel's reported costs to include both fair value adjustments recognized in the company's normal books and records – the wood fair value adjustments associated with consumed logs (increase to costs) and the fair value adjustments associated with unharvested forests (decrease to costs). Commerce included the POI WOODFV costs in TOTCOM and the fiscal year 2019 unharvested forest fair value adjustment in the calculation of the G&A expense ratio.[183]

For the final determination, we have continued to include the fair value adjustments related to the unharvested forests as well as the fair value adjustments related to consumed logs (WOODFV) in the calculations of Araupel's G&A expenses and TOTCOM, respectively. Our treatment of the fair value adjustments recorded in Araupel's normal books and records is consistent with both the statute and prior practice.

Section 773(f)(1)(A) of the Act stipulates that costs shall normally be calculated based on a company's books and records, if such records reflect the home country's GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with Brazilian GAAP, which follows IFRS, Araupel's FS reflect two fair value adjustments, both of which are ultimately related to the revaluation of its biological assets.[184] IAS 41 requires biological assets, *i.e.*, the standing trees in the forests owned by Araupel, to be measured at each balance sheet date at their fair value less costs to sell.[185] The annual change in the unharvested forest values (increase or decrease in the asset balance for forests) is recognized as a gain or loss in the income statement during the period in which they occur.[186] In turn, when self-grown forests are harvested, the logs are valued in raw material inventory at their annually-established exhaustion value, *i.e.*, the total of the historical cost of the forest plus its associated fair value

[182] *Id.* at 49 (citing, *e.g.*, *Oil Country Tubular Goods from the Republic of Korea*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 8).
[183] *See* Araupel/Braslumber/BrasPine Preliminary Cost Calculation Memo at 1-2.
[184] *See* Araupel SDQR at SD-3.
[185] *Id.*; *see also* Araupel AQR at Exhibit A-8-B, and IAS 41.
[186] *See* Araupel SDQR at SD-3.

adjustment, as well as harvesting and delivery costs.[187] Thus, the fair value adjustments to the forests attach to the logs harvested from the forests as additional inventoried log costs. In its audited 2019 FS, which an independent auditor found to be in compliance with Brazilian GAAP in all material respects, Araupel recognized both additional income related to the year-end fair value adjustment of its forests and additional expense related to the fair value adjustments that were allocated to the logs harvested, consumed, and sold from those forests.[188] Thus, we find that including both sides of the fair value adjustments in COP is consistent with Araupel's normal books and records which are compliant with Brazilian GAAP. Further, we find that recognizing only one side of the fair value adjustments required by Brazilian GAAP, as argued for by the petitioner, would be unreasonable and result in a distortion of Araupel's total reported costs.

Moreover, Commerce's treatment of Araupel's fair value adjustments is consistent with prior practice. In *Uncoated Paper Brazil*, Commerce included both parts of the fair value adjustments stating that respondents failed to demonstrate why the fair value adjustments, which represent the accounting practices adopted in Brazil, were unreasonable and distortive to Commerce's calculations.[189] Similarly, we find that the petitioner in the instant case has also failed to demonstrate that following Araupel's normal books and records would be distortive. While the petitioner argues that the two fair value adjustments are separate and unrelated, we disagree. Rather, as explained above, it is the annual revaluation of the standing forests that gives rise to the additional fair value costs allocated to logs harvested from those forests. Thus, we find that including the POI fair value adjustments that that have been allocated to harvested logs, *i.e.*, those that increase costs, but excluding the annual fair value adjustment to the unharvested forests, *i.e.*, those that decrease costs but give rise to the additional costs that are ultimately allocated to harvested logs, is unreasonable and distortive. Accordingly, we also find unavailing the petitioner's contention that the fair value adjustments for unharvested forests reflect future realizable values that are unrelated to current production costs. It is, in fact, the year-end revaluations of the underlying biological assets that increases the value of the logs harvested from those forests. Both adjustments were recognized on Araupel's 2019 audited FS and therefore we likewise find it appropriate to recognize both adjustments in the reported costs.

Finally, we also find the classification of the fair value adjustments as an element of gross profit rather than G&A expense items on Araupel's FS an unpersuasive and irrelevant argument for the exclusion of the unharvested forest fair value adjustments. Because both adjustments were included in Araupel's audited FS that an independent auditor found to be in compliance with Brazilian GAAP, and because we find no record evidence that the FS do not reasonably reflect the cost of producing the merchandise, we determine that both fair value adjustments should be included in the reported costs. Consequently, for the final determination, we have continued to adjust Araupel's reported costs to include both sides of the fair value adjustments.

Comment 6: Whether Commerce Should Apply the Major Input Rule to Araupel's Log Purchases

Petitioner's Case Brief:

[187] *Id.* at SD-3.
[188] *See* Araupel AQR at Exhibit A-8-B.
[189] *See Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115-01 (January 20, 2016) (*Uncoated Paper Brazil*), and accompanying IDM at Comment 2.

- Araupel reported that logs accounted for a certain amount of TOTCOM, which it purchases from Company A,[190] which is wholly owned by Company B.[191] Because Araupel is affiliated with Company B, Commerce should apply the major input rule to the log purchases.[192]
- Araupel was a joint venture partner with Company B during the POI to allow Company B to invest in standing timber in Brazil while reducing the risk of the investment because Araupel would purchase the timber for its operations. Araupel would also have a reliable source of timber supply in the region.[193]
- In the joint venture, Araupel and Company B had joint ownership of Company C[194] and Company D,[195] which owned the land that produced the logs owned by Company A and purchased by Araupel during the POI.[196]
- Originally, Araupel and Company B were shareholders in Company E,[197] which held the title to the biological assets and subsequently merged into Company A without direct ownership by Araupel.[198]
- Commerce has determined that the threshold issue for affiliation is whether either the buyer or seller has, in fact, become reliant on the other. When such reliance exists, Commerce determines whether one of the parties is in a position to exercise restraint or direction over the other.[199]
- Araupel claims that there were no formal written contracts or agreements in place regarding log prices during the POI due to the informal nature of the negotiations with Company A. Commerce must either apply adverse facts available (AFA) to these inputs or request that Araupel provide the missing information in order to apply the affiliated party input adjustment.[200]

Araupel's Rebuttal Brief*:*

- Araupel and Company B are not affiliated because the threshold test of "control" in the affiliation standard is not met in their joint venture relationship. Araupel and Company B have no direct or indirect shareholding interest in each other and there is no overlapping of managers, directors, or board members between Araupel and Company B. During the POI, Araupel held a minority interest in Companies C and D, which allowed Company B to hold land titles in Brazil.[201]
- Shared interest in a third company is not by itself a basis by itself for affiliation under section 771(33)(F) of the Act, which requires direct or indirect "control." Commerce will

[190] The identity of this company is proprietary in nature. *See* Memorandum, "Antidumping Duty Investigation of Wood Mouldings and Millwork Products from Brazil: Business Proprietary Information Memorandum," dated December 28, 2020 (BPI Memorandum).
[191] The identity of this company is proprietary in nature. *Id.*
[192] *See* Petitioner Case Brief at 42.
[193] *Id.* at 42-43.
[194] The identity of this company is proprietary in nature. *See* BPI Memorandum.
[195] The identity of this company is proprietary in nature. *Id.*
[196] *See* Petitioner Case Brief at 43.
[197] The identity of this company is proprietary in nature. *See* BPI Memorandum.
[198] *See* Petitioner Case Brief at 43.
[199] *Id.*
[200] *Id.* at 43-44.
[201] *See* Araupel Rebuttal Brief at 37-38.

