COATED GROUNDWOOD PAPER FROM BELGIUM, FINLAND, FRANCE, GERMANY, AND THE UNITED KINGDOM

Determination of the Commission in Investigations Nos. 731-TA-487, 488, 489, 490, and 494 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

USITC PUBLICATION 2467

DECEMBER 1991

United States International Trade Commission
Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Don E. Newquist, Chairman

Anne E. Brunsdale, Vice Chairman

Seeley G. Lodwick

David B. Rohr

Carol T. Crawford

Janet A. Nuzum

Charles Ervin,
Director of Operations

Staff assigned:

Larry Reavis, Investigator
C.B. Stahmer, Commodity-Industry Analyst
Joseph Baremore, Economist
Jerald Tepper, Accountant
Steven McLaughlin, Attorney

Robert Eninger, Supervisory Investigator

Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

CONTENTS

CONTENTS

Tables

CONTENTS

Tables--continued

CONTENTS

Tables--Continued

CONTENTS

Tables-Continued

Figures

CONTENTS

Figures--Continued

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-487, 488, 489, 490, and 494 (Final)

COATED GROUNDWOOD PAPER FROM BELGIUM, FINLAND, FRANCE, GERMANY, AND THE UNITED KINGDOM

Determination

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium, Finland, France, Germany, and the United Kingdom of coated groundwood paper, provided for in subheadings 4810.21.00, 4810.29.00, and 4823.59.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 13, 1991, following preliminary determinations by the Department of Commerce that imports of coated groundwood paper from Belgium, Finland, France, Germany, and the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the

---

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Crawford and Nuzum did not participate in these investigations.

Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the _Federal Register_ of July 17, 1991 (56 F.R. 32588). The hearing was held in Washington, DC, on October 30, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSIONER LODWICK,
COMMISSIONER ROHR, AND COMMISSIONER NEWQUIST

On the basis of the information obtained in these investigations, we determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of less than fair value (LTFV) imports of coated groundwood paper from Belgium, Finland, France, Germany, and the United Kingdom.[1]

I. Like Product and the Domestic Industry

In order to determine whether there is "material injury" or "threat of material injury," to a domestic industry, the Commission must first define the "domestic industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[2] "Like product" is defined as a "product that is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation."[3]

The imported article subject to these investigations is coated groundwood paper. Coated groundwood paper is "paper coated on both sides with kaolin (China clay) or other inorganic substances (e.g., calcium carbonate), of which more than ten percent by weight of the total fiber content consists

[1] Material retardation is not an issue in these investigations and will not be discussed further.

[2] 19 U.S.C. § 1677(4)(A).

[3] 19 U.S.C. § 1677(10).

of fibers obtained by mechanical processes. . . ."[4] All coated groundwood paper is included in the scope of the investigation regardless of basis weight,[5] GE brightness,[6] and the form in which the paper is sold (rolls, sheets, or other forms).

In the preliminary investigations, we determined that the like product was domestically produced coated groundwood paper.[7] None of the parties to these final investigations has challenged that determination. Further, there is no new information gathered in these final investigations that warrants changing the Commission's preliminary like product determination. Therefore, we again determine that the like product consists of domestically produced coated groundwood paper, and, concomitantly, that the domestic industry consists of the producers of such paper.[8]

II. Condition of the Domestic Industry

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, market share, domestic prices, financial performance, the ability to raise capital,

---

[4] E.g. Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium, 56 Fed. Reg. 56359 (Nov. 4, 1991) (attached to the Report of the Commission (Report) at Appendix A).

[5] Basis weight is the number of pounds per ream or grams per one square meter sheet of paper. Report at A-6.

[6] GE brightness refers to the ability, in percentage terms, of paper to reflect light. Thus, a GE brightness of 77.0 indicates that the paper will reflect 77 percent of projected light. Report at A-6.

[7] Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom, Inv. No. 731-TA-486-494 (Preliminary), USITC Pub. 2359 at 16 (Feb. 1991)(Preliminary Determination).

[8] See Report at A-11, Table 2.

and investment.[9] In addition, the Commission evaluates all of these factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."[10]

A. The Business Cycle and Conditions of Competition

The domestic coated groundwood paper industry is characterized by a price/investment business cycle that takes approximately four to five years to complete.[11] The mechanics of this cycle are dictated by the extremely high capital expenditures necessary to produce coated groundwood paper[12] and the high utilization rates necessary to justify such an investment. These factors, together with the difficulty in making marginal additions to capacity, result in a pattern whereby additions to capacity are substantial and occur after a period of tight supply and relatively high domestic prices.

An assumption underlying the existence of the business cycle is that demand for coated groundwood paper is increasing at a relatively constant rate.[13] Given increases in demand and high capacity utilization rates, supplies tighten, causing domestic prices and profits to rise, thereby attracting imports. Tight supplies and increasing prices and profits then induce one or more, but not all, domestic producers to expand their capacity

---

[9] 19 U.S.C. § 1677(7)(C)(iii).

[10] 19 U.S.C. § 1677(7)(C)(iii).

[11] See, e.g., Report at A-12, n. 9, A-21, Appendix B; Prehearing Brief of Petitioner at 48-52; Prehearing Brief of Respondents at 27-34.

[12] See Report at A-8 (cost estimated at several million dollars).

[13] Report at A-35 (apparent consumption increased by 3 to 6 percent from 1988 to 1990, but has fallen recently); A-35 (producers and importers reported that demand has been generally flat since 1988). Changes in demand may affect the length of the cycle, with lower demand extending the cycle, and more rapid increases in demand accelerating it.

by the addition of a new machine. When this occurs, capacity utilization, domestic prices, and imports tend to decline for a period of time. Because of consistently increasing demand, however, utilization rates again begin to rise, domestic supplies tighten, prices increase, and imports reappear as the next phase of investment and expansion occur.[14]

In the most recent periods, however, this business cycle has been affected by certain conditions of trade in the domestic market. Of primary importance has been a levelling, and even declining, demand for coated groundwood paper. The levelling of demand is, in turn, the result of declining advertising revenues for magazine publishers and increasing postal rates that affect both magazines and catalogue publishers, the predominant consumers of coated groundwood paper.[15] Also evident in the domestic market is the shift in recent years to lighter weight paper.[16] This also is principally the result of the declining advertising revenues and higher postal rates. Further, the contractual relationship between producers and consumers typically is characterized by long term supply contracts with "meet competition" price clauses.[17] This allows magazine publishers the security of scheduling shipments to coincide with periodic production runs of their magazine and ensures a competitive price.[18] Another factor characterizing the

---

[14] See, e.g., Report at A-21; Prehearing Brief of Petitioner at 48; Prehearing Brief of Respondent at 18-21.

[15] See, e.g., Report at A-35.

[16] Report at A-7, A-35.

[17] See, e.g., Report at A-34; Posthearing Brief of Petitioner, Volume II, Answer to Question 8 (existence of long term contracts and price terms); Posthearing Brief of Respondents, Answer to Question 3 (existence of long term contracts and price terms); Hearing Transcript at 100.

[18] See, e.g., Report at A-10-A-12, A-38.

domestic industry is the need of domestic producers to operate at high rates of capacity in order to remain profitable.[19]

B. Material Injury Factors

Turning now to the data relevant to an assessment of the condition of the domestic industry, apparent domestic consumption of coated groundwood paper by quantity increased irregularly from 4.65 million tons in 1988 to 4.82 million tons in 1990.[20] Between January-June 1990 and January-June 1991, apparent consumption declined from 2.37 million tons to 2.27 million tons. In terms of value, apparent consumption increased steadily from $3.76 billion in 1988 to $3.78 billion in 1989 and then to $3.82 billion in 1990. In interim 1991, the value of apparent consumption dropped to $1.74 billion, compared with $1.89 billion in interim 1990. By way of contrast, prior to the period of investigation, demand for coated groundwood paper historically had been growing, on average, by 6 percent or more annually.[21]

Aggregate domestic capacity to produce coated groundwood paper increased marginally during the period of investigation. Capacity rose from 4.42 million short tons in 1988 to 4.47 million short tons in 1989 and then to 4.55 million short tons in 1990. In interim 1991 capacity increased further to 2.26 million short tons, compared with 2.23 million short tons in interim 1990. The marginal capacity changes for the industry as a whole were the result of significant additions of capacity by a few domestic producers, together with plant shutdowns or conversion of plants to the production of

[19] See, e.g., Prehearing Brief of Petitioner at 31-34.

[20] Report at A-32.

[21] See, e.g., Posthearing Brief of Petitioner, Volume II, Answer to Question 1 (Attachments A, B, and C); Prehearing Brief of Respondents at Attachment 3.

non-subject products by other domestic producers.[22]

Expansion plans for domestic producers normally take about 6 to 7 years from conception to full production. However, all producers generally have expansion plans under study in anticipation of bringing new capacity on-line during the next peak of the business cycle. At least six domestic producers reported that they have either cancelled or deferred plans to increase capacity during the period of investigation.[23] Detailed information regarding those cancellations, however, was not forthcoming from those producers. Moreover, the nature of capacity expansions in this industry preclude all producers from bringing new capacity into production at the same time.[24] Rather, it appears that one or two producers will significantly add to industry capacity with the installation of a new machine when prices are rising during the upturn in the business cycle, while others will defer their expansion plans until the next upturn of the business cycle.

Domestic production increased irregularly during the period of investigation. Production increased from 4.17 million short tons in 1988 to 4.22 million tons in 1990. Production continued to increase in interim 1991, rising from 2.07 million short tons in interim 1990 to 2.09 million short tons. The irregular increase in production, however, did not keep pace with increasing capacity. As a result capacity utilization declined irregularly, dropping from 94.2 percent in 1988 to 91.8 percent in 1989, then increasing to 92.6 percent in 1990. Utilization rates continued to increase in interim

---

[22] Report at A-13.

[23] See, e.g., Report at A-14 and Appendix B.

[24] See, e.g., Posthearing Brief of Respondents at 5.

1991, reaching 92.9 percent, compared with 92.8 percent in interim 1990.[25]

Consistent with the levelling off of apparent consumption, domestic shipments remained essentially unchanged during the period, both in quantity and value terms.[26] The quantity of domestic shipments declined from 4.05 million short tons in 1988 to 3.98 million short tons in 1989, then increased back to 4.05 million short tons in 1990. Shipments by quantity declined slightly in interim 1991 to 1.93 million short tons compared with 1.98 million short tons in interim 1990. In value terms, domestic shipments increased from $3.22 billion in 1988 to $3.25 billion in 1989, then dropped to $3.20 billion in 1990. In interim 1991, the value of domestic shipments dropped to $1.47 billion, compared with $1.57 billion in interim 1990.

The domestic industry continued to have the dominant share of the domestic market throughout the period of investigation.[27] The market share of domestic shipments, however, declined from 88.0 percent in 1988 to 87.1 percent in 1989 and then to 85.5 percent in 1990. In interim 1991, domestic shipments regained market share, however, reaching 86.5 percent of apparent consumption, compared with 85.0 for interim 1990.[28]

Employment indicators for the domestic industry were mixed. While overall employment in the domestic industry declined irregularly during the

---

[25] Report at A-13, Table 4.

[26] Report at A-13, Table 4.

[27] The fact that the domestic industry has a dominant share of the market, of course, does not necessarily lead to a negative determination. It is, however, a relevant factor in analyzing the condition of the domestic industry. See Minivans from Japan, 731-TA-522 (Preliminary), USITC Pub. 2402 at 33, n. 106 (July 1991).

[28] Report at A-32, Table 15. During this time, the market share of subject imports remained essentially unchanged, while non-subject imports grew from 4.9 to 6.4 percent.

period of investigation, total compensation increased by 7 percent and hourly compensation increased by 14 percent. Moreover, productivity increased significantly. The number of production and related workers dropped from 9,162 in 1988 to 9,011 in 1989, but then increased to 9,100 in 1990. In interim 1991, the number of workers dropped again to 9,020, compared with 9,098 in interim 1990. Hours worked also declined.[29]

The Commission collected price data for several grades of coated groundwood paper (Products 1-12) sold in three different markets (the spot market, contract sales to agents and brokers, and contract sales to publishers).[30] Generally speaking, prices for all domestically produced products in all markets increased during 1988 and early 1989, before declining in 1990 and interim 1991. For many products, especially in the spot market, recent prices were below those reported in 1988. For several high volume products sold to publishers, however, prices remained above those reported in 1988, notwithstanding recent declining trends.[31]

The financial indicators of U.S. producers reflected the downturn in the business cycle.[32] Net sales declined from $2.964 billion in 1988 to $2.957 billion in 1989, and then to $2.930 billion in 1990. In interim 1991 net sales declined to $1.385 billion, compared with $1.440 billion in interim 1990. Significantly, the costs of good sold, both in dollar terms and as a percentage of net sales increased dramatically during the period of

---

[29] Report at A-15, Table 5.

[30] <u>See</u> Report at A-38-A-39.

[31] For a more detailed discussion of the pricing data as a whole, see discussion <u>supra</u>.

[32] <u>See</u> Report at A-15-A-20 and Table 6.

investigation. While net sales declined by approximately $34 million from 1988 to 1990, costs increased by approximately $210 million. In percentage terms, costs increased from 75.3 percent of net sales to 83.3 percent between 1988 and 1990.

As the result of dramatically increased costs and the relatively less significant drop in net sales, operating income as a percentage of net sales declined from its 1988 peak of 20.3 percent, to 17.2 percent in 1989, and again to 12.2 percent in 1990. In interim 1991, operating income declined to 10.7 percent, compared with 12.6 percent in interim 1991.[33]

Capital expenditures by the domestic coated groundwood paper industry increased from $424 million in 1988 to $581 million in 1989, but then dropped to $274 million in 1990 during the downturn in the business cycle. Capital expenditures dropped further to $71 million in interim 1991, compared with $98 million in interim 1990.[34] As noted previously, several domestic producers indicated that they had deferred plans to expand capacity during the period of investigation.

Consideration of all the relevant data available in these investigations in the context of the business cycle and the conditions of competition that prevail in the domestic market lead us to determine that the domestic industry is not materially injured.[35] Although operating returns have declined, they

---

[33] Report at A-16, Table 6. We note, however, that evidence taken from the annual reports of domestic producers indicates that 1988 may have been the best year in the history of the coated groundwood paper industry, with 1989 a close second. Report at Appendix C.

[34] Report at A-24, Table 10.

[35] Commissioner Lodwick determines that the drop in operating income and the loss of market share by the domestic industry during a period of slightly increasing demand indicates that the domestic industry is materially injured.

are still substantial. Further, the observed drop in prices, profits, and investment are not unexpected when viewed in the context of the predictable downturn in the price/investment cycle. Moreover, almost all other indicators of the condition of the industry remain at or slightly below the levels prevailing at the beginning of the period of investigation when the domestic industry was experiencing its best years ever. Production and shipment trends are consistent with the slow growth in demand. The only factor relevant to a consideration of material injury that is not consistent with the business cycle and conditions of competition is the drop in domestic market share. Our determination, however, is based upon an evaluation of all the statutory factors, including market share, in the context of the business cycle and conditions of competition unique to these investigations.[36] Accordingly, we believe that the drop in market share, from 88.0 percent to 86.5 percent over the period of investigation, is insufficient, in and of itself, to support a finding of material injury.[37] [38]

[36] In this regard, we note Congressional direction to the Commission to weigh the various material injury factors in light of the circumstances. Congress stated that:

> The significance of the various factors affecting an industry will depend upon the facts of each particular case. Neither the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC to decide.

S. Rep. No. 249, 96th Cong., 1st Sess. at 88 (1979).

[37] Commissioner Newquist does not give much weight to import penetration levels recorded in interim (January-June) 1991, as declines in LTFV imports may well have been the result of the filing of the domestic industry's antidumping petition. He notes that, while the decline in the domestic industry's market share by volume, from 88.5 percent in 1988 to 85.5 percent in 1990, may provide support for a finding of material injury, subject imports gained just 0.6 percent of the market over this same period.

III. No Material Injury By Reason of LTFV Imports

Even assuming that the domestic industry is materially injured, however, we set forth below our rationale for determining that any such injury is not "by reason of" LTFV imports, even if they are evaluated on a cumulated basis.

A. Cumulation, Competition, and the Negligible Imports Exception

In determining whether there is material injury "by reason of" the LTFV imports, the Commission is required to cumulatively assess the volume and effect of imports from two or more countries subject to investigation if such imports are reasonably coincident with one another and compete with one another and with the domestic like product in the United States market,[39] unless imports from a subject country are negligible and have no discernable adverse impact on the domestic industry.[40] In determining whether there is a threat of material injury by reason of LTFV imports, cumulation is discretionary.[41]

---

[38] (...continued)

[38] Commissioner Rohr notes that, because he has determined that the domestic industry is not currently experiencing material injury, he necessarily makes a negative present injury determination. He notes, however, that had the condition of the industry warranted the legal conclusion that it was currently experiencing material injury, he would nevertheless have found that the allegedly LTFV imports subject to this investigation were not a cause of such injury.

[39] 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

[40] 19 U.S.C. § 1677(7)(C)(v). In determining whether imports are negligible, the Commission considers all relevant economic factors including whether:
(I) the volume and market share of the imports are negligible,
(II) sales transactions involving the imports are isolated and sporadic, and
(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

[41] 19 U.S.C. § 1677(7)(F)(iv). When the Commission is considering threat of material injury to a domestic industry by reason of imports from several (continued...)

In the preliminary investigations, we found "sufficient evidence indicating that all imports from the subject countries compete with one another and with the domestic like product."[42] None of the parties to these final investigations has asserted that imports from the remaining countries do not compete with one another and with the domestic like product.[43] Indeed, the Commission Report indicates that imported and the domestic coated groundwood paper are marketed throughout the United States, come in a wide variety of grades, can be either in sheet or roll form, and are produced for either offset or rotogravure printing.[44] Thus, we again find that the competition requirement for cumulation has been met.

The parties have presented arguments regarding the applicability of the negligible imports exception and the propriety of cumulation for threat purposes. Because we do not believe that subject imports, even if cumulated, are a cause of material injury, or threaten material injury, to the domestic industry, an extensive analysis of the negligible imports exception to cumulation and the propriety of cumulation for threat purposes is superfluous

---

[41](...continued)
countries, the Commission may, at its discretion, cumulate the volume and effect of each country's imports. Steel Wire Rope, USITC Pub. 2343 at 14 (citing Metallverken Nederland, B.V. v. United States, 728 F.Supp. 730, 741-42 (CIT 1989); Asocoflores, 693 F. Supp. at 1171-72 (CIT 1988), Commission determination aff'd after remand, 704 F. Supp. 1068, 1070-71 (CIT 1988)).

[42] Preliminary Determination at 16. The Commission found that "competition of imports from Italy, the Netherlands, Austria, and Sweden with the products of other producers [was] attenuated to varying degrees." Id. The Commission, however, found imports from those countries to be negligible and reached a negative determination as to them. Accordingly, they are no longer subject to investigation.

[43] Several foreign producers assert that their imports, while competitive to a certain extent, are nonetheless negligible and have no discernable impact on the domestic industry. See discussion supra.

[44] Report at A-6-A-9, A-35-A-36, A-38.

and a definitive resolution of these issues is unnecessary.[45] Therefore, for the purposes of the discussion of causation and threat which follow, we have assumed that cumulation is appropriate.[46]

B. The lack of a causal nexus

In addition to finding material injury to a domestic industry, the Commission must also determine whether such injury is "by reason of" the allegedly less than fair value or subsidized imports.[47] In making this determination, the Commission is required to consider, inter alia, the volume of the imports subject to investigation, the effect of such imports on domestic prices, and the impact of such imports on the domestic industry.[48] Evaluation of these factors involves a consideration of: (1) whether the volume of imports, or increase in volume is significant, (2) whether there has been significant price underselling by the imported products, and (3) whether imports have otherwise depressed prices to a significant degree, or have

---

[45] We do note, however, that there is much additional information in the final record regarding the applicability of the negligible imports exception to Belgium, France, and the United Kingdom, particularly with regard to corporate affiliation, common control and marketing, and the ability to source supply from different plants. These data may have provided a basis for reaching a determination regarding negligible imports different from that reached in the preliminary. Since we reach a negative determination for all subject imports, we do not reach this question. For a detailed discussion of the negligible imports exception and cumulation for threat purposes, see Preliminary Determination at 16-36, 42-44.

[46] Commissioner Rohr notes that, while cumulation is appropriate in some circumstances with regard to some data in the context of the Commission's threat analysis, it must be used with care and in full recognition of its limitations. As he has stated previously, because one country may have the capability to increase its exports to the United States and a second country may have demonstrated an intention to try to increase its exports by means of underselling, does not mean that cumulatively the two countries pose a threat to the domestic industry.

[47] 19 U.S.C. § 1673b(a).

[48] 19 U.S.C. § 1677(7)(B).

prevented price increases.[49] In addition, the Commission must evaluate the impact of the imports on the domestic industry by examining other relevant economic factors, such as actual and potential changes in profits, productivity, capacity utilization, and investment.[50]

The Commission may not weigh the various causes of material injury,[51] nor must it determine that LTFV or subsidized imports are the principal, a substantial, or a significant cause of material injury.[52] However, the Commission may consider any information demonstrating possible alternative causes of injury to the domestic industry. Importantly, such alternative causes may include "the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption [and] trade."[53]

In the context of the business cycle and the conditions of trade noted previously, the market share of cumulated imports has been relatively stable, with a 7.1 percent market share by volume in 1988, increasing to 7.6 percent in 1989, and then to 7.7 percent in 1990.[54] In interim 1991, market share

---

[49] 19 U.S.C. § 1677(7)(C)(i-ii).

[50] 19 U.S.C. § 1677(7)(C)(iii).

[51] S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979); <u>La Metalli Industriale, S.p.A. v. United States</u>, 712 F. Supp. 969, 971 (CIT 1989); <u>Citrosuco Paulista v. United States</u>, 704 F. Supp. 1075, 1101 (CIT 1988); <u>Hercules, Inc. v. United States</u>, 673 F. Supp. 454, 481 (CIT 1987); <u>British Steel Corp. v. United States</u>, 593 F. Supp. 405, 413 (CIT 1984).

[52] S. Rep. No. 249, 96th Cong., 1st Sess. at 74 (1979).

[53] S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). Also included as alternative causes are "restrictive practices of competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry." <u>Id</u>. at 74.

[54] In the preliminary investigation, market share calculations were difficult because of the lack of data regarding imports from Canada. Preliminary Determination at 39. In the final, Commission obtained complete data
(continued...)

declined to 7.1 percent, compared with 7.9 percent in interim 1990. The volume of cumulated imports from Belgium, Finland, France, Germany, and the United Kingdom has generally increased during the period of investigation. Volume increased in quantity and value terms from 331,881 short tons in 1988 to 372,941 tons in 1990. In interim 1991, cumulated imports declined to 161,538 short tons, compared with 187,6550 short tons in interim 1990.[55] Trends in the value of cumulated imports followed a similar pattern.

While the absolute volume of cumulated imports was high, exceeding $310 million in 1990, the significance of that volume was diminished by its relatively small and stable market share and the lack of any significant effect of such imports on prices, discussed below. In this regard, we note that the statute requires us to evaluate "the significance of a quantity of imports, and not absolute volume alone."[56] The significance of subject imports can principally be determined by evaluating the absolute market share of those imports, the change in that market share, if any, and the effect of those imports on domestic prices.[57]

With regard to the pricing data, our inquiry focuses primarily on the highest volume products for which pricing data were obtained. The Commission sought pricing data for twelve products sold in three different markets -- the

---

[54](...continued)
regarding Canadian imports. They are increasing, while subject imports are relatively stable. See Report at A-32, Table 15.

[55] Report at A-30, Table 14.

[56] See USX Corp. v. United States, 11 CIT 82, 85, 655 F. Supp. 487, 490 (1987).

[57] See Iwatsu Elec. Co. v. United States, 758 F. Supp. 1506, 1512-13 (CIT 1991) (the Court "cannot envision a case in which causation could be proven by volume alone," even though the importers in that case had over 50 percent of the multibillion dollar domestic market).

spot market, contract sales to agents and brokers, and contract sales to publishers. Total contract sales were roughly double the volume of spot market sales during the period of investigation. Within each market, product 7 accounted for the largest volume by far. Product 9 was the next largest in both the spot market and contract sales to brokers. With regard to contract sales to publishers, products 3 and 4 were the next largest in terms of volume. For all markets, products 1, 2, 10, 11, and 12 were relatively insignificant in terms of volume.[58]

Generalizations regarding trends in domestic prices are difficult to make, given the variety of grades of coated groundwood paper and the different markets into which they are sold. A review of the pricing data for all products in all markets, however, reveals that price increases occurred during 1988 and early 1989 for all 12 domestic products in all three markets, with one exception.[59] Prices then began to decline in late 1989 and continued to decline during the remainder of the period, returning to early 1988 levels, or dropping below those levels. Given that early 1988 was considered to be the peak of the price/investment business cycle,[60] we believe that prices during the periodic downturn of the cycle have been relatively stable. In fact, for the highest volume products in the largest markets (products 3,4, and 7, contract sales to publishers) prices in the most recent quarter are still

---

[58] See Report at A-39, Fig. 1-3 and Appendix E.

