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Administrative Review
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January 19, 2021

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 Results of the
2018-2019 Administrative Review of the Antidumping Duty Order
on Certain Uncoated Paper from Brazil

I. SUMMARY

We analyzed the comments of the interested parties in the 2018-2019 administrative review of the antidumping duty (AD) *Order*¹ covering certain uncoated paper (uncoated paper) from Brazil. As a result of our analysis, we made certain changes to the margins found in the *Preliminary Results*.² We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

- Comment 1: Calculation of Suzano’s Financial Expenses
- Comment 2: Programming Issue in Suzano’s Margin Calculation
- Comment 3: Treatment of International Paper’s FTZ Sales
- Comment 4: Programming Issue in International Paper’s Margin Calculation

II. BACKGROUND

On April 2, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. The period of review (POR) is March 1, 2018, through February 28, 2019.

¹ See *Certain Uncoated Paper from Australia, Brazil, Indonesia, the People’s Republic of China, and Portugal: Amended Final Affirmative Determinations for Brazil and Indonesia and Antidumping Duty Order*, 85 FR 11174 (March 3, 2016) (*Order*).

² See *Certain Uncoated Paper from Brazil: Preliminary Results of the Administrative Review of the Antidumping Duty Order; 2018-2019*, 85 FR 18550 (April 2, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.³ Between May and July, 2020, we received timely-filed case briefs on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; P.H. Glatfelter Company; and Packaging Corporation of America (collectively, the petitioners), and Suzano Papel e Celulose S.A. (Suzano).⁴ In June and July, 2020, we received timely-filed rebuttal briefs on behalf of the petitioners and International Paper do Brasil Ltda. and International Paper Exportadora Ltda. (collectively, International Paper).⁵

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁶ On November 9, 2020, we further extended the deadline for these final results.⁷ The deadline for the final results of this review is now January 19, 2021.

III. SCOPE OF THE *ORDER*

The merchandise covered by this *Order* includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level⁸ of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

⁴ See Petitioners’ Letter, “Certain Uncoated Paper from Brazil: Petitioners’ Case Brief Addressing Suzano Issues,” dated May 28, 2020 (Petitioners’ Case Brief on Suzano); Suzano’s Letter, “Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Suzano’s Case Brief,” dated May 28, 2020 (Suzano’s Case Brief); and Petitioners’ Letter, “Certain Uncoated Paper from Brazil: Petitioners’ Case Brief Addressing International Paper Issues,” dated July 15, 2020 (Petitioners’ Case Brief on International Paper).

⁵ See Petitioner’s Letter, “Certain Uncoated Paper from Brazil: Petitioners’ Rebuttal Brief Addressing Suzano Issues,” dated June 4, 2020 (Petitioners’ Rebuttal Brief); and International Paper’s Letter, “Uncoated Paper from Brazil: Rebuttal Brief,” dated July 22, 2020 (International Paper’s Rebuttal Brief); Commerce previously found International Paper do Brasil Ltda. and International Paper Exportadora Ltda. to be affiliated and to constitute a single entity. No party has challenged that finding and in the absence of any new information regarding this finding, we continue to consider these companies as a single entity. See *Certain Uncoated Paper from Brazil: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 52029 (August 27, 2015), and accompanying PDM at “Affiliation Determinations,” unchanged in *Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115 (January 20, 2016).

⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

⁷ See Memorandum, “Certain Uncoated Paper from Brazil: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2018-2019,” dated November 9, 2020.

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

(BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

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

On September 1, 2017, Commerce determined that imports of uncoated paper with a GE brightness of 83 +/- 1% (83 Bright paper), otherwise meeting the description of in-scope merchandise, constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise that are subject to this *Order*.⁹

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

We calculated export price, constructed export price, and normal value using the same methodology as stated in the *Preliminary Results*, except as follows:

- We adjusted the programming language for Suzano using a corrected manufacturer code. *See* Comment 2.
- We included certain of International Paper’s sales to a downstream customer located in a free trade zone (FTZ) in the margin calculation. *See* Comment 3.
- We adjusted the programming language for International Paper to eliminate the deduction of certain taxes in the calculation of home market gross unit price. *See* Comment 4.