not find that control exists in these relationships unless the relationship has the potential to impact decisions concerning production, pricing, or cost of the subject merchandise or foreign-like product, and not by just being in a joint venture.[202]

- In *Korea CORE*, Commerce found that despite the participation of two companies in a joint venture in Brazil, there was no control between those parties because the joint venture had no potential to impact decisions concerning the production, pricing, or cost of subject merchandise or foreign like product, despite one company purchasing steel slabs from the joint venture.[203]
- Araupel and Company B entered into a joint venture to invest in rural land for timber production through Companies C and D so that Company B could own the land. All of Araupel's transactions for the purchase of timber occurred at arm's length based on market conditions at the time.[204]
- Araupel is not affiliated with Company A because Araupel has no control over Company B or its affiliates. In *Korea Carbon Steel*, Commerce determined that even where affiliation is found between two parties under section 771(33)(F) of the Act, this finding of affiliation cannot be simply extended to a joint venture owner's subsidiary as there must be the evidentiary basis for a threshold finding of "control" between the joint venture parties and the subsidiary.[205]
- Araupel acted to the best of its ability in providing information and stating in its responses that it was not affiliated with Company A or B. If Commerce disagrees with this position, it should apply neutral facts available or request more information rather than applying AFA.[206]

Commerce's Position:

We agree with Araupel that it is not affiliated with Company A and Company B through its joint venture agreement. As indicated by the record, Araupel and Company B entered into a joint venture agreement prior to the POI to invest in rural land for timber production.[207] The joint venture agreement allowed Company B's foreign-owned parent company to maintain investments in timber in Brazil.[208] Araupel and Company B held shares in Company E, the entity originally designated to hold title to the biological assets, which prior to the POI merged with Company A.[209] At that point, Araupel transferred any remaining shares it owned of Company E to Company A.[210] Company A is wholly-owned by Company B.[211] Under the joint

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[202] *Id.* (citing *Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 48118 (September 12, 2019) (*Korea CORE Prelim*), and accompanying PDM at "VI. Affiliation and Collapsing," unchanged in *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*Korea CORE Final*)).
[203] *Id.* at 39 (citing *Korea CORE Prelim* and accompanying PDM at "VI. Affiliation and Collapsing").
[204] *Id.* at 40.
[205] *Id.* at 41 (citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997) (*Korea Carbon Steel*) at Comment 2).
[206] *Id.* at 42-43.
[207] *See* Araupel AQR at A-11; *see also* Araupel 2AQR at S2A-1.
[208] *See* Araupel 2AQR S2A-2.
[209] *Id.*
[210] *Id.*
[211] *See* Araupel AQR at A-11.

venture agreement, Araupel was a minority shareholder in Companies C and D, while Company B held the remaining ownership shares.[212] Companies C and D hold title to the land in which Company A harvests the logs that Araupel purchases for the production of subject merchandise.[213] Araupel explained that, in Brazil, different entities can hold titles to the land and the biological assets held on that land.[214] Araupel also stated that it did not share any board members, company directors, or employees with Companies A or B, nor did it exercise any control over the operations, production or pricing decisions of Companies A or B.[215]

Section 771(33)(F) of the Act defines the term "affiliated parties" to include "{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person." Under 19 CFR 351.102(b)(3), Commerce determines whether control over another person exists, within the meaning of section 771(33) of the Act, by considering certain relationships, including joint venture agreements. However, Commerce will not find that control exists in these relationships unless the relationship has the potential to impact decisions concerning production, pricing, or cost of the subject merchandise or foreign like product. In this case, we find that Araupel has sufficiently demonstrated that it does not have ownership over Companies A and B, nor that the joint venture has the potential to impact decisions concerning the production, pricing, or cost of subject merchandise. Therefore, in accordance with 19 CFR 351.102(b)(3) and consistent with Commerce's practice, we find that neither affiliation nor control exists between Araupel and Companies A and B on the basis of the joint venture.[216] As such, we have not applied the major input rule to Araupel's log purchases from Company A for this final determination.

Comment 7: Whether Unreconciled Costs Should Be Allocated to Production Costs

Petitioner's Case Brief:[217]

- Araupel's cost reconciliation reveals two significant reconciling items that were excluded from the reported costs for no legitimate reason.
  - Araupel excluded the costs of products that were produced and shipped during the POI but not delivered as of December 31, 2019. While Brazilian GAAP precluded Araupel from recognizing the revenue and cost of goods sold (COGS) for these sales in its 2019 income statement, these goods were produced during the POI and therefore should have been included in the reported costs.
  - Araupel overstated the cost of blanks that were produced and sold during the POI, but did not enter finished goods inventory, which was the basis for Araupel's product-specific cost reporting. Because these blanks did not enter finished goods inventory, Araupel reported them with zero production quantities and surrogate production costs in the cost database. Araupel contends that the unreconciled difference from its cost reconciliation is largely due to these blanks and therefore allocated a portion of the unreconciled cost difference to the blanks and the residual amount to the finished

[212] *Id.*
[213] Araupel's percentage ownership of Companies C and D is proprietary in nature. *Id.*; *see also* Araupel 2AQR at S2A-2.
[214] *See* Araupel SDQR at SD-6.
[215] *See* Araupel 2AQR at S2A-3.
[216] *See, e.g.*, *Korea CORE Prelim* PDM at "VI. Affiliation and Collapsing," unchanged in *Korea CORE Final*.
[217] *See* Petitioner Case Brief at 47-50.

products reported in the cost database. However, Araupel's estimation of the costs for these blanks is flawed and must be recalculated.
    - The source of the surrogate costs was not identified and cannot be found in the cost database.
    - The surrogate labor and variable overhead costs are overstated and are higher than the total weighted-average labor and variable overhead costs reported in Araupel's cost database. The blanks are intermediate products that should not reflect higher costs than finished products.
    - The total amount allocated to blanks is also overstated since Araupel failed to include byproduct offsets in its calculation.
- Commerce should revise Araupel's calculation of blank costs and add the difference in the reported and revised blank costs along with the production costs for the undelivered products to Araupel's reported TOTCOM.

Araupel's Rebuttal Brief:[218]

- The petitioner is incorrect - Araupel has included the costs for the produced, but undelivered products in the reported costs. While recorded in Araupel's financial accounting system, the sales revenue and associated COGS for these products could not be recognized on Araupel's audited income statement under Brazilian GAAP. Consequently, Araupel's year-end trial balance reflects a contra-account that reduces the total COGS for the year and an additional balance sheet account that increases finished goods inventory for the COGS of the undelivered products. Thus, in the cost reconciliation, the COGS for the undelivered products appear as a reduction to the total COGS recorded during the POI, but then the COGS for undelivered products is added back when Araupel's total costs are increased to include the ending balance of finished goods inventories.
- Araupel's approach for estimating the total costs for the blanks initially assigned no costs in the cost database (the blanks sold from work-in-process without entering finished goods inventory) using the costs for blanks with costs assigned in the cost database (the blanks that were transferred to finished goods inventory) is reasonable and appropriate under the circumstances, therefore no adjustment is warranted.
    - Contrary to the petitioner's contentions, Araupel provided a complete explanation of its methodology and detailed supporting documentation.
    - The petitioner has understated the estimated cost for the blanks in an effort to artificially increase Araupel's costs. The petitioner illogically submits an estimated cost for the blanks that, depending on which cost element is lower, reflects a selective hybrid of the surrogate blank costs submitted by Araupel (direct materials and fixed overhead) and the total weighted-average costs from the cost database (direct labor and variable overhead). In fact, if all cost elements are based on the total weighted-average costs from the cost database, the estimated cost of the blanks would be higher than the estimated costs calculated by Araupel.
    - The petitioner inappropriately reduced the total estimated costs allocated to blanks with byproduct offsets, however, the costs being allocated do not include byproduct offsets.

