

October 17, 2007

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in  
the Less-Than-Fair-Value Investigation of Coated Free Sheet Paper  
from Indonesia

### Summary

We have analyzed the case and rebuttal briefs submitted by the petitioner<sup>1</sup> and the Indonesian Respondents<sup>2</sup> in this investigation. As a result of our analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from the interested parties:

*Comment 1: Whether to Adjust Export Price for Amounts Paid by TK to an Unaffiliated Company*

*Comment 2: Application of Major Input Rule to Logs Used to Produce Pulp by IK*

*Comment 3: Application of Major Input Rule to Pulp Produced by Lontar*

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<sup>1</sup> The petitioner in this investigation is NewPage Corporation.

<sup>2</sup> The Indonesian Respondents include the following companies: PT. Pindo Deli Pulp & Paper Mills (“PD”), PT. Pabrik Kertas Tjiwi Kimia, Tbk (“TK”), and their affiliates PT. Cakrawala Mega Indah (“CMI”), PT Indah Kiat Pulp & Paper Tbk (“IK”), PT. Lontar Papyrus Pulp & Paper Industries (“Lontar”), PT Arara Abadi (“AA”) and PT. Wirakarya Sakti (“WKS”). In the preliminary determination, we determined it appropriate to treat PD, TK, and IK as one entity for margin calculation purposes because they met the regulatory criteria for collapsing. See May 29, 2007, Memorandum from the Team to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled, “Treatment of Data Reported By Affiliated Parties in the Antidumping Duty Investigation of Coated Free Sheet Paper from Indonesia.” No party commented on this preliminary determination and we found nothing at verification that would otherwise compel us to reverse this determination. Therefore, we have continued to treat these affiliated companies as one entity in the final determination.

*Comment 4: Selection of Market Price Used for Testing of Purchases of Pulp from Lontar*

*Comment 5: Application of Transactions Disregarded Rule for Purchases of Electricity*

*Comment 6: Treatment of Miscellaneous Expenses in Financial Expense Calculation*

## **Background**

On June 4, 2007, the Department of Commerce (“the Department”) published the preliminary determination in the less-than-fair-value investigation of coated free sheet paper (“CFS Paper”) from Indonesia. See Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 72 FR 30753 (June 4, 2007) (“Preliminary Determination”). The products covered by this investigation are coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. The period of investigation (“POI”) is October 1, 2005, through September 30, 2006. For a detailed discussion of the events which have occurred in this investigation since the Preliminary Determination, see the “Background” section of the Federal Register notice which this memorandum accompanies. We provided the petitioner and the Indonesian Respondents with an opportunity to comment on our Preliminary Determination and verification findings.

On August 20, August 28, and September 10, 2007, the petitioner requested that the Department clarify the scope of the antidumping and countervailing duty investigations of CFS paper from Indonesia, Korea and the People’s Republic of China to include coated free sheet paper containing hardwood BCTMP. Because this request affected all six investigations, the Department set up a general issues file to handle this scope request. After considering the comments submitted by the parties to these investigations, we have determined not to adopt the scope clarification sought by the petitioner. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled “Scope Clarification Request: NewPage Corporation” (“Scope Memorandum”), which is appended to the “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China.” All comments submitted by the parties to all six investigations are addressed in the Scope Memorandum.

Based on our analysis of the comments received, we have changed the weighted-average margin applicable to the collapsed entity PD/TK/IK.

## **Margin Calculations**

We calculated export price (“EP”) and normal value (“NV”) for the collapsed entity PD/TK/IK using the same methodology described in the Preliminary Determination, except as follows below:

1. For certain home market sales transactions, we adjusted the reported quantity amounts to account for returns of merchandise (see verification exhibit PD-0 of the August 28, 2007,

sales verification report for PD, TK, CMI, and its affiliates (“August 28, 2007, sales verification report”).