[59] See Report at E-2, Table E-1, E-2, E-3. The sole exception was product 12 in contract sales to agents and brokers, for which there were only two reported transactions.

[60] See, e.g., Petition at Exhibit 16; Exhibit 3 to Hearing Testimony of Bruce Malashevich.

above the level of prices in the first quarter of 1988.[61]

A review of the price comparisons for domestic products and subject imports reveals no evidence of significant underselling by subject imports.[62] Pricing comparisons for the spot market revealed that, for product 7, subject imports oversold the domestic product in 50 of 56 quarterly comparisons.[63] For product 9, the subject imports oversold the domestic product in 45 of 50 quarterly comparisons.[64] For product 3, subject imports oversold the domestic product in 21 of 24 quarterly comparisons.[65]

In contract sales to publishers, imports of product 7 oversold the domestic product in 21 of 34 quarters.[66] For product 9, imports oversold the domestic product in 11 of 19 comparisons. For product 3, imports oversold the domestic product in 17 of 18 quarterly comparisons. For contract sales to agents and brokers, only Finland reported any pricing data. In those reported transactions, imports from Finland of product 7 oversold the domestic product

---

[61] Report at Appendix E, Table E-3.

[62] Interestingly, comparisons of prices for Canadian imports with domestic prices and prices of subject imports, reveals a fairly regular pattern of underselling by Canadian imports. Report at Appendix H.

[63] Report at G-2, Table G-1. Imports from Belgium and the United Kingdom did not undersell the domestic product in any quarter. Imports from France and Germany undersold the domestic product in one quarter only. Imports from Finland oversold the domestic product in 10 of 14 quarterly comparisons.

[64] Report at G-2, Table G-1. Imports from Belgium, France, and the United Kingdom oversold the domestic product in every quarter. Imports from Finland and Germany oversold the domestic product in 12 of 14 and 6 of 9 quarters respectively.

[65] Report at G-2, Table G-1.

[66] Imports from Finland and Germany were overselling in 11 of 14 and 10 of 14 comparisons respectively. Imports from the United Kingdom were undersold in each of six quarters, but constituted less than five percent of total subject imports for those quarters. See Report at G-2, Table G-3.

in 11 of 14 quarterly comparisons. Imports of product 9 oversold the domestic product in 9 of 14 comparisons.[67]

Moreover, lost sales and lost revenue data, questionnaire responses of purchasers, and other data indicate that end users often purchase imported paper for non-price reasons.[68] A number of purchasers reported that they buy imports because of particular customer specifications, the need for an alternative source of supply to avoid the dangers of future allocations in a tight market, and better service and sales support. Further, many purchasers reported dissatisfaction with the cyclical ebb and flow of imports, especially given the market preference for long term contracts.[69] In peak periods, such as 1988-89, the Commission Report reveals that many domestic purchasers were put on allocation by their domestic suppliers.[70] Allocation creates production problems for magazine publishers.[71] Moreover, all purchasers allegedly must test and "qualify" the paper that they use and this process takes time and results in delay when new sources of supply are sought.[72] To eliminate this problem, consumers typically have a number of domestic producers supplying them with paper under long term contracts. As a hedge against future domestic shortages, many purchasers have entered into long term

---

[67] Report at G-2, Table G-2.

[68] See generally Report at A-48-A-56, Appendix D at D-2. See also Prehearing Brief of Respondents, Volume of Affidavits A-P;

[69] See, e.g., Prehearing Brief of the Magazine Publishers of America at 21-22.

[70] Report at A-8, A-36-A-37.

[71] See, e.g., Report at A-36-A-37, A-48-A-54; Hearing Transcript at 103-04, 107.

[72] See, e.g., Prehearing Brief of Caledonian, Appendix B (Affadavit of Charles Wemyss).

contracts with importers as well, notwithstanding the current soft market and the apparently higher prices of imported paper.[73] Foreign producers also have found the qualification process and the historical ebb and flow of demand for imported paper to be disruptive and allegedly have decided to retain a presence in the domestic market during a downturn in order to make the cycle operate more smoothly during the upturn.[74]

Together with the absence of significant underselling,[75] we find that the subject imports have not depressed prices to a significant degree nor have they prevented price increases that otherwise may have occurred to a significant degree. As noted above, price trends for most of the products studied by the Commission can be generally characterized as increasing in 1988 and early 1989, but declining thereafter.[76] Given that early 1988 was near the peak of the price/investment business cycle, prices during the periodic decline have been relatively stable. Furthermore, prices are expected to soften during the downturn in the business cycle, not increase.

Moreover, domestic producers are not likely to be able to pass on

---

[73] See, e.g., Hearing Transcript at 103, 127-29.

[74] See, e.g., Prehearing Brief of Respondents at 71-74.

[75] In the preliminary investigation, we did not place much emphasis on price comparisons primarily because of problems in obtaining prices at the same level of trade. Many domestic producers did not provide actual delivered prices, while all imported price data was on a delivered basis. Preliminary Determination at A-26, n. 20. In the final investigation, all price data is at the same level of trade. Moreover, we studied a greater number of products and a much higher volume of sales in the final investigation. While we noted uncertainty in the underselling data in the preliminary investigation, the pricing data in the final provides clear evidence of consistent overselling by subject imports. In addition to more detailed and comparable price data, we also obtained pricing information from purchasers regarding not only subject imports, but also imports from Canada.

[76] Report at A-44 (delivered prices for contract sales to publishers); for a further discussion of domestic price trends see infra.

increased costs to their customers in a price sensitive market. Conditions of competition in the domestic market, independent of the prices for subject imports, severely limit the ability of domestic producers to increase prices. These conditions include the need of the domestic industry to operate at high capacity utilization rates regardless of price, slack aggregate demand, competition with Canadian imports,[77] and competition with other paper products.[78] Thus we find no significant suppression of domestic prices as the result of the stable market presence of subject imports.

Additionally, the principal source for imported paper is Canada.[79] Canadian imports are almost twice as large as those from any other country, including Finland and Germany. Imports from Canada have increased in both volume and market share at a much faster rate than subject imports collectively.[80] The volume of Canadian imports increased from 220 thousand short tons in 1988 to 238 thousand in 1989, and jumped significantly to 313 thousand short tons in 1990, before declining in interim 1991. The market share of non-subject imports increased from 4.9 percent in 1988 to 5.3 percent in 1989, and then to 6.8 percent in 1990. This significant increase in market share was coupled with pricing evidence suggesting fairly consistent

---

[77] There is evidence of price cutting by domestic producers in the spot market in an attempt to maintain volume production. Report at A-52. Furthermore, the majority of purchasers responding to Commission questionnaires reported that domestic and Canadian firms are most often the price leaders in the market. See, e.g., Report at Appendix D, D-2.

[78] See, e.g., Prehearing Brief of Respondents at 46-53, 80-83, Appendix 18, 19.

[79] Capacity in Canada has apparently increased during the period of investigation, while capacity utilization has declined. See, e.g., Prehearing Brief of Respondents at Appendix 22, 23, 25.

[80] Report at A-30, Table 14, A-32, Table 15.

underselling by Canadian imports.[81] This is in marked contrast to the pricing data regarding subject imports. Moreover, most Canadian production is destined for the U.S. market.[82]

Based upon the information available in these investigations, we determine that, even if the domestic industry were injured, such injury is not "by reason of" cumulated LTFV imports from Belgium, Finland, France, Germany, and the United Kingdom. There has been no significant increase in the market share of subject imports. Most importantly, the pricing data collected by the Commission fails to show any significant underselling and there is insufficient evidence that the subject imports' prices have had a significant depressing or suppressing effect on prices.

IV. No threat of material injury by reason of LTFV imports

Section 771(7)(F) of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984, requires that, in assessing a threat of material injury, the Commission consider, inter alia, increases in production capacity or existing unused or underutilized capacity in the exporting country that might lead to a significant increase in imports, any rapid increase in U.S. market penetration and the likelihood that the penetration will reach an injurious level, the probability that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices, and whether there are substantial increases in inventories of the imported products in the United States.[83] The statute also cautions that an

---

[81] See, e.g., Report at Appendix H, H-2.

[82] See, e.g., Prehearing Brief of Respondents at Appendix 24.

[83] See 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Several of the statutory threat factors have no relevance to these investigations and need not be discussed in (continued...)

affirmative threat determination "shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent" and not on the basis of mere conjecture or supposition.[84]

Consideration of the various threat factors reveals that there has been no "rapid" increase in market penetration.[85] Market penetration has been relatively stable throughout the period of investigation and actually declined in interim 1991. Thus, there is no likelihood that subject imports would reach an injurious level in the imminent future.

While capacity in the subject countries has increased during the period of investigation and capacity utilization rates are lower than in the United States, that has not led to an increase in U.S. market share.[86] Also there are no reported significant additional increases in foreign capacity expected in the near future. Further, the increase in capacity or in unused or underutilized capacity is not likely to result in a significant increase in

[83](...continued)
detail. Since there is no subsidy involved, factor I is not applicable. Moreover factor VIII regarding product shifting in countries covered by other antidumping orders and factor IX regarding raw and processed agricultural products also are not applicable to the facts of this case.

[84] 19 U.S.C. § 1677(7)(F)(ii).

[85] See 19 U.S.C. § 1677(7)(F)(i)(III).

[86] The "mere fact of increased capacity does not ipso facto imply increased imports to the United States." American Spring Wire Corp. v. United States, 8 CIT 20,28, 590 F. Supp. 1273, 1280 (1984) aff'd sub nom. Armco, Inc. v. United States, 760 F. 2d 249 (Fed. Cir. 1985). In Philipp Bros. v. United States, 640 F. Supp. 1340, 1344 (1986), capacity utilization rates fell from 88.7 percent to 36.2 percent, while capacity grew by one third. In the instant investigations, capacity utilization rates for the subject countries as a whole declined from over 100 percent in 1988 to 89.4 percent in 1990, then declined further to 82.2 percent in interim 1991. Meanwhile capacity has increased by 31 percent.

market penetration of the subject imports,[87] given the insignificance of the U.S. market relative to other markets for foreign production. On average two-thirds of production in the subject countries is exported. Of that two-thirds approximately 13 percent has gone to the United States. Most exports are consumed in Europe. Further, the ratio of shipments to the United States to total export shipments has actually declined slightly during the period of investigation, notwithstanding increased production and capacity.[88] There is insufficient evidence in the record to support a determination that there will be a change in these consistent patterns of trade in the imminent future.[89]

Regarding the price effects of future imports,[90] imports have not had a discernable adverse impact on domestic prices to date.[91] The lack of a depressing or suppressing effect on prices, noted in the causation analysis during the current downturn in the business cycle, is not likely to change in the near future. There has been little underselling, domestic prices have been relatively stable while demand has slackened and the industry has entered a downturn in the pricing/investment cycle.

Inventories do not exist for imports and, therefore, do not support a

---

[87] See 19 U.S.C. § 1677(7)(F)(i)(II) and (VI).

[88] Report at A-29, Table 13.

[89] Commissioner Newquist notes that, although the statutory indicia of a threat of imminent material injury are not present in this investigation, various conditions of trade may indeed portend additional incremental increases in the subject imports, while European import barriers effectively foreclose any likelihood of reciprocal export sales by U.S. producers. See Additional Views of Commissioner Don E. Newquist.

[90] See 19 U. S.C. § 1677(7)(F)(i)(IV).

[91] Cf. Philipp Bros. v. United States, 640 F. Supp. 1340, 1344 (1986). In that case, there was evidence that domestic prices declined in recent periods to less than half the price in earlier period. Further there was "evidence of aggressive pricing to increase market share." 640 F. Supp. at 1346.

threat determination.[92] In fact, inventories are insignificant for all producers of coated groundwood paper. Furthermore, there are no "other demonstrable adverse trends" that indicate that imports will be the cause of actual injury, nor are there "actual and potential negative effects on existing development and production efforts of the domestic industry."[93]

---

[92] See 19 U.S.C. § 1677(7)(F)(i)(V).

[93] 19 U.S.C. § 1677(7)(F)(i)(VII) and (X).

CONCURRING VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE

Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom

Invs. Nos. 731-TA-487 through 490 and 494 (Final)

In these investigations, I determine, as do my colleagues, that no domestic industry is being materially injured or threatened with material injury by reason of imports of coated groundwood paper from Belgium, Finland, France, Germany, and the United Kingdom that are sold at less than fair value.[1]

Like Product and Domestic Industry

In the preliminary investigations, we found that the like product consisted of all coated groundwood paper and that the domestic industry was composed of the domestic producers of coated groundwood paper.[2] No new issues related to like product or domestic industry have arisen in these final investigations to disturb those findings. I therefore adopt them here.

Cumulation

In making my determinations, I must decide whether to cumulate imports from the various countries subject to these investigations. The statute provides two exceptions to the

---

[1] 19 U.S.C. 1673d(b). Material retardation is not an issue in these investigations and therefore will not be discussed further.

[2] Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom, Invs. Nos. 731-TA-486-494 (Preliminary), USITC Pub. 2359 (February 1991) at 8.

general requirement that imports from two or more countries be cumulated: (1) if the imports from two countries do not compete with each other or with the domestic like product[3] or (2) if the imports from a country "are negligible and have no discernable adverse impact on the domestic industry."[4]

In the current investigations, only the second of these issues -- the negligible imports exception -- is of any relevance. In several recent investigations, I have found imports from a country to be negligible if they have a market share below 1.5 percent of U.S. apparent consumption throughout the period of investigation.[5] My conclusion that such imports are generally negligible, even if they are fully fungible with the domestic like product, is based on my reading of the legislative history of this clause.[6]

Imports from three of the five countries involved in these investigations -- Belgium, France, and the United Kingdom -- never came close to accounting for even 1 percent each of U.S.

---

[3] 19 U.S.C. 1677(7)(C)(iv)(I).

[4] 19 U.S.C. 1677(7)(C)(v).

[5] See, e.g., Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, The Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, Invs. Nos. 701-TA-311 and 731-TA-532-537 (Preliminary), USITC Pub. 2454 (November 1991) at 31-32 (Views of Acting Chairman Anne E. Brunsdale) and Steel Wire Rope from Canada, Inv. No. 7310TA-524 (Preliminary), USITC Pub. 2409 (August 1991).

[6] See Steel Wire Rope from Argentina, Chile, India, Israel, Mexico, the People's Republic of China, Taiwan and Thailand, Invs. Nos. 701-TA-305 and 306 (Preliminary) and Nos. 731-TA-476-482 (Preliminary), USITC Pub. 2343 (December 1990) at 38 (Views of Chairman Anne E. Brunsdale).

apparent consumption during the period of investigation, let alone 1.5 percent.[7] This suggests that cumulation would probably be inappropriate even if the imports from the various countries and the domestic like product were fully fungible, which they are not.[8] In particular, there is evidence that imports from France are inferior to those produced elsewhere.[9]

Moreover, this is a market where most sales are on the basis of long-term contracts.[10] Yet, imports from Belgium and the United Kingdom have been primarily sold in the spot market. Reported sales of Belgian groundwood paper were all in the spot market.[11] While there were a few reported sales of British imports in the contract market in the last half of 1989 and in 1990, the spot market was clearly the primary source of sales of these imports as well. And, during the first half of 1991, all sales of British imports have been in the spot market.[12] This

---

[7] Report at A-32, Table 15. Of these three countries, Belgium had the highest share, reaching [***] percent on a quantity basis in 1989. However, during the first six months of 1991, the Belgian share fell to [***] percent. Neither the French producers nor the British producer ever had market shares exceeding [***] percent.

[8] See Economics Memorandum at 17-20.

[9] Specifically, three different purchasers noted in their responses to Commission questionnaires that they did not purchase French imports because they were of lower quality. (Economics Memorandum at 18)

[10] Report at A-32.

[11] Report at E-2, Table E-4.

[12] Report at E-2, Tables E-12 and E-13.

absence of contract sales may indicate a somewhat sporadic market presence.

Petitioners argued that we should not apply the negligible imports standard, particularly not to France and Britain, because those imports were made in German and Finnish plants.[13] Finnish producer Kymmene owns the sole producer in the U.K. while the German producer Feldmuhle owns one of the two French firms.[14] However, I find nothing in the statutory discussion of negligible imports that addresses the issue of cross-ownership. The statute talks only about cumulation of imports from two or more countries. I therefore believe that consideration of common ownership of producers located in different countries is inappropriate.

Given these considerations, I determine that imports of groundwood paper from Belgium, France, and the United Kingdom "are negligible and have no discernable adverse impact on the domestic industry."[15] My discussion of material injury will deal only with imports from Finland and Germany, which I do cumulate. Imports from Belgium, France, and the United Kingdom need not be further considered since, by definition, the negligible imports finding means that these imports do not cause material injury.[16]

---

[13] Petitioners' Pre-Hearing Brief at 61.

[14] Report at A-5, Table 1.

[15] 19 U.S.C. 1677(7)(C)(v).

[16] Of course, because imports from the non-cumulated countries have no discernible impact on the domestic industry, my (continued...)

<u>Material Injury by Reason of Dumped Imports from Finland and Germany</u>

In determining that the domestic industry producing coated groundwood paper is not materially injured by reason of dumped imports,[17] I consider, as the statute directs, the volume of subject imports, the effects of these imports on the price of the like product, and the effects on the domestic industry producing the like product.[18] As is obvious from these statutory factors, and as I have stated so often in the past,[19] a coherent and

[16](...continued)
determination that there is no material injury would be unchanged if I cumulated these imports with those from Finland and Germany.
I note that my determination on cumulation differs from that of the Commission majority in the preliminary investigations, which I accepted by reference. I revisited, in this case, the issue here both in order to be consistent with my practice in other cases and because the record in the final investigations contains a fuller picture of the role of imports from these countries. For example, in the preliminary investigations we had import penetration data for only 1989 and part of 1990. (Preliminary Report at A-22, Table 15) We now have data for 1988 through the first half of 1991. (Report at A-32, Table 15)

[17] Of course, the elimination of the <u>dumped</u> imports could be accomplished by raising the price of those imports to the point where they are no longer being dumped.

[18] 19 U.S.C. 1677(7)(B).

[19] See, e.g., Certain Steel Pails from Mexico, Inv. No. 731-TA-435 (Final), USITC Pub. 2277, at 24-28 (May 1990) (Additional Views of Chairman Anne E. Brunsdale); Certain Residential Door Locks and Parts Thereof From Taiwan, Inv. No. 731-TA-433 (Final), USITC Pub. 2253, at 33-36 (January 1990) (Additional Views of Chairman Anne E. Brunsdale); Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. Nos. 701-TA-287 (Final) and 731-TA-378 (Final), USITC Pub. 2103, at 42-46 (August 1988) (Dissenting Views of Chairman Anne E. Brunsdale); and Color Picture Tubes from Canada, Japan, the Republic or Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046, at
(continued...)

transparent analysis of the kind demanded by the statute requires an assessment of the domestic market and an understanding of the role of the subject imports within that market. Economics, which is the study of markets and how they change, is an ideal source of the tools necessary for making that assessment.

Economic analysis involves little more than organizing and evaluating the evidence in the record in a manner that permits a Commisioner to assess the impact of the dumped imports in a rigorous fashion. These tools are not surrogates for the statutory factors. They simply permit me to analyze in a direct and open way the volume effect, the price effect, and the overall impact of the dumped imports on the domestic industry as the law specifically and unambiguously requires.

Volumes and Prices of LTFV Imports. The first factors that we are directed to consider are the volume and prices of the LTFV imports. This directive -- which is of course consistent with an economic analysis of the effects of the dumped imports -- calls for examining the market share of the dumped imports and the margins of dumping.

The smaller the sales of the dumped imports as a share of the domestic market, the smaller the effect of those imports on the domestic market. Similarly, the smaller the dumping margin, the smaller the effect. The dumping margin measures the

---

[19](...continued)
23-32 (December 1987) (Additional Views of Vice Chairman Anne E. Brunsdale).

difference between the fair price of the imports and the unfair price at which they are being sold. The extent of the effect of the dumped imports will depend on how far below the fair price they are actually priced. The greater the difference, the greater the number of purchasers who will shift from the domestic like product to the dumped imports in order to obtain the benefits of a reduced price.

In this case, the dumping margins are in the moderate range. The Department of Commerce determined that for the period July 1 to December 31, 1991, margins for Finnish producers ranged from 28.20 percent to 35.20 percent, with an average value of 30.84. For Germany, the margins ranged from 31.40 to 39.49 percent, with an average value of 34.51 percent.[20]

The cumulated market shares of Finland and Germany were quite small and stable throughout the period of investigation. On a quantity basis, they rose from 6.1 percent of U.S. consumption in 1988 to 6.3 percent in 1989, then fell back to 6.1 percent in 1990 and to 5.7 percent in the first half of 1991. On a value basis, they rose from 6.4 percent of U.S. consumption in 1988 and 1989 to 6.5 percent in 1990, and then fell to 5.9 percent in the first half of 1991.[21] Taken alone, these market share figures suggest that injury is unlikely.

---

[20] Report at A-5, Table 1.

[21] Report at A-32, Table 15.

Effect on Domestic Prices and Volumes Sold. Consideration of the dumping margins and import penetration figures alone is not sufficient to determine, as I must, the way in which the domestic industry producing coated groundwood paper is affected by the dumped imports. In order to evaluate the effects on the volume of sales and on the prices at which these sales are made, I must know how purchasers and suppliers respond to changes in the prices of the imported product and the domestic like product. The key attribute of dumped imports is their unfairly low price, and it is through this low price that the effects on the domestic industry are felt and must be evaluated.

(1) Price responsiveness of domestic supply. The Finnish and German market shares are so small that quantity effects alone are unlikely to constitute material injury. Even if there would be no sales of the subject imports at fair prices -- a situation which, as discussed below, is unlikely -- the sales lost by domestic producers due to the dumping are unlikely to be material. Only if there are significant price effects in addition to quantity effects is there a substantial likelihood of material injury.

The magnitude of any price effects depends on the responsiveness of domestic supply to a change in price.[22] If a slight decrease in price causes domestic firms to cut their

[22] The responsiveness of supply to a change in price can be expressed quantitatively in the elasticity of domestic supply, which is the percentage change in the quantity of domestic production resulting from a 1 percent change in the domestic goods's price.

production by a relatively large amount, any effect of dumping is likely to be found primarily in decreased quantities sold by the domestic firms, rather than in depressed or suppressed prices for the product. On the other hand, if a price change results in a small change in production, dumping may have a smaller quantity effect along with greater price depression or suppression.

The record evidence in this case suggests that domestic supply would change only slightly in response to an increase or decrease in price. The paper industry is highly capital intensive, which creates strong economic pressures to keep equipment operating at full capacity.[23] Questionnaire responses show that capacity utilization by domestic producers has ranged between 91.8 and 94.2 percent during the period of investigation and was equal to 92.9 percent during the first six months of 1991.[24] Other data maintained by the American Paper Institute, an industry trade association, apparently show even higher levels

---

[23] In brief, a company incurs the costs associated with capital equipment -- generally, the cost of the capital to purchase the equipment and depreciation of that equipment -- whether the equipment is used or not. Thus, once the equipment is in place these costs are not relevant to the firm's decision regarding production on the equipment. The firm will find it profitable to produce provided the price it receives is greater than the costs that could be avoided if the equipment was not operated -- *e.g.*, the labor and raw materials that are used in production. The more capital intensive the production process, the smaller the percentage of total cost that is avoidable and therefore the more likely that it will be profitable to operate the equipment even in a time of reduced demand.

[24] Report at A-13, Table 4.

of capacity utilization.[25] Further, these capacity figures are based on round the clock operation for 51 or 52 weeks of the year.[26] As an industry approaches full capacity operation, it becomes increasingly difficult and expensive to expand output, indicating that such expansions will be small and will occur only if price rises significantly. That is, output is not highly responsive to price changes.

Other factors also suggest that domestic sales are only slightly responsive to changes in price.[27] First, U.S. producers of coated groundwood paper have only limited export sales, so they cannot redirect significant foreign sales to the domestic market in response to a price increase here. Second, no significant inventories of coated groundwood paper are maintained. Finally, expansion of existing capacity takes several years.