Commerce's Position:

[218] *See* Araupel Rebuttal Brief at 50-54.

Based on record evidence, we find that no adjustment is warranted to Araupel's total costs for the undelivered product costs. However, with regard to Araupel's estimation of the total blank production costs, we agree with the petitioner, in part, and have adjusted Araupel's reported costs accordingly for the final determination.

First, based on Araupel's reported cost reconciliation, we find that the quantity and value of the undelivered products, as they relate to the MUC, have been included in the reported costs. As requested by Commerce, Araupel provided a reconciliation of the total costs from its audited FS to the total costs reported in the cost database.[219] In the first step of this reconciliation, Araupel demonstrates how the total COGS from the 2019 audited income statement ties to the total of the COGS accounts in the 2019 trial balance (COGS accounts less the IFRS fair value account which is presented as a separate line item on the income statement).[220] Included in these COGS trial balance accounts is a separate account, "Produtos Nao Entregues – IFRS 15/CPC 47," that pertains to the COGS for goods shipped but not delivered.[221] This account reflects a credit balance, *i.e.*, it is a contra-account that offsets or reduces the debit balances accumulated in the other COGS accounts, and apparently, is the source of the confusion regarding this issue.

The parties agree that Brazilian GAAP, which follows IFRS, does not allow a company to recognize revenues for products that at year end were sold but were still in transit to customers.[222] Because Araupel had already recorded these sales in its financial accounting system, the company booked a year-end adjustment reversing the recognition of the sales for purposes of preparing its 2019 GAAP-based FS.[223] On the cost side, this adjustment was recorded as a credit to the contra-COGS account, thus reducing overall COGS, and a debit to a separate finished goods inventory account similarly notated as "IFRS 15/CPC 47", thus increasing finished goods inventory.[224] Hence, when Araupel identified the various COGS accounts from the trial balance that comprise the COGS in the audited FS, the COGS of the undelivered products were incorporated in the debit-balanced COGS accounts and then also appear in the contra-COGS account as a credit, or offset, to the total COGS recorded in the trial balance.[225] Thus, at this point of the reconciliation, which reflects the total COGS on the audited income statement, the undelivered products are not included. However, in order to calculate the total POI cost of manufacturing, Araupel next adjusted the total COGS on its reconciliation worksheet for the POI change in finished goods inventories.[226] This means that the beginning finished goods inventory balance was deducted since it represented products produced prior to the POI and the ending finished goods inventory balance was added to the total COGS. Therefore, it is at this step that Araupel incorporates the costs for the undelivered products. We have confirmed based on record evidence that the COGS for the undelivered products are a component of the ending finished goods inventory balance that Araupel added to the total COGS.[227] Furthermore, Araupel also reconciled the total COGS adjusted for the change in

[219] *See* Araupel SDQR at Exhibit SD-15.
[220] *Id*.
[221] *Id.* at SD-21 and SD-15.
[222] *Id.* at SD-21; and Petitioner Case Brief at 47.
[223] *See* Araupel SDQR at SD-21, Exhibit SD-15, and Exhibit SD-28.
[224] *Id.* at SD-21, Exhibit SD-15, and Exhibit SD-28.
[225] *Id.* at Exhibit SD-15.
[226] *Id.* at Exhibit SD-15b.2.
[227] *Id.* at Exhibit SD-15b.2 and Exhibit SD-28.3.

finished goods inventory to the total costs reported in the cost database.[228] Thus, we disagree with the petitioner that the costs for the undelivered products that were produced during the POI were excluded from the reported costs.

Second, we find that Araupel's methodology for reporting the per-unit blank costs in the cost database is reasonable and supported by record evidence; however, we disagree with Araupel's methodology for estimating the total blank production costs for purposes of the overall cost reconciliation. A brief overview of Araupel's cost reporting methodology is instructive in the examination of this issue. To compile the reported cost database, Araupel relied on the product-specific production quantities and costs for products transferred to finished goods inventory during the POI.[229] However, certain blanks, which are intermediate but reportable products, did not enter Araupel's finished goods inventory and instead were sold directly out of work-in-process inventories.[230] As a result, the production quantities and costs for these blanks were not included in the data extracted from finished goods inventory records. However, because the sales of these blanks were reported in the sales databases, Araupel added the corresponding CONNUMs for the blanks to the cost database and reported them with surrogate production costs but zero production quantities.[231] As a result of this methodology there was a difference between the total costs from Araupel's financial accounting system, which included the costs of the blanks sold from work-in-process, and the extended total of the per-unit costs in the cost database, which did not include the costs for these blanks (zero production quantities times surrogate per-unit costs equals an extended production cost of zero for the blanks). Consequently, in the overall cost reconciliation, Araupel estimated a cost for these blanks using the weighted-average per-unit costs for the surrogate products multiplied by the sales quantities for the blanks.[232] The remaining unreconciled cost difference between the financial accounting system and the extended reported costs was allocated to all products in the cost database. The petitioner argues that Araupel's estimation of the blank production costs is overstated, thus, the unreconciled difference adjustment to the reported costs should be larger. We agree, in part.

There are two separate questions at issue here – whether the per-unit surrogate blank costs reported in the cost database are reasonable and whether the total production costs assigned to the blanks in the overall cost reconciliation is accurate. First, we find Araupel's methodology for reporting product-specific per-unit costs for the blanks in the cost database to be reasonable. Contrary to the petitioner's assertions, Araupel did in fact identify the surrogate CONNUMs that were used to value the blanks with missing costs.[233] The surrogate CONNUMs were also blanks, but blanks that had been transferred to finished goods inventory during the POI and were therefore reported with quantities and costs in the cost database. We examined lists of the underlying job orders, product codes, production quantities and production costs for the surrogate CONNUMs that tie in total to the quantities and values reported in the cost database.[234] We also obtained screen prints from Araupel's cost accounting system, confirming that the products were blanks and that Araupel reported the costs allocated to these products from its

[228] *Id.* at Exhibit SD-15b.
[229] *See, e.g.*, Araupel SDQR at SD-24.
[230] *See* Araupel SDQR at SD-24.
[231] *Id.* at SD-24 and cost database araupelcop02.
[232] *Id.* at SD-21 to SD-22 and Exhibit SD-15.
[233] *See* Araupel In-Lieu-of Verification Response at Exhibits V-9A and V-9B.
[234] *Id.* at Exhibit V-9A and Araupel SDQR at cost database arupelcop02.

normal books and records.[235] Thus, we find Araupel's methodology for reporting product-specific blank costs in the cost database to be reasonable.