⁹ *See Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 82 FR 41610 (September 1, 2017).

V. DISCUSSION OF THE ISSUES

Comment 1: Calculation for Suzano's Financial Expenses

Background: In January 2019, Suzano acquired a 100 percent share ownership of Fibria Celulose S.A. (Fibria), a pulp producer in Brazil. In its questionnaire response, Suzano calculated its financial expenses based on its own 2018 financial statements, as well as those of Fibria. However, we instructed Suzano to recalculate these expenses based solely on its own financial statements, and we relied on these recalculated expenses in our *Preliminary Results*.¹⁰

Suzano's Comments

- Commerce should adjust the calculation of Suzano's financial expenses to account for a net derivative loss related to the acquisition of Fibria. This loss was not tied to the ongoing operations of Suzano, as demonstrated by Suzano's quarterly financial reports, and it was related to extraordinary expenses that stemmed from an isolated event. Consistent with Commerce's past precedent, Commerce should exclude these expenses.¹¹
- Alternatively, Commerce should revise Suzano's financial ratio to rely on Suzano's and Fibria's combined financial expenses and cost of goods sold.¹²

Petitioners' Comments

- Suzano's 2018 financial statements, prepared in accordance with Brazil's generally accepted accounting principles (GAAP), recognized the full amount of Suzano's derivative losses and classified them as financial expenses. Because Suzano's auditors did not find Suzano's financial expenses extraordinary, there is no basis to exclude them. Commerce's established practice is to include in the calculation of financial expenses all gains and losses attributable to derivatives and related hedging activities.¹³
- Fibria was not affiliated with Suzano during 2018, and there is no justification for artificially consolidating the 2018 financial experience of the two companies.¹⁴

Commerce's Position:

For these final results, we have not made the changes requested by Suzano. Section 773(f)(1)(a) of Tariff Act of 1930, as amended (the Act), provides that

costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing

¹⁰ See *Preliminary Results* PDM at 15.

¹¹ See Suzano's Case Brief at 2-4 (citing *Phosphor Copper from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 69720 (December 19, 2019) (*Copper from Korea*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4 and *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018) (*TRBs from Korea*), and accompanying IDM at Comment 7).

¹² *Id.* at 3-4.

¹³ See Petitioners' Rebuttal Brief at 1-3.

¹⁴ *Id.* at 3.

country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

Here, Suzano's 2018 consolidated financial statements, prepared in accordance with Brazilian GAAP, show the derivative losses in question as financial expenses.¹⁵ We note that the footnotes to those financial statements do not identify any derivatives related to the Fibria acquisition.¹⁶ Instead, Suzano bases its arguments on its own quarterly earnings releases to show that certain derivatives were related to the cash requirements of the acquisition of Fibria.¹⁷ We agree with the petitioners that we should rely on the findings of Suzano's auditors and not exclude a portion of Suzano's financial expenses from our calculations.

With respect to whether the inclusion of these derivatives in Suzano's financial expenses conforms with precedent, Commerce's practice is to include gains and losses attributable to derivative transactions related to a company's overall cash management in the calculation of its financial expenses.¹⁸ While it is Commerce's practice to exclude only investment-related gains or losses from the calculation of cost of production,¹⁹ the capital management mechanisms practiced by Suzano by way of these derivative transactions are reasonably associated with the company's cost of borrowing. We disagree with Suzano's assertion that Commerce's decisions in *Copper from Korea*²⁰ and *TRBs from Korea*²¹ support Suzano's claim that the derivative losses in question should be excluded because the derivative losses relate to cash for investments, not the company's normal operations. Suzano's reference to these cases is misplaced. In both cases, Commerce's determination was based on whether the derivative activity itself was a separate profit-making investment activity. Here, the derivative activity is part of Suzano's normal business. Moreover, we disagree with Suzano's claim that these derivative expenses are extraordinary and stem from an isolated event.²² In *OJ from Brazil*, Commerce did not exclude similar expenses as extraordinary because the respondent's financial statements did not classify the expenses as extraordinary.²³ Here, the auditors who issued an unqualified opinion on Suzano's financial statements did not classify the derivative expenses as extraordinary.²⁴

