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DEPARTMENT OF COMMERCE

International Trade Administration

[A-471-807]

Certain Uncoated Paper from Portugal: Notice of Court Decision Not in Harmony with Amended Final Results of Antidumping Duty Administrative Review; Notice of Amended Final Results of Review Pursuant to Court Decision; 2015-2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 7, 2020, the U.S. Court of International Trade (CIT) sustained the final results of redetermination pertaining to the administrative review of the antidumping duty order on certain uncoated paper from Portugal covering the period of review (POR) August 26, 2015 through February 28, 2017. The Department of Commerce (Commerce) is notifying the public that the CIT's final judgement in this case is not in harmony with the final results of the administrative review, and that Commerce is amending the final results with respect to The Navigator Company, S.A. (Navigator).

DATES: Applicable July 17, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2593.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2018, Commerce published its *Final Results* in the 2015-2017 administrative review of certain uncoated paper from Portugal.¹ During the review, Commerce found that Navigator had failed to demonstrate that the allocation methodology for its U.S. brokerage and handling expenses did not create inaccuracies or distortions. Therefore, Commerce selected the highest reported allocated U.S. brokerage and handling expense as adverse facts available (AFA) for the allocated U.S. brokerage and handling expenses.²

Navigator alleged, among other things, that Commerce made a ministerial error in the *Final Results* when applying AFA for Navigator's allocated U.S. brokerage and handling expenses.³ Commerce agreed that it committed a ministerial error in its selection of the figure used as AFA; therefore, Commerce modified its calculations to select instead the highest transaction-specific, actual U.S. brokerage and handling expense.⁴

Navigator challenged Commerce's decision to base U.S. brokerage and handling expenses on AFA in the *Final Results*. In addition, The Packaging Corporation of America, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union, AFL-CIO, CLC and the Domtar Corporation (collectively, the petitioners) challenged the value selected as AFA in *Amended Final Results*. On November 22, 2019, the CIT issued its *Remand Order*, remanding, in part, the *Final Results* and *Amended Final Results* to Commerce, stating that, in the *Final Results*, Commerce permissibly used facts otherwise available, but that the use of an adverse inference was not supported by substantive

¹ See *Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2015-2017*, 83 FR 39982 (August 13, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² *Id.* at Comment 2.

³ See *Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2015-2017*, 83 FR 52810 (October 18, 2018) (*Amended Final Results*), and accompanying IDM.

⁴ See *Amended Final Results* IDM at Allegation 2.

evidence, and that in the *Amended Final Results*, Commerce did not correct an inadvertent clerical error. but rather made an impermissible substantive modification to the *Final Results*.⁵

On February 19, 2020, Commerce issued the *Final Redetermination Results*,⁶ selecting a neutral facts available for allocated U.S. brokerage and handling expenses by calculating a weighted average of all positive allocated U.S. brokerage and handling expenses reported for the POR.⁷ On July 7, 2020, the CIT sustained Commerce’s *Final Redetermination Results*.⁸

Timken Notice

In its decision in *Timken*,⁹ as clarified by *Diamond Sawblades*,¹⁰ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Trade Act of 1970, as amended (the Act), Commerce must publish notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision.¹¹ The CIT’s July 7, 2020 judgment sustaining the *Final Redetermination Results* constitutes a final decision of the CIT that is not in harmony with Commerce’s *Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

⁵ See *The Navigator Company, S.A. (Navigator) and Packaging Corporation of America et al. and Domtar Corporation v. United States and Packaging Corporation of America et al.*, Consol. Court No. 18-00192, Slip Op. 19-146 (CIT November 22, 2019) (*Remand Order*).

⁶ See *Final Results of Redetermination Pursuant to Court Remand in The Navigator Company, S.A. (Navigator) and Packaging Corporation of America et al. and Domtar Corporation v. United States and Packaging Corporation of America et al.*, Consol. Court No. 18-00192, Slip Op. 19-146, dated February 19, 2020 (*Final Redetermination Results*).

⁷ See *Final Redetermination Results* at 5.

⁸ See *The Navigator Company, S.A. (Navigator) and Packaging Corporation of America et al. and Domtar Corporation v. United States and Packaging Corporation of America et al.*, Consol. Court No. 18-00192, Slip Op. 20-94 (CIT July 7, 2020).

⁹ See *Timken Co. v United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁰ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹¹ See sections 516A(c) and (e) of the Act.

Amended Final Results of Review

Because there is now a final CIT decision, Commerce is amending its *Amended Final Results* with respect to Navigator for the POR as follows:

Exporter	Weighted-Average Dumping Margin (percent)
The Navigator Company, S.A.	1.63

Assessment Instructions

In the event the CIT's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by Navigator in accordance with 19 CFR 351.212(b)(1). Commerce will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated is not zero or *de minimis*. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*,¹² we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The cash deposit rate for Navigator has been superseded by cash deposit rates calculated in intervening administrative reviews of the antidumping duty order on certain uncoated paper

¹² See 19 CFR 351.106(c)(2).

from Portugal. Thus, we will not alter Navigator's cash deposit rate as a result of these amended final results of review.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 9, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

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