2. We incorporated, where applicable, all other revisions to the Indonesian Respondents’ data as noted in the sales verifications reports (see the August 27, 2007, sales verification report for PD, TK, CMI, and its affiliates (“August 27, 2007, sales verification report”) at page 3 and 17, and the August 28, 2007, sales verification report at page 3, 23 and 24).
3. We did not adjust the EP starting price for the amounts TK paid to an unaffiliated trading company involved in the invoicing process for certain U.S. sales of subject merchandise TK made through an affiliated trading company. See Comment 1 below.
4. We applied the major input rule to IK’s purchases of acacia and mixed tropical hardwood (“MTH”) logs from AA. In so doing, we adjusted the plantation costs which were erroneously allocated to MTH logs. See Comment 2 below.
5. We applied the major input rule to Lontar’s purchases of acacia and MTH logs from WKS. See Comment 3 below.
6. We used the prices at which IK sold pulp to unaffiliated customers as a benchmark for testing PD’s and TK’s affiliated pulp purchase prices. See Comment 4 below. \_\_\_\_\_
7. We added TK’s miscellaneous expenses to the numerator of the financial expense ratio calculation because these expenses consist of bank charges and debt restructuring expenses and are, thus, financial expenses. See Comment 6 below.

See October 17, 2007, Memorandum from Case Analyst to The File, entitled “Calculations Performed for PT. Pindo Deli Pulp and Paper Mills, PT. Pabrik Kertas Tjiwi Kimia Tbk, and PT Indah Kiat Pulp & Paper Tbk (PD/TK/IK) for the Final Determination in the Antidumping Duty Investigation of Coated Free Sheet Paper from Indonesia” (“October 17, 2007, sales calculation memo”); and October 17, 2007, Memorandum to Neal M. Halper, Director of Office of Accounting, from Oh Ji, Accountant, entitled “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination,” for further details.

### **Discussion of the Issues**

Comment 1: *Whether to Adjust Export Price for Amounts Paid by TK to an Unaffiliated Company*

For certain of its U.S. sales of subject merchandise made through a trading company affiliated through an agency relationship, TK included an unaffiliated trading company in the invoicing process. In the Preliminary Determination, we adjusted EP for the amounts TK paid to the unaffiliated trading company on these U.S. sales transactions because the record was insufficient to establish that the amounts TK paid to the unaffiliated company were unrelated to sales of

subject merchandise. However, we also stated in the Preliminary Determination that we intended to examine the trading company's role in the U.S. sales process further at verification.

The Indonesian Respondents claim that the Department should not adjust EP for the amounts paid by TK to the unaffiliated trading company because the Department's verification findings indicate that these payments are not related to sales of subject merchandise made through the affiliated company.<sup>3</sup> Rather, the Indonesian Respondents maintain the Department's verification report confirmed that TK's payments to the unaffiliated trading company were made for reasons that predate the POI and are unrelated to the sale of subject merchandise.<sup>4</sup> Therefore, they maintain that there is no basis under the antidumping statute or regulations to deduct these payments from EP. The Indonesian Respondents also claim that these amounts are not otherwise direct selling expenses or assumed expenses, as defined under the Department's regulations, and thus must not be added to NV as a circumstance-of-sale adjustment; nor are they indirect selling expenses.

The petitioner argues that the amounts paid to the unaffiliated trading company should be deducted from EP as direct expenses incident to bringing the merchandise to the United States because the expenses are variable (*i.e.*, the expenses are calculated as a certain percentage of the invoice price to TK's affiliated trading company) and traceable to sales of subject merchandise in TK's financial records.<sup>5</sup> Alternatively, the petitioner argues that the Department should add the amounts paid to the unaffiliated trading company to NV as a circumstance-of-sale adjustment.

Department's Position:

We agree with the Indonesian Respondents. For the final determination, we have not treated the amounts TK paid to the unaffiliated trading company as an adjustment to EP or as a direct selling expense because they not associated with making sales of subject merchandise or otherwise a condition of sale to the U.S. customer.<sup>6</sup> Rather, they are simply part of a debt repayment plan. Furthermore, an adjustment for such payments is neither contemplated under sections 772(c) or

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<sup>3</sup> For further details regarding the transactions between TK and the unaffiliated trading company, see August 28, 2007, sales verification report at pages 8-10, and October 17, 2007, sales calculation memo.