Because output in this industry is only slightly responsive to price changes, prices may be significantly depressed or suppressed as a result of the dumping of Finnish and German coated groundwood paper and material injury may result in spite

---

[25] See Hearing Transcript at 80-81 (Question of Mr. Eninger of the Commission Staff) and Post-Hearing Brief of Respondents European Paper Institute at Tab No. 4. The differences apparently result from different assumptions about the capacity of various equipment, which can vary depending on the weight of the paper made on it. There has been a general tendency toward using lighter weight paper, which reduces the capacity of any equipment.

[26] Report at A-13, Table 4, n. 1.

[27] See Economics Memorandum at 9-11.

of the small market shares involved. I must therefore evaluate more fully the effect of the dumping on the demand for the domestic like product.[28]

(2) Substitutability. Another key factor determining how dumped imports affect the demand for the domestic like product is the substitutability between them -- that is, the extent to which a reduction in the price of the unfairly traded import will lead U.S. buyers to purchase the unfair imports rather than the domestic like product.[29] If purchasers believe the domestic and imported products are close substitutes, the dumped imports are more likely to cause material injury because a small decrease in the price of the imported product may lead a large fraction of purchasers to switch from the domestic product to the unfairly traded import. If, on the other hand, substitutability is low, fewer purchasers will make the switch to the imported product, making material injury less likely.

---

[28] In quantitative terms, staff in the Commission's Applied Economics Division places the elasticity of domestic supply between 1 and 2. (Economics Memorandum at 7.) Respondents argued for a lower value because of the very high capacity utilization figures reported by the American Paper Institute, while petitioners argued for a higher value. (Post-Hearing Brief of Respondents European Paper Institute at Tab 7, pp. 1-3, and Petitioners' Post-Hearing Brief at Attachment 7, pp. 13-15.) I agree with respondents that the elasticity should be slightly lower than what staff suggests and would place it in the range of 0.5 to 1.5.

[29] The degree of substitutability between products of different producers can be quantified using a concept that economists call the elasticity of substitution, which is defined as the percentage change in the relative quantities demanded of two goods resulting from a 1 percent change in their relative prices. A high elasticity of substitution indicates that products are good substitutes, while a low elasticity indicates they are not.

Staff of the Applied Economics Division judges that there is a moderate degree of substitution among the coated groundwood paper produced in different countries.[30] While I generally concur with this assessment, I think that substitutability may be slightly less than what staff concludes.[31] I base this on two characteristics of this market. First, there is considerable evidence that some U.S. purchasers buy from European suppliers in order to maintain an alternative source of supply. In the past, purchasers relying totally on domestic suppliers found that they were unable to obtain all of the paper they wanted during periods of short supply in the domestic market. Continuing relationships with European suppliers are seen as a way to avoid such problems in the future.[32] The fact that price is less likely to be an important determinant for purchases made to maintain an alternative source of supply reduces the overall responsiveness of purchase patterns to a change in relative prices.

---

[30] Economic Memorandum at 17. Staff places the elasticity of substitution between 3 and 5.

[31] Specifically, I would place the upper end of the range at 4.5 instead of 5.

[32] See, *e.g.*, Letter from Cathleen Black, President and Chief Executive Officer, American Newspaper Publishers Association, November 8, 1991; Affidavit of William T. Kerr, President of the Magazine Group of the Meredith Group, October 24, 1991; Affidavit of Robert G. Whitton, Jr., Associate Production Director of Readers Digest Association, Inc., October 23, 1991; and Affidavit of Joe Reiss, Director of Materials of Newsweek, Inc., October 24, 1991.

Second, the majority of coated groundwood paper is sold under long-term contracts.[33] In particular sectors, as much as 90 percent of purchases are made under contract.[34] The presence of such contracts reduces the substitutability among different producers' products. I am aware that these contracts apparently provide for periodic renegotiation of prices and generally require that a seller match price cuts offered by other sellers. Indeed, in some cases, the contracts contain express "shopping clauses" that require the seller to match a price cut offered by specific competing suppliers or release the purchaser from the contract requirements.[35] While the provision for periodic price renegotiation or "shopping clauses" may increase substitutability relative to contracts that do not contain such clauses, the fact that the sales are made under contract still reduces substitutability below what would be observed if all sales were made on a spot basis. The fact that sales are made under a contract, even a contract with these clauses, reduces the likelihood that a purchaser will change suppliers in response to

---

[33] Report at A-32.

[34] Post-Hearing Brief of Respondents European Paper Institute at Tab 3, p. 3.

[35] Report at A-33, Post-Hearing Affidavit of Donald D. Kummerfeld, President, Magazine Publishers of America, November 8, 1991.

a lower price offer, since with a contract the current supplier can keep the business by matching the lower offer.[36]

(3) Changes in total quantity purchased. The injury that dumped imports cause a domestic industry will also depend on the extent to which the aggregate demand for that product responds to a change in price. If demand is highly responsive, the lower dumped price will generate a large increase in total sales of the product. In such a case, a relatively large portion of the increased sales of the dumped imports will be sales that would not have been made had the price been higher, and a relatively small portion will be sales lost by domestic producers. By contrast, if quantity does not increase significantly with the decrease in price, most of the increased sales of the unfair imports will come from the domestic producers or from other sources of imports. Thus, the greater the price responsiveness of total demand, the smaller the likelihood that the domestic industry will be materially injured.

This case is somewhat unusual in that data are available to permit actual statistical estimation of the relationship between price changes and changes in total quantity, and economic experts

[36] I note that petitioners argued that the elasticity of substitution was in the range of 5 to 7, because "strict industry conventions regarding basis weight, printing grade, and brightness" mean that the same grade of paper from any two producers is essentially fungible. (Petitioners' Post-Hearing Brief at Tab 7, pp. 10-12) Based on the evidence that a substantial number of purchasers base their purchase decisions on differences in such attributes of quality as brightness, runability, lead times, sales support, and reliability of supply, I am persuaded that this argument is incorrect. (Economics Memorandum at 19)

working for both petitioners and respondents have submitted such estimates.[37] Unfortunately, in terms of my determination, the estimates supplied by the two parties differ substantially. Respondents' expert finds that demand is only slightly inelastic.[38] Using slightly different data and estimation procedures, petitioners' expert finds that demand is highly inelastic.[39]

I find the estimate offered by the respondents' expert to be the more reliable of the two. The statistical properties of respondents' estimate are better than those of the petitioners.[40] Respondents also appear to have exercised greater care in

---

[37] The economic concept used in measuring this effect is the elasticity of aggregate demand, which is defined as the percentage change in the quantity of a product sold resulting from a 1 percent change in the average price of the product. The higher this elasticity the more responsive demand is to a change in price.

[38] Respondent estimates the elasticity of aggregate demand at 0.70. (Statement of Andrew R. Wechsler on Behalf of Respondents in the Matter of Coated Groundwood Paper, October 25, 1991, at 6-A.)

[39] Petitioners' best estimate of the elasticity is 0.35. (Petitioners' Post-Hearing Brief at Exhibit 7-D)

[40] Specifically, the estimates of the elasticity of demand and of the effect of a change in the price of a substitute paper product have the expected signs and are statistically significant at the 1 percent level in respondents' equation. (See Statement of Andrew Wechsler at 6-A.) In contrast, in petitioners' equation, neither variable is significant even at the 5 percent level, and the sign on the effect of a change in the price of the substitute paper product is wrong. (Petitioners' Post-Hearing Brief at Exhibit 7-D.)

selecting the data to use in their estimation.[41] Finally, respondents use a more recent time period in their estimation, which increases the likelihood that their estimate reflects current market relationships.[42]

While I find respondents' estimate to be more reliable than that offered by petitioners, I recognize that there are technical problems with both efforts.[43] I also recognize that these estimates are just that, <u>statistical estimates</u>. Neither tells us the true value of the elasticity, and even respondent's estimate leaves considerable statistical uncertainty about the precise value of the elasticity of demand.[44]

---

[41] Specifically, respondents eliminated some early observations because of significant conflicts between the prices reported by two different sources. (Statement of Andrew Wechsler at 7, n.7.)

[42] In part this is the result of the data inconsistencies found in the earlier data. However, it also reflects the inclusion by respondents of data for the last two quarters of 1990, which petitioners did not use. Petitioners have not explained this decision.

[43] Several of these problems are set forth in the Economics Memorandum at 23-24. In addition, I note that both economic experts estimated a single demand equation rather than simultaneously estimating demand and supply equations, which introduces additional problems.

[44] Technically, all that can be said is that in a certain percentage of cases -- in practice, 95 percent is often used -- the true parameter will lie within a particular interval around this estimated value. Using respondents' estimation, the 95 percent confidence interval is between 0.21 and 1.20 -- that is, we can be relatively certain that the elasticity is not less than 0.21 or greater than 1.20. This interval, of course, includes petitioners' estimated value of 0.35. Because of this, from a statistical perspective there is no significant difference between the two estimates.

Because of the limitations on the statistical estimates, I also consider the available qualitative evidence in arriving at my final evaluation of the elasticity of demand. In particular, there is evidence of some substitutability between coated groundwood paper and both higher and lower quality paper -- the relevant higher quality paper is called coated freesheet while the lower quality paper is called supercalendared paper. There are significant price and quality differences between the various types of paper. And, therefore, customers generally select and stick with a particular type of paper that provides the quality they want at a price they can afford.[45] However, a decline in the price of coated groundwood relative to that of coated freesheet may make the cost savings from using coated groundwood great enough that some publications will choose to sacrifice the higher quality of coated freesheet.[46] Similarly, such price declines will result in some customers upgrading the quality of their product by switching away from the lower quality supercalendared paper.[47]

This qualitative evidence provides additional support for respondents' quantitative estimates. In particular, relying on the qualitative information, staff places the elasticity of

---

[45] Economics Memorandum at 20.

[46] Affidavit of Robert G. Whitton, Jr., Associate Production Director of Reader's Digest Association, Inc., October 23, 1991.

[47] Letter from [* * *], Director, Corporate Purchasing, [* * *], October 22, 1991.

demand in a range that encompasses the value estimated by respondents.[48]

(4) Effect on Domestic Volumes and Prices. Examination of all the relevant information leads me to conclude that dumped imports of coated groundwood paper from Finland and Germany have not caused significant depression or suppression of the prices domestic producers can charge, nor have they significantly reduced the volume of sales made by these firms. The reduction in the demand faced by the domestic producers has been limited because of the degree of substitutability between the dumped imports and domestic products and because a reduction in price leads to some expansion in total sales of coated groundwood paper as a few customers shift from either higher or lower quality papers.

Effect on Domestic Producers. In addition to considering the impact of dumping on the domestic industry's sales volume and the prices at which those sales occur, the statute directs us to examine "the impact of such merchandise on domestic producers of like products. . . ."[49] In conducting this examination, we are instructed to consider such factors as industry employment, investment, and utilization of capacity.[50]

---

[48] Specifically, staff place this elasticity between 0.5 and 0.8. Economics Memorandum at 20.

[49] 16 U.S.C. 1677(7)(B)(i)(III).

[50] 19 U.S.C. 1677(7)(C)(iii).

The effect on investment has been an issue of considerable debate in these investigations, with petitioners alleging that their injury is the result of the inability to proceed with various new investment projects. Indeed, in their post-hearing submissions, they belatedly provided us with what they see as evidence supporting their claim.[51]

I have examined this material with great interest, but do not find there evidence that dumped imports have led to deferred investment projects. Rather, I find that firms in this industry are constantly evaluating both the profitability of adding capacity and the risks associated with such investment. Not infrequently, this evaluation has led to the conclusion that the new investment project is too risky or not sufficiently profitable. This continuing evaluation is what I would expect in a highly capital intensive industry where a new machine represents a significant expansion in industry capacity and therefore is likely to have significant effect on industry output and price.

Further, a variety of factors appear to contribute to the decision not to undertake particular projects. One of these, not surprisingly, is the existence of excess capacity in Europe. But excess capacity in North America, declines in overall demand, and

[51] Petitioners' Post-Hearing Brief, Volume II, Exhibit I. I note that this information had initially been requested by the Commission in its questionnaires which were due in August. I do not understand why petitioners could not have supplied this information in a more timely fashion.

changing relationships among buyers and sellers in this industry are also cited.

I also note that investment has continued at a fairly robust level during the period of investigation. Capital expenditures equalled 15.2 percent and 19.3 percent of the book value of fixed assets in 1988 and 1989 respectively. In 1990, it fell to 8.8 percent and fell again to 4.6 percent on an annualized basis in the first half of 1991 .[52] The rates in the first two years appear to be quite high and I do not find the decline in 1990 and 1991 particularly surprising in light of the general economic recession.

Given the levels of investment observed during the period of investigation, the variety of reasons given for not pursuing certain proposed capital expansions, and the fact that one would never expect all such proposals to be approved, I do not believe the record supports petitioners' claim of material injury by reason of dumped imports on the basis of foregone capital investment.

As to the other factors we are directed to consider, I note that their effect can be inferred from the effects on prices and volumes. For example, the effect on industry employment is directly related to the effect on volume, since an industry's employment level will rise or fall with changes in its level of production. In the current case, the slight impact of the dumping on the volume of domestic production provides conclusive

[52] Derived from Report at A-24, Table 11, and A-35, Table 10.

evidence that there is no material effect on employment. Similarly, because dumping has no material effect on investment, there is no material effect on capacity, and when this is combined with the lack of a significant effect on production, no material effect on capacity utilization.

No Material Injury. In conclusion, LTFV imports of coated groundwood paper from Finland and Germany have had no significant effect on the price or volume of sales of the domestic like product. Moreover, they have also had no significant effect on employment or investment in the domestic industry. Therefore, I conclude that the dumped imports are not materially injuring the domestic industry.

In reaching this conclusion, I have of course considered the general condition of the domestic industry.[53] In particular, I am cognizant that the unit value of sales by the domestic industry and industry profitability declined from 1989 to 1990 and again in the first half of 1991.[54] While such declines are consistent with dumping causing material injury, this is not the only available explanation. During the period of investigation demand for coated groundwood paper was affected by other factors as well -- the U.S. recession in 1990 and 1991, which had a serious impact on the demand for coated groundwood paper, and the

[53] All of the information on the condition of the industry is provided in the Report. I see no need to repeat it here.

[54] Report at A-13, Table 4, and A-16, Table 6.

postage rate increased, which should also have reduced the demand for coated groundwood paper.

No Threat of Material Injury

I must also consider whether the dumped imports pose a threat of material injury. The statute provides a list of nine factors that I am to consider.[55] The statute also instructs me that

> Any determination ... that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.[56]

I have examined all of the statutory factors. However, the only possible reason for concern is "the presence of underutilized capacity for producing the merchandise in the exporting country".[57,58] Capacity utilization has declined for each of the subject countries. In 1988, producers in the five countries combined operated at 100 percent of capacity. By 1990, they were operating at only 89.4 percent of capacity, and this figure fell to 82.2 percent in the first half of 1991. For one

---

[55] 19 U.S.C. 1677(7)(F)(i).

[56] 19 U.S.C. 1677(7)(F)(ii) (emphasis added).

[57] 19 U.S.C. 1677(7)(F)(i)(VI).

[58] Other factors are either irrelevant to the case at hand, or the available evidence provides no reason for concern. For example, there has been no significant increase in market penetration during the period of investigation (Report at A-32, Table 15) and no significant inventories of imported paper are held in this country. (*Id*. at A-27)

of the individual countries, capacity utilization fell to slightly more than 70 percent.[59]

While the presence of this excess capacity might appear to present a reason to worry about future injury, I do not find the record to support such a concern. First, European producers currently are planning only modest future increases in their capacity.[60] Second, while European capacity utilization has declined throughout the period of investigation, it has not been accompanied by any significant increase in sales in the U.S., either for individual countries or for all the countries combined. Indeed, during the first half of 1991, capacity utilization generally declined to its lowest level during the period of investigation, and yet U.S. imports from all five countries were more than 15 percent below the levels in the same period of 1990.[61] If European producers intended to increase their sales in the U.S. market to keep their capacity fully utilized, I would have expected to see increased sales in the United States during the period of investigation. Absent evidence that such are currently increasing, I cannot conclude that the presence of excess capacity presents evidence of real and imminent threat.

I therefore find no evidence to support a finding of the threat of future injury.

---

[59] Report at A-28, Table 12.

[60] Report at A-27.

[61] Report at A-28, Table 12, and A-29, Table 13.

Conclusion: No Injury or Threat of Future Injury

On the basis of the record developed in these investigations, I find that the domestic industry producing coated groundwood paper is not injured by reason of dumped imports from Belgium, Finland, France, Germany, and the United Kingdom. I also find that there is no threat of future material injury by reason of these imports.

Additional Views of Commissioner Don E. Newquist

As set forth in the Commission's majority views, I do not find present material injury to the domestic coated groundwood paper industry by reason of less-than-fair-value imports from France, Germany, Belgium, Finland, and the U.K. Nor do I find a sufficiently "imminent" threat of material injury, as that standard has been promulgated by Congress and interpreted by our reviewing Courts. However, I offer these additional views to discuss certain restrictive conditions of international trade in coated groundwood paper ("CGP") which undermine the overall performance of our domestic industry and are a major cause of our CGP trade imbalance with these countries.

All parties to this investigation appear to agree that given the high fixed costs of producing coated groundwood paper, high rates of capacity utilization are essential to maintaining profitability in this industry. Thus, LTFV export sales to the United States, which in 1990 accounted for 8.4 percent of the respondent exporters' total production, contribute substantially to the ability of those producers to earn a profit.[1]

U.S. producers, however, are effectively barred from entry

[1] Export sales to the United States, which is the respondent exporters' largest export market outside of Europe, can increase European producers' overall profitability, so long as such sales are priced to simply cover their marginal cost of production, U.S. import duties, and freight charges.

to the large European market. Although U.S. coated groundwood paper mills reportedly are more efficient than European mills,[2] European producers are protected from U.S. import competition, by reason of prohibitive transportation costs for producers located in the central United States and, more importantly, through high tariff and border tax measures.[3] Imports of coated groundwood paper entering Germany, France, Belgium, and the U.K. are dutied at 9 percent ad valorem; in Finland the duty is 5.1 percent. These duties are applied against the landed (CIF) invoice value of the imports. Then, before the imports can be cleared through customs, a value added tax -- ranging from 14 percent in Germany to 21 percent in Finland -- is levied on their CIF value plus the amount of the duty.[4] By contrast, the U.S. duty rate on imports of coated groundwood paper is only 2.5 percent, and is not applied against the costs of insurance and freight, but merely

---

[2] Petitioners' Prehearing Brief, at 48 and Exhibit 6. This proposition is supported by the fact that although LTFV imports from Germany, France, Belgium, Finland, and the U.K. may not consistently undersell the domestic product, they are price competitive in the U.S. market only because they are sold at prices ranging from 28 to 39 percent below their home market "fair value."

[3] Tr. at 89-90.

[4] Source: Commerce Department. Thus, for example, the duty and tax treatment on $10,000 (CIF) of U.S. coated groundwood exports into Germany, where there is a 9 percent duty and a 14 percent VAT, is as follows:

$10,000	C.I.F.
900	9% duty
$10,900	
1,526	14% VAT on CIF and duty
$12,426	

the overseas (FOB) customs value of subject imports.[5] The European industry, therefore, can export to the United States at far below fair value, with little fear of retaliation.

These LTFV imports subject to investigation have maintained a stable share of the U.S. market and do not appear, at least in the three year period of this investigation, to have had a significant adverse impact on U.S. prices, or otherwise exacerbated the declining performance of the domestic industry.[6] Thus, inasmuch as our reviewing Court has indicated it "cannot envision a case in which causation would be proven by volume alone,"[7] the mere presence of LTFV imports -- even at sizeable penetration levels of 8 percent in a price sensitive market such as that for CGP -- is insufficient to warrant an affirmative present injury determination.

As for the question whether these imports pose a threat of material injury, the respondents' substantial excess production capacity, due to a capacity buildup and reported softening of demand in Europe, is certainly an important factor in the

---

[5] Staff Report at A-9; Tr. at 90. This gross disparity in the terms of competition facing prospective American versus European exporters no doubt explains why, according to producers' questionnaires, less than 10,000 short tons of CGP is exported annually from the U.S. to the subject countries.

[6] Following two years of very strong profitability, the most recent downturn experienced by U.S. producers appears to be explained by the natural operation of the business cycle and, to a degree, the price and volume effects of non-subject imports.

[7] Iwatsu Electric Co. v. United States, ___ F. Supp. ___, Slip Op. at 16 (Court of International Trade 1991).

Commission's threat analysis. However, given the absence of any rapid increase in import penetration levels,[8] the respondents' ability to ship substantial quantities of additional output to the United States does not constitute the kind of "positive evidence" necessary to sustain an affirmative threat determination.[9]

Nevertheless, it is clear that U.S. producers will continue to face competition from these less-than-fair-value imports. The historical notion of generally distinct European and North American markets for coated groundwood paper, it appears, no longer holds true. Also, to the extent international trade between these markets has increased, it has largely flowed in just one direction. Cumulated imports from Belgium, France, Finland, Germany and the U.K. have increased their U.S. market penetration level, albeit incrementally, in every year since 1981.[10] In 1990, our deficit in CGP trade with these countries

---

[8] Even though the respondent exporters' production capacity rose by one million tons and their output increased by 473,000 tons, from 1988 to 1990 subject imports rose by just 41,000 tons. By value, subject imports increased by just under $30 million, compared to apparent US consumption totalling some $3.8 billion in 1990. Staff Report, Table 14.

[9] American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (CIT 1984), aff'd sub nom. Armco Inc. v. United States, 760 F.2d 249 (CAFC 1985).

[10] Petitioners' Prehearing Brief at 73. Long-term supply commitments may limit the potential for a rapid, large-scale shift from domestic to imported coated groundwood paper, at least in the contract market. It is significant to note, however, that because these imports have not "left the market" during the current downturn in the business cycle, they need not undergo requalification by purchasers in order for their future sales to

(continued...)

totalled some $300 million.[11]

It is clear from the record in this investigation, therefore, that conditions of international trade in coated groundwood paper -- in particular, the impact of border taxes and tariff barriers in the exporting countries in this investigation, place U.S. producers at a significant competitive disadvantage. While these conditions may not be a sufficient basis for an affirmative determination by the ITC, they certainly should be a subject of concern in other, tariff negotiating or trade policymaking settings.

[10](...continued) increase.

[11] Sources: Staff Report, Tables 12, 14; Producers' Questionnaires; C.D. Rom, Department of Commerce Statistics (1990).

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

On December 28, 1990, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, New York, NY, and by each of its individual members, alleging that imports of coated groundwood paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, the Commission instituted and conducted preliminary antidumping investigations with respect to these countries (Nos. 731-TA-486 through 494) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), and on February 6, 1991, determined that there is a reasonable indication that an industry in the United States is materially injured by reason of alleged LTFV imports from Belgium, Finland, France, Germany, and the United Kingdom--but not materially injured, or threatened therewith, by reason of such imports from Austria, Italy, the Netherlands, and Sweden. Commerce, therefore, continued its investigation into the existence and extent of LTFV sales from Belgium, Finland, France, Germany, and the United Kingdom and, on June 13, 1991, published affirmative preliminary determinations in the Federal Register (56 F.R. 27231) with respect to all five countries. On the basis of Commerce's preliminary determinations, the Commission instituted final antidumping investigations Nos. 731-TA-487 (Belgium), 488 (Finland), 489 (France), 490 (Germany), and 494 (United Kingdom), effective the same date.

Notice of the institution of the Commission's final investigations and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S.International Trade Commission, Washington, DC, and published in the Federal Register on July 17, 1991 (56 F.R. 32588).[1] The schedule of events therein reflects Commerce's postponement of its final determinations from August 20 to October 28, 1991 (Federal Register of July 17, 1991 (56 F.R. 32548)). The public hearing was held in Washington, DC, on October 30, 1991.[2]

Commerce published its final LTFV determinations--affirmative with respect to all five countries--in the Federal Register of November 4, 1991 (56 F.R. 56359).[3] In connection with its final dumping determinations, Commerce also determined that critical circumstances exist with respect to one firm in Finland--United/Repola Ltd. The Commission voted on these investigations on December 5, 1991, and reported its determinations to Commerce on December 11. Coated groundwood paper has not been the subject of any other investigation conducted by the Commission.

---

[1] A copy of the Commission's notice of its final investigations is shown in app. A.

[2] The Commission's calendar for the public hearing is shown in app. A.

[3] A copy of Commerce's notice of its final LTFV determinations is shown in app. A.