With regard to the overall cost reconciliation, we agree with the petitioner that Araupel's estimation of the total blank costs is overstated. For purposes of the cost reconciliation, Araupel first calculated one weighted-average cost for all of the surrogate CONNUMs and then multiplied this per-unit cost by the total sales quantity for the blanks. However, we find it is more accurate to multiply the CONNUM-specific sales quantities by the CONNUM-specific per-unit surrogate costs. Therefore, for purposes of the overall cost reconciliation, we have revised Araupel's estimate of the total blank production costs and applied the difference between Araupel's estimate and our recalculation, *i.e.*, an additional unreconciled cost difference, as an adjustment to Araupel's reported costs for the final determination.

Finally, with regard to the petitioner's own calculation of the total blank costs, we agree with Araupel that the petitioner unreasonably incorporates cost elements from multiple sources. We find it more appropriate to rely on a single source, the per-unit surrogate costs reported in the cost database, which were derived from similar blank products produced during the POI, to calculate the total estimated blank production costs. With regard to the byproduct offset, Araupel does not assign values to byproducts when they are generated, but rather only assigns further processing costs in its normal books and records.[236] Thus, in the cost reconciliation, the total costs from Araupel's financial accounting system were not reduced by the byproduct offset, which was only calculated for reporting purposes. This is demonstrated by the fact that Araupel reconciled these total costs from the financial accounting system, including the further processing costs related to byproducts, to the extended total of the direct material, direct labor, variable overhead, and fixed overhead per-unit cost fields, *i.e.*, excluding the byproduct offset field from the cost database.[237] Thus, to be on a consistent basis, the total estimated blank production costs used in the cost reconciliation should likewise exclude byproduct offsets.

Comment 8: Whether Araupel's Non-Prime Merchandise Should Be Assigned Full Production Costs

Petitioner's Case Brief:[238]

- In accordance with its normal practice, Commerce should revalue Araupel's non-prime declassified merchandise, which has limited commercial value and cannot be used for the same purposes as prime merchandise, to reflect its sales price and allocate the remaining production costs to prime merchandise.

Araupel's Rebuttal Brief:[239]

- The petitioner provides no citations to support Commerce's supposed "practice" of revising non-prime products costs to their market price. Rather, controlling legal precedent directs Commerce to apply the same costs to non-prime products, if, as is true

[235] *Id.* at Exhibit V-9A.
[236] *See* Araupel DQR at D-25.
[237] *See* Araupel SDQR at Exhibit SD-15.
[238] *See* Petitioner Case Brief at 50-51.
[239] *See* Araupel Rebuttal Brief at 54-58.

here, they undergo the same production process. Moreover, Commerce has correctly followed the *IPSCO* precedent in other cases where the prime and off-grade products had identical production processes.[240]

- While Commerce has subsequently sought to limit the reach of *IPSCO* by inserting an exception for non-prime products that do not have the same applications as prime products, the CAFC's concern in *IPSCO* was the circular nature of tying production costs to sales prices and not the "application" of the products that emerged from the production process. Instead, the CAFC identified the COP as an "independent standard" for fair value that cannot be reasonably tied to sales prices of the products produced.[241]
- The petitioner's proposal to allocate Araupel's costs between prime and non-prime products that are produced on the same line and by the same process based on sales prices therefore flies in the face of the *IPSCO* ruling and would lead to an arbitrary and circular approach. In fact, under the petitioner's theory, if the demand and price for non-prime materials were to suddenly rise in the future, Commerce would have to shift more costs to non-prime product, which would violate the requirement that production costs serve as an independent standard.

Commerce's Position:

We agree with the petitioner and have adjusted Araupel's non-prime product costs for the final determination. Commerce's current practice with respect to non-prime products is to analyze the products sold as non-prime on a case-by-case basis to determine how such products are treated in the respondent's normal books and records, whether they remain in scope, and likewise whether they can still be used in the same applications as the prime subject merchandise.[242] Sometimes the downgrading is minor, and the product remains within a product group. Other times the downgraded product differs significantly, no longer belongs to the same group, and cannot be used for the same applications as the prime product. If the product cannot be used for the same applications, the product's market value is usually significantly impaired to a point where its full cost cannot be recovered. In such cases, assigning full costs to that product could be unreasonable.

In its normal books and records, which were relied on for reporting purposes, Araupel assigned costs to declassified products in three different manners: (1) the declassified products were assigned no costs; (2) the declassified products were assigned the same costs as prime products, but transferred to a different product code, or, (3) the declassified products were removed from production, transferred to a different product code, and assigned the costs through the stage of production where they were detected and downgraded.[243] Araupel explained that declassified material has numerous defects that prohibit it from being used as a moulding product.[244]

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[240] *See* Araupel Rebuttal Brief at 56-57 (citing *IPSCO v. United States*, 965 F.2d 1056, 1059-1061 (CAFC 1992) (*IPSCO*); and *e.g.*, *Polyethylene Terephthalate Film, Sheet and Strip from Korea*, 65 FR 55003 (September 12, 2000) (*PET Film Korea*), and accompanying IDM at Comment 1).
[241] *See* Araupel Rebuttal Brief at 57 (citing, *e.g.*, *Large Diameter Welded Pipe from Canada*, 84 FR 6378 (February 27, 2019) (*LD Pipe Canada*), and accompanying IDM at Comment 5; and *IPSCO*, 965 F.2d at 1061).
[242] *See, e.g.*, *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 230 (November 30, 2020), and accompanying IDM at Comment 5; *LD Pipe Korea* IDM at Comment 5; *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 21391 (April 20, 2020), and accompanying IDM at Comment 9.
[243] *See* Araupel SDQR at SD-22.
[244] *Id*.

According to Araupel, the declassified materials are usually purchased for other end uses, such as small wooden objects or toys.[245] Additionally, Araupel does not track the dimensional data for downgraded products, thus, these products can be distinguished in the cost database by the "99" CONNUM coding that was used in place of Commerce's dimensional characteristics.[246]

Based on this information, Araupel's downgraded products differ significantly from prime products and cannot be used for the same applications as prime products. Their downgraded nature is underscored by the fact that Araupel does not track their dimensional data and is therefore unable to even fully report the physical characteristics of the downgraded products. Furthermore, in its normal books and records, Araupel uses a variety of cost allocation methodologies for the declassified products that range from no costs to full production costs. Consequently, to determine if the costs assigned to these significantly impaired products during the POI were reasonable, we compared the weighted-average TOTCOM reported for the declassified products to the POI weighted-average sales price reported for the declassified products. Based on this analysis, we find that the market value of the declassified products was significantly lower than the production costs allocated to the declassified products. As such, we find it appropriate to revalue the declassified products at their market value and assign to prime products the difference between the reported costs of the declassified products and their market value.

We disagree with Araupel's reliance on *IPSCO*. In *IPSCO*, Commerce rejected respondent's treatment of "limited service pipe" as a byproduct of oil country tubular goods (OCTG). Because Commerce found evidence that IPSCO treated the limited service pipe as an OCTG product in certain FS, we reallocated costs equally to both prime OCTG and limited service pipe. Although Commerce was directed by the CIT to change this methodology on remand, ultimately, the CAFC upheld Commerce's original decision to cost the limited service OCTG at the same amount as prime OCTG because of the limited service pipe's use as OCTG, a fact distinguishable from the current case where the declassified products are not used as mouldings.