Finally, we disagree with Suzano's assertion that, because these expenses relate to both Suzano and Fibria, we should include Fibria in the denominator of the financial expense rate. Suzano incurred the derivative expenses, not Fibria, and it incurred them prior to Suzano's purchase of Fibria.²⁵ Therefore, because Suzano alone incurred the expenses, we find it unreasonable to calculate a rate based on the consolidated expenses of the two companies. We, therefore,

¹⁵ See Suzano's Section A Questionnaire Response, dated July 26, 2019 (Suzano July 26, 2019 AQR) at Exhibit A-17.

¹⁶ *Id.*

¹⁷ See Suzano's Section D Questionnaire Response, dated August 21, 2019, at Exhibit D-19.

¹⁸ See, e.g., *Copper from Korea* IDM at Comment 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See *TRBs from Korea* IDM at Comment 7.

²² 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) (*OJ from Brazil*), and accompanying IDM at Comment 12.

²³ *Id.*

²⁴ See Suzano July 26, 2019 AQR at Exhibit A-17.

²⁵ *Id.*

continue to use the financial expenses as reported in Suzano's audited financial statements to calculate Suzano's cost of production.²⁶

Comment 2: Programming Issue in Suzano's Margin Calculation

Petitioners' Comments

- Suzano formatted its name slightly differently in its reported U.S. and home market sales databases, and the margin program incorrectly treats these name variants as if they were two different manufacturers.²⁷

Commerce's Position:

We agree that the margin program inadvertently treated Suzano's home market sales as if from different manufacturers. Accordingly, we have made appropriate adjustments to the programming language so that Suzano's home market sales are treated as all produced by the same company.²⁸

Comment 3: Treatment of International Paper's FTZ Sales

Background: International Paper initially reported that the overwhelming majority of its sales of uncoated paper exported to the United States were made to one customer (Customer A) located in an FTZ. International Paper also reported that most of the goods sold to that customer were re-exported to countries other than the United States or were transferred to an entity within another FTZ (Customer B) for eventual exportation.²⁹ We required International Paper to report its sales into the FTZ so that we could consider whether they should be included in our analysis.

Although we excluded these sales from the preliminary margin calculation, we stated in the *Preliminary Results* that "we intend to continue to gather information on this matter for the final results."³⁰ International Paper provided additional information thereafter.³¹

Petitioners' Comments

- In the first administrative review of this order, Commerce found that, where a respondent ships subject merchandise to an FTZ located in the United States and asserts that the merchandise was subsequently re-exported (rather than entered for consumption), the respondent bears the burden to make that demonstration.³² If the respondent cannot prove

²⁶ See *Preliminary Results* PDM at "Cost of Production."

²⁷ See Petitioners' Case Brief on Suzano at 1-2.

²⁸ See Memorandum, "Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Final Results Analysis Memorandum for Suzano Papel e Celulose S.A.," dated concurrently with this memorandum.

²⁹ International Paper's Letter, "Uncoated Paper from Brazil: Response to Sections B-C of the Questionnaire," dated August 19, 2019 (International Paper August 19, 2019 IQR) at C-47-48.

³⁰ See *Preliminary Results* PDM at 8.

³¹ See International Paper's Letter, "Uncoated Paper from Brazil: Response to Questions 6-8 of the Second Supplemental Questionnaire," dated June 23, 2020 (International Paper's June 23, 2020 SQR).