NATURE AND EXTENT OF SALES AT LTFV

At least one firm each in Belgium and the United Kingdom, two in France, four in Germany, and eight in Finland manufacture the subject product. Although these firms do not necessarily account for all production and shipments of coated groundwood paper by their respective countries, they account for all or the overwhelming bulk of exports to the United States. On the basis of home-market prices for these firms (with the exception of one Finnish producer, Metsa-Serla, for which sales to the United Kingdom were used) and prices paid by unrelated customers in the United States from July 1 through December 31, 1990, Commerce found final dumping margins ranging from 28.20 to 39.49 percent. The firms, their respective countries, and the margins associated therewith are shown in table 1.

THE PRODUCT

Description and Uses

Consisting basically of matted and pressed wood fibers, paper is a highly ubiquitous commodity with many applications and nearly as many varieties. It is primarily differentiated for use by its surface characteristics (with particular attention to the existence and type of any coating) and the processes by which its wood fibers are obtained. The imported article subject to the petitioners' complaint--coated groundwood paper--is a paper used for writing, printing, or other graphic purposes that is coated with kaolin (China clay) or other inorganic substances (to improve it for such use), with more than 10 percent by weight of its constituent wood fibers obtained from mechanical, as opposed to chemical, processes.[4] Such paper may be coated on one or both sides. That coated on both sides

[4] Like most paper used for graphic purposes, coated groundwood paper is produced from a mixture of mechanically obtained and chemically obtained wood fibers--microscopic strands, which, when matted together, form paper. In the mechanical process they are produced by physically grinding wood chips, with water, to the appropriate size. The resultant product, groundwood pulp, contains pure wood (cellulose) fibers in addition to noncellulose elements such as lignin, the natural glue that holds the fibers together in wood. In the chemical process the fibers are produced by subjecting wood chips to certain chemicals, which, with the addition of water, achieves the same effect, except that the resultant product, chemical pulp, is relatively free of noncellulose elements. The difference is important for paper making. Although lignin and other noncellulosic elements provide paper with good opacity, they effectively weaken its structure and shorten its life. The addition of chemical pulp adds strength and longevity to the finished product. In general, the higher the chemical-pulp content, the better quality and higher priced the paper. In the course of satisfying users' needs, two broad categories of printing paper have emerged in recent periods--<u>groundwood</u> paper, with mechanically obtained fibers constituting more than 10 percent of its total fiber weight; and <u>freesheet</u> paper, with mechanically obtained fibers constituting 10 percent or less of its total fiber weight.

Table 1
Coated groundwood paper: Countries subject to the instant investigations, manufacturers therein exporting to the United States, and respective final dumping margins

Country	Manufacturers exporting to the United States	Final dumping margin (percent)
Belgium	KNP Belgie NV	33.61[1]
Finland	Enso-Gutzeit OY	30.84[2]
	Kymmene Corp. (owns Chapelle Darblay (France) and Caledonian Paper (United Kingdom))	28.20
	Metsa-Serla Group[3]	35.20
	Myllykoski OY (owns Albbruck Papierfabrik (Germany))[3]	30.84[2]
	Rauma Repola OY[4]	31.27
	Tampella Ltd.[3]	30.84[2]
	United Paper Mills Ltd.[3] [4]	31.27
	Veitsiluoto OY[3]	32.96
France	Feldmuhle Beghin-Corbehem S.A.	32.44
	Chapelle Darblay S.A.	32.44[5]
Germany	Albbruck Papierfabrik	34.51[6]
	Feldmuhle AG (owns Feldmuhle Beghin-Corbehem (France))	34.51[6]
	Haindl Papier GmBH	39.49
	MD Papier GmBH	31.40
United Kingdom	Caledonian Paper PLC	35.61[1]

[1] Also applicable to any other firms in the country exporting to the United States.

[2] The weighted-average margin of the firms for which Commerce made actual calculations, i.e., Kymmene, Metsa-Serla, Rauma Repola, United Paper Mills, and Veitsiluoto, is applicable to all other firms in Finland exporting to the United States.

[3] Members of the Finnish Paper Mills Association (Finnpap), a cooperative organization engaged in the sales and distribution of paper products. Most of its members are linked by ownership and management.

[4] Rauma Repola was merged with United Paper Mills as of Dec. 31, 1990.

[5] The margin of the firm for which Commerce made actual calculations, i.e., Feldmuhle Beghin-Corbehem, is applicable to all other firms in France exporting to the United States.

[6] The weighted-average margin of the firms for which Commerce made actual calculations, i.e., Haindl and MD Papier, is applicable to all other firms in Germany exporting to the United States.

Source: Compiled from Commerce's notices of final LTFV determinations and from information submitted during the course of the Commission's preliminary and final investigations.

constitutes the bulk of coated groundwood paper production in the United States and is the imported product to which the petitioners' complaint is limited. It is generally used for multi-colored publications that commonly remain in use from several days to a month--primarily magazines and merchandising catalogues, but also better quality newspaper inserts, direct mail advertisements, and coupons. (The relatively small quantity of coated groundwood paper produced with coating on one side is primarily used for printed wrapping paper).

Coated groundwood paper is one of five major types of paper used for graphic purposes. Ranked according to overall price and quality, they are:

Coated freesheet paper--similar in terms of coating to the subject product but composed of a greater proportion of chemically obtained fibers (90 percent or more by weight), used primarily for more permanent and higher priced publications such as premium magazines, gift books, and art reproductions;

Uncoated freesheet paper--similar in composition to the former but without coating and used primarily for finer drawing and handwriting paper, commercial correspondence paper, letterhead, carbonizing base, and wallpaper base;

Coated groundwood paper--the subject product;

Uncoated groundwood paper--similar in composition to the subject product but lacking the coating necessary for better graphics (color clarity and print sharpness), used primarily for lesser quality drawing and handwriting paper, black and white publications, and relatively shortlived color publications, such as most newspaper inserts; and

Newsprint--a very low quality uncoated groundwood paper designed exclusively for newspapers and similar publications commonly disposed of within a day.

In addition to the above printing papers, distinguished mostly by their relative proportions of mechanically- or chemically-derived pulp and whether or not coated with kaolin or other inorganic substances, there are a number of printing papers coated with special substances specifically designed for use with duplicating machines, reprographic machines, and other specialized equipment.

Each type of printing paper is classified by grade and basis weight. Grade is largely related to paper "brightness," a measure of the reflectivity of paper under standardized conditions by an instrument designed and calibrated for this purpose. Brightness grades for most printing papers range from a low of No. 5 to a high of No. 1. (A "premium" grade above No. 1 is sometimes available on special order). Basis weight, a standard unit of measurement in the United States, is the weight of the paper in pounds per ream, a ream being equivalent to 500 sheets of paper, each measuring 25" x 38." In Europe basis weight is measured by the weight in grams of one sheet measuring one meter square. In any case it is directly related to the thickness of the paper. Most coated (2-sided) groundwood paper sold in the United States measures No. 5 to No. 4 in brightness and ranges from 32 to 50 pounds in basis weight. In response to market demand, U.S. producers have gradually shifted production to lighter basis weights and higher brightness over the past several years.[5] The use of lighter weight paper is designed to offset postal rate increases and the correspondingly higher cost of publication distribution. The lightest basis weights, i.e., 34 pounds and below, are not universally available. In general, the field of suppliers becomes more limited as the basis weight declines.

In addition to brightness and basis weight, coated groundwood paper is classified according to use for offset or rotogravure printing processes and whether made in the form of discreet sheets or continuous rolls. Offset printing processes generally require paper of coarser texture and greater stiffness than do rotogravure processes, and coated groundwood paper is produced accordingly. Also, because of constraints in handling capabilities, some users require the standard roll of paper to be precut into sheets. The consumption of sheets, however, is very small.

A more subjective, but no less important, factor in the subject product's use is its "runability." Slight variations in producers' operating conditions inevitably result in slight differences in paper to which a specific printer's equipment may be sensitive. Anywhere from 2 to 12 percent of printing paper may be wasted during the printing process, depending on the peculiarities of the printing equipment used and the brand of paper. A brand of paper that is most runable to one printer, however, may be least runable to another, and there is no consistency of preferences in this regard among users.

A small quantity of domestically-produced coated groundwood paper is defective in one way or another and is either sold as such at a discount to job-lot dealers for placement in non-primary markets (mainly giftwrap converters) or recycled through the production process. Producers report that such "secondary" or "off-spec" material generally accounts for anywhere from 1 to 5 percent of annual production. Defective paper is also produced randomly by new or completely reconfigured equipment, which usually requires many months of fine tuning and adjustment before it can consistently produce paper of standard quality. Unlike secondary paper, such "first-run" or "start-up" paper is sold within the normal channels of distribution, but it is priced at a discount to compensate buyers for the producer's inability to guarantee its quality.

---

[5] According to testimony at the public hearing by James F. Kear, Strategic Planning Manager for the Coated Papers Division of International Paper Co., the shift has been confined to users of light-weight paper, i.e., paper below 38 pounds basis weight, so that although the average weight of total paper consumption may have declined, the proportion of light-weight paper to total consumption has remained the same--or even declined, since, according to Mr. Kear, the consumption of heavy-weight paper has increased more than light-weight paper in recent periods.

A wide range of coated groundwood paper is available in the United States from both foreign and domestic sources. According to some users, U.S. producers have been slower to shift to lighter basis weights and higher brightness than have foreign producers, and several users have reported that while the brightness of some foreign-produced paper--particularly that from Finland and Germany--is superior to the U.S. product, its stiffness and opacity are correspondingly inferior. For the most part, however, what is presently available from producers in the countries subject to these investigations is also available from U.S. producers, though perhaps not always as readily from one source to another. Individual producers may vary in their ability to provide a specific grade and/or quantity of paper at any one time, and traditionally there have been periods when the product in general has been in short supply.

To produce coated groundwood paper, logs and wood chips must first be reduced to pulp (minute wood fibers mixed with water) by both mechanical and chemical means and the respective pulps mixed to appropriate proportions. The mixed pulp then undergoes a fibrillation process to fray the fibers and otherwise increase their surface area for better cohesion. This process may include the addition of dyes, to add color to the paper; starches, to give it firmness; and/or resins, to give it water resistant properties. Removing the bulk of the water from the pulp--by gravity, suction, and pressure--allows the fibers to cohere to each other, turning the pulp into large continuous sheets of paper. After further drying by means of heat and pressure, the paper is coated (usually with clays but also with other inorganic substances such as calcium carbonate and titanium dioxide) to provide a smooth surface for printing. The coated paper is often further smoothed by passing it through calenders, which press the paper between heavy polished rollers. The finished product is then wound into rolls or cut into sheets before distribution. Although the basic process is common worldwide, individual producers, both foreign and domestic, report proprietary modifications and upgrades to their processes that contribute to production efficiency or product enhancement. The proportionately greater use of recycled paper as a pulp substitute in Europe may be one reason that some Finnish and German paper appears brighter than its U.S.-produced counterpart. Because of their collapsed condition, recycled fibers almost invariably produce a smoother paper surface.

Most of the machinery and equipment used in the production of printing paper is specific to a single paper type. To convert a U.S. coated groundwood paper facility to the production of freesheet or uncoated groundwood paper, for example, would require an investment of $10 to $30 million for equipment modifications alone and a year or more in downtime for installation, cleaning, changing pulp furnish and chemical additives, resetting machine controls and flow rates, fine tuning to achieve paper of acceptable quality, and, in many instances, additional training for workers. (Downtime for similar adjustments, albeit less lengthy, is incurred by producers even when switching to different grades and weights of coated groundwood paper). Alternatively, the cost of a new paper machine is on the order of several hundred million dollars. From time to time some U.S. producers have produced newsprint and/or uncoated groundwood paper on coated groundwood machinery, but only under exceptional circumstances, such as when coating equipment is idle or unable to keep pace with the rest of the machine's production.[6] The cost of idling coaters for non-coated paper production is usually prohibitive.

Printing characteristics are unique to each of the aforementioned types of paper. For this reason they are rarely substituted. Most buyers decide upon the printing effect, both visual and tangible, they wish to achieve and select a paper accordingly. Switching may occur, if another type of paper better suits their needs or constraints, but most publishers--particularly those of recurring products like magazines and catalogues--are neither indifferent nor capricious as to their choice of paper. Coated freesheet paper, the closest substitute for coated groundwood paper in terms of physical characteristics, is usually 10 to 25 percent higher in price and does not provide adequate opacity at lower basis weights. For this reason it is generally not available in basis weights below 45 pounds. Uncoated papers are generally lower in price--10 to 20 percent for the better grades--but consume more ink and have inferior printing surfaces (i.e., brightness, smoothness, and gloss). Without a constant and recurring product, publishers of newspaper inserts, coupons, and the like are far less concerned with image and have occasionally substituted coated freesheet or the highest grade of uncoated groundwood paper (known as <u>supercalendered</u> paper because of the additional calendering process it undergoes to improve its surface characteristics) for the subject product. The likelihood of substitution in this market increases as the relative prices for different types of paper narrow.

U.S. Tariff Treatment

Coated groundwood paper (coated on one or both sides) is provided for in subheadings 4810.21.00 and 4810.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 254.4620 of the former Tariff Schedules of the United States Annotated). The former subheading provides for paper of light basis weight, which, according to standard industry definition, is 50 pounds and under; the latter is for all other, i.e., over 50 pounds. The column 1-general (most-favored-nation) rate of duty for these subheadings, applicable to imports from the countries subject to these investigations, is 2.5 percent ad valorem.

U.S. PRODUCERS

The petitioning Committee consists of eight firms[7] producing coated groundwood paper in the United States. These and five others account for all U.S. production of the subject product since 1987. The locations of their

[6] One U.S. producer, ***, reports that it shifts between coated groundwood and coated freesheet paper on one of its two machines, but the machine was originally designed for this purpose and includes the additional equipment necessary.

[7] The Committee originally consisted of 9 firms. One firm, Fraser Paper, Ltd., Madawaska, ME, asked to be excluded during the course of the Commission's preliminary investigations.

respective plants and shares of U.S. coated (2-sided) groundwood paper production in 1990 are shown in table 2. Although they vary as to the quantity and range of basis weights they produce, none is particularly predominant in the domestic market. Plant locations, proximate to sources of wood pulp, are concentrated in the northeast. Despite the concentration, each firm claims to serve and ship to the entire U.S. market.

All U.S. producers are primarily, if not exclusively, paper and wood-product manufacturers, and all manufacture paper other than the subject product, though not necessarily at the same location or in the same establishment. The degree of integration, i.e., the extent to which firms purchase and/or produce pulp, chemicals, and other raw materials, varies from firm to firm. All, however, produce a finished product.

U.S. MARKET, IMPORTERS, AND CHANNELS OF DISTRIBUTION

The market for coated groundwood paper is large, demanding, and active. In 1990 alone, domestic consumption exceeded 4.8 million tons valued at $3.8 billion. According to most sources, magazines account for at least half of the subject product's consumption and catalogues for the bulk of the remainder. Although mail advertising, newspaper inserts, and similar forms of commercial printing consume lesser quantities of coated groundwood paper, they represent a no less viable and active segment of the market. Like the publishing industry in general, magazine publishers and commercial printers are fastpaced and deadline oriented, operating under monthly, weekly, and sometimes daily production schedules. As the basic raw material for their output, coated groundwood paper is consumed quickly and needed regularly. Catalogue publishing is less frequent, but the large quantities of paper demanded when such publishing occurs puts additional stress on supply--particularly from June to December when catalogues are readied for the fall, Christmas, and spring shopping seasons.

Several hundred publishers and printers in the United States use the subject product. Large publishers such as Time, Inc. (magazines) and Sears (catalogues) tend to produce their publications themselves; small publishers tend to retain independent printers for this purpose. In any case the decision as to the type and grade of paper is virtually always the publisher's; although, in cases where an independent printer is used, it is often the printer that makes the actual purchase.

Publishers and printers have many sources of coated groundwood paper available to them, although, as mentioned previously, the range of product available varies from source to source. In addition to U.S. producers, they may purchase from U.S. sales agents representing (and in many cases affiliated with) foreign producers or from independent brokers and merchants[8] serving all sources. Foreign-produced coated groundwood paper accounted for about 15 percent of domestic consumption in 1990. Sales agents, brokers, and merchants accounting for the bulk of the imported material subject to these investigations--about 8 percent of U.S. consumption in 1990--are identified in table 3.

---

[8] Brokers arrange for the purchase and delivery of a certain quantity of paper for others; merchants function more like distributors in that they buy, stock, and sell paper for themselves.

Table 2
Coated (2-sided) groundwood paper: U.S. producers, plant locations, and shares of domestic production in 1990, by firms

Firm	Plant location(s)	Share (percent) of U.S. production[1]
Petitioners:		
Blandin Paper Co.	Grand Rapids, MN	***
Boise Cascade Corp.	Rumford, ME	***
Bowater, Inc.	Catawaba, SC	***
Champion International Corp.	Bucksport, ME, Sartell, MN, Deferiet, NY	***
Consolidated Papers, Inc.	Wisconsin Rapids, WI, Stevens Point, WI	***
International Paper Co.	Jay, ME, Corinth, NY, Pine Bluff, AR	***
James River Corp.	St. Francisville, LA	***
Niagara Paper Co.	Niagara, WI	***
		78.4
Nonpetitioners:		
Fraser Paper, Ltd.***	Madawaska, ME	***
Great Northern Paper Co.***	Millinocket, ME	***
Mead Publishing Paper***	Escanaba, MI	***
Midtec Paper Corp.***	Kimberly, WI	***
Weyerhaeuser Paper Co.***	Columbus, MS	***
		21.7

[1] Figures may not add to 100 percent due to rounding.
[2] Supports the petition.
[3] Takes no position with respect to the petition.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 3
Coated (2-sided) groundwood paper: U.S. importers, foreign producer affiliations, and sources of imports, by firms

Firm	Foreign producer affiliation	Sources of imports

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

To insure adequate and timely supplies of paper, publishers generally prefer to purchase on a contractual basis and purchase from, or at least have access to, several alternative sources at once. Because of the nature of the industry, however, contracts are subject to frequent renegotiation. In many ways the trade in coated groundwood paper is similar to that for heavily traded commodities. Although it is not an undifferentiated product, it is actively traded in large volumes between a relatively large number of producers and consumers who, in a climate of supply and demand uncertainties, are served by brokers and merchants seeking and selling paper at spot prices in spot quantities. The result is a certain degree of price instability and relatively fluid purchase arrangements.[9]

CONSIDERATION OF THE ALLEGED MATERIAL INJURY

Other than for employment and financial experience, the data in the following sections, characterizing the period 1988 through January-June 1991, represent 100 percent of U.S. production. Employment data do not include the operations of one small producer, Mead, which accounted for *** percent of U.S. production in 1988-90; and the financial data do not include the operations of Mead and another small producer, Great Northern, which together accounted for *** percent of U.S. production in this period.

U.S. Production, Capacity, Capacity Utilization, Shipments, and Inventories

Data reflecting aggregate U.S. producers' operations are shown in table 4. The data show that the production of all kinds of coated (2-sided) groundwood paper, in terms of weight, increased slightly during the period for which the data were collected--by 1.2 percent from 1988 to 1990 and by 1.1 percent from January-June 1990 to January-June 1991. The reporting of paper quantities by weight--in this report by short tons--is standard industry practice and the basis on which customs duties are assessed. In periods of increasing or decreasing average basis weights, however, the data may somewhat distort the picture of the industry and its market. The effect of U.S. and foreign producers shifting production to lighter basis weights, as has occurred in recent periods, is more paper--more printable surface area--per ton. In terms of surface area, it is likely that the quantity of paper produced and consumed increased somewhat more than the reported data indicate.

---

[9] According to the petitioners, the U.S. industry has experienced many years of increasing demand and a 4 to 5 year price cycle--peaking as domestic supply reaches capacity limitations and imports rise, troughing as new capacity increases supply and imports fall, and peaking again with demand further outpacing capacity. The current cycle is uncharacteristic, according to petitioners, in that prices were relatively low during the last period of high capacity utilization (1987-88) and have remained low while imports have continued to increase, discouraging investment in additional capacity.

Table 4
Coated (2-sided) groundwood paper: U.S. production, average practical capacity, capacity utilization, company transfers, domestic shipments, exports, and end-of-period inventories, 1988-90, January-June 1990, and January-June 1991

Item	1988	1989	1990	January-June-- 1990	January-June-- 1991
Production (1,000 short tons).....	4,166	4,104	4,215	2,072	2,094
Capacity[1] (1,000 short tons)......	4,424	4,474	4,553	2,232	2,255
Ratio of production to capacity (percent)...........	94.2	91.8	92.6	92.8	92.9
Transfer shipments:					
Quantity (1,000 short tons).....	43	55	77	37	38
Value[2] (million dollars)........	34	44	60	29	29
Unit value (dollars per ton)....	$799	$808	$771	$778	$761
Domestic shipments:					
Quantity (1,000 short tons).....	4,050	3,984	4,045	1,978	1,926
Value[2] (million dollars)........	3,224	3,246	3,197	1,572	1,473
Unit value (dollars per ton)....	$796	$815	$790	$795	$765
Exports:					
Quantity (1,000 short tons).....	63	62	88	39	44
Value[2] (million dollars)........	47	46	61	27	29
Unit value (dollars per ton)....	$754	$751	$694	$699	$670
Total shipments:					
Quantity (1,000 short tons).....	4,156	4,100	4,210	2,054	2,008
Value[2] (million dollars)........	3,306	3,337	3,318	1,628	1,532
Unit value(dollars per ton)....	$796	$814	$788	$793	$763
Inventories (1,000 short tons)....	59	64	82	84	165
Ratio of inventories to total shipments during the period (percent).............	1.4	1.6	1.9	2.0[3]	4.1[3]

[1] Most producers estimated capacity on the basis of operating their facilities 168 hours per week and 51 to 52 weeks per year.
[2] Net sales value, i.e., gross value less all discounts, allowances, rebates, and the value of returned goods.
[3] Annualized.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The recent shift in basis weight also complicates the calculation of the industry's capacity, although the data shown in table 4 fairly accurately reflect capacity changes. Several producers reported changes. Effectively reducing capacity, ***. Other changes effectively increased capacity. ***. The net result was a 2.9 percent increase in U.S. producers' productive capacity from 1988 to 1990 and a further increase of 1.0 percent from January-June 1990 to January-June 1991. Capacity utilization rates remained high throughout the period, as U.S. producers endeavored to maximize productivity and minimize the financial burden of their large capital investments.

Several producers reported cancelling or deferring plans to increase capacity during this period. Increasing demand has led U.S. producers to plan for and periodically add additional productive capability.[10] ***.

Total shipments, which increased by 1.3 percent from 1988 to 1990 and then declined by 2.2 percent from January-June 1990 to January-June 1991, did not keep pace with production. The result was a doubling of inventory levels in this period, although relative to total shipments overall inventory levels remained fairly small. Exports, while rising, remained at 2 percent or less of total shipments throughout the period for which data were collected. More noticeable is the deterioration of unit values after 1989. The decline in unit values reflects the overall decline in prices, a decline perhaps somewhat more precipitous than the data in table 4 would suggest because of the increasing proportion of lower-weight paper shipped and the correspondingly higher prices normally paid therefor.

Individual producers were alike in experiencing falling unit values. Otherwise, the aggregate data in table 4 conceal somewhat diverse trends among them. As to whether their respective production, shipments, and inventories increased or decreased from period to period, U.S. producers varied considerably, and none reported consistent performance throughout. They were alike, however, in not experiencing fluctuations of great magnitude. However diverse and inconsistent the trends in their respective data, for the most part changes from period to period remained relatively moderate.

Employment

Despite its capital intensiveness, the industry employs a large number of workers--over 9,000--in the production of coated groundwood paper (table 5). Unlike most paper-producing machinery, which is specific to the type of paper it produces, workers are often trained and used to produce other types of paper on separate equipment within their establishments. The data in table 5 reflect a number of workers equivalent to the proportion of all workers' time devoted to the subject product. Average employment levels have moderately fluctuated, declining overall by 1.5 percent between 1988 and January-June 1991. Hours worked in the production of coated groundwood paper changed slightly more, declining by 2.7 percent from 1988 to 1990 and by 1.3 percent from January-June 1990 to January-June 1991. Productivity, in terms of tons produced per hour worked, and total compensation paid to workers steadily increased, as shown in table 5.

---

[10] According to testimony at the public hearing by James F. Kear, Strategic Planning Manager for the Coated Papers Division of International and corroborated by members of other firms present, 6 to 7 years transpire from the conception of adding a new machine to achieving its full operational productivity--1 year for feasibility research, engineering studies, and capital budgeting analysis; approximately 2 years for construction; and 3 to 4 years to achieve full productivity. Full capacity for a new machine today is about 250,000 tons per annum, and the total cost would be in excess of $500 million.