Furthermore, subsequent to the *IPSCO* case, section 773(f)(1)(A) of the Act was added to the statute and expressly directs Commerce to consider the normal books and records of the exporter or producer, if such records are kept in accordance with GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. Under the appropriate circumstances, assigning costs based on market value is a well-established practice in cost accounting and accepted under GAAP. It has also been accepted by the courts.[247]

Further, we disagree with the notion that we are reallocating Araupel's costs to prime and non-prime products using relative sales values – such reallocation methodology would be a coproduct methodology. Coproduct methodologies are used where multiple products are generated simultaneously in a single production process and incur undifferentiated joint production costs until a "split-off point," after which the joint products become separately identifiable.[248] Here,

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[245] *Id*.
[246] *Id.*
[247] *See PSC VSMPO-AVISMA Corp. v. United States*, 688 F.3d 751 (CAFC 2012). We note that the facts of this investigation differ from the CAFC's decision in *Dillinger France S.A. v. United States*, Court No. 19-2395 (CAFC December 3, 2020) (*Dillinger CAFC*), because, unlike here, in that case Commerce used the respondent's books and records, which used estimates, such as "likely selling price." *Dillinger CAFC* at *4.
[248] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than*

the issue is whether Araupel's declassified products are more akin to scrap in substance and value than to prime products, and, if so, whether the declassified products should be valued consistent with scrap, *i.e.*, based on their net realizable values rather than full production costs. Thus, in the instant case, there is no discussion nor any intent to reallocate Araupel's total production costs based on the relative sales values of prime and non-prime products.

We also disagree with Araupel that this case is similar to *PET Film Korea*.[249] In that case, Commerce reallocated the respondent's costs equally between grade A and grade B PET film because Commerce found that not only were the production processes of grade A and grade B PET film identical, but also that grade B PET film had the same commercial value as grade A PET film (*i.e.*, the market value of grade B PET film was not significantly lower than the market value of grade A PET film).[250] In the instant case, the declassified products have a significantly downgraded market value in comparison to prime products. Therefore, it is not reasonable to allocate full production costs to the declassified products.

Comment 9: Whether Commerce Should Use the Federal Reserve's Small Business Lending Survey Short-Term Interest Rate to Calculate Araupel's Credit Expenses

Petitioner's Case Brief:

- As Araupel did not have short-term borrowings during the POI, it used a 2.16 percent interest rate from the Federal Reserve as the U.S. dollar short-term borrowing rate to calculate its credit and inventory carrying cost expenses.[251]
- Commerce should recalculate Araupel's interest expenses using the Federal Reserve's Small Business Lending Survey (SBLS) short-term interest rate, which is an average of interest rate of 5.73 percent, consistent with Braslumber/BrasPine's reported rate of 5.182 percent and with Commerce's practice.[252]
- Commerce's Policy Bulletin 98.2 provides that "{f}or dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made." The policy bulletin provides a link to the Federal Reserve's Survey of Business Lending Terms, which was replaced by the SBLS in 2018.[253]
- Commerce should also recalculate Araupel's credit expenses using date of shipment from the plant, which is when Araupel's commercial terms of sale are set, instead of the reported shipment date from the port in Brazil, consistent with past practice.[254]

Fair Value and Negative Final Determination of Critical Circumstances, 79 FR 41983 (July 18, 2014), and accompanying IDM at Comment 18.

[249] *See PET Film Korea* IDM at Comment 1.

[250] *Id*.

[251] *See* Petitioner Case Brief at 51.

[252] *Id.* at 52-53.

[253] *Id.*

[254] *Id.* at 54 (citing *Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002), and accompanying IDM at Comment 19 (*Silicomanganese from India*); and *Certain Welded Carbon Steel Standard Pipes and Tubes from*

- Araupel contends that the export merchandise remains part of its finished goods inventory for accounting purposes until the merchandise is shipped from the port of export to the customer. However, in *India Steel Pipes*, Commerce emphasized that credit expenses relate to both "the costs associated with carrying accounts receivable on the books and the expenses related to extending credit to purchasers for the interim between shipping and payment." Any overlap between the number of days used to calculate the extension of credit (*i.e.*, credit expenses) and the number of days used to calculate post-production lost opportunity costs (*i.e.*, inventory carrying costs) is irrelevant as these two adjustments measure completely different things.[255]

Araupel's Rebuttal Brief:

- As Araupel did not have short-term borrowings during the POI, it reported its imputed credit expenses using the Effective Federal Funds Rate for 2019. As the petitioner stated, the Federal Reserve's SBLS is no longer published by the Federal Reserve.[256]
- The SBLS rate proposed by the petitioner is not a reasonable proxy for Araupel's short-term borrowing because that survey pertains to loans by small businesses, defined as companies with $5 million or less in annual gross revenue. Araupel's gross revenue in 2018 and 2019 is many multiples higher than this threshold.[257]
- Araupel calculated imputed credit based on the date of shipment from the port because export merchandise remains a part of Araupel's finished goods inventory for accounting purposes until the merchandise is shipped from the port of export to the customer. Araupel also included the time period between the date of shipment from the plant and the date of shipment from the port in its domestic market inventory carrying expense calculation.[258]
- If Commerce were to change the imputed credit calculation to the date of shipment from the factory, it would double-count the imputed expenses. During the time period after production and prior to sale, the products are deemed to be held in inventory and generate an inventory carrying expense. Once sold, the products are no longer part of inventory and generate an imputed credit expense for the unpaid accounts receivable.[259]
- The importance of the accounts receivable date to the proper determination of the imputed credit period is confirmed by Commerce's established practice of using accounts receivable turnover periods to calculate imputed credit periods.[260]

Commerce's Position:

In the *Preliminary Determination*, Commerce used Araupel's reported interest rate to calculate imputed credit expenses and inventory carrying costs. Araupel reported that did not have qualifying short-term U.S. dollar borrowings of its own during the POI.[261] Therefore, Araupel

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India: Final Results of Antidumping Duty Administrative Review, 75 FR 69626 (November 15, 2010) (*India Steel Pipes*), and accompanying IDM at Comment 7).

[255] *Id.* (citing *India Steel Pipes* IDM at Comment 7).

[256] *See* Araupel Rebuttal Brief at 58.

[257] *Id.* at 59.

[258] *Id.* at 59-60.

[259] *Id.* at 60.

[260] *Id.* (citing Commerce's Initial Investigation Questionnaire, dated March 2, 2010 at Appendix I, p. I-6).

[261] *See* Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Sections B and C Initial Questionnaire Response of Araupel S.A.," dated May 6, 2020 (Araupel CQR) at C-54.

used the POI annual average of a published U.S. dollar short-term borrowing rate from the Federal Reserve Bank of New York in its calculation of the imputed credit expense.[262] The petitioner argues that Commerce should recalculate Araupel's credit expense using an average interest rate taken from the Federal Reserve's SBLS per Commerce's Policy Bulletin 98.2.[263] Policy Bulletin 98.2 states that Commerce's preferred source for surrogate short-term interest rates was line item "31 to 365 days" in the Federal Reserve's statistical release "E.2 -Survey of Terms of Business Lending" (STBL) for commercial and industrial loans made by all commercial banks because this survey satisfied the criteria outlined in Policy Bulletin 98.2.[264] However, the STBL was discontinued in 2017; thus, we have considered the two sources of short-term interest rate information on the record provided by Araupel and the petitioner for use to impute Araupel's credit expense. The criteria laid out in Policy Bulletin 98.2 state that the surrogate short-term interest rate: (1) should be reasonable; (2) be readily obtainable and predictable; and (3) should be a short-term interest rate actually realized by borrowers in the course of "usual commercial behavior" in the United States.[265] However, as Araupel points out, the SBLS survey pertains to loans by small businesses, defined as companies with $5 million or less in annual gross revenue.[266] As such, we find that the SBLS is not an appropriate measure to calculate credit expenses because Araupel's annual revenue exceeded the $5 million threshold, and as such, is not categorized as a small business.[267] Therefore, we find it appropriate to use the POI annual average of a published U.S. dollar short-term borrowing rate from the Federal Reserve Bank of New York to calculate Araupel's imputed credit expense. Accordingly, we continue to use Araupel's reported interest rate to calculate imputed credit expenses for the final determination.