³² See Petitioners' Brief at 2 (citing, *Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2015-2017*, 83 FR 52804 (October 18, 2018) (*Uncoated Paper AR1*), and accompanying IDM at Comment 1).

that the merchandise was re-exported, Commerce's practice is to include such FTZ sales in the margin calculations.³³

- The record is clear that International Paper and its direct FTZ customer (Customer A) made a sufficient showing that the overwhelming majority of subject merchandise was re-exported.
- In contrast, the downstream customer (Customer B) provided only an unsworn letter claiming that the merchandise at issue was later re-exported.
- Commerce asked for additional information from Customer B, providing more than three months to respond. However, International Paper and Customer B failed to provide the requested information, including any of the requested FTZ annual reports or inventory movement schedules, or any sample transaction documents demonstrating the final disposition of the goods.
- Customer B provided even less information than the FTZ operator in the first administrative review, when Commerce treated the FTZ sales as consumption entries.
- In *Uncoated Paper ARI*, Commerce found that “although strict inventory control is required to operate a FTZ and allow entries under privileged status, the FTZ owner here actually is not able to trace its inventory from reception as purchased, to movement into the FTZ, and shipment out of the FTZ,” and Commerce found inadequate an “otherwise unsupported affidavit” regarding the FTZ’s re-export activities.³⁴
- In this review, the unsupported letter provided on behalf of Customer B’s downstream customer was not even presented as a sworn affidavit, and the operator refused to provide any of the requested documentation to show that it has the necessary inventory tracing capabilities. Therefore, just as in *Uncoated Paper ARI*, International Paper has not demonstrated that the quantity of goods transferred to Customer B was re-exported and that the goods should not be included in the dumping calculations.
- That International Paper was unable to obtain Customer B’s information, despite its “best efforts,” does not obviate the fact that Customer B refused to provide the requested information and is irrelevant to the issue at hand.
- The petitioners are not seeking an adverse inference, and Commerce need not evaluate whether any of the above-referenced parties cooperated to the best of its ability to provide the requested information. Nonetheless, International Paper bears the burden of demonstrating that subject merchandise shipped to the U.S. FTZ was later re-exported, and, if it cannot satisfy that burden, the sales must be included in the dumping calculations.
- For the goods sold to International Paper’s customer that were later transferred to Customer B, International Paper has failed to meet its burden in demonstrating that the goods were re-exported from the FTZ.

International Paper’s Comments

- Commerce should disregard the petitioners’ claim because unrefuted evidence demonstrates that none of International Paper’s sales to its FTZ customer, including those resold to Customer B, were entered for consumption into the United States.
- Because none of these FTZ sales were entered for consumption, they cannot be treated as U.S. sales and must be excluded from the margin calculation.

³³ *Id.*

³⁴ *Id.*

- Customer A prepared an updated spreadsheet that accounts for all inventory movements of subject merchandise produced by International Paper shipped to its customer's FTZ during the POR.³⁵ This spreadsheet included the final destinations of all of the International Paper-produced merchandise associated with the FTZ sales reported in the revised U.S. sales database, showing that Customer A did not enter any subject merchandise into the United States for consumption.
- The owner of Customer A provided a statement explaining that the company made only one entry for consumption of International Paper-produced paper during the POR, for which the relevant CBP Form 7501 was provided.³⁶ This entry did not come through the company's FTZ.
- Annual reports from Customer A in 2018 and 2019 to the operator of its FTZ show that none of the merchandise entered into the FTZ subsequently entered the U.S. market.
- The petitioners concede that International Paper and Customer A made a sufficient showing that the overwhelming majority of subject merchandise was re-exported.³⁷
- The record demonstrates that none of the paper purchased by Customer B during the POR entered the United States for consumption, and Commerce should therefore continue to exclude those purchases from its margin calculation in the final results.
- Customer B provided two signed letters attesting to the fact that none of the International Paper-produced paper it purchased entered the United States for consumption.³⁸ The petitioners have not provided any evidence casting doubt on the accuracy or veracity of Customer B's statements.
- There is no distinction between Customer B's statements and sworn affidavits, and the petitioners provide no legal support for the distinction they wish to draw.
- U.S. federal law clearly imposes criminal liability on individuals who knowingly make material false statements to the U.S. government. The courts have repeatedly held that such liability attaches equally to false sworn and unsworn statements.³⁹
- By working with its direct and downstream customers to obtain statements, International Paper met its burden to show that the resales to the downstream customer during the POR did not enter the United States for consumption.
- International Paper's burden with respect to these sales is not limitless, and Commerce should consider the circumstances of this case when determining whether International Paper met its burden.
- Customer B was two steps removed from International Paper in the distribution chain, and International Paper was not involved in any discussions with the company. As Customer B was only the customer of Customer A, all contacts with Customer B have been through Customer A.