Table 5
Coated (2-sided) groundwood paper: Average number of U.S. production and related workers and hours worked by and compensation paid to such workers, 1988-90, January-June 1990, and January-June 1991[1]

Item	1988	1989	1990	January-June-- 1990	January-June-- 1991
Average number of production and related workers producing coated groundwood paper.......	9,162	9,011	9,100	9,098	9,020
Hours worked by production and related workers producing coated groundwood paper (1,000 hours)................	19,434	18,906	18,904	9,432	9,309
Tons of coated groundwood paper produced per hour worked......	0.198	0.201	0.209	0.207	0.211
Total compensation paid to production and related workers producing coated groundwood paper (1,000 dollars).........	392,812	399,500	420,158	207,313	214,182
Hourly compensation paid to production and related workers producing coated groundwood paper........................	$20.21	$21.13	$22.23	$21.98	$23.01

[1] Does not include Mead.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Financial Experience of U.S. Producers

OVERALL ESTABLISHMENT OPERATIONS

Most producers' establishments are used to manufacture several kinds of paper products in addition to coated groundwood paper. Some of these establishments also produce the chemical (kraft) pulp used in coated groundwood paper production. As a share of total establishment net sales, sales of coated groundwood paper were 68.4 percent, 66.2 percent, 64.0 percent, 65.3 percent, and 62.2 percent in 1988, 1989, 1990, interim 1990, and interim 1991, respectively. Overall establishment income-and-loss experience is not presented as it is not comparable to the adjusted data for coated groundwood paper operations which follow.

OPERATIONS ON COATED GROUNDWOOD PAPER

Aggregate income-and-loss experience of U.S. producers' coated (2-sided) groundwood paper operations is presented in table 6. (The data include 11 of 13 producers, representing *** percent of U.S. production in 1988-90). Net sales in 1989 of $2,957 million were virtually unchanged from 1988 sales of $2,964 million. Sales in 1990 of $2,930 million were also little changed from these levels. Operating income was $603 million in 1988, $508

Table 6
Income-and-loss experience of U.S. producers on their operations producing coated groundwood paper, fiscal years 1988-90, January-June 1990, and January-June 1991[1]

Item	1988	1989	1990	January-June-- 1990	January-June-- 1991
	Value (1,000 dollars)				
Net sales	2,963,787	2,957,149	2,930,039	1,440,060	1,385,355
Cost of goods sold	2,230,974	2,319,210	2,440,484	1,193,001	1,170,125
Gross profit	732,813	637,939	489,555	247,059	215,230
Selling, general, and administrative expenses	130,294	129,522	131,180	65,850	66,771
Operating income	602,519	508,417	358,375	181,209	148,459
Startup or shutdown expense	32,158	21,748	6,245	3,047	3,150
Interest expense	27,258	30,401	34,525	16,421	23,980
Other income, net	6,669	1,426	7,042	3,653	4,170
Net income before income taxes	549,772	457,694	324,647	165,394	125,499
Depreciation and amortization	181,795	194,713	213,840	105,414	112,621
Cash flow[2]	731,567	652,407	538,487	270,808	238,120
	Ratio to net sales (percent)				
Cost of goods sold	75.3	78.4	83.3	82.8	84.5
Gross profit	24.7	21.6	16.7	17.2	15.5
Selling, general, and administrative expenses	4.4	4.4	4.5	4.6	4.8
Operating income	20.3	17.2	12.2	12.6	10.7
Net income before income taxes	18.5	15.5	11.1	11.5	9.1
	Number of firms reporting				
Operating losses	0	0	1	1	2
Net losses	0	0	1	1	2
Data	11	11	11	11	11

[1] All current fiscal years end December 31, except Weyerhaeuser's, which ends the last Saturday in December. James River's fiscal year prior to 1990 ended April 30.
[2] Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

million in 1989, and $358 million in 1990. Operating income margins (the ratio of operating income to net sales) were 20.3 percent in 1988, 17.2 percent in 1989, and 12.2 percent in 1990. None of the companies incurred operating losses in 1988 or 1989, but one company incurred an operating loss in 1990.

Net sales in interim 1991 were $1,385 million, a decrease of 3.8 percent from interim 1990 sales of $1,440 million. Operating income fell by 18.1 percent from $181 million in interim 1990 to $148 million in interim 1991. Correspondingly, operating income margins fell from 12.6 percent to 10.7 percent. One producer incurred an operating loss in interim 1990 and two producers incurred such losses in interim 1991. Cash flow and net income may be materially overstated as five producers did not allocate interest to the subject product.

Kraft pulp is a major intermediate material in the production of coated groundwood paper, and its cost impacts significantly on U.S. producers' profitability. Its sources are many, including (1) internal production within a U.S. producer's coated groundwood paper establishment; (2) transfers from a producer's other U.S. plants; (3) purchases from unaffiliated companies within the United States; (4) transfers from affiliated Canadian companies; and (5) purchases from unaffiliated Canadian companies. For purposes of reporting profit-and-loss information to the Commission, producers were requested to value their internal production of kraft pulp and/or transfers from affiliated companies (whether U.S. or foreign) at actual production cost.[11]

In 1990, internal production of pulp accounted for 51.1 percent of the quantity of producers' requirements; purchases from domestic and Canadian affiliates accounted for 14.1 percent; and purchases from non-affiliated domestic and Canadian sources accounted for the remaining 34.8 percent.

Five producers (***) purchased some of their kraft pulp requirements from a Canadian affiliate or parent.[12] Their average acquisition prices (per short ton) were $606 in 1988, $668 in 1989, $685 in 1990, $707 in interim 1990, and $580 in interim 1991. These transactions were revalued on a cost basis by Commission staff. The effect of these changes was to increase aggregate profitability by $57.2 million in 1988, $60.5 million in 1989, $61.0 million in 1990, $29.6 million in interim 1990, and $24.4 million in interim 1991.

[11] In the preliminary investigations, the petitioners suggested that the market price for kraft pulp, regardless of source, should be used in order to determine profitability. However, generally accepted accounting principles (GAAP) dictate the use of the lower of cost or market for valuation purposes. See USITC Publication 2359, February 1991, pp. 14 (footnote 42), A-10, and B-16.

[12] "Fraser's integrated pulp and paper complex straddles the border between Edmundston, New Brunswick, and Madawaska, Maine. The Edmundston mill produces groundwood and bleached and unbleached bisulphite pulps, all of which are used to produce paper at Madawaska." Excerpt from the 1990 annual report (p. 18) of Noranda (parent of Fraser).

Three producers (***) purchased a small portion of their requirements of kraft pulp from domestic affiliates. Their average acquisition prices (per short ton) were $619 in 1988, $642 in 1989, $665 in 1990, $666 in interim 1990, and $605 in interim 1991. These transactions were also revalued by the Commission staff. These changes increased profitability by $2.8 million in 1988, $3.3 million in 1989, $3.9 million in 1990, $2.1 million in interim 1990, and $900,000 in interim 1991.

Between 1988 and 1990, U.S. producers reported that the cost of producing pulp themselves was considerably below the market price of the pulp they purchased from unaffiliated companies. However, this gap narrowed within the past year as market pulp prices declined sharply. The average reported costs (per short ton) for U.S. producers' internally produced pulp were $281 in 1988, $307 in 1989, $316 in 1990, $309 in interim 1990, and $320 in interim 1991.

All market pulp transactions, except purchases from external sources, have been adjusted to a cost basis. Average purchase prices for unaffiliated domestic market pulp (per short ton) were $632 in 1988, $726 in 1989, $625 in 1990, $677 in interim 1990, and $531 in interim 1991. The average purchase prices for unaffiliated Canadian market pulp (per short ton) were $639 in 1988, $751 in 1989, $732 in 1990, $747 in interim 1990, and $583 in interim 1991. These unaffiliated market pulp purchases accounted for approximately 14 percent of the total cost of goods sold.

A summary of kraft pulp costs previously discussed and included in the cost of goods sold is shown below (on a dollars-per-ton basis):[1] [2]

Source of kraft pulp	1988	1989	1990	Jan.-June 1990	Jan.-June 1991
Internal production...	$281	$307	$316	$309	$320
Affiliated purchases:					
Canadian:					
Original..........	**606**	**668**	**685**	**707**	**580**
Revised[3]..........	340	350	360	360	370
Domestic:					
Original..........	**619**	**642**	**665**	**666**	**605**
Revised[3]..........	300	310	320	320	330
Unaffiliated purchases:					
Canadian............	639	751	732	747	583
Domestic............	632	726	625	677	531

[1] One of the *** producers (***) did not provide a breakdown of its kraft pulp costs; however, its income-and-loss data were prepared on the basis of cost.
[2] The impact on the cost of goods sold for these items will be discussed in a later section.
[3] These are estimated costs based on internal production. The difference between the domestic and Canadian costs reflect estimated differences between domestic and Canadian mills using *** internal production cost as an estimate for Canadian mill costs. The effect of all these changes was to increase aggregate annual operating income as a share of sales by 2.0 percentage points in 1988, 2.2 percentage points in 1989, 2.1 percentage points in 1990, 2.2 percentage points in interim 1990, and 1.8 percentage points in interim 1991. Most of the increases were due to the ***. These costs will also be discussed in the section on profitability.

U.S. producers' income-and-loss experience on a dollars-per-short-ton basis is shown in table 7.

Table 7
Income-and-loss experience (on a per-short-ton basis) of U.S. producers on their operations producing coated groundwood paper, fiscal years 1988-90, January-June 1990, and January-June 1991

Item	1988	1989	1990	January-June-- 1990	January-June-- 1991
	Quantity (1,000 short tons)				
Net sales	3,719	3,640	3,731	1,817	1,828
	Value (per short ton)				
Net sales	$797.00	$812.30	$785.32	$792.63	$757.85
Cost of goods sold:					
Raw materials	315.91	348.92	349.37	352.97	332.36
Labor	85.95	87.01	88.86	90.20	89.85
Factory overhead	198.08	201.13	215.88	213.47	217.90
Total cost	599.94	637.07	654.11	656.65	640.11
Gross profit	197.06	175.24	131.21	135.99	117.74
Selling, general, and administrative expenses	35.04	35.58	35.16	36.25	36.53
Operating income	162.03	139.66	96.05	99.74	81.21

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission. Note.--The data are derived from the cost of production, which is similar to but not the same as cost of goods sold. Production costs are the actual costs incurred during a period to produce goods for sale. Cost of goods sold is production cost adjusted for beginning and ending inventory. Because inventory levels are relatively small in this industry, production cost approximates cost of goods sold.

Selected income-and-loss data for each reporting firm are shown in table 8. Profitability declined for most of the producers during the period of investigation. However, there were large differences in profitability among the producers. This is mainly attributable to one or more of the following factors:

1. Product mix and marketing factors
The product mix of each producer is different and it varies from period to period. Some products increased in price whereas others declined during the period of investigation.

Table 8
Income-and-loss experience of U.S. producers on their operations producing coated groundwood paper, by firms, fiscal years 1988-90, January-June 1990, and January-June 1991

Item	1988	1989	1990	January-June-- 1990	January-June-- 1991
	Value (1,000 dollars)				
Net sales:					
	* * * * * * *				
Total............	2,963,787	2,957,149	2,930,039	1,440,060	1,385,355
Operating income or (loss):					
	* * * * * * *				
Total............	602,519	508,417	358,375	181,209	148,459
Net income or (loss) before income taxes:					
	* * * * * * *				
Total............	549,772	457,694	324,647	165,394	125,499
	Ratio to net sales (percent)				
Operating income or (loss):					
	* * * * * * *				
Average..........	20.3	17.2	12.2	12.6	10.7
Net income or (loss) before income taxes:					
	* * * * * * *				
Average..........	18.5	15.5	11.1	11.5	9.1

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

2. Differences in raw material costs

As previously indicated, producers have several sources of supply for their kraft pulp. Those producers that internally produce pulp and/or purchase their pulp from affiliated companies had significantly lower raw material costs than those producers that purchased pulp from external suppliers during the period of investigation.

3. Operating problems

Some companies had production problems and/or labor disruptions during the period of investigation.

ISSUES RAISED RELATING TO PROFITABILITY

In its preliminary determinations the Commission raised various issues pertaining to profitability. These issues included (1) the significance of high profitability levels for a capital intensive industry operating in a highly price competitive domestic market, (2) changes in profitability due to the business cycle for coated groundwood paper, and (3) the relationship between changes in costs, the reasons for those changes, and their effect on profitability.

Due to the capital intensiveness of the coated groundwood paper industry, operating income and operating income margins may be relatively high compared with those of non-capital intensive industries. Integrated ownership of low-cost raw material sources, large investments in new capital equipment, high labor productivity per worker, low overhead (SG&A), and high levels of capacity utilization are cost factors in this industry that improve cost efficiency and affect profitability levels.

*** addressed the industry's business cycle and its effect on profitability in its questionnaire response. Its comments are illustrative of the views of the industry as a whole:

> "The coated groundwood paper industry, like other major commodity paper products, has consistently demonstrated a cyclical nature. This cyclicality is one of feast or famine. It begins with a robust market and strong operating rates with resulting high prices and profits. Producers quickly plow the high profits back into new capacity additions. These additions typically come onstream when the economy is weakening and the result is low operating rates and minimal profits. The cycle, however, has been different this time around for coated groundwood. Despite a couple of years during which supply was very tight, prices never rose significantly (contrary to past history for this product and virtually all other paper products) and profit remained depressed. The consequence is that no new capacity is being added unlike the other commodity paper product lines (despite the fact that coated groundwood has been one of the two highest demand growth product lines)..."[13]

---

[13] Excerpt from *** response to a questionnaire inquiry regarding its views on the actual negative effects of imports of coated groundwood paper on its growth, investment, ability to raise capital, or existing development and production efforts. (U.S. producers' responses as a whole are shown in app. B). Also refer to information selected from certain firms' 1990 annual reports, shown in app. C. Data collected in the preliminary investigations suggest that 1988 was a considerably more profitable year than 1987. In the preliminary report, the operating income margins were 9.3 percent in 1987 and 18.5 percent in 1988. In this (final) report there were additional cost adjustments which resulted in the 1988 operating income margin of 20.3 percent; however, no comparably adjusted 1987 data are available. The preliminary report indicated that 1987 capacity utilization was 87.8 percent and the domestic shipment unit value per short ton averaged only $668, compared to $794 in 1988. (USITC Publication 2359, February 1991, p. A-12, table 7, and p. A-13, table 4).

The relationship between changes in cost, price, and volume determines the extent to which profitability varies from period to period. A variance analysis (table 9) shows that overall costs increased $210 million between 1988 and 1990, or by 9.4 percent. Beginning in 1990 and 1991, some companies shifted their pulp requirements to lower cost internal production or affiliates. ***. Thus costs for both companies decreased and their profitability increased in the interim periods relative to other companies.[14]

Table 9
Coated groundwood paper: Variances[1] in net sales; cost of goods sold; gross profit; selling, general, and administrative expenses; and operating income due to changes in price, volume, costs, and/or expenses of U.S. producers between the fiscal years 1988-90, 1988-89, and 1989-90, and between the January-June periods of 1990 and 1991

(In thousands of dollars)

Item	1988-90	1988-89	1989-90	Jan.-June 1990-91
Net sales:				
Price variance.......	(43,573)	55,699	(100,657)	(63,583)
Volume variance......	9,825	(62,337)	73,547	8,878
Total net sales variance[2]...........	(33,748)	(6,638)	(27,110)	(54,705)
COGS:				
Cost variance.........	(202,115)	(135,160)	(63,593)	30,230
Volume variance.......	(7,395)	46,924	(57,681)	(7,354)
Total COGS variance[2]	(209,510)	(88,236)	(121,274)	22,876
Gross profit variance[2]..	(243,258)	(94,874)	(148,384)	(31,829)
SG&A expenses:				
Expense variance......	(454)	(1,968)	1,563	(515)
Volume variance.......	(432)	2,740	(3,221)	(406)
Total SG&A variance[2]	(886)	772	(1,658)	(921)
Operating income variance[2]................	(244,144)	(94,102)	(150,042)	(32,750)

[1] Unfavorable variances are shown in parentheses; all others are favorable.
[2] Comparable to changes in net sales; cost of goods sold; gross profit; SG&A expenses; and operating income, as presented in table 6.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

[14] In its 1990 annual report, p. 20, Repap (parent of Midtec) stated that "During economic slowdowns, paper makers favour their own and affiliated mills over market mills."

These source changes, in combination with the reduction of costs attributable to the decline in the price of market pulp, were primarily responsible for the decline in aggregate industry costs between interim 1990 and interim 1991. This is reflected in the decline in costs shown in the variance analysis for the interim periods.

Certain other costs increased between 1988 and 1990 due to other factors. Depreciation expense increased sharply because of high levels of capital expenditures. Raw material cost levels were high because the commodity price for market pulp, as well as various chemicals used in producing paper, were at high levels. The following tabulation shows all of the cost of goods sold components and their dollar and percentage changes between 1988 and 1990 (in thousands of dollars, except as noted):[1]

	1988	1990	Percent increase
Cost of goods sold:			
Raw materials........	1,174,778	1,303,489	11.0
Labor................	319,613	331,516	3.7
Factory overhead:			
Depreciation/ amortization[2]....	175,574	207,595	18.2
Other..............	561,009	597,884	6.6
Total............	736,583	805,479	9.4
Total costs........	2,230,974	2,440,484	9.4

[1] Partially derived from cost of production data.
[2] Depreciation/amortization expense differs from the totals in table 6 because some of these expenses are included in startup or shutdown expense.

INVESTMENT IN PRODUCTIVE FACILITIES

U.S. producers' investment in property, plant, and equipment and return on investment are shown in table 10. The net and operating returns on assets shown therein are not directly comparable to the cost of capital as they do not consider factors such as the time value of money, debt-equity ratios utilized for capitalizing assets related to the product, and differences in the original and book value of assets. In addition, all computations are on a pre-tax basis. Computing the cost of capital by averaging public data on the costs for all producers is not appropriate in these investigations for two reasons: (1) the reported interest expense allocated to the product is quite small in comparison to total assets, which does not support the use of an average debt-equity ratio, and (2) the current tax positions of the producers have varied materially over the period of investigation, and therefore pre-tax capital costs cannot be derived from after-tax capital costs adjusted by income tax rates which include current and deferred taxes.

CAPITAL EXPENDITURES

Capital expenditures by U.S. producers are shown in table 11. None of

Table 10
Value of assets and return on assets of U.S. producers' coated groundwood paper operations, fiscal years 1988-90, January-June 1990, and January-June 1991.

Item	As of the end of fiscal year-- 1988	1989	1990	As of June 30-- 1990	1991
	Value (1,000 dollars)				
Fixed assets:					
Original cost	4,157,523	4,619,464	4,891,946	4,641,900	4,949,033
Book value	2,782,299	3.015,076	3,103,688	2,961,887	3,101,679
Total assets[1] [2]	4,152,026	5,029,698	4,815,708	4,779,895	4,904,009
	Return on book value of fixed assets (percent)[3]				
Operating return [4]	21.7	16.9	11.5	12.2	9.6
Net return [5]	19.8	15.2	10.5	11.2	8.1
	Return on total assets (percent)[3]				
Operating return [4]	14.5	10.1	7.4	7.6	6.1
Net return [5]	13.2	9.1	6.7	6.9	5.1

[1] Defined as the book value of fixed assets plus current and noncurrent assets.
[2] Total establishment assets are apportioned, by firm, to product groups on the basis of the ratios of the respective book values of fixed assets.
[3] Computed using data from only those firms supplying both asset and income-and-loss information and, as such, may not be derivable from data presented. Data for the partial-year periods are calculated using annualized income-and-loss information.
[4] Defined as operating income or loss divided by asset value.
[5] Defined as net income or loss divided by asset value.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 11
U.S. producers' capital expenditures on coated groundwood paper operations, fiscal years 1988-90, January-June 1990, and January-June 1991

(In thousands of dollars)

Item	1988	1989	1990	January-June-- 1990	1991
Land and land improvements	4,723	4,852	4,797	1,932	1,217
Building and leasehold improvements	36,647	32,149	27,540	5,391	4,034
Machinery, equipment, and fixtures	382,669	543,865	241,535	90,670	66,244
Total	424,039	580,866	273,872	97,993	71,495

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

the producers reported construction in progress for expanding groundwood paper capacity. The large capital expenditures in 1988 and 1989 were primarily due to ***, which accounted for *** in 1988 and *** in 1989. The company's #6 machine was the last machine completed by U.S. producers during the period of investigation and was responsible for most of the capacity increase.

RESEARCH AND DEVELOPMENT

Research and development expenses for coated groundwood paper operations are shown in the tabulation below (in thousands of dollars):

			January-June--	
1988	1989	1990	1990	1991
8,964	8,688	10,032	4,067	4,390

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of coated groundwood paper from the subject countries on their firm's growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of coated groundwood paper). The producers' responses are presented in appendix B.

CONSIDERATION OF THE ALLEGED THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors[15]--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

[15] Section 771(7)(F)(ii) of the act (19 U.S.C. 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 and 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and,

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.[16]

---

[16] Section 771(7)(F)(iii) of the act (19 U.S.C. 1677(7)(F)(iii)) further provides that, in antidumping investigations, "...the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between the LTFV Imports and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix B. Available information on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); and any other threat indicators, if applicable (item (VII) above), is discussed below.

Virtually all of the coated groundwood paper imported into the United States from the countries subject to these investigations has been produced to order. Unless an order is cancelled during shipment or after importation, any inventories held in the United States are pre-sold and awaiting shipment. Paper is a heavy, bulky commodity, and importers, like producers, are not inclined to maintain large stocks of inventory.

Information on coated groundwood paper operations in the countries subject to investigation is shown in tables 12 and 13. The data show that from 1988 to 1990 aggregate producers' capacity and production in these countries rose to levels roughly equivalent to those in the United States. Well over half of this production was exported worldwide. That shipped to the United States remained between 11 and 13 percent of total exports throughout the periods for which data were collected. Monthly exports to the United States by United/Repola, the Finnish firm for which Commerce found critical circumstances, are shown below (in short tons):

<u>1989</u>

* * * * * * *

<u>1990</u>

* * * * * * *

<u>1991</u>

* * * * * * *

Commerce's critical circumstances determination was based on a comparison of August-December 1990 exports with those for January-May 1991. According to counsel for United/Repola, ***.

Foreign producers' planned capacity increases are reportedly modest.

* * * * * * *

Table 12
Coated (2-sided) groundwood paper: Production and capacity of countries subject to the instant investigations, by country, 1988-90, January-June 1990, and January-June 1991

Item	1988	1989	1990	January-June-- 1990	January-June-- 1991
Production (1,000 short tons):					
Belgium	***	***	***	***	***
Finland	1,486	1,639	1,631	808	809
France	***	***	***	***	***
Germany	1,513	1,602	1,559	771	722
United Kingdom[1]	***	***	***	***	***
Total	3,908	4,293	4,381	2,156	2,094
Capacity (1,000 short tons):					
Belgium	***	***	***	***	***
Finland	1,414	1,757	1,878	957	1,008
France	***	***	***	***	***
Germany	1,535	1,676	1,737	840	823
United Kingdom[1]	***	***	***	***	***
Total	3,885	4,549	4,900	2,436	2,546
Capacity utilization (percent):					
Belgium	***	***	***	***	***
Finland	105.1	93.3	86.8	84.4	80.3
France	***	***	***	***	***
Germany	98.6	95.6	89.8	91.8	87.7
United Kingdom[1]	***	***	***	***	***
Average	100.6	94.4	89.4	88.5	82.2

[1] Caledonian, the U.K. producer, did not begin production until 1989.

Source: Compiled from data submitted by respondents in accordance with Commission requests.

Because of cross-ownership of some of the foreign firms subject to these investigations (see table 1), the petitioner has argued that antidumping orders issued for some but not all countries would allow owners of plants in countries subject to orders to shift production and exports to plants in the non-affected countries. Kymmene, one of the Finnish producers, owns the producer in the United Kingdom (Caledonian)[17] and one of the two producers in France (Chapelle Darblay). The other producer in France, Beghin-Corbehem, is owned by Feldmuhle, one of the German firms. The extent to which any shifting would, or could, take place is unknown; however, if European firms continue to utilize less capacity, as the data in table 12 indicate, they at least will be

[17] According to testimony given at the public hearing by David Mackie, Marketing Director of Caledonian, Caledonian's management board consists of one Finnish citizen and six British citizens who are not affiliated with the firm's parent company and operate independently thereof.