<sup>4</sup> The Indonesian Respondents note that the unaffiliated trading company did not perform any selling, marketing or distribution functions in connection with TK's sales through the affiliated company.

<sup>5</sup> The petitioner asserts that the antidumping duty questionnaire defines direct expenses as expenses which are: (1) variable; and (2) traceable in a company's financial records to sales of the merchandise under investigation.

<sup>6</sup> For further details regarding the transactions between TK and the unaffiliated trading company, see August 28, 2007, sales verification report at pages 8-10, and October 17, 2007, sales calculation memo.

773(a)(6) of the Tariff Act of 1930, as amended (“the Act”), nor do the payments fall under the definition of “price adjustment” at 19 CFR 351.102(b). In addition, based on our verification findings, we have no reason to believe that the amounts at issue were not otherwise captured in the respondents’ cost reporting. Therefore, we have no basis to make any adjustment to our margin calculations for these amounts.

Comment 2: *Application of Major Input Rule to Logs Used to Produce Pulp by IK*

At the preliminary determination, the Department collapsed PD, TK, and IK into a single entity for purposes of this antidumping duty proceeding. Because PD and TK purchased pulp from IK, the Department made an adjustment to the cost of production (“COP”) and constructed values (“CVs”) of CFS Paper such that pulp purchased from IK was valued at IK’s COP, rather than the transfer price between IK, PD, and TK (*i.e.*, we eliminated the inter-company profit on the pulp transactions between IK, PD, and TK).

The petitioner argues that the Department should recalculate IK’s COP for pulp using its affiliated log supplier’s cost (*i.e.*, AA’s cost) to produce the logs that IK, in turn, used in producing the pulp IK sold to PD and TK. The petitioner contends that the only reason IK showed a profit on these pulp transactions was because IK purchased logs from AA at prices below the affiliated supplier’s cost of logs. The petitioner claims that once IK’s COP for pulp is adjusted to reflect AA’s log costs, the Department will no longer find it necessary to adjust downward TK’s and PD’s reported cost to eliminate inter-company profit. In fact, the petitioner argues that an upward adjustment is necessary.

Specifically, the petitioner argues that the Department should not adjust AA’s reported log cost for plantation costs. The petitioner states that the Department noted in its cost verification report that it may be necessary to remove the plantation costs from AA’s reported COP for MTH logs, and include them in the reported COP for acacia logs, because MTH logs are not grown on plantations. However, the petitioner objects to such an adjustment for the following reasons. First, PD and TK failed to provide an analysis of plantation costs for acacia logs at verification. Second, PD and TK never stated that AA’s reported COPs for acacia and MTH logs were incorrect. Third, PD and TK did not present any verifiable documentary evidence to demonstrate the calculation or the mis-allocation of plantation costs. Accordingly, the petitioner asserts that in performing the major input rule analysis for AA’s logs sold to IK, and subsequent analysis of IK’s COP and sale price of pulp to PD and TK, the Department should use AA’s cost to produce logs as reported, without making any further adjustment for plantation costs. The petitioner also argues that the Department should include in its analysis the movement costs incurred to transport the pulp from IK to PD and TK. According to the petitioner, PD and TK acknowledged that amounts reported as IK’s COP excluded such movement costs and, thus, these movement costs should be included in IK’s reported COP for pulp.

PD and TK argue that the Department properly allocated the plantation costs back to acacia logs from MTH logs in calculating AA’s COP for logs. PD and TK point to the information on the record and assert that AA allocated the plantation costs to MTH logs in error, even though the plantation costs were not incurred for MTH logs. Consequently, PD and TK maintain that the Department properly allocated the plantation costs back to acacia logs.