With regard to the date of shipment used in the calculation of the imputed credit expense, we agree with Araupel that the appropriate date is the date of shipment from the port of export. Our policy regarding EP sales is to impute expenses starting from the time that the merchandise leaves the production line until it is paid for by the customer.[268] We break these imputed expenses up into imputed inventory carrying costs (indirect) and imputed credit costs (direct), depending on whether the goods are in the producer's inventory or not. Once the merchandise is shipped to the customer, it is no longer in the company's inventory and therefore the inventory carrying period is over and the credit period begins. In addition, at this point, the company has identified a specific customer and, therefore, the goods are no longer available for general sale. Because the company has shipped the goods to a specific customer, the expenses after shipment from the factory are directly associated with a given sale (and thus are part of credit expense,

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[262] *Id.* at C-54 and Exhibit C-17.
[263] *See* Petitioner's Letter, "Wood Mouldings and Millwork Products from Brazil: Comments on Araupel S.A.'s Section C Initial Questionnaire Response," dated May 20, 2020 at Exhibit 1.
[264] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34899 (May 16, 2002), and accompanying IDM at Comment 16 ("we have calculated imputed U.S. credit expense using the prevailing average short-term interest rate, as published by the Federal Reserve, in effect during the POI. *See* Federal Reserve Statistical Release E.2; Survey of Terms of Business Lending, dated May 1-5, 2000, August 7-11, 2000, November 6-10, 2000, and February 5-9, 2001…); *see also Certain Oil Country Tubular Goods from the Republic of the Philippines: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41976 (July 18, 2014), and accompanying IDM at Comment 3 (supporting the use of this lending rate).
[265] *Id.*
[266] *See* Araupel SACQR at Exhibit SAC-27B.
[267] *Id.* at Exhibits A-16 and SAC-7A.
[268] *See Silicomanganese from India* IDM at Comment 19.

which is direct, rather than inventory carrying costs, which is indirect).[269] In *Mittal*, the CAFC recognized that, "irrespective of the date of sale, once goods have been shipped from a foreign port, the material terms of sale have been set, as the seller may not then sell those goods to another customer" and, "at that point, the seller has extended credit to a specific buyer."[270]

Araupel reported that export merchandise remains a part of Araupel's finished goods inventory for accounting purposes until such time as the merchandise is shipped from the port of export to the customer.[271] As such, Araupel also included the time period between the date of shipment from the plant and the date of shipment from the port as part of its inventory carrying cost calculation.[272] Araupel also reported that the date of Araupel's commercial invoice to its customer, which is issued on the day the merchandise leaves the port of export, is the appropriate date of sale for sales to the U.S. market, as this is the date upon which all material terms of sale, including quantity and price, are fixed with the unaffiliated U.S. customer.[273]

As stated in Comment 11, we continue to find it appropriate to use Araupel's commercial invoice date as Araupel's date of sale. In *Mittal*, the CAFC found that Commerce's judgment in calculating credit expenses for the respondent beginning on the invoice date rather than the date of shipment from the factory was supported by substantial evidence and was not contrary to law.[274] As in *Mittal*, record evidence in this case shows that Araupel's material terms of sale were not set before the invoice date, and that Araupel therefore retained control of the goods until the invoice date. Thus, no credit was extended by Araupel to the U.S. customer until the invoice date. In addition, we note that Araupel has accounted for the shipment period from the factory to the port of export in its inventory carrying cost calculation. Because this time period is already accounted for in Araupel's inventory carrying cost calculation, modifying the credit expense calculation using the date of shipment from the factory would distort the margin calculations by double-counting the imputed expense for this time period. Therefore, we continue to calculate Araupel's imputed credit expense by using the date of shipment from the port of export for this final determination.

Comment 10: Whether Commerce Should Use the Earlier of the Shipment Date or Commercial Invoice as Braslumber/BrasPine's Date of Sale

Petitioner's Case Brief:

- Commerce should use the earlier of the shipment date or commercial invoice date as Braslumber's date of sale for the final determination.[275]
- Braslumber/BrasPine issues its tax invoice at inconsistent times throughout its sales process, rendering the tax invoice date an unreliable choice for the date of sale.[276]

[269] *Id.*
[270] *See Mittal Steel Point Lisas Ltd. v. United States*, 548 F.3d 1375, 1385 (CAFC 2008) (*Mittal*).
[271] *See* Araupel SACQR at SAC-38.
[272] *Id.*
[273] *See* Araupel AQR at A-20; *see also* Araupel CQR at C-23.
[274] *See Mittal*, 548 F.3d at 1379.
[275] *See* Petitioner Case Brief at 55.
[276] *Id.* at 56-57.

- Commerce should rely on the earlier of the reported shipment date or commercial invoice date, which are normally issued on the same day and will result in less variation than the tax invoice date.[277]

Braslumber/BrasPine's Rebuttal Brief:

- Commerce should continue to use the earlier of Braslumber/BrasPine's tax invoice date or shipment date as the date of sale for the final determination. Braslumber/BrasPine reported that its shipment date is the date on which the goods were shipped from the factory and that its essential sales terms are determined with the issuance of the Brazilian tax invoice, which is issued shortly before or on the same date merchandise is shipped from the factory.[278]
- Braslumber/BrasPine also reported that its commercial invoice is issued later, when the merchandise is loaded on the vessel and the bill of lading issued.[279] Braslumber/BrasPine further clarified that no material terms of sale change or have been changed between the issuance of tax invoice and commercial invoice.[280]
- In the *Preliminary Determination* Commerce found that Braslumber/BrasPine's Brazilian tax invoice date was the appropriate date of sale, "{b}ecause Braslumber/BrasPine shipped merchandise to the port of export prior to issuing the tax invoice, and at that point, the price and quantity were set."[281] This determination is consistent with prior cases involving Brazilian respondents, in which Commerce has directed parties to use the earlier of tax invoice or commercial invoice as date of sale, and have penalized respondents that have not.[282] In cases where there were no differences between the terms of sale at time of shipment from the factory (*i.e.*, Braslumber/BrasPine's tax invoice date) and time of shipment from the port (*i.e.*, Braslumber/BrasPine's commercial invoice date), Commerce has applied adverse "facts available" where respondents have reported the latter as the date of sale.[283]
- The petitioner misinterprets Braslumber/BrasPine's shipment date as the date of shipment from the port, by arguing that Braslumber/BrasPine issues its tax invoice before the shipment date and then issues its commercial invoice on the same day the product is shipped."[284] This incorrectly states how Braslumber/BrasPine has reported its shipment date, which as noted above, is the date on which the goods leave the factory. It also ignores the fact that material terms of sale do not change from the time the goods are shipped from the factory to the time they are shipped from the port.[285]

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[277] *Id.* at 55-56.
[278] *See* Braslumber/BrasPine Rebuttal Brief at 6-7 (citing Braslumber/BrasPine's Letter, "Wood Mouldings and Millwork Products from Brazil: Braslumber Industria de Molduras Ltda. ("Braslumber") and BrasPine Madeiras Ltda. ("BrasPine")'s Response to Sections C and D of the Department's Questionnaire," dated May 6, 2020 (Braslumber/BrasPine CQR); and Braslumber/BrasPine AQR at 21-22).
[279] *Id.* at 7 (citing Braslumber/BrasPine AQR at 21-22 and Braslumber/BrasPine SAQR at 29).
[280] *Id.* (citing Braslumber/BrasPine AQR at 21-22, Braslumber/BrasPine CQR at 18, and Braslumber/BrasPine SAQR at 30).
[281] *Id.* (citing *Preliminary Results* PDM at 9).
[282] *Id.* at 7-8 (citing *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, 2020), and accompanying IDM at Comment 1).
[283] *Id*. at 7 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017), and accompanying IDM).
[284] *Id*. at 8 (citing Petitioner Case Brief at 56).
[285] *Id*.