Table 13
Coated (2-sided) groundwood paper: Total exports and exports to the United States of countries subject to the instant investigations, by country, 1988-90, January-June 1990, and January-June 1991

Item	1988	1989	1990	January-June-- 1990	January-June-- 1991
Total exports (1,000 short tons):					
Belgium	***	***	***	***	***
Finland	1,354	1,508	1,479	709	689
France	***	***	***	***	***
Germany	725	821	769	387	330
United Kingdom[1]	***	***	***	***	***
Total	2,573	2,914	2,928	1,418	1,335
Exports to the United States (1,000 short tons):					
Belgium	***	***	***	***	***
Finland	147	154	172	77	73
France	***	***	***	***	***
Germany	137	133	122	64	44
United Kingdom[1]	***	***	***	***	***
Total	336	348	369	178	149
Ratio of total exports to production (percent):					
Belgium	***	***	***	***	***
Finland	91.1	92.0	90.7	87.7	85.2
France	***	***	***	***	***
Germany	47.9	51.2	49.3	50.2	45.7
United Kingdom[1]	***	***	***	***	***
Average	65.8	67.9	66.8	65.8	63.8
Share of total exports exported to the United States (percent):					
Belgium	***	***	***	***	***
Finland	10.9	10.2	11.6	10.9	10.6
France	***	***	***	***	***
Germany	18.9	16.2	15.9	16.5	13.3
United Kingdom[1]	***	***	***	***	***
Average	13.1	11.9	12.6	12.6	11.2

[1] Caledonian did not begin production until 1989.

Source: Compiled from data submitted by respondents in accordance with Commission requests.

in a better position to produce for other than their normal commitments. The potential markets for any such shift, however, are many. Although the bulk of these countries' production has been exported in recent periods, most of it has not been destined to the United States. On the other hand, given European producers' past difficulties in reestablishing relations with former U.S. customers, they are less likely than before to completely pull out of the U.S. market. Outside the United States, so far as it is known, there are no extant dumping orders on coated groundwood paper made in the countries subject to these investigations.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN THE LTFV IMPORTS AND THE ALLEGED MATERIAL INJURY

Imports

Canada, Finland, and Germany are by far the United States' largest suppliers of foreign-made coated groundwood paper, together accounting for over 88 percent of the total tonnage of imports in the period for which data were collected (table 14). Over 2 million tons of the subject product, valued at more than $1.7 billion, have entered the United States from all sources since 1988. Imports from the countries under investigation accounted for well over half of this total. Until recently, imports from most sources had

Table 14
Coated (2-sided) groundwood paper: U.S. imports, by principal sources, 1988-90, January-June 1990, and January-June 1991

Source	1988	1989	1990	January-June-- 1990	January-June-- 1991
	Quantity (short tons)				
Belgium	***	***	***	***	***
Finland	146,757	156,761	175,020	87,048	86,608
France	***	***	***	***	***
Germany	137,198	133,314	121,840	63,515	43,655
United Kingdom	***	***	***	***	***
Subtotal	331,881	351,544	372,941	187,650	161,538
Canada	220,454	237,560	313,233	160,054	133,967
All others[1]	6,536	6,971	12,705	8,269	10,608
Total	558,871	596,075	698,879	355,973	306,113
	Value, landed, duty-paid (1,000 dollars)				
Belgium	***	***	***	***	***
Finland	127,056	133,262	148,754	74,055	68,210
France	***	***	***	***	***
Germany	113,160	109,667	97,806	50,990	35,441
United Kingdom	***	***	***	***	***
Subtotal	280,690	294,673	310,323	156,426	129,174
Canada	181,829	187,156	242,423	125,648	104,192
All others[1]	5,726	5,965	8,985	5,436	7,880
Total	468,245	487,794	561,731	287,510	241,246
	Unit value (per short ton)				
Belgium	***	***	***	***	***
Finland	$865.76	$850.10	$849.93	$850.74	$787.57
France	***	***	***	***	***
Germany	824.79	822.62	802.74	802.81	811.84
United Kingdom	***	***	***	***	***
Average	845.75	838.23	832.10	833.61	799.65
Canada	824.79	787.83	773.94	785.04	777.74
All others[1]	876.07	855.69	707.20	657.40	742.84
Average	837.84	818.34	803.76	807.67	788.09

[1] Austria, Brazil, and Sweden. Although official statistics of the U.S. Department of Commerce list several other sources, the high unit values associated with imports from these countries suggest a product that is unlike and/or noncompetitive with that under investigation. In any case, imports from these countries are relatively small, together accounting for less than 3.5 percent of the quantity of all imports in official statistics for January 1989-June 1991.

Source: All the data for Belgium, France, Germany, and the United Kingdom, and the first year (1988) of that shown for Finland and Canada, were compiled from data submitted in response to questionnaires of the U.S. International Trade Commission; all other data were compiled from official statistics of the U.S. Department of Commerce.

increased. From 1988 to 1990, total imports from Belgium, Finland, France, Germany, and the United Kingdom increased in tonnage by 12.4 percent. From January-June 1990 to January-June 1991, however, imports from these countries declined by 13.9 percent, reflecting the trend in general. Like that for the U.S.-produced product, the average unit value of imports has steadily declined since 1988. From an average value of $845.75 per ton in 1988, coated groundwood paper from the countries under investigation declined to an average value of $799.65 per ton in January-June 1991. The decline reflects a general deterioration of price levels throughout most of the period.

U.S. Consumption and Market Penetration

From 1988 to 1990, annual consumption of coated groundwood paper in the United States was well in excess of 4.5 million tons valued at $3.8 billion (table 15). Both tonnage and tonnage value rose during this period, but in moderation, increasing overall by 3.6 percent and 1.5 percent, respectively. A more marked change occurred from January-June 1990 to January-June 1991, when tonnage fell by 4.3 percent and the value of tonnage fell by 7.7 percent. Because of price declines and the market's shift to lighter weight paper, changes in tonnage and total tonnage value may not accurately reflect market trends, but it is generally agreed that overall demand has fallen in recent periods. Publishers and printers report that advertising demand has slackened, subscription rates have declined, and fewer new publications are entering the market. The result has been an excess of supply and an overall decline in price, exacerbated by brokers and merchants offering spot deals that may or may not reflect actual offers from sellers or actual needs of buyers. Despite highly competitive conditions existing in the market, the quantity of imports from the countries under investigation increased from 7.1 percent of consumption in 1988 to 7.7 percent in 1990. The effect competitive prices may have had on this shift will be discussed in the following section. The effect other factors may have had is not clear. Although several purchasers report superior brightness in some European-produced paper, they acknowledge a corresponding lack of firmness and opacity. The relative importance of opacity and brightness varies from buyer to buyer. None of the purchasers report any significant inability of U.S. producers to supply them in recent periods, and all credit U.S. producers with shorter lead times for delivery. For whatever reasons, the trend reversed from January-June 1990 to January-June 1991, when total imports from Belgium, Finland, France, Germany, and the United Kingdom, as a share of consumption, declined from 7.9 percent to 7.1 percent. The trend was similar for imports as a whole.

Table 15
Coated (2-sided) groundwood paper: Apparent U.S. consumption and ratio of imports to consumption, 1988-90, January-June 1990, and January-June 1991

(Quantity in 1,000 short tons; value in million dollars)

Period	Apparent U.S. consumption[1]	Ratio (percent) of imports to consumption: For Belgium	For Finland	For France	For Germany	For the United Kingdom	Subtotal	For all other countries[2]	Total
		Quantity							
1988	4,652	***	3.2	***	2.9	***	7.1	4.9	12.0
1989	4,635	***	3.4	***	2.9	***	7.6	5.3	12.9
1990	4,821	***	3.6	***	2.5	***	7.7	6.8	14.5
Jan.-June--									
1990	2,371	***	3.7	***	2.7	***	7.9	7.1	15.0
1991	2,270	***	3.8	***	1.9	***	7.1	6.4	13.5
		Value							
1988	3,761	***	3.4	***	3.0	***	7.5	5.1	12.6
1989	3,778	***	3.5	***	2.9	***	7.8	5.1	12.9
1990	3,819	***	3.9	***	2.6	***	8.1	6.6	14.7
Jan.-June--									
1990	1,889	***	3.9	***	2.7	***	8.3	6.9	15.2
1991	1,743	***	3.9	***	2.0	***	7.4	6.4	13.8

[1] Transfer shipments and domestic shipments plus imports.
[2] Austria, Brazil, Canada, and Sweden.

Source: Compiled from official statistics of the U.S. Department of Commerce and from data submitted in response to questionnaires of the U.S. International Trade Commission.

Prices

MARKET CHARACTERISTICS

Coated groundwood paper is sold in the U.S. market on both a contract and a spot basis. Most customers fall into two general categories: (1) agents, brokers, and merchants, who are not end users themselves, but rather serve as intermediaries between producers and end users, and (2) publishers and printers who use the paper to publish magazines and journals, and to print items such as catalogues and newspaper inserts.

Sales based on contracts or sales agreements are frequently made to publishers and printers and account for the largest portion of the total sales volume of coated groundwood paper in the U.S. market. Contracts usually address factors such as terms of sale and the quantities to be delivered during a given year. Most producers and importers reported that quantities to be shipped are estimated and no penalties are assessed by either buyers or sellers if the specified quantities are not met. Most contracts usually last from 1 to 5 years, with specific terms of the agreement subject to annual renegotiation.

Spot sales usually involve smaller quantities of coated groundwood paper and are more commonly made to sales agents, brokers, and merchants. However, a number of publishers and printers also reported spot purchases during the investigation period.

Coated groundwood paper sold in the United States is priced according to its basis weight and brightness grade.[18] Lighter basis weights and brighter grades of paper are usually sold for a premium over paper of heavier basis weights and lower brightness grades. Coated groundwood paper is sold in the U.S. market by the hundredweight, and prices for both domestic and imported products are almost always quoted to the customer on a delivered basis. Most domestic and foreign coated groundwood paper mills produce paper for both offset and rotogravure printing processes. Although these types of paper differ somewhat in physical characteristics, there is typically no difference in the price that is charged.

Price lists are frequently distributed by producers and importers, but most often serve only as a reference point from which negotiations for both spot and contract sales begin.[19] Discounts from list price are common, and depend primarily on overall supply and demand conditions in the U.S. market. Most producers, importers, and purchasers reported that in 1988, when supply was tight, discounts from list price were infrequent. However, since 1989, with an increase in domestic and foreign supply, virtually all sales of both domestic and foreign coated groundwood paper have been discounted, with levels reaching as high as 16 percent in several instances.[20] Agents, brokers, and merchants reportedly receive additional discounts from list price in the form of a commission for making a sale to a customer. These additional discounts are consistently in the range of 3 to 5 percent; 3 percent for sales of GE brightness grade No. 5, and 5 percent for GE brightness grade No. 4.

Prices for contract sales are usually agreed upon during negotiations between the buyer and seller. Producers and importers reported that the most important factors considered in arriving at prices with contract customers include existing market competition, the volume of the order, the relationship with the customer, production costs, and existing production schedules (if a particular order does not fit well into a domestic or foreign producer's production schedule, a price premium may be included). The majority of producers and importers reported that contract prices are usually fixed for no longer than 1 calendar quarter and at least 15 days advance notice must be given to the customer before prices can be changed. Most contracts also reportedly contain meet-or-release provisions, also known as "shopping clauses," through which a producer or importer must meet a lower offer quoted to a customer by a competitor, or release this customer from any previously arranged purchase requirements.

Negotiated prices for spot sales are based primarily on market competition and the volume of any particular sale. Petitioners reported that

---

[18] Coated groundwood paper is also more expensive when sold in sheets, rather than in rolls. However, the vast majority of all coated groundwood paper sales in the U.S. market are in rolls.

[19] A number of producers, importers, and purchasers reported that list prices for coated groundwood paper have not changed since July 1988.

[20] ***, in its purchaser's questionnaire response, reported that several domestic mills, ***, made some tonnage of coated groundwood paper available at a 16-percent discount from list price for limited periods during 1991.

because of the meet-or-release provisions contained in most contracts, prices for coated groundwood paper in the spot market have a large impact on prices negotiated in contract sales agreements.[21] Purchasers frequently renegotiate lower contract prices if they receive a better quote in the spot market. Petitioners also argued that agents, brokers, and merchants exaggerate this effect by competing against each other in the spot market for the best possible price from coated groundwood paper suppliers. One printer, ***, that purchases both domestic and imported paper on behalf of its customers reported that in a number of instances since 1989 merchants quoted *** customers very low spot prices for paper from unnamed mills. When *** investigated these quotes, it found that the merchants often did not have legitimate offers from domestic or foreign mills, but rather would go to the mills with a price already quoted to a particular customer, and report that a sale was certain if the mill would agree to sell at the quoted spot price. *** believes that regardless of whether sales were actually completed based on these quotes, the existence of such low spot prices in the U.S. market has the effect of lowering all spot prices somewhat, and ultimately lowering contract prices as well.

Coated groundwood paper produced during the first 3 to 6 months of a new or remodelled machine's operation, often referred to as "startup tonnage," is usually inferior in quality and may be sold at a discount below the prevailing market price. In addition, paper from a fully operational machine that does not meet the manufacturer's specifications or for any other reason cannot be sold to a mill's primary customers may also be sold at a discount below market price. These sales are usually made to merchants who either reprocess the paper, convert it to another size, or resell it to be used for individual printing runs not requiring any certification or specifications. This type of paper often has poor print quality and purchasers usually have no recourse if the paper fails.

Three of 25 responding purchasers reported purchases of startup or inferior grade paper over the period of investigation. *** purchases excess production and trim widths[22] of domestic coated groundwood paper on a regular basis through a merchant, ***. According to ***, any paper that *** purchases from *** is physically identical, and is used interchangeably with the first-quality paper purchased directly from the domestic mills. This paper purchased from *** is priced approximately 17 percent below market price for coated groundwood paper, and is used in the edit body as well as in covers and ad inserts of *** publications. *** stated that his company purchases approximately 80-85 percent of its total coated groundwood paper needs directly through long-term contracts with ***, and the remainder through spot transactions with ***. Both domestic mills are reportedly aware of this arrangement and have not objected as long as these relative proportions remain

---

[21] Conference transcript, p. 49.

[22] Trim width is paper that is trimmed from larger rolls of paper that are too wide to meet a particular customer's specifications. This trim is usually sold by the mills to brokers and agents who resell it to publishers and printers that are able to use it.

stable.[23] Another publisher, ***, which purchased small quantities of startup tonnage from *** during the investigation period, reported that the paper was comparable to first quality paper, and that discounts were not significantly below market price. Finally, *** reported 2 or 3 spot purchases of startup quality coated groundwood paper per year. The product is used in some catalogues and magazines and is purchased for a price approximately 10 percent below market price.

Most producers and importers reported that overall demand for coated groundwood paper in the United States has generally been flat since 1988, but demand has shifted from heavier basis weights in the range of 38-45 pounds to lighter basis weights in the range of 28-32 pounds. This increase in demand for lighter weight paper is due, in part, to recent postal rate increases in February 1991. With lower levels of circulation for many magazines and journals, and the reduction in the number of advertising pages in these publications, publishers are moving to lighter weight paper as a means of reducing distribution costs.[24] Producers and importers have also indicated some shift in demand from coated groundwood paper with GE brightness grade No. 5 toward brighter, GE grade No. 4 paper. This brighter paper is reportedly preferred for advertisements because it provides a more favorable product presentation.

Several new coated groundwood paper products have also been introduced into the U.S. market over the investigation period. *** both reported that coated groundwood paper with a No. 6 GE brightness grade has been introduced by several domestic mills in the past year. According to ***, this product has brightness and gloss only slightly lower than No. 5 paper, but is priced considerably below No. 5 and is forcing the price of the latter product down. Increased demand has also been reported for products containing recycled fibers. *** reportedly began production of coated groundwood paper of this nature during the past 2 years.

Producers and importers reported that inland transportation costs usually represent between 3 and 8 percent of the total delivered cost to the customer. A number of producers and importers reported that prior to 1988, sales were frequently made on an f.o.b. basis from the mill or port of entry, with freight paid on orders in excess of a specified volume such as 22 tons. However, due to increased competition in recent years, delivered prices are almost always quoted to the customer.

Most producers and importers sell their coated groundwood paper to a national market, and the majority of sales are reportedly made to customers located more than 500 miles from the domestic mills or foreign producers' ports of entry. Several producers and importers reported a majority of sales within certain regions of the country, such as east or west of the Rocky

---

[23] Conversation with ***, Nov. 8, 1991.

[24] Magazine ad pages fell 10.8 percent and magazine ad revenues fell 5.4 percent during the first half of 1991 as compared to the first half of 1990. Source: Publishers Information Bureau, as quoted in The Wall Street Journal, July 19, 1991, pp. B 1-2.

Mountains or the Mississippi river, but none reported all sales made exclusively within any one region.

Domestic mills reported lead times of varying length for their coated groundwood paper, ranging from 1 to 45 days. Most U.S. producers reported that lead times have shortened somewhat since 1988 due to the soft market. Several producers reported that lead times depend on several factors, including the basis weights and quantities ordered, as well as the production schedules on the machinery. *** reported that deliveries for just-in-time orders can range from 1 day to 1 week.

Lead times between order and delivery of imported coated groundwood paper are considerably longer than lead times for the domestic product when importers do not maintain inventories in the United States and must place the customer's order with the foreign mill. Approximately half of all importers fall into this category. Instead of carrying inventories of coated groundwood paper, these importers place their customers' orders directly with the foreign manufacturer and ship directly from the U.S. port of entry to the customer's facilities. Among this group, *** reported that lead times between order and delivery to the customer ranged from 8 to 10 weeks for paper imported from France and Germany. *** reported lead times of 8 to 10 weeks for paper imported from Finland and France and 5 to 14 days for the product imported from Canada. *** reported lead times of 6 weeks for coated groundwood paper imported from Belgium and 2 weeks for paper imported from Canada.

Importers with warehouse facilities in the United States reported considerably shorter lead times, ranging from 1 to 10 days, when shipments of imported paper are made from the U.S. warehouse. *** reported that in recent years it has used its U.S. warehouses for just-in-time shipments to its larger customers with orders of predictable size and volume. ***, which has warehouses in the United States, reported that over the period of investigation it has lost spot sales to U.S. mills because the customer required prompt delivery and it did not have sufficient inventories available to meet this demand. *** imports coated groundwood paper from Belgium, but for financial reasons does not maintain large inventories of the product in the United States.

Nine different domestic mills reported that at some point during the investigation period they were not able to fill all of their customers' orders at prevailing market prices. The reasons for these supply shortages are varied. *** reported supply problems at different points between January 1988 and December 1990 due to strong market demand and lower than expected production rates. *** reported supply problems during October through December of 1989 because the startup process for one machine was slower than expected. *** reported that they were not able to accept all orders because of seasonal factors such as the catalogue season during July through September of each year during the investigation period. *** reported that in February 1988 supply problems were experienced because one of its coated groundwood paper machines was being rebuilt. *** reported that from December 1990 through the first quarter of 1991 it could not meet total demand because a blade coater was being rebuilt. *** reported that it could not meet total demand during 1988 because of a labor strike at its *** facility and a poor startup for a new machine at another location.

Four different domestic mills placed customers on supply allocation at some point during the investigation period because they were not able to meet all of the existing demand. Supplies were more commonly allocated during the first half of the investigation period, and the means of allocation reported were somewhat varied. *** reported that during periods of supply shortages it determined each customer's product mix and timing requirements in order to meet their most important needs first. In addition, production was shifted among several of its different mills to meet as much of the demand as possible. *** reported that none of its customers failed to meet their own production requirements because they were not supplied with the necessary paper in a timely manner. The remaining producers that placed customers on supply allocation reported that priority was usually given to longer-term customers with large annual volumes purchased. Several domestic mills that were not able to supply all of the paper demanded by their existing customers reported that these customers' needs were met by either domestic or foreign competition.

Five different importers reported that they were unable to meet total demand for coated groundwood paper at prevailing market prices at some point during the investigation period. As with U.S. producers, the reasons cited for these supply shortages were varied. ***, which imports from ***, cited the production slowdown associated with the *** supplier's shift from one production facility to another as the source of its supply difficulties. *** reported that in 1989 supply was temporarily interrupted due to a production stoppage at a mill in Germany. In addition, during 1988 and into the beginning of 1989 there was strong demand in the U.S. market, which made supplying all customers difficult. *** reported that during this period it did not as aggressively solicit new business, but was able to meet most of its existing customers' coated groundwood paper needs. In several instances, *** sold supercalendered paper as a substitute for coated groundwood paper in order to alleviate supply shortages. *** reported that supply shortages to their customers were infrequent during the investigation period, but when they occurred, they were due to allocation of supply from the foreign mills. ***, located in ***, reported being unable to make several deliveries west of the Rocky Mountains during the investigation period. In these instances domestic suppliers were contacted to supply these customers, but were reportedly also unable to fill the orders. *** reported that in several instances during 1988 it was unable to supply its customers with coated groundwood paper in a timely manner due to problems with an inland freight company.

Terms of sale are fairly consistent among producers and importers. The most common terms for both were reported to be a 2-percent discount if payment is made within 20 days, with full payment due within 21 days (2/20, net 21). Three importers reported somewhat different sales terms. *** reported terms of 2-percent discount within 20 days, with full payment due within 30 days; *** reported terms of 2-percent discount within 45 days, with full payment due within 60 days for coated groundwood paper imported from ***; and *** reported sales discounts of 2 percent on payment made within 15 days, with full payment due within 45 days for the product imported from ***.

In their questionnaire responses, purchasers addressed issues such as quality comparisons between domestic and foreign coated groundwood paper, changes in purchasing patterns over the investigation period, factors considered when deciding from whom to purchase coated groundwood paper, and the ease with which other products can be used as substitutes for coated groundwood paper. In general, most purchasers reported that coated groundwood paper produced in the United States and that imported from the subject countries are similar in quality. However, a few purchasers did identify quality differences for paper from several of the subject countries. Most also reported that they very infrequently change suppliers and that maintaining long-term relationships with their suppliers is very important. Regarding trends in demand, most purchasers reported that they have increased their purchases of lighter basis weights and brighter grades of coated groundwood paper over the past 3 years. Finally, most purchasers indicated that supercalendered paper and coated freesheet paper are, at times, substitutable for coated groundwood paper. However, due to price and quality considerations, the substitutability of these products is somewhat limited. A detailed discussion of these as well as several other factors is contained in appendix D.

QUESTIONNAIRE PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly pricing data between January 1988 and June 1991 for spot sales of coated groundwood paper to all customers and contract sales to two different categories of customers: (1) brokers, agents, and merchants and (2) publishers and printers. Specific pricing data requested include the quantity and net delivered price for each firm's largest single quarterly spot sale to any customer and each firm's largest single contract sale to each of the two specified types of customers. In addition, the total quantity shipped and the total net delivered value shipped were also requested for each quarter. Importers were requested to report separately for sales of products imported from each of the subject countries and from Canada.

Purchasers were requested to provide similar information for their purchases of coated groundwood paper on a spot and on a contract basis from domestic and subject foreign suppliers. Pricing was requested for the following 12 coated groundwood paper products:

<u>Product 1</u>: Coated groundwood paper, rolls, offset grade, 32 lb. basis weight, GE brightness grade No. 5.

<u>Product 2</u>: Coated groundwood paper, rolls, rotogravure grade, 32 lb. basis weight, GE brightness grade No. 5.

<u>Product 3</u>: Coated groundwood paper, rolls, offset grade, 34 lb. basis weight, GE brightness grade No. 5.

<u>Product 4</u>: Coated groundwood paper, rolls, rotogravure grade, 34 lb. basis weight, GE brightness grade No. 5.

Product 5: Coated groundwood paper, rolls, offset grade, 38 lb. basis weight, GE brightness grade No. 5.

Product 6: Coated groundwood paper, rolls, rotogravure grade, 38 lb. basis weight, GE brightness grade No. 5.

Product 7: Coated groundwood paper, rolls, offset grade, 40 lb. basis weight, GE brightness grade No. 5.

Product 8: Coated groundwood paper, rolls, rotogravure grade, 40 lb. basis weight, GE brightness grade No. 5.

Product 9: Coated groundwood paper, rolls, offset grade, 45 lb. basis weight, GE brightness grade No. 5.

Product 10: Coated groundwood paper, rolls, rotogravure grade, 45 lb. basis weight, GE brightness grade No. 5.

Product 11: Coated groundwood paper, rolls, offset grade, 50 lb. basis weight, GE brightness grade No. 4.

Product 12: Coated groundwood paper, rolls, rotogravure grade, 50 lb. basis weight, GE brightness grade No. 4.

Producers and importers

Ten U.S. producers[25] and eight importers reported pricing data for U.S. sales of domestic and imported coated groundwood paper, but not necessarily for each type of sale, each type of customer, all periods, or all products specified. Total reported quantities sold for each product, from all countries, within each channel of distribution, are represented in figures 1-3.