³⁵ See International Paper's Rebuttal Brief at 2 (citing, International Paper's Letter, "Uncoated Paper from Brazil: Response to Questions 1-5 of the Second Supplemental Questionnaire," dated April 13, 2020 at Exhibit 2SQR-1).

³⁶ *Id.* at 2-3 (citing, International Paper August 19, 2019 IQR at Exhibit C-3).

³⁷ *Id.* at 3 (citing Petitioners' Brief at 2).

³⁸ *Id.* (citing International Paper August 19, 2019 IQR at Exhibit C-3, Attachment 3; and International Paper's Letter, "Uncoated Paper from Brazil: Response to the Supplemental Questionnaire for Sections A-C," dated February 21, 2020 (International Paper February 21, 2020 SQR) at Exhibit SQR-11).

³⁹ *Id.* at 4 (citing, e.g., *United States v. Ricard*, 922 F.3d 639, 651, n. 10 (5th Cir. 2019) and *United States v. Krause*, 507 F.2d 113, 117-18 (5th Cir. 1975)).

- Commerce has in the past acknowledged the difficulties that a producer or exporter faces in acquiring evidence from parties that are several steps removed in the supply chain.⁴⁰ The communications provided on the record indicate that the downstream customer was facing difficulties in responding to Commerce’s request due to the COVID-19 outbreak and related pressure on its resources.
- The petitioners have misleadingly characterized these difficulties as “refus{al} to provide any of the requested documentation...”⁴¹ However, under these extraordinary circumstances, Customer B’s inability to provide additional supporting documentation cannot reasonably be viewed as casting doubt on the clear statements made before the crisis in its two letters.
- Commerce’s regulations at 19 CFR 351.212(b) state that Commerce “normally will calculate an assessment rate for each importer of subject merchandise covered by this review.” If Commerce includes the goods resold to Customer B in its dumping margin calculation, it must calculate an importer-specific assessment rate for Customer B based on these sales because they are wholly unrelated to the sales of International Paper-produced goods that are sold to direct customers for consumption in the United States.

Commerce’s Position:

For these final results, Commerce finds that International Paper’s sales in question to the downstream customer, Customer B, should be included in the company’s margin calculations. In the *Preliminary Results*, Commerce excluded these sales from the margin analysis, stating that “we intend to continue to gather information on this matter for the final results.”⁴² Commerce sought additional information from International Paper, Customer A, and Customer B in a supplemental questionnaire subsequent to the *Preliminary Results*. Because these parties were unable to conclusively demonstrate that the goods purchased by Customer B were not entered for consumption into the customs territory of the United States, we are including these sales in the margin calculations for the final results.

As we explained in the *Preliminary Results*, in order to determine whether sales to these FTZ customers are U.S. sales which should be included in the margin calculation, Commerce considers whether the unaffiliated customer is located in the United States,⁴³ whether the merchandise was delivered in the United States and, finally, whether the goods entered the commerce of the United States for consumption.⁴⁴ In its questionnaire responses, International Paper initially reported that it exported subject merchandise to an unaffiliated customer located in the United States.⁴⁵ Customer A provided documentation demonstrating that it stored this merchandise in its FTZ warehouse and then re-exported most of the goods purchased from

⁴⁰ *Id.* at 5 (citing *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 83 FR 28186 (June 18, 2018), and accompanying IDM at Comment 5).

⁴¹ *Id.* (citing Petitioners’ Brief at 4.).

⁴² See *Preliminary Results* PDM at 8.

⁴³ See section 772(a) of the Act (defining “export price” as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act.).

⁴⁴ See *Preliminary Results* PDM at 8.

⁴⁵ See International Paper’s Letter, “Uncoated Paper from Brazil: Response to Section A of the Questionnaire,” dated August 1, 2019 at A-1.