- The petitioner argues that Braslumber/BrasPine's tax invoice date is unreliable because there are discrepancies. However, these discrepancies are atypical and not representative of Braslumber/BrasPine's sales and the reliability of the tax invoice date as the date of sale.[286]
- The commercial invoice date is not an appropriate date of sale because no terms of sale changed from the date of the tax invoice (*i.e.*, shipment from the factory) to the date of the commercial invoice (*i.e.*, shipment from the port). While there can be a gap between the issuance of the tax invoice and the issuance of the commercial invoice, that gap depends solely on transportation time and on port operations.[287] It is not an opportunity for renegotiation of commercial terms, which as noted above are established at the time the goods leave the factory and the tax invoice is issued.[288]

Commerce Position:

We agree with Braslumber/BrasPine that its date of sale is its earlier of the tax invoice date or shipment date. In its questionnaire response, Braslumber/BrasPine reported that its shipment date is the date on which the goods were shipped from the factory.[289] Braslumber/BrasPine further reported that the "essential sales terms are determined with the issuance of the Brazilian tax invoice,"[290] which is issued "shortly before or on the same date merchandise is shipped from the factory."[291] Braslumber/BrasPine further clarified that no material terms of sale change or have been changed between the issuance of tax invoice and commercial invoice.[292] Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Commerce's regulations further state that Commerce may use a date other than the date of invoice if Commerce is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[293] The petitioner argues that Commerce should use the earlier of Braslumber/BrasPine's shipment date or commercial invoice date, because Braslumber/BrasPine issues its tax invoice before the shipment date and then issues it commercial invoice on the same day the product is shipped.[294] However, the record of this investigation demonstrates that the shipment date is the date on which the goods are shipped from the factory, and the material terms of the sale do not change from the time the goods are shipped from the factory to the time they are shipped from the port. Accordingly, Commerce continues to find that the appropriate date of sale is the earlier of Braslumber/BrasPine's tax invoice date or shipment date.

The petitioner also argues that Braslumber/BrasPine's tax invoice is unreliable because Braslumber/BrasPine issues its tax invoice at inconsistent times throughout its sales process.

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[286] *Id.* at 8-9.
[287] *Id.* (citing Braslumber/BrasPine AQR at 21-22; Braslumber/BrasPine CQR at 18; Braslumber/BrasPine SAQR at 30).
[288] *Id*. at 9.
[289] *See* Braslumber/BrasPine CDQR at 21.
[290] *See* Braslumber/BrasPine AQR at 21.
[291] *See* Braslumber/BrasPine SAQR at 29.
[292] *See* Braslumber/BrasPine AQR at 21-22; *see also* Braslumber/BrasPine CDQR at 18; and Braslumber/BrasPine SAQR at 30.
[293] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).
[294] *See* Petitioner Case Brief at 55.

However, the record of this investigation demonstrates that these inconsistencies are minimal and are not representative of Braslumber/BrasPine's sales. Furthermore, Commerce addressed this issue in the *Preliminary Determination* by setting the date of sale to the earlier of the shipment date or the tax invoice date for its U.S. sales.[295] Additionally, Braslumber/BrasPine explains that gaps between the issuance of the tax invoice and the issuance of the commercial invoice depend solely on transportation time and on port operations, and that no sales terms change from the date of the tax invoice (*i.e.*, shipment from the factory) to the date of the commercial invoice (*i.e.*, shipment from the port).[296] Accordingly, for the reasons outlined above, Commerce will continue to use, for this final determination, the earlier of Braslumber/BrasPine's tax invoice date or shipment date as the date of sale.

Comment 11: Whether the Date of Sale Should Be Consistent Between the Mandatory Respondents

Araupel's Case Brief:

- In the *Preliminary Determination*, Commerce used the commercial invoice date as the date of sale for all of Araupel's sales of merchandise made during the POI.[297]
- Commerce applied its long-standing practice of selecting the earlier of the shipment date or the tax invoice date as the date of sale for Braslumber/BrasPine.[298]
- Commerce should be consistent when determining the date of sale between the two respondents and should apply the same criteria for Araupel and Braslumber/BrasPine.[299]

Petitioner's Rebuttal Brief:

- Commerce should continue to use the commercial invoice date as the date of sale for Araupel.[300]
- Araupel has failed to provide sufficient justification to warrant a change to the date of sale chosen by Commerce for the respondent's sales of subject merchandise during the POI.[301]
- Commerce's established practice is to use the commercial invoice date as the date of sale unless a respondent can demonstrate with sufficient evidence that a different date better reflects when the material terms of sale are established.[302]
- The CIT has stated that the "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[303]

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[295] *See* Araupel/Braslumber/BrasPine Preliminary Calculation Memorandum at 4; *see also Preliminary Results* PDM at 8-9.
[296] *See* Braslumber/BrasPine AQR at 21-22; *see also* Braslumber/BrasPine CDQR at 18; and Braslumber/BrasPine SAQR at 29-30.
[297] *See* Araupel Case Brief at 24 (citing *Preliminary Results* PDM at 8-9).
[298] *Id.*
[299] *Id.* at 24-25.
[300] *See* Petitioner Rebuttal Brief at 32.
[301] *Id.*
[302] *Id.*
[303] *Id.* at 33 (citing *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d. 1087, 1090 (CIT 2001); and 19 CFR 351.401(i)).