Figures 1-3

* * * * * * *

[25] Two U.S. producers, Niagara and Consolidated, both members of the petitioning group, provided only total quantities and total values shipped for each quarter. This information could not be used in the calculation of weighted-average prices.

Price trends for U.S.-produced coated groundwood paper.--Weighted-average net delivered prices for spot sales of U.S.-produced products 1-11 all declined between January 1988 and June 1991 (appendix E, table E-1). Magnitudes of price decline ranged from 1.0 percent for product 9 to 15.6 percent for product 6. Prices for these products generally reached a peak between the third quarter of 1988 and the second quarter of 1989 and then declined steadily thereafter. Product 12, which increased in price by 1.9 percent, was the only U.S.-produced product that showed an increase on a spot basis over the investigation period. Several producers reported prices for sales of this product, but only during 6 different quarters over the period of investigation, with relatively small sales volumes in each quarter.

As with spot sales, prices for contract sales of all domestic products to agents, brokers, and merchants generally reached a peak between the third quarter of 1988 and the second quarter of 1989, and then declined steadily through the end of the investigation period (Appendix E, table E-2). Price declines for products 1-5, 8, 9, and 11 to agents, brokers, and merchants over the investigation period ranged from 0.1 percent for product 5 to 11.9 percent for product 2.[26] Prices increased over the investigation period by 29.4 percent for product 6, by 1.1 percent for product 7, and by 21.3 percent for product 10.[27]

Total sales volumes for contract sales to printers and publishers were considerably larger in most quarters than volumes for either spot sales or contract sales to agents, brokers, and merchants. Price trends for these sales were varied for the 12 coated groundwood paper products under investigation. Prices decreased over the investigation period for products 1, 5, 6, 8, 9, 11, and 12. Price declines for these products were generally smaller on average than for spot sales or contract sales to agents, brokers, and merchants, ranging from 0.5 percent for product 6 to 4.8 percent for product 1. Prices for products 2, 3, 4, 7, and 10 increased in a range from 1.2 percent for products 2 and 7 to 5.4 percent for product 3. Peak prices were reported for most products between the fourth quarter of 1988 and the first quarter of 1989 (appendix E, table E-3).

Price trends for imported coated groundwood paper.--Prices for spot and contract sales were received from importers of coated groundwood paper from the five countries subject to these investigations as well as from Canada. Each importer characteristically imports coated groundwood paper from one or two countries and, in most cases, quarterly pricing was received from at

---

[26] Limited pricing were available for product 2, 32-lb. rotogravure coated groundwood paper, from one domestic producer, ***. Sales were reported in 6 different quarters between the second quarter of 1988 and the second quarter of 1991. The total reported sales volume for this product did, however, increase considerably from *** tons in the second quarter of 1988 to *** tons in the second quarter of 1991.

[27] Prices for sales to brokers of U.S-produced product 12 were reported for only 2 quarters during the investigation period.

most one or two importers for each product, from each country, and sold to the three different channels of distribution. Consequently, quarterly prices for the imported products from each country in each channel of distribution are somewhat more variable than prices reported by U.S. producers, and in a number of instances, price trend analyses were not possible.

In general, prices for spot sales of coated groundwood paper imported from the five subject countries and from Canada followed patterns similar to those for domestic paper.[28] Spot prices declined over the investigation period for all 5 products from Belgium, 6 of 7 products from Finland, both products from France, 4 of 11 products from Germany, all 6 products from the United Kingdom, and 9 of 10 products from Canada.

As with U.S.-produced coated groundwood paper, prices for contract sales of the imported products showed less consistent trends over the investigation period than prices for spot sales. Contract prices increased for sales of 3 out of 4 Finnish products to agents, brokers and merchants, and prices increased for 6 of 10 products sold on contract to publishers and printers. Contract prices for sales of 3 French products to publishers and printers all declined over the investigation period. Prices for contract sales of German paper decreased over the investigation period for 8 of the 10 products for which pricing was reported. Prices were reported for contract sales of 3 products from the United Kingdom. One product increased in price, one decreased in price, and one showed no change over the investigation period. Finally, prices for contract sales of Canadian coated groundwood paper declined for 8 of 9 products sold to agents and brokers, and for 5 of 8 products sold to publishers and printers. A detailed discussion of price trends for the relevant products from each subject country and from Canada is contained in appendix F.

Price comparisons for spot sales.--The reported spot sales information for U.S. producers' and importers' largest quarterly sales during January 1988-June 1991 resulted in a total of 277 direct price comparisons for the 12 products from the 5 countries subject to these investigations (appendix G).[29] The foreign products from the 5 subject countries were priced below the domestic products in 72 of these 277 comparisons.

---

[28] When price trend analyses were possible, prices for spot and contract sales of the imported products generally peaked between mid-1988 an mid-1989. These are similar to the trends for spot and contract sales of the domestic products.

[29] Because not all domestic and imported coated groundwood paper products were sold on a spot basis in the U.S. market during each quarter of the investigation period, price comparisons were not possible in all quarters for all products.

Belgium.--A total of 57 quarterly spot price comparisons between U.S.-produced and Belgian coated groundwood paper were possible. In 12 of these 57 comparisons the Belgian products were priced below the domestic products; 11 of these 12 instances occurred for product 11. Margins of underselling ranged from 0.6 percent to 6.7 percent. In the remaining 45 quarterly price comparisons covering products 3, 4, 5, 7, 9, and 10, Belgian paper was priced higher than domestic paper by margins ranging from 0.5 to 21.4 percent.

Finland.--In 80 quarterly spot price comparisons with Finland, the Finnish products were priced below the domestic products in 20 instances, with margins of underselling ranging from 0.1 to 9.3 percent. In the remaining 60 quarters the prices of the Finnish products were higher than the prices of the domestic products. Margins ranged from 0.1 to 17.3 percent.

France.--In 2 of 20 quarterly spot price comparisons between domestic and imported coated groundwood paper from France the French products were priced below the domestic products. In the two instances of underselling, French paper was priced below domestic paper by margins of 1.1 and 1.6 percent. In the remaining 18 quarters French paper was priced higher than domestic paper by margins ranging from 0.5 to 10.5 percent.

Germany.--German coated groundwood paper sold on a spot basis was priced below domestic paper in 36 of the 83 possible quarterly price comparisons. Margins by which German paper was priced below domestic paper ranged from 0.1 percent to 15.2 percent. In 47 quarterly comparisons, German paper was higher in price than domestic paper, by margins that ranged from less than 0.1 to 23.3 percent.

United Kingdom.--In 2 of 37 quarterly spot price comparisons between domestic and imported coated groundwood paper from the United Kingdom, the U.K. products were priced below the domestic products. In these two quarters, the margins of underselling were 10.6 and 12.0 percent. In the remaining 35 quarterly price comparisons coated groundwood paper from the United Kingdom was priced higher than domestic paper, by margins ranging from 0.5 to 10.1 percent.

Price comparisons for contract sales.--Selling price data reported by producers and importers resulted in 45 quarterly price comparisons for contract sales to agents, brokers, and merchants, and 231 quarterly price comparisons for contract sales to publishers and printers (appendix G, tables G-2 and G-3).[30] Among the 45 quarterly price comparisons for sales to agents, brokers, and merchants,

[30] Due to the large number of possible price comparisons, only contract selling prices to publishers and printers are depicted graphically in this section. Contract sales to publishers and printers are the channel with the largest volume of paper sold and are believed to represent overall trends in the industry. Price comparison tables for spot sales and contract sales to agents, brokers, and merchants can be found in app. G.

underselling was observed in 14 instances.[31] Among the 231 quarterly price comparisons for contract sales to publishers and printers, imported products from 4 of the 5 subject countries undersold the comparable domestic products in a total of 76 instances (figures 4-15).[32]

Contract sales to publishers and printers--The reported pricing information for contract sales to publishers and printers of domestic and imported coated groundwood paper between January 1988 and June 1991 resulted in a total of 231 direct price comparisons for the products from the relevant subject countries.[33]

Finland.--In 95 quarterly contract price comparisons between U.S. and Finnish paper sold to publishers and printers, Finnish products were priced below domestic products in 27 instances, with observed margins of underselling ranging from 0.1 to 6.6 percent. In 67 quarters, prices for the Finnish products were higher than prices for the domestic products; margins ranged from 0.3 to 19.2 percent. In 1 quarter, coated groundwood paper product 9 from the two countries was sold for the same delivered price.

France.--A total of 20 quarterly contract price comparisons were possible between domestic and French coated groundwood paper sold to publishers and printers. In 13 of these 20 quarterly price comparisons for products 4, 6, and 8, the French products were priced below the domestic products by margins ranging from 1.0 to 6.1 percent. In the remaining 7 quarters French paper was priced higher than domestic paper by margins ranging from 0.7 to 8.8 percent.

Germany.--In 22 of 101 quarterly contract price comparisons between U.S.-produced and German coated groundwood paper sold to publishers and printers the German products were priced below the domestic products. Margins of underselling ranged from 0.1 to 9.4 percent. In an additional 78 quarters German paper was priced above domestic paper, by margins that ranged from 0.1 to 15.4 percent. In the remaining quarter, German and domestic product 8 were sold for virtually the same price.

United Kingdom.--In 14 of 15 quarterly contract price comparisons between domestic and imported coated groundwood paper from the United Kingdom, the U.K. products were priced below the domestic products, by margins ranging from 0.7 to 9.9 percent. In the remaining quarter, product 9 from the United Kingdom was priced 1.9 percent higher than the domestic product.

---

[31] Finland is the only subject country from which contract sales of coated groundwood paper to U.S. agents, brokers, and merchants were reported.

[32] No contract sales of Belgian coated groundwood paper to publishers and printers were reported by any of the responding importers.

[33] Because not all domestic and imported coated groundwood paper products were sold on contract to publishers and printers in the U.S. market in each quarter during the investigation period, price comparisons were not possible in all quarters for all products.

Figures 4-15

*   *   *   *   *   *   *

Contract sales to agents, brokers, and merchants.--A total of 45 price comparisons between domestic and Finnish coated groundwood paper sold on contract to agents, brokers, and merchants were possible for the investigation period. Finland was the only subject country for which contract sales to this category of customer were reported, and then only for products 3, 5, 7, and 9. In 14 of the 45 price comparisons Finnish coated groundwood paper was priced below the comparable domestic product, by margins ranging from 0.1 to 10.3 percent. In the remaining 31 quarters, Finnish paper was priced higher than domestic paper by margins ranging from 0.6 to 9.6 percent.

Purchasers

Twenty-five purchasers reported pricing data for their purchases of domestic and imported coated groundwood paper during the investigation period, but not necessarily for each type of purchase, from each subject country, for all quarters, or for each product specified.[34] Among this group, two purchasers, ***, identified themselves as merchant/brokers, and reported only spot purchases of U.S.-produced paper. The remaining purchasers all identified themselves as publishers or printers. Consequently, all discussions of contract purchases pertain to publishers and printers only.

Purchase price trends for U.S.-produced coated groundwood paper.--Weighted-average net delivered prices reported by all customers for purchases of U.S.-produced products 1 and 3-10 on a spot basis showed trends similar to those for spot sales reported by domestic producers, declining over the investigation period in the range from 0.2 percent for product 6 to 9.4 percent for product 3. Prices for products 2 and 11 increased over the investigation period by 1.1 and 0.6 percent respectively (appendix H, table H-1).[35] As with selling prices reported by domestic producers, purchase prices for domestic products reached a peak between the third quarter of 1988 and the second quarter of 1989 and then declined steadily thereafter.

Prices for contract purchases by printers and publishers of domestic products 1 and 4-10 all declined over the investigation period in a range from 0.5 percent for product 7 to 4.9 percent for product 8 (appendix H, table H-2). Product 2 increased in price by 18.1 percent between January 1988 and June 1991. Most of this increase came between the first and second quarters of 1988, and prices were fairly stable over the remainder of the investigation period. Product 11 increased in price by 1.0 percent between January 1988 and June 1991, and product 3 prices varied slightly but did not increase between

[34] Four purchasers, including two large purchasers, ***, provided no pricing information but did provide narrative information related to their purchasing practices.

[35] Prices of *** and *** were reported for purchases of product 12 in the fourth quarters of 1989 and 1990 respectively.

the beginning and the end of the investigation period.[36] Similar to contract sales of the domestic products, prices for all of these products increased to a peak between the third quarters of 1988 and 1989 and then generally declined through the end of the investigation period.

Purchase price trends for imported coated groundwood paper

Purchasers reported prices for their spot and contract purchases from the five subject countries and from Canada over the investigation period.[37] Quarterly purchase price data for imported coated groundwood paper are fairly limited, and in many instances pricing from any country was reported for only a few products and in a few quarters over the investigation period. In general, spot and contract purchase price trends for imported coated groundwood paper were less consistent than purchase price trends for the domestic products.

Declines in spot purchase prices were reported for most of the products imported from the subject countries and Canada. Declines in contract purchase prices were reported for 13 of 20 imported product/country categories over the investigation period. Prices showed no change for 2 different product/country items. Pricing tables containing all reported contract and spot purchase prices, as well as a discussion of trends for products with 3 or more quarterly observations, can be found in appendices H and I, respectively.

Price comparisons for spot and contract purchases

Coated groundwood paper imported from the subject countries and purchased on a spot basis was priced below the domestic product in 16 of a possible 53 quarterly price comparisons, with margins ranging from 0.2 to 13.2 percent (appendix table H-1). In the remaining 37 quarterly price comparisons, the imported product was priced above the domestic product by margins ranging from 0.1 to 11.2 percent.

In a possible 117 price comparisons for contract purchases, coated groundwood paper from the subject countries was priced below the domestic product in 64 quarters. Margins ranged from 0.1 to 11.5 percent. In the remaining 53 quarters, imported coated groundwood paper was priced above the domestic product by margins ranging from 0.2 to 11.3 percent.[38]

---

[36] No purchase prices were reported for U.S.-produced product 12.

[37] Only one purchaser reported pricing for a single spot purchase of product 7 from France over the investigation period. No contract purchases of French coated groundwood paper were reported for the investigation period.

[38] Only one quarterly price comparison was possible between domestic and French product 7 purchased on a spot basis. No contract purchases were reported for coated groundwood paper from France or the United Kingdom.

Belgium.--Coated groundwood paper products 7, 9, and 11 imported from Belgium and purchased on a spot basis were priced below the domestic product in 5 of a possible 19 quarterly price comparisons. Margins of underselling ranged from 0.2 to 8.8 percent. In the remaining 14 quarterly price comparisons, the Belgian product was priced above the domestic product by margins ranging from 0.2 to 6.8 percent. In all of the 19 possible price comparisons for purchases of products 7 and 11 on a contract basis, the Belgian product was priced above the domestic product, with margins in the range from 1.9 to 11.3 percent.

Finland.--A total of 14 quarterly spot purchase price comparisons were possible between U.S.-produced and Finnish products 6-9, 11, and 12. In 5 of these 14 comparisons the Finnish product was priced below the domestic product, with margins ranging from 0.6 to 11.5 percent. In the remaining 9 quarterly spot comparisons the product from Finland was priced above the domestic product; margins were in the range from 0.1 to 9.6 percent. In a possible 27 quarterly price comparisons for contract purchases of products 1, 5, and 7 from Finland, the Finnish product was priced below the domestic product in a total of 25 quarters, with margins ranging from 0.5 to 11.5 percent. In two quarterly comparisons the Finnish product was priced above the domestic product by 0.8 and 0.9 percent.

France.--One quarterly spot purchase price comparison was possible between domestic and French coated groundwood paper product 7. In the third quarter of 1989, the French product was priced 8.9 percent below the domestic product. No contract purchase price comparisons between domestic and French coated groundwood paper were possible.

Germany.--Thirteen spot purchase price comparisons were possible between domestic and German coated groundwood paper products 2, 4-6, 8, and 10. The German product was priced below the domestic product in 3 of the possible 13 quarterly comparisons. Margins of underselling ranged from 2.2 to 13.2 percent. In the remaining 10 quarters the German product was priced above the domestic product, with margins ranging from 1.0 percent to 11.2 percent. An additional 71 quarterly price comparisons were possible between domestic and German products 1-8 and 10 purchased on a contract basis. In 39 of these 71 quarterly price comparisons the German product was priced below the domestic product, with margins of underselling in the range from 0.1 to 8.7 percent. In the remaining 32 quarters the German product was priced above the domestic product. Margins of overselling were in the range from 0.2 to 6.5 percent.

United Kingdom.--Five quarterly spot price comparisons were possible between coated groundwood paper products 5 and 6 produced domestically and imported from the United Kingdom in a total of 5 different quarters. In 2 of these 5 comparisons the U.K. product was priced below the domestic product by margins of 0.3 and 8.7 percent. In the remaining 3 quarters the product from the United Kingdom was priced above the domestic product by margins between 0.2 and 1.3 percent. No quarterly price comparisons were possible for purchases made on a contract basis.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of the five countries subject to these investigations depreciated in relation to the U.S. dollar over the period January-March 1988 through April-June 1991 (table 16).[39] The nominal values of the Belgian, Finnish, French, German, and British currencies depreciated by 1.7 percent, 0.6 percent, 3.6 percent, 3.4 percent, and 4.9 percent, respectively. When adjusted for movements in producer price indexes in the United States and the specified countries, the real values of the Belgian and German currencies depreciated by 6.8 percent and 6.0 percent respectively, while the Finnish, French, and British currencies appreciated by 11.6 percent, 5.8 percent, and 2.8 percent during the periods for which data were collected.

Lost Sales/Lost Revenues

FINAL INVESTIGATIONS

Five domestic producers, ***, provided a total of 29 new lost revenue allegations totalling $7,254,307 and 23 new lost sale allegations totalling $56,576,350 in the final investigations. Commission staff was able to contact 5 purchasers named in 13 lost revenue allegations for a total value of $6,237,383 and 3 purchasers named in 7 lost sales allegations valued at $20,514,516.[40]

*** alleged 4 separate lost sales of a variety of products to *** during 1989 and 1990 for a total of 19,800 tons valued at $16,480,816. *** also alleged a lost sale of 2,000 tons of 30-lb. coated groundwood paper valued at $2,000,000 to *** on August 2, 1989. *** alleged that the competing product was imported from Finland and Germany and *** alleged that the competing product was imported from Germany.[41] Regarding two allegations involving Germany, *** stated that he has not purchased coated groundwood paper from Germany during the past three years. He also indicated that the price differential of $15 dollars per ton between domestic and Finnish paper reported for one of the lost sales was too small for him to have switched from the domestic to the Finnish supplier. Regarding the other allegation involving Finland, *** stated that as a broker arranging sales for domestic mills, he has lost sales to Finnish mills over the investigation period because of lower prices. However, he stated that during the past 3

---

[39] International Financial Statistics, September 1991.

[40] *** also alleged a total of 11 lost sales valued at $11,852,000 and 8 instances of lost revenues valued at $184,695 due to the competing product imported from Canada. Since Canada is not a country subject to these investigations, the purchasers involved were not contacted by Commission staff.

[41] In one lost sale allegation by *** involving 1,500 tons of 40-lb. coated groundwood paper valued at $1,205,400, the country of origin of the competing paper was not identified.

Table 16
Exchange rates:[1] Indexes of nominal and real exchange rates of selected currencies, and indexes of producer prices in specified countries,[2] by quarters, January 1988-June 1991

Period	U.S. producer price index	Belgium: Producer price index	Belgium: Nominal exchange rate index	Belgium: Real exchange rate index[3]	Finland: Producer price index	Finland: Nominal exchange rate index	Finland: Real exchange rate index[3]	France: Producer price index	France: Nominal exchange rate index	France: Real exchange rate index[3]
1988:										
Jan.-March....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
April-June....	101.6	100.0	98.2	96.6	101.2	100.1	99.8	101.2	98.1	97.7
July-Sept.....	103.1	102.5	89.6	89.2	104.7	91.9	93.4	103.5	89.7	90.1
Oct.-Dec......	103.5	103.6	94.3	94.3	104.1	96.8	97.4	106.1	93.5	95.8
1989:										
Jan.-March....	105.8	107.1	90.5	91.6	105.8	94.6	94.6	108.6	90.1	92.5
April-June....	107.7	108.9	86.5	87.5	107.6	94.0	94.0	109.0	86.5	87.6
July-Sept.....	107.3	108.7	87.1	88.2	108.0	93.6	94.3	108.2	87.1	87.9
Oct.-Dec......	107.7	108.3	92.1	92.6	109.2	96.4	97.7	107.4	91.9	91.7
1990:										
Jan.-March....	109.3	107.2	99.3	97.5	109.7	101.7	102.1	106.7	98.8	96.5
April-June....	109.1	105.8	101.3	98.3	110.6	102.6	104.1	106.5	100.4	98.1
July-Sept.....	111.0	106.9	106.9	103.0	111.7	108.3	109.0	106.7	106.1	102.0
Oct.-Dec......	114.4	108.6	113.1	107.4	113.0	113.0	111.6	107.9	112.1	105.8
1991:										
Jan.-March....	112.0	106.3	111.2	105.6	([4])	110.2	([4])	([4])	108.8	([4])
April-June....	110.9	105.2[5]	98.3	93.2[5]	([4])	99.4	([4])	([4])	96.4	([4])

Period	U.S. producer price index	Germany: Producer price index	Germany: Nominal exchange rate index	Germany: Real exchange rate index[3]	United Kingdom: Producer price index	United Kingdom: Nominal exchange rate index	United Kingdom: Real exchange rate index[3]
1988:							
Jan.-March....	100.0	100.0	100.0	100.0	100.0	100.0	100.0
April-June....	101.6	100.6	98.1	97.2	101.4	102.6	102.4
July-Sept.....	103.1	101.2	89.8	88.1	102.6	94.4	94.0
Oct.-Dec......	103.5	101.7	94.4	92.7	103.8	99.6	99.9
1989:							
Jan.-March....	105.8	103.1	90.6	88.3	105.2	97.3	96.8
April-June....	107.7	104.0	86.7	83.7	106.6	90.6	89.7
July-Sept.....	107.3	104.2	87.1	84.6	107.8	88.9	89.3
Oct.-Dec......	107.7	104.9	92.4	90.1	109.2	88.2	89.5
1990:							
Jan.-March....	109.3	105.0	99.1	95.3	110.9	92.3	93.6
April-June....	109.1	105.7	99.9	96.8	113.2	93.2	96.8
July-Sept.....	111.0	106.2	105.2	100.6	114.3	103.6	106.7
Oct.-Dec......	114.4	106.7	111.7	104.2	115.6	108.3	109.4
1991:							
Jan.-March....	112.0	107.2	109.5	104.8	117.8	106.3	111.8
April-June....	110.9	108.0[6]	96.6	94.0[6]	119.9[7]	95.1	102.8[7]

[1] Exchange rates expressed in U.S. dollars per unit of foreign currency.
[2] Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.
[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and the specified countries.
[4] Not available.
[5] Derived from Belgian price data reported for April-May only.
[6] Derived from German price data reported for April-May only.
[7] Derived from British price data reported for April only.

Note.--January-March 1988 = 100. The real exchange rates, calculated from precise figures, cannot in all instances be derived accurately from previously rounded nominal exchange rate and price indexes.

Source: International Monetary Fund, International Financial Statistics, September 1991.

years, paper from Finland has not consistently undersold domestic paper in the U.S. market, and that domestic mills have lost a number of sales because of better service and sales support from the Finnish mills. *** indicated that he believes that low prices over the past three years are primarily due to reduced demand and increased domestic supply. Furthermore, *** believes that U.S. prices have been forced down by large domestic printers and brokers that have gone to foreign mills with false price quotes from domestic mills and have told the foreign suppliers that they must meet these prices if they are to remain competitive.

*** named *** in a lost sale of 750 tons of 38-lb. coated groundwood paper on August 29, 1990, valued at $622,500. The sale was allegedly lost to a mill in Germany that offered a price of $600,000 for the same quantity of paper. *** did not have specific documentation pertaining to the allegation, but he agreed that his firm did purchase coated groundwood paper from a German mill instead of from a domestic mill in this instance. However, he denied that the price difference between domestic and German paper was as large as that reported, and stated that the price of the German product was not a factor in this particular purchase. According to ***, the German paper was purchased because none of the domestic mills could trim the width of the rolls to meet *** customer's specifications. *** stated that in some instances he receives lower quotes from mills in the subject countries, but the quoted prices are not substantially below prices quoted by the domestic mills, and prices have not been consistently below domestic prices over the past 3 years. He further stated that since June 1991, the German presence in the U.S. market has declined substantially, but domestic prices continue to fall.