International Paper to markets outside the customs territory of the United States.⁴⁶ As a result, in the *Preliminary Results*, Commerce excluded International Paper's direct sales to Customer A that were reported to have been exported from the customs territory of the United States.⁴⁷ In making this finding, we relied on information provided by Customer A, *via* International Paper, demonstrating that the goods in question were exported from the customs territory of the United States. The documentation we relied on included annual reports to the operator of the FTZ in which Customer A was located,⁴⁸ a detailed spreadsheet kept in the ordinary course of business that identified the movement of the inventory in question,⁴⁹ and sales-related documentation, such as commercial invoices and shipping manifests, that demonstrated that the goods in question were exported outside the customs territory of the United States.⁵⁰

Noting in the *Preliminary Results* that we would gather further information regarding resales of products from Customer A to Customer B, in our supplemental questionnaire issued to International Paper on March 18, 2020, we requested information regarding Customer B, similar in type to the information on which we were relying in our preliminary finding that International Paper's sales to its Customer A should not be included in the margin program, *i.e.*, annual reports to the FTZ operator, inventory movement schedules, and documents demonstrating the ultimate disposition of the goods, such as invoices, shipping documents, and customs forms.⁵¹ International Paper and Customer A attempted to gather the requested information from Customer B⁵² but were unable to do so, providing instead only email correspondence between Customer A and Customer B and a declaration from Customer B that it had attempted to gather the requested information.⁵³

In this administrative review, the issue is whether Customer B's purported FTZ sales should be considered as U.S. sales that entered for consumption and should be included in calculating the U.S. price in International Paper's margin calculation. Section 772(a) of the Act specifies that "export price" is defined as the "price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer, or exporter, of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States."⁵⁴ In order to determine whether a U.S. sale should be included in the margin calculation, Commerce considers whether the unaffiliated customer is located in the United States,⁵⁵ whether the merchandise was delivered in the United States, and finally, whether the goods entered for consumption.⁵⁶

⁴⁶ See International Paper February 21, 2020 SQR at Exhibits SQR-12, SQR-13, and SQR-15.

⁴⁷ See *Preliminary Results* PDM at 8.

⁴⁸ See International Paper February 21, 2020 SQR at Exhibit SQR-11.

⁴⁹ *Id.* at Exhibit SQR-12.

⁵⁰ *Id.* at Exhibit SQR-15.

⁵¹ See Commerce Letter, "Administrative Review of Certain Uncoated Paper from Brazil: Second Supplemental Questionnaire," dated March 18, 2020 at 2.

⁵² See International Paper's June 23, 2020 SQR at Exhibit 2SQR-6.

⁵³ *Id.* at Exhibits 2-SQR-6 and 2SQR-7.

⁵⁴ See section 772(a) of the Act.

⁵⁵ *Id.*

⁵⁶ See, e.g., *Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 41969 (July 18, 2014), and accompanying IDM at Comment 1.

Generally, merchandise that is shipped to an FTZ in the United States is not subject to antidumping duties unless and until it enters the U.S. customs territory.⁵⁷ This is because FTZs are considered to be outside the customs territory of the United States for duty purposes. If merchandise admitted to an FTZ does not enter the customs territory of the United States, but rather is re-exported to a third country, then (absent instruction otherwise from the FTZ Board) that merchandise is not subject to the U.S. antidumping duty laws.⁵⁸ At the same time, FTZ “procedures shall not be used to circumvent” antidumping and countervailing duty laws.⁵⁹ For this reason, items subject to antidumping or countervailing duty orders must be placed in privileged foreign status upon admission to a zone.⁶⁰ This “locks in” the merchandise as it was admitted to the FTZ, and, upon entry into the United States for consumption, antidumping duties and/or suspension is required.⁶¹

The petitioners do not contest that uncoated paper produced by International Paper and sold to Customer A was, with the exception of one shipment, subsequently exported from the FTZ to outside the customs territory of the United States. The parties differ, however, on the standard we should rely on for our findings in this final determination regarding the goods transferred from Customer A to Customer B. As noted above, Customer A was able to provide extensive documentation demonstrating that the purchases of uncoated paper that we excluded from International Paper’s margin calculations in the *Preliminary Results* were actually exported from the FTZ to territories outside the United States and its possessions. The issue remains whether the record indicates that the merchandise sold by Customer A to Customer B in fact entered into the FTZ and was then subsequently re-exported to destinations outside the customs territory of the United States, as claimed.