Department's Position:

We agree with PD and TK. Because logs are a significant input into the production of CFS Paper, the Department has applied the major input rule under section 773(f)(3) of the Act to IK's purchase of acacia and MTH logs from AA in calculating IK's COP for pulp. In the normal course of business, AA incurs plantation costs for acacia logs, but does not incur any plantation costs for MTH logs. Unlike MTH logs, which are obtained through logging of forests, acacia logs are obtained from plantations, where acacia trees are planted and cared for over a number of years. During verification, the Department examined the significant differences between the log production costs at AA and WKS, and found that part of this difference was caused by AA's misallocation of plantation costs from acacia logs to MTH logs. While the petitioner argues that there is no evidence to demonstrate the misallocation of plantation costs, AA's log COP calculation sheet clearly shows the misallocation of plantation costs from acacia logs to MTH logs. See the Memorandum from Ji Young Oh, Senior Accountant to Neal Halper, Director, Office of Accounting, dated August 20, 2007, entitled "Verification of the Cost Response of PT. Pindo Deli Pulp & Paper Mills, PT. Pabrik Kertas Tjiwi Kimia, Tbk, and Affiliates in the Antidumping Duty Investigation of Coated Free Sheet Paper from Indonesia" ("cost verification report") at exhibit 16, page 3. As such, the Department finds it appropriate to make an adjustment to AA's reported log cost for the plantation costs. Furthermore, in this case, in order to insure a proper comparison between IK's COP and transfer price of pulp, it is inappropriate to include the transportation costs in IK's reported COP for pulp because the shipping terms for pulp sale transactions between IK, PD, and TK were ex-factory. See cost verification report at exhibit 18, pages 6-9 (i.e., IK's sales invoices). The movement costs for pulp were incurred by PD and TK and already included in the reported cost build-up of CFS Paper.

Thus, before we determined the amount of intercompany profit or loss to remove for the transactions between IK, PD and TK, we adjusted the plantation costs consistent with our verification findings and applied the major input rule to the log purchases from AA consistent with section 773(f)(3) of Act. Because this adjustment resulted in inter-company transaction profit for pulp between IK, PD, and TK, we continued to eliminate the inter-company profit on transactions between IK, PD and TK for the final determination.

Comment 3: *Application of Major Input Rule to Pulp Produced by Lontar*

The petitioner argues that the Department should recalculate the COP for acacia pulp produced by PD's and TK's other affiliated pulp supplier, Lontar, by applying the major input rule to Lontar's purchases of acacia logs from WKS, an affiliated log supplier. The petitioner further argues that in making the major input rule adjustment, the Department should include freight expenses incurred to transport the pulp from Lontar to PD and TK in the calculation of Lontar's COP for pulp.

PD and TK argue that the petitioner's proposed recalculations have major flaws and should not be used for the final determination. For example, PD and TK point out that the petitioner used an incorrect formula to calculate a cost of manufacture for acacia pulp. Further, PD and TK

object to the inclusion of freight expenses in the calculation of Lontar's COP for pulp. PD and TK assert that the freight expense adjustment would be valid only if Lontar's transfer price of pulp to PD and TK also included freight expenses (*i.e.*, the sales were made on a delivered basis). According to PD and TK, Lontar's transfer price for pulp does not include the freight expenses and, thus, there is no basis to include the freight expenses in Lontar's COP for pulp.

Department's Position:

We agree with the petitioner that in applying the major input rule under section 773(f)(3) of the Act to the pulp purchases from Lontar, we must also examine Lontar's purchases of logs from its affiliated supplier WKS. However, we also agree with the Indonesian Respondents that the petitioner's recalculations are flawed and, thus, have not relied on them for purposes of the final determination. Instead, we have used the information on the record, including verification exhibits, to conduct the major input analysis. During the POI, PD and TK purchased acacia and MTH pulp from Lontar, which produced this pulp using logs purchased from WKS, an affiliated forestry company. Because logs are a significant input into the production of CFS Paper, the Department determined that it was appropriate to apply the major input rule to Lontar's purchase of logs from WKS in calculating Lontar's COP for pulp in accordance with section 773(f)(3) of the Act and the Statement of Administrative Action at 838. This pulp COP was then used to apply the major input rule to PD's and TK's pulp purchases from Lontar. With regard to freight expenses, PD and TK state that Lontar's reported transfer price to PD and TK and the reported COP were ex-factory, and there is no information on the record to contradict this statement. While the verification exhibits for pulp purchases between Lontar and the Indonesian Respondents do not show separately the shipping terms, the invoices between IK, PD, and TK make clear that PD and TK are incurring these costs. In addition, the verification exhibits show that freight costs associated with pulp were included in the reported cost of CFS Paper. In order to insure a proper comparison between COP and transfer price, the amounts being compared should be on the same basis. Therefore, we did not include the transportation costs in Lontar's reported COP for pulp.