- Araupel has consistently claimed throughout this investigation that Commerce should use the commercial invoice date as the date of sale. Araupel has reported that, "{t}he date of Araupel's commercial invoice to its customer is the appropriate date of sale for sales to the U.S. market," noting that "this is the date upon which all material terms of sale, including quantity and price, are fixed with the unaffiliated U.S. customer."[304]
- Commerce should disregard Araupel's claim that the agency must be consistent in choosing a date of sale between respondents. There is no requirement in Commerce's regulations or prior practice that the agency use the same date of sale for all mandatory respondents in a proceeding.[305]
- Commerce should also disregard Araupel's request to use a different U.S. sales file for the final determination because there is no basis to use any other date of sale than the commercial invoice date.[306]

Commerce Position:

We agree with the petitioner that the commercial invoice date is the appropriate date of sale for Araupel. For the *Preliminary Determination*, we "used the commercial invoice date as the date of sale for all {of} Araupel's sales of subject merchandise made during the POI."[307] We further explained that "Araupel reported the invoice date as the date of sale for its EP sales and demonstrated that the material terms of sale were established on the commercial invoice date."[308] Araupel argues in its case brief that the date of sale should be consistent between the two mandatory respondents, and that Commerce should apply the earlier of the shipment date from the plant or the commercial invoice date as Araupel's date of sale.[309] However, the record of this investigation does not support using the earlier of the shipment date or the commercial invoice date as Araupel's date of sale.[310] Araupel has consistently claimed throughout this investigation that Commerce should use the commercial invoice date as the date of sale.[311]

Furthermore, there is no regulation or prior practice that requires Commerce to use the same date of sale for all mandatory respondents in a proceeding, collapsed or otherwise. In fact, the *Preamble* to Commerce's regulations states that, "{i}n these final regulations, we have retained the preference for using a single date of sale for each respondent" and "{i}n some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale usually are established on some date other than the date of invoice."[312] Additionally, Commerce's practice is to independently evaluate what the date of sale is for each company, regardless of whether the companies are affiliated or collapsed. For example, in *Biodiesel from Argentina*, , Commerce used the earlier of the invoice date or shipment date as the date of sale for several of the collapsed entities. However, based on the information received by the respondent, Commerce

[304] *Id.* at 33 (citing Araupel AQR at A-20).
[305] *Id.* at 34 (citing 19 CFR 351.401(i)).
[306] *Id.* at 35.
[307] *See Preliminary Results* PDM at 9.
[308] *Id.*
[309] *See* Araupel Case Brief at 24-25.
[310] *See* Araupel AQR at A-20; *see also See* Araupel's Letter, "Wood Mouldings and Millwork Products from Brazil: Araupel S.A. Pre-Preliminary Determination Comments," dated July 20, 2020 (Araupel Pre-Preliminary Comments).
[311] *See* Araupel CQR at C-14; *see also* generally Araupel Pre-Preliminary Comments.
[312] *See Preamble* at 62 FR 27348-27349.

determined that one collapsed entity (Molinos), reported that its invoice date is the date of sale. Commerce determined that Molinos accurately reported its date of sale, and used its invoice date as the date of sale even though it was not the same date of sale used for its collapsed affiliates.[313] Although we have collapsed Araupel and Braslumber/BrasPine, we find that the evidence supports using different dates of sale for each company to reflect the date when the material terms of sale have been established. Araupel has reported that, "{t}he date of Araupel's commercial invoice to its customer is the appropriate date of sale for sales to the U.S. market, as this is the date upon which all material terms of the sale, including quantity and price, are fixed with the unaffiliated U.S. customer.[314] Additionally, as explained in Comment 10, Commerce is using the earlier of the shipment date or commercial invoice date as the date of sale for Braslumber/BrasPine, because the record demonstrates that the essential sales terms are determined with the issuance of the Brazilian tax invoice and no material terms of sale changed between the issuance of the tax invoice and commercial invoice. Accordingly, for this final determination, Commerce will continue to use Araupel's commercial invoice date as Araupel's date of sale because it is the appropriate date of sale according to the evidence on the record and there is no reason or requirement that we use the same date of sale for both Araupel and Braslumber/BrasPine.

Comment 12: Whether Commerce Should Include Araupel's Reported Other Revenue

Araupel's Case Brief:

- The amounts of additional revenue reported in the field ADDREVU relate to the specific transaction reported. As such, Commerce should include this field in the final determination.[315]
- The field IC_VAL_REVU reported all revenue adjustments indicated on the invoice to the customer, whether or not related to the specific transaction. The field ADDREVU limited the amounts only to revenue directly attributable to the specific sales invoice, such as additional logistics charges or a one-time tooling charge.[316]

Petitioner's Rebuttal Brief:

- Araupel failed to demonstrate that ADDREVU is related to the sale of subject merchandise and, as such, Commerce should disregard this field in its calculations for the final determination.[317]
- Araupel reported that the revenue in fields IC_VAL_REVU and ADDREVU was not sales-specific. The fact that the additional revenue items are directly attributable to the specific sales invoices does not mean that these are related to the sale of subject

[313] *See Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances*, in Part, 82 FR 50391 (October 31, 2017), and accompanying PDM at 16, unchanged in *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2017-2018*, 83 FR. 8837 (March 1, 2018).
[314] *See* Araupel AQR at A-20.
[315] *See* Araupel Case Brief at 23.
[316] *Id.* at 23-24.
[317] *See* Petitioner Rebuttal Brief at 27.

merchandise such that Commerce would add these amounts to Araupel's U.S. price for subject merchandise.[318]

- It is unclear whether the items accounted for in ADDREVU are limited to the additional charges for logistics and a one-time tooling charge provided as examples.[319]
- Araupel explained that the additional logistics expenses it charged to a client amount to freight revenue, which it did not report separately from other additional revenues. Commerce's practice is to not treat freight-related revenue as an addition to U.S. price and "to cap it at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight)."[320]
- Araupel did not provide enough documentation to demonstrate how the additional revenue from a one-time tooling charge to the customer relates to the sale of subject merchandise.[321]

Commerce's Position:

In the *Preliminary Determination*, we did not include Araupel's additional revenue, reported on a per-unit basis under the field ADDREVU, in our margin calculations. We agree with the petitioner that it is inappropriate to include Araupel's additional revenues in our calculation. Araupel stated in its supplemental questionnaire response that it incurred additional revenue under several scenarios that were "included in the sales invoice that may or may not relate to the merchandise sold on the same invoice."[322] Araupel identified the scenarios reported under the additional revenue field as quantity or price adjustments pertaining to a previous invoice, additional charges for logistics costs incurred by Araupel in connection with the same or a previous invoice, and a one-time tooling charge passed on to the customer, among others.[323] However, Araupel grouped all these categories of additional revenue in a single field (ADDREVU) rather than creating a separate field for each scenario. As such, Commerce is unable to differentiate between the different categories of additional revenue. This prevents Commerce from appropriately calculating any freight revenue received by Araupel. When a respondent reports freight revenue, Commerce's normal practice is to deduct from the gross unit selling price the freight expenses actually paid by that company and then add back any payment received from the customer for the associated freight charges.[324] Commerce "caps" the reported revenue at the amount of the underlying expense reported because it is inappropriate to increase

[318] *Id.* at 28-29.
[319] *Id.* at 29.
[320] *Id.* at 29-31 (citing *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 39; and *Large Diameter Welded Pipe from Greece: Final Determination of Sales at Less Than Fair Value*, 84 FR 6364 (February 27, 2019), and accompanying IDM at Comment 4).
[321] *Id.* at 31.
[322] *See* Araupel SACQR at SAC-21.
[323] *Id.* at SAC-21 to SAC-24.
[324] It is Commerce's practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38). *See 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 *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014), and accompanying IDM at Comment 4.

the gross unit selling price as a result of profit earned on the sale of ancillary services.[325] In this case, we are unable to follow our normal practice of treating ancillary revenue as an offset to ancillary expenses rather than as an addition to U.S. price where ancillary revenue exceeds ancillary expenses because Araupel did not identify freight revenue as a separate field in its sales database from other reported revenue items incurred. As we are not able to properly calculate the freight revenue for Araupel, we continue to exclude the additional revenue reported in the field ADDREVU from our margin calculations for this final determination.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final estimated weighted-average dumping margin in the *Federal Register*.

☒ ☐

Agree Disagree

12/28/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[325] *See Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 78 FR 65272 (October 31, 2013), and accompanying IDM at Comment 5.