International Paper argues that Commerce should accept Customer A’s statements that the goods resold to Customer B were subsequently exported outside the customs territory of the United States as adequate for purposes of demonstrating this fact. We find that these statements are inadequate in light of the record evidence. We note that International Paper provided no evidence -- other than the otherwise unsupported declaration from Customer A that Customer B subsequently exported the goods -- such as the annual report, inventory movement schedules, or sales documentation we requested, even though International Paper was aware that these documents formed the basis for our finding in the *Preliminary Results* that it was appropriate to exclude certain sales to Customer A from the margin calculation. While International Paper claimed that Customer B was unable to provide this information due to operational limitations resulting from the COVID-19 pandemic,⁶² that claim does not appear to have been made by Customer B, nor did International Paper or Customer A provide any evidence supporting this claim. Instead Customer A provided a number of reasons why Customer B could not, or would

⁵⁷ See, e.g., *Helmerich & Payne v. United States*, 24 F. Supp. 2d 304, 314 (CIT 1998) (explaining that “merchandise admitted into a foreign trade zone is exempt from an antidumping order or administrative review while it is in the zone; however, the exemption expires upon entry into the U.S. customs territory”).

⁵⁸ See *Torrington Co. v. United States*, 826 F. Supp. 492, 494 (CIT 1993) (finding that products “imported into FTZs and re-exported without entering the U.S. customs territory are not subject to cash deposits and assessment of antidumping duties”).

⁵⁹ See 15 CFR 400.14(e)(1)

⁶⁰ See 15 CFR 400.14(e)(2).

⁶¹ *Id.*

⁶² See International Paper’s June 23, 2020 SQR at Exhibit 2SQR-6.

not, provide the information, none of which provides sufficiently explains the failure to provide the requested documentation.⁶³ Further, there is no information from Customer B directly supporting this contention, and the fact remains that Commerce provided more than three months for the companies to provide the requested information. In this administrative review, International Paper has not established that its products that were sold by Customer A to Customer B were not entered into the U.S. customs territory. Accordingly, because we find that International Paper failed to adequately demonstrate that the products sold to Customer B were admitted to the U.S. FTZ and subsequently exported outside the customs territory of the United States, we are including the sales of these products in the U.S. sales database and using them in the calculation of International Paper's cash deposit rate, consistent with our past practice.⁶⁴

With respect to the issue of the assessment rate, we agree that it is Commerce's practice to compute importer-specific assessment rates where possible. Therefore, we have revised the margin calculation program so as to calculate a separate assessment rate for International Paper's sales which were imported by Customer B.⁶⁵

Comment 4: Programming Issue in International Paper's Margin Calculation

Petitioners' Comments

- The comparison market program used in the preliminary results contains a ministerial error whereby Commerce deducted certain taxes on home market sales twice, effectively resulting in a "double deduction" of the taxes in the "TAX_ICMSH_ST" and "TAX_IPI" fields, because the amount in the GRSUPR1H field is already net of those two taxes.
- In the home market sales database, International Paper reported taxes in four fields: "TAX_PIS_COFINSH," "TAX_ICMSH," "TAX_ICMSH_ST" and "TAX_IPI."
- The total value of the invoice includes all four taxes. International Paper, however, did not report a gross price field that included all four taxes.
- Instead, International Paper reported the GRSUPR1H field *inclusive* of "TAX_PIS_COFINSH" and "TAX_ICMSH," but *exclusive* of "TAX_ICMSH_ST" and "TAX_IPI."
- Because "TAX_ICMSH_ST" and "TAX_IPI" have already been removed from GRSUPR1H, it is mathematically incorrect to deduct them again at line 8103 of the program. To correct this error, Commerce should set the gross unit price macro variable (HMGUP) should as equal to the GRSUPR2H field, which is already exclusive of all four taxes.
- The proposed correction is also consistent with the statutory mandate that home market prices should be reduced by taxes not collected on sales of the subject merchandise, "but only to the extent that such taxes are added to or included in the price of the foreign like

⁶³ *Id.* and Exhibit 2SQR-7.