Comment 4: *Selection of Market Price Used for Testing of Purchases of Pulp from Lontar*

PD and TK purchased certain types of pulp from affiliated pulp suppliers (*i.e.*, IK and Lontar) and unaffiliated pulp suppliers during the POR. The petitioner argues that in applying the major input rule to purchases of acacia and MTH pulp from Lontar, the Department should base the unaffiliated price on PD's and TK's own purchases of these items from their unaffiliated suppliers, and not on the prices charged for these inputs by IK to its unaffiliated customers. Citing to Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 70 FR 54359 (September 14, 2005), and accompanying Issues and Decision Memorandum at Comment 3 ("Low Enriched Uranium From France"), the petitioner contends that the Department's established preference is to use the respondent's own purchase price from unaffiliated suppliers as the unaffiliated price for an input, rather than the sales price of the input charged by the affiliated supplier to other unaffiliated parties.

Further, the petitioner objects to the argument that the pulp purchased by PD and TK from their unaffiliated suppliers was physically different in a significant way and, thus, based on this difference, the Department would depart from its established preference and look to the pulp sales made by the affiliated supplier IK. Citing to Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 64 FR 2173, 2182 (January 13, 1999) (“Corrosion-Resistant Carbon Steel from Canada”), the petitioner argues that even if there were minor physical differences, the Department has stated that the input purchased from an unaffiliated supplier need not be “identical” to the input purchased from the affiliated supplier in order to be used as a benchmark when applying the major input rule. Furthermore, the petitioner asserts that it is the respondent’s burden to quantify the physical difference and provide some means to make an adjustment for that difference. The petitioner claims that PD and TK made no attempt to do so in this investigation. Consequently, the petitioner maintains that the Department should not use IK’s sales price of pulp to IK’s unaffiliated customers as the benchmark unaffiliated price for pulp in applying the major input rule.

PD and TK disagree, arguing that the Department should use IK’s sales price of pulp to IK’s unaffiliated customers as the benchmark unaffiliated price for applying the major input rule. PD and TK assert that the types of pulp they purchased from unaffiliated suppliers were specialty pulp (i.e., a prime grade of acacia pulp and Brazilian eucalyptus pulp) which have important physical properties that distinguish them from the standard pulp purchased from their affiliated pulp suppliers (i.e., IK and Lontar). PD and TK contend that because of these differences, the types of pulp purchased from their unaffiliated suppliers are not interchangeable with pulp purchased from IK and Lontar and command substantially different prices. As such, according to PD and TK, the pulp purchase prices paid to their unaffiliated suppliers do not fairly reflect the unaffiliated prices for the types of pulp purchased from IK and Lontar.

Further, PD and TK argue that, contrary to the petitioner’s claim, the record demonstrates that the differences in physical characteristics between the types of pulp they purchased from unaffiliated suppliers and IK/Lontar are significant in the following ways. First, the prime grade acacia and Brazilian eucalyptus pulps are not substitutable with the standard pulp purchased from IK and Lontar. According to PD and TK, they mix the prime grade acacia and the Brazilian eucalyptus pulps with other grades of pulp to produce high-quality CFS Paper, and cannot substitute the pulp they obtain from affiliates for prime grade acacia and eucalyptus pulp. Also, PD and TK state that for lower quality CFS Paper, PD and TK do not mix the prime grade acacia and the Brazilian eucalyptus pulps with other grades of pulp because it is not required and there is no reason to incur the additional cost. Second, the differences in physical characteristics affect the CFS Paper production process. Specifically, according to PD and TK, TK uses paper machines that run at higher speeds and, thus, require more durable pulp with higher tear and tensile strengths, such as Brazilian eucalyptus pulp, to prevent breakage of the paper. In contrast, PD mostly runs lower speed machines that do not require these types of high tear and tensile strength pulp.

PD and TK state that during the POI, IK sold to its unaffiliated customers a significant quantity of the same types of pulp that it sold to PD/TK. PD and TK argue that, as verified by the Department, the price of prime grade acacia pulp was significantly higher than the price of standard acacia pulp, and the price for Brazilian eucalyptus pulp was significantly higher than the price of standard MTH pulp. PD and TK contend that such price premiums are to be expected for specialty, higher quality products, and further undermine the petitioner's claim. Thus, they point out that the differences in physical characteristics of the pulp also affect the price of pulp. Consequently, PD and TK maintain that the Department should use IK's sales price of pulp to IK's unaffiliated customers as the benchmark unaffiliated price for applying the major input rule to pulp.

Department's Position:

We agree with PD and TK. If the input in question constitutes a major input under section 773(f)(3) of the Act, the Department compares the transfer price and the affiliated supplier's COP to the unaffiliated supplier's price and adjusts the reported costs to reflect the highest of the three amounts. In its brief, the petitioner cites Low Enriched Uranium From France and argues that the Department's established preference is to use the respondent's own purchase price from its unaffiliated suppliers as the unaffiliated price for an input. However, the petitioner fails to acknowledge that in the case cited, the Department stated that it considers the respondent's own unaffiliated purchases to be the first preference, except when the input purchased from the respondent's unaffiliated suppliers is not comparable to the input purchased from its affiliates, or evidence of unusual circumstances surrounding such unaffiliated purchases exists, in which case it would use sales by the affiliated supplier to its unaffiliated customers. See Low Enriched Uranium From France at Comment 3.

In the instant case, we have information on the record that the prime grade of acacia pulp and the Brazilian eucalyptus pulp purchased from PD's and TK's unaffiliated suppliers have different physical properties that distinguish them from the standard pulp purchased from IK and Lontar. Specifically, the prime grade of acacia pulp and the Brazilian eucalyptus pulp have a lower dichloromethane ("DCM") count than the standard pulp purchased from IK and Lontar (*i.e.*, DCM is a type of natural resin found in wood and a higher DCM percentage indicates a less desirable product because it means that the pulp will have a higher dirt count). Also, the pulp specification reports on the record illustrate that the Brazilian eucalyptus pulp has higher tensile strength and less dirt content than the pulp purchased from IK and Lontar (*i.e.*, the higher tensile and tear strengths represent the durability of products). Furthermore, the specification reports show that the base paper and the cast coated paper produced from the Brazilian eucalyptus pulp had higher tensile and tear strength compared to the base paper and the cast coated paper produced from the pulp from IK and Lontar. See May 1, 2007, section D supplemental questionnaire response at exhibit 23 and the cost verification report at exhibit 18, pages 13-18. In addition, the prime grade acacia pulp and the Brazilian eucalyptus pulp can be processed on the higher speed paper machines because they can tolerate the pressure of high speeds. See the cost verification report at page 29. Consequently, we find that evidence on the record

demonstrates that the pulp purchased from PD's and TK's unaffiliated suppliers is not comparable to the pulp purchased from IK/Lontar.