⁶⁴ See, e.g., *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 31555 (July 7, 2017), and accompanying IDM at Comment 1 (in which the respondent in question claimed that certain products that were shipped to the United States were entered into FTZs and should be excluded from the dumping analysis, but could not demonstrate the shipments' final destination; Commerce found it appropriate in those circumstances to include those sales in its dumping margin calculation); see also *Uncoated Paper ARI* IDM at Comment 1.

⁶⁵ See Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Uncoated Paper from Brazil 2018-2019: Final Analysis Memorandum for International Paper do Brasil Ltda. and International Paper Exportadora Ltda.," (International Paper Analysis Memorandum) dated concurrently with this memorandum.

product.”⁶⁶ If Commerce were to deduct taxes that had already been removed from the reported gross unit price, it would violate this statutory provision. Therefore, Commerce should correct this ministerial error.

International Paper’s Comments

- The petitioners’ argument is untimely and should be rejected.
- Commerce’s first briefing schedule indicated that the case briefs schedule “will be divided between general case issues and any specific issues related to the outstanding supplemental questionnaire response due from {International Paper}.”⁶⁷ The outstanding supplemental questionnaire response was related only to resales of International Paper products from the FTZ.
- Because any issues not related to the FTZ sales should have been submitted in the general issues case brief, the petitioners’ comments are untimely.

Commerce’s Position:

For these final results of review, we are correcting a calculation error in the *Preliminary Results* that resulted in a double deduction of taxes from gross unit price. We have now defined the home market price variable used in our calculations, HMGUP, as GRSUPR2H, the variable that is already exclusive of the relevant taxes.

Under 19 CFR 351.224, “ministerial errors” are defined as errors

in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.⁶⁸

Commerce’s regulations at 19 CFR 351.224 governs the procedures for correcting ministerial errors in investigations and administrative reviews after the preliminary determination or results have been published. Neither the Act nor the regulations limit Commerce’s ability to make changes between the preliminary and final results where Commerce finds that its calculations in the preliminary results contained an error.⁶⁹ Thus, we disagree with International Paper that Commerce should be barred from correcting the error in the final results, given that the use of the variable GRSUPR1H resulted in unintentional and inappropriate double counting of expenses. Accordingly, we are revising the margin program used in the *Preliminary Results* to define HMGUP as GRSUPR2H,⁷⁰ the tax-exclusive gross unit price reported by International Paper.

Finally, we disagree with International Paper that the ministerial error allegation is untimely. This allegation was made in the petitioners’ case brief and relates to the accurate calculation of

⁶⁶ See Petitioners’ Brief at 9 (citing section 773(a)(6)(B)(iii) of the Act).

⁶⁷ See International Paper’s Rebuttal Brief at 7 (citing Memorandum, “Third Antidumping Duty Administrative Review of Certain Uncoated Paper from Brazil: Case Brief Schedule,” dated May 21, 2020).

⁶⁸ See section 751(h) of the Act.

⁶⁹ See, e.g., *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 35599 (July 24, 2019), and accompanying IDM at Comment 6.

⁷⁰ See International Paper Analysis Memorandum.

International Paper's U.S. sales prices, including the prices of those sales made within the FTZ. Further, International Paper had a chance to respond to this allegation in its rebuttal brief, and it did not argue that the allegation was invalid as a matter of fact; rather it argued that Commerce should not accept it solely on procedural grounds. Thus, even if the error highlighted by the petitioners represented an untimely allegation of a ministerial error within the meaning of 19 CFR 351.224, which we do not concede, the issue is moot.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.

☒

☐

Agree

Disagree

1/19/2021

X



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