We also find that the petitioner's reliance on Corrosion-Resistant Carbon Steel from Canada is misplaced. In that case, there was no information on the record that allowed the Department to determine whether differences in physical properties between the inputs from affiliated and unaffiliated suppliers were substantial enough that they could not be compared without adjustment. In addition, in that case, the respondent did not quantify the differences or provide information for the Department to adjust for the differences and make the comparison. However, in the instant case, the information on the record demonstrates the different physical properties which distinguish the prime grade of acacia pulp and Brazilian eucalyptus pulp purchased by PD/TK from unaffiliated suppliers from the standard pulp purchased from IK/Lontar. Further, PD and TK provided the price at which the affiliated party sold the input to its unaffiliated customers (i.e., IK's sales price to its unaffiliated customers) because PD and TK did not purchase the same types of standard pulp from their unaffiliated suppliers. In the Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil, 69 FR 13813 (March 24, 2004), and the accompanying Issues and Decision Memorandum at Comment 7, we stated that “{i}f the respondent did not make any purchases of the input from unaffiliated parties during the POR, the Department's next preference is to use the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration.” Accordingly, we determined that it is appropriate to use IK's sales price of pulp to IK's unaffiliated customers as the benchmark unaffiliated price for applying the major input rule to pulp for the final determination in this investigation.

Comment 5: Application of Transactions Disregarded Rule for Purchases of Electricity

The petitioner argues that the Department should apply the transactions disregarded rule for PD's purchases of electricity from an affiliated company, PT Dian Swastatika Sentosa (“DSS”). The petitioner disagrees with PD's claim that DSS provided electricity “generation services” to PD using fuel PD provided. According to the petitioner, the financial statements of DSS show that it sells electricity and not “generation services.” In addition, the petitioner argues that the Department did not verify that PD provided the fuel used by DSS to generate electricity. Thus, the petitioner contends that the Department should apply the transactions disregarded rule for PD's purchases of electricity from DSS for the final determination.

PD and TK argue that there is no basis on which to apply the transactions disregarded rule to PD's purchases of electricity generation services from DSS. PD and TK contend that they clarified in their supplemental response to section D of the questionnaire that PD purchased electricity generation services, not electricity, from DSS. According to PD and TK, DSS owned and operated the electricity generation facility used to produce the electricity, and PD supplied DSS with the fuel used in the process. PD would then pay DSS only for the service of generating electricity and, thus, the price paid is lower than the market rate for electricity. PD and TK assert that the Department confirmed this information at verification based on interviews with company officials and the review of DSS's financial statements at the power plant division and the

consolidated levels. PD and TK further argue that PD does not have comparable market prices for electricity generation services because it does not purchase such services from other unaffiliated suppliers. They also argue that DSS does not provide such services to its unaffiliated customers and that the Department verified that the revenues earned from the power generation services were much higher than the cost of goods sold related to these services. Consequently, PD and TK maintain that there is no support for an adjustment under the transaction disregarded rule for PD's purchases of electricity generation services from DSS.

Department's Position:

We agree with PD and TK. At the verification, we verified the reported costs of transactions between PD and DSS. The record demonstrates that PD was not able to obtain comparable unaffiliated prices due to the unique nature of the arrangement between PD and DSS. See June 11, 2007, Supplemental Section D Questionnaire Response at page 4; and the cost verification report at page 8. Consequently, we did not seek to obtain a market price and, instead, reviewed DSS's power plant divisional and the consolidated financial statements to see whether DSS incurred a loss on its transactions with PD during the POI. Because both financial statements showed the revenues earned were much higher than the costs, the transfer price appears to be above the COP. Therefore, consistent with section 773(f)(2) of the Act, we determined that it is inappropriate to make an adjustment under the transactions disregarded rule.

Comment 6: *Treatment of Miscellaneous Expenses in Financial Expense Calculation*

The petitioner argues that TK's excluded miscellaneous expenses should be added to the numerator of the financial expense ratio calculation because they were related to bank charges and debt restructuring expenses.

PD and TK did not comment on this issue.

Department's Position:

We agree with the petitioner. We noted during the cost verification that TK excluded the miscellaneous expenses from its reported costs. Because these miscellaneous expenses were related to the company's financing activities (i.e., debt restructuring expenses), we included them in the numerator of the financial expense ratio calculation for the final determination.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margin for the investigated firms (i.e., the collapsed entity PD/TK/IK) in the Federal Register.

Agree \_\_\_\_

Disagree \_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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(Date)