*** alleged a lost sale on May 5, 1989 of 1,800 tons of 40-lb. coated groundwood paper valued at $1,411,200 to ***. The sale was reportedly made by a mill in Belgium. *** also alleged lost revenues on sales to *** totalling $148,200 for 6,000 tons of a variety of products during 1990. Prices were reportedly reduced to meet competition from producers in Finland. Regarding the lost sale allegation, *** stated that he has purchased Belgian coated groundwood paper for one customer, ***, during the investigation period but the price of this paper was actually higher than domestic paper in a comparable basis weight. *** first went to a Belgian supplier in mid-1988 because paper of the particular brightness grade and shade requested by *** was not available from any domestic suppliers. However, during the past month, *** has found a domestic mill, ***, that is able to produce the paper requested by *** at a price comparable to the Belgian mill and they have now switched all of their purchases to ***. *** reported that because of shipping delays, he prefers to purchase coated groundwood paper from domestic suppliers. He was not able to directly address the lost revenue allegations because of their unspecific nature, but he did state that over the past 3 years, paper from the subject countries has not been priced below domestic paper and he has never used a lower price quote from a European supplier to force down a domestic mill's price.

*** named *** in one allegation of lost revenues on August 9, 1989, totalling $150,000 on a 1,200 ton order of 45-lb. offset coated groundwood paper. ***, which made an initial offer of $865.00 per ton, was forced to match a competing quote of $740.00 per ton which came from a mill in France.

*** agreed that his firm received a lower price quote from a French mill and added that the mill in question was *** which, at the time, had just begun production of coated groundwood paper. According to ***, the French mill was actually not able to fill the entire order, so *** made the purchase from *** at the price that had been offered by the French mill. According to ***, price quotes are usually common knowledge in the industry and domestic mills often match the quotes of other domestic or foreign suppliers. The large majority of *** total annual tonnage requirements are purchased on contract from several domestic mills. This practice is preferable because of long-term relationships with the domestic mills, greater certainty of supply, and considerably shorter lead times between order and delivery for the domestic product. *** attributes the current low prices in the U.S. market to reduced demand for coated groundwood paper in the publishing industry and not to price undercutting from foreign mills. According to ***, if foreign prices were consistently lower than domestic prices, *** would switch at least some of its regular purchases to foreign suppliers.

*** named *** in a lost revenue allegation of $495,000 on a sale of 25,000 tons of 34-lb. coated groundwood paper. The date of the sale was reportedly November 27, 1989, and the lower price quote allegedly came from a mill in Germany. Purchasing manager *** denied the allegation, stating that he purchases a total of *** tons of coated groundwood paper annually and would not consider purchasing more than a few thousand tons from any supplier in a single month. *** further stated that coated groundwood paper from Germany is consistently priced equal to or above the domestic product and he has never gone to a domestic supplier and asked them to meet a lower quote from a German mill. He does purchase some of his company's tonnage requirements from Germany, but never more than 15 percent of the total requirements in any year. According to *** does not purchase a larger share of its paper from foreign suppliers because the risks of currency fluctuations and transportation delays are too great. *** initially went to *** for some of its supply in 1988 because none of the domestic mills could fill the company's increased orders. Since then, *** has continued to purchase from *** as a means of diversifying its supply in the event that the market becomes tight again. *** believes that prices in the U.S. market are being driven down by domestic mills which sell excess production on a spot basis to brokers and merchants at discounts of up to 15 percent.

*** named ***, a *** located in ***, in four instances of lost revenues totalling $140,000 on three different sales of 1,000 tons and one sale of 500 tons of 40-lb. coated groundwood paper. The sales were reportedly made in January, March, May, and December of 1990 and the competing quotes for each sale allegedly came from mills in Finland. *** could not directly confirm the specific allegations but stated that it is conceivable that a customer for whom he was making a purchase might have received a lower price quote from another broker or a foreign mill. *** would have taken this quote back to *** to determine if they were willing to meet the competitive price quote. *** described the market for coated groundwood paper as very competitive and stated that all suppliers, both domestic and foreign, are almost always within $0.50 per hundredweight of each other.

*** alleged lost revenues of $14,000 on two different sales of 200 tons of 45-lb. coated groundwood paper on July 13, 1989, to ***, a *** located in ***. For each sale, an initial offer of $890.00 per ton was reduced to $855.00 per ton in order to meet competing offers from Finland and Germany. *** also alleged lost revenues totalling $45,000 on a January 12, 1990, sale to ***. *** reportedly made an initial price quote of $840.00 per ton on a sale of 1,500 tons of 45-lb. coated groundwood paper, but was forced to reduce its price to $810.00 to meet a competitive quote from a Finnish mill. *** agreed that these mills had reduced their prices due to competition from Finnish coated groundwood paper. He also stated that coated groundwood paper from Finland and Germany was priced from 3 to 5 percent below the domestic product at the time of the allegations and most domestic mills were forced to lower their prices in order to remain competitive. One *** mill in particular, ***, was reported to be a price leader in the industry at the time of the allegations, but this mill ceased its U.S. sales in April of 1991. *** serves as a paper broker for a number of different educational publications and *** reported that most customers purchase their paper from U.S. and Canadian mills. *** believes that problems in the domestic industry are primarily due to reduced circulation among most magazines, an increase in postal rates in early 1991, and an expansion in domestic capacity.

*** alleged two instances of lost revenues and *** alleged one instance of lost revenues on sales to ***. *** alleged lost revenues totalling $2,159,572 on sales of 41,219 tons of light-weight coated groundwood paper over the period from December 1988 through November 1989 and lost revenues totalling $2,909,611 on sales of 40,883 tons of lightweight coated groundwood paper over the period from December 1989 through the end of 1990. Finland and Germany were identified as the competing subject foreign countries. *** also alleged lost revenues of $176,000 on a sale of 2,000 tons of 40-lb. coated groundwood paper to *** in November 1989. The competing product was reportedly from a producer in Finland. *** could not directly confirm or deny either of the *** allegations because of their unspecific nature. He did, however, note that the initial quote reported by ***, which is equivalent to $44.00 per hundredweight, is at list price and is unrealistic in the U.S. market. *** stated that even without foreign presence in the U.S. market, none of the domestic producers would be able to sell coated groundwood paper at list price. This is due to a general state of reduced demand by magazine publishers and other end users, as well as an increased supply by the domestic mills. He further stated that over the past 2 years a number of domestic mills, in order to maintain high production volumes, have been selling coated groundwood paper to brokers at discounts of 10-15 percent while selling to their contract customers at discounts of 6-8 percent. This effectively forces all prices in the market down. In many cases, especially over the last 2 years, price competition has been primarily among the domestic mills and the foreign mills have not had a large impact on price. *** stated that in 1988 *** priced some of its paper below domestic paper, but this is the last time that he can recall receiving a lower price quote from a foreign mill.

PRELIMINARY INVESTIGATIONS

Thirty-three allegations of lost sales and 41 allegations of lost revenues were supplied to the Commission by 7 U.S. producers of coated groundwood paper.[42] Alleged lost sales amounted to over $67 million involving over 80,000 tons, and lost revenues totaled over $5 million involving over 350,000 tons.[43] Commission staff contacted 10 of the purchasers cited; these firms accounted for 12 of the lost sales allegations, involving nearly $30 million, and 10 of the lost revenues allegations, involving over $4.3 million.

All of the purchasers contacted reported buying coated groundwood paper from more than one supplier to ensure their supply of this product. Each purchaser stated that the market is very competitive and no one company consistently quotes the lowest price. These purchasers also acknowledged that if market conditions changed and the current market price for coated groundwood paper fell below a specific company's quote, the company would have to lower its quote to receive the business. These purchasers reported that prices from each of their suppliers varied by no more than 1-1/2 percent of each other. They commented that the imported product was not always the lowest priced coated groundwood paper.

*** was named by *** in a lost revenue allegation for $1,224,000 of 40-lb. rotogravure coated groundwood paper in order to match a German quote during 1989. *** was also cited by *** in a $198,000 lost revenue allegation for 34-lb. coated groundwood paper involving an unnamed European producer.

***, purchaser of coated groundwood paper for ***, reported that although he did use a foreign quote as an example to lower the *** quote, a North American producer's quote was used to lower the *** quote. For the *** sale, the original price was 6-percent discount off list price, but conditions had lowered the market price below that discount. *** reduced its price to 9

---

[42] In some lost sales/lost revenues allegations, U.S. producers identified agents and brokers as purchasers of the coated groundwood paper product. These purchasers generally arrange the purchase of these products for other customers. In the allegations involving this type of purchaser, U.S. producers did not identify whether the lost sale or lost revenue was to the agent or broker or whether the agent or broker that represented the U.S. producer also lost the sale.

[43] German coated groundwood paper was cited in 18 lost sales allegations involving nearly $37 million and 9 lost revenues allegations involving over $3 million. Finnish product was cited in 8 lost sales allegations involving over $25 million and 26 lost revenues allegations involving over $2 million. Belgian coated groundwood paper was cited in 4 lost sales allegations involving nearly $3 million and 5 lost revenues allegations involving over $150,000. French product was cited in 2 lost sales allegations involving nearly $2 million and in 1 lost revenue allegation involving $150,000. The United Kingdom was cited in one lost sales allegation involving over $500,000.

U.S. producers did not specifically identify the European producer in 5 lost sales allegations involving nearly $8 million and 6 lost revenues allegations involving over $1 million.

percent discount off list for that coated groundwood paper product. For the *** sale, the original price was 10-percent discount off list price. *** received a quote of 12 percent off list price from a petitioning North American company (not a regular supplier) and used that quote to lower other quotes.

*** purchased approximately *** tons of coated groundwood paper during 1990, of which *** tons or nearly 7 percent were foreign product. It currently has *** suppliers of coated groundwood paper under contract: ***.[44] *** reported that *** purchased foreign paper in the 1980s because North American supply was tight. *** commented that the U.S. market is currently loose and most of the foreign product purchased by *** during 1990 was at customer request.

*** was named by *** in a $1,144,500 lost revenue allegation for 26-lb. rotogravure coated groundwood paper in order to match a German quote during 1990. *** was also cited in a $890,000 lost revenue allegation by *** for 26-lb. coated groundwood paper in order to match a Finnish quote during 1990.

***, purchaser of this product for ***, reported that during 1990 *** had four domestic suppliers and two German suppliers under contract. For 1991, it reduced the supplier base to three suppliers of 26-lb. coated groundwood paper: two domestic suppliers and one German supplier. *** reported that the Germans originally created the 26-lb. coated groundwood paper and that the quality of the German sheet was not available from domestic producers. *** has worked with domestic mills to assist the production of this grade, but the German product is still superior in quality. *** reported that it is very important that *** has many suppliers to ensure supply. He also reported that all his suppliers' prices are competitive with each other.

*** was named by *** in a 1990 lost sale allegation involving 3,500 tons of 40-lb. offset coated groundwood paper valued at $2,833,600. This sale was allegedly lost to a supplier of Finnish coated groundwood paper. ***, a purchaser of coated groundwood paper for ***, reported that the Finnish product was less expensive than *** product, but that another petitioning company, ***, was the least expensive quote. *** offered a 5-percent discount off list price, the Finnish supplier offered a 9-percent discount off list price, and *** offered a 12-percent discount off list price. *** commented that the *** quote was rejected because the quality of its product was inferior. *** currently purchases approximately 4,000 tons of 38-lb. offset coated groundwood paper through one merchant that supplies the Finnish product. Prior to 1990, it purchased from two domestic suppliers of coated groundwood paper.

*** was named by *** in a lost sale allegation involving 4,000 tons of 34-lb. rotogravure coated groundwood paper involving a $3,720,000 quote during 1990. This sale was allegedly lost to a supplier of German coated groundwood paper. ***, purchaser of coated groundwood paper for ***, reported that it

[44] Repap is a Canadian producer of coated groundwood paper.

purchased the German product because there was no U.S. substitute for the specific coated groundwood paper product satisfactory to its standards of printability. The price of the German product was approximately $1 per hundredweight below the U.S. supplier quote. *** stated that *** is currently working with two or three North American manufacturers to produce the desired coated groundwood paper product. *** also reported that currently a domestic producer, ***, was quoting the lowest prices.[45]

*** was cited by *** in a lost revenue allegation involving $396,000 of 40-lb. offset coated groundwood paper to match a Finnish quote in mid-1989. ***, purchaser of coated groundwood paper for ***, reported that the allegation was incorrect. He stated that its foreign source of supply is not responsible for pushing prices lower. Moreover, *** commented that he never purchased from any source at the alleged $770 per ton price.

*** purchases approximately *** tons of coated groundwood paper annually. It currently has eight suppliers, two of which are foreign suppliers of a Finnish product. This foreign source represents approximately 10 percent of its purchases. Prices from all suppliers are competitive, within 1 to 1-1/2 percent of each other. The discount rate from list rose from 6.5 percent in 1989 to approximately 10 percent in 1990. *** reported that domestic sources, primarily ***, started the price spiral in 1989.[46]

*** was cited by *** in a lost sale allegation involving 600 tons of 45-lb. coated groundwood paper amounting to $600,000 in January 1988. This sale was allegedly lost to a supplier of Belgian coated groundwood paper. *** reported that it purchases only domestic/North American supply and has done so since the early 1980s when a tight supply forced the firm to purchase temporarily from foreign sources. It currently arranges the purchase of approximately *** tons of coated groundwood paper annually for its customers and has *** suppliers (***). *** pays approximately 6 to 7 percent discount off list price.

*** was named by *** in a lost sale allegation involving 130 tons of 40-lb./50-lb. coated groundwood paper amounting to $108,875 in May 1989. This sale was allegedly lost to a supplier of French coated groundwood paper. ***, purchaser of this product for ***, reported that to his knowledge, *** did not purchase any imported product in 1989 or 1990. *** arranges the purchase of approximately *** tons of coated groundwood paper per year for its 17 divisions. It currently has approximately 10 North American suppliers of coated groundwood paper.

***, a paper merchant located in New York, NY, was cited by *** in two lost sales allegations involving 100 tons per month of coated groundwood paper totaling $97,000 per month in May 1989 and January 1990 that involved ***. These sales were allegedly lost to United Kingdom and Finnish product. ***,

---

[45] See also app. D of postconference brief of respondents, Cahill Gordon & Reindel.

[46] See also app. C of postconference brief of respondents, Cahill Gordon & Reindel.

purchaser of this product for ***, could not recall these sales but stated that only domestic coated groundwood paper was used for the ***.

*** currently purchases approximately *** tons of coated groundwood paper per year. It currently has *** domestic suppliers and one foreign supplier of Finnish coated groundwood paper. *** commented that all of his suppliers have comparable prices within 1 percent of each other. The 2,000 tons of Finnish product he purchased was due to a customer request for that specific product. This customer believed that the foreign product had superior printability.

*** was cited by 4 U.S. producers in 4 lost sales allegations amounting to $15,890,400 and in 2 lost revenues allegations totalling $324,599.[47] *** reported that he could not identify five of the six allegations. The one allegation that he could recall involved lost revenues of $180,000 due to a competing German product. In this sale, *** was not the customer, but served as the broker representing ***, the U.S. producer making the allegation. He stated that the Germans offered the customer, ***, a lower price that forced *** to lower its price quote from $883 per ton to $865 per ton to gain the sale.

*** arranged the purchase of approximately *** tons of coated groundwood paper for his customers in 1990 from 11 North American suppliers and one foreign supplier of Finnish coated groundwood paper. *** reported that the German suppliers have selectively undercut the market in some spot sales, whereas the Finnish suppliers have not undercut the market in his opinion. He commented that the decline in price for this product during 1989-90 is due primarily to an excess of world capacity.

*** was cited by *** in 3 lost sales allegations amounting to $5,681,300 and in 3 lost revenues allegations totalling $171,500.[48] ***, purchaser of this product for ***, reported that he could not recall any of the allegations. He commented that the price quotes in these allegations seemed to be out of line with market prices for the time period specified.

*** arranged the purchase of between 120,000 tons and 130,000 tons of coated groundwood paper per year for its customers, with less than 5 percent being Belgian or German. *** commented that he purchased the foreign material upon customer request or as a secondary supplier to ensure supply of the product. This latter reason was more important during times of tight supply during 1987-88. *** reported that during his experience with the Belgian and German suppliers of coated groundwood paper, these suppliers have not undercut the market in the pricing of their product.

[47] Three of the lost sales allegations involved German coated groundwood paper. The fourth lost sales allegation involved coated groundwood paper from an unnamed European country. The lost revenues allegations involved Finnish and German coated groundwood paper.

[48] Two of the lost sales allegations involved German coated groundwood paper and one involved Belgian coated groundwood paper. Two of the lost revenues allegations involved Belgian coated groundwood paper and one involved German coated groundwood paper.

APPENDIX A

FEDERAL REGISTER NOTICES AND HEARING CALENDAR

[Investigations Nos. 731-TA-487, 488, 489, 490, and 494 (Final)]

Coated Groundwood Paper From Belgium, Finland, France, Germany, and The United Kingdom; Institution and Scheduling of Final Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation Nos. 731-TA-487, 488, 489, 490, and 494 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Finland, France, Germany, and the United Kingdom of coated groundwood paper, provided for in subheadings 4810.21.00 and 4810.29.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general applciation, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-252-1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of coated groundwood paper from the above countries are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigations were requested in a petition filed on December 28, 1990, by the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, New York, NY, and each of its individual members.

Participation in the investigations and public service list.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in seciton 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be place in the nonpublic record on October 11, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on October 30, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 23, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 22, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Writen submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must confom with the provisions of § 207.22 of the Commission's rules; the deadline for filing is October 22, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is November 8, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 8, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI msut also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with § 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 8, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-17021 Filed 7-16-91; 8:45 am]

BILLING CODE 7020-02-M

[A-423-801]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Belgium

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2778.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (56 FR 27231), the following events have occurred.

On June 20, 1991, the petitioner in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, requested a public hearing.

On June 24, 1991, the respondent, KNP Belgie, N.V. (KNP), requested a public hearing. On June 26 through June 28, 1991, the Department conducted verification in Belgium of the questionnaire response submitted by KNP.

On July 1, 1991, the respondent requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20(b). On July 2, 1991, petitioner submitted a letter opposing the postponement request.

On July 8, 1991, the Department published a notice of Preliminary Negative Determinations of Critical Circumstances from Belgium (56 FR 30898). On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991. On August 9, 1991, respondent submitted a revised computer tape with changes required as a result of the verification process.

Petitioner and respondent filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 4, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from Belgium to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in Belgium.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, where U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate because the subject merchandise was not introduced into the inventory of KNP's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between the parties involved, and KNP's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer. (See "Comment 2" of the "Interested Party Comments" section of this notice for further discussion).

We calculated purchase price based on packed, f.o.b. port and delivered prices. We made miscellaneous adjustments to KNP's reported U.S. sales data based on information discovered at verification. We made deductions, where appropriate, for containerization expenses, foreign inland freight, ocean freight, foreign inland and marine insurance, U.S. duty, U.S. and foreign brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Belgian value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP. The volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We made miscellaneous adjustments to KNP's reported home market sales data based on information discovered at verification. We included sales to a related customer, pursuant to 19 CFR 353.45, because we determined that the prices paid by this related customer were comparable to the prices paid by unrelated customers. We made deductions, where appropriate, for containerization expenses, foreign inland freight and insurance, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and direct advertising expenses. We allowed an adjustment for direct advertising expenses only for home market sales of CGP in sheet form because this was the only advertising that was directed at second-level customers (*i.e.*, printers) rather than at the original purchaser (*i.e.*, merchants). In the case of sales of CGP in roll form, the merchant acts only as a sales agent, and the first customer is the printer. Therefore, we have reclassified direct advertising expenses related to these sales as indirect expenses. (See "Comment 5" of the "Interested Party Comments" section of this notice for further discussion). We also made a circumstance of sale adjustment for differences in the amount of value-added tax.

We recalculated KNP's imputed credit expenses incurred on home market and U.S. sales net of discounts. We recalculated credit expenses for those U.S. sales which had not been shipped prior to verification, using the average credit period reported for all sales for which payment had been received. For the U.S. imputed credit expenses, we used KNP's home market interest rate because KNP does not borrow funds in the U.S. market. (For further discussion, see Comment 3 of the "Interested Party Comments" section of this notice.) We also recalculated KNP's direct and indirect advertising expenses by allocating the total expenses over total value as opposed to total weight of sales during the POI, in keeping with the Department's long-standing practice.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). We determined that the related party commissions paid on U.S. and home market sales are at arm's-length because the commission rates were comparable to that which KNP paid to other unrelated selling agents on sales of CGP in the respective markets. Where commissions were paid in one market and not the other, we allowed an adjustment for indirect selling expenses in the second market of offset commissions paid in the first market, in accordance with 19 CFR 353.56(b).

We recalculated KNP's home market and U.S. indirect selling expenses by allocating these expenses over the total value as opposed to total weight of sales during the POI. We also recalculated KNP's home market and U.S. inventory carrying costs by backing out all charges and adjustments from the gross unit price.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

Prior to the preliminary determination in this investigation, respondent requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of what respondent characterized as temporary fluctuations in the exchange rate between the Belgian franc and Dutch guilder, and the U.S. dollar during the POI.

We were unable to consider KNP's request in our preliminary determination due to the late date on which the claim was made. We now determine that the special rule for currency conversion as outlined in 19 CFR 353.60(b), does not apply in this investigation. Accordingly, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. We have explained our position regarding KNP's request for currency conversion in "Comment 1" in the "Interested Party Comments" section of this notice.

Critical Circumstances

On July 8, 1991, we published in the **Federal Register** (56 FR 30898) preliminary negative determinations of critical circumstances for coated groundwood paper from Belgium, Finland, and France. In that notice we articulated the Department's methodology for determining whether critical circumstances exist. Also in that notice, we indicated that we used U.S. Department of Commerce IM-146 import statistics for four months from the month after the petition was filed (the comparison period) and compared that four-month period to the four-month period including and immediately prior to the filing of the petition (the base period). Our analysis of the imports of coated groundwood paper from Belgium showed that the volume of imports from the base period to the comparison period did not increase by 15 percent or more, and thus, we found that there have not been massive imports of the subject merchandise since the filing of the petition.

Since the publication of the preliminary negative determination of critical circumstances for Belgium, we verified the company-specific shipment data submitted by KNP. We examined data for five months from the month after the petition was filed and compared that five-month period to the five-month period including and immediately prior to the filing of the petition. Our analysis showed that the volume of imports from the base period to the comparison period did not increase by 15 percent or more, and thus, we found that there have not been massive imports of the subject merchandise since the filing of the petition. Accordingly, we finally determine that critical circumstances do not exist with respect to imports of coated groundwood paper from Belgium.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination of this investigation. We received cases and rebuttal briefs from the petitioner and the respondent.

Comment 1

Respondent maintains that the Department should invoke the special rule for currency conversion provided for in section 353.60(b) of the Department's regulations because of temporary exchange rate fluctuations between the Belgian franc (franc) and U.S. dollar and the Dutch guilder (guilder) and the U.S. dollar. Respondent has further requested that the Department use the average exchange rates in effect during the two quarters immediately proceeding the POI. In support of its contention that there have been temporary exchange rate fluctuations, respondent provided charts showing that the U.S. dollar had declined noticeably against the franc and guilder during the POI and that the dollar began to appreciate again at the end of January 1991 (the month after the end of the POI). Respondent asserts that this decline of the dollar was primarily attributable to the Iraqi invasion of Kuwait, and that once the crisis was resolved the dollar recovered its pre-POI level. Respondent further claims that during the POI, the dollar dropped not as a result of long-term macroeconomic forces, but because of a significant temporary exogenous shock—the Persian Gulf crisis. Given that the dollar's decline resulted from the uncertainty in the Persian Gulf, the drop in the franc/dollar and guilder/dollar exchange rates during the crisis was a temporary fluctuation rather than a sustained change in the prevailing rates. Under these circumstances, respondent maintains that it was not obliged to adjust its U.S. prices to account for the temporary fluctuations.

Petitioners contend that the Department should use the quarterly exchange rates in effect during the POI because the franc/dollar and guilder/dollar exchange rates experienced a sustained change during the POI which had already been in existence during the proceeding year. Petitioner further claims that the franc and guilder did not fluctuate during the POI, but rather declined steadily. Even if fluctuations in the exchange rates during the POI could be viewed as temporary, according to Petitioner the special rule still does not apply because the differences between U.S. price and foreign market value would not result solely from temporary exchange rate fluctuations. Petitioner also states that a 180-day lag period is unprecedented and excessive.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the franc that, while not entirely steady, (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/franc exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine Chemicals* 732 F.2d 924 (Fed. Cir. 1984) (*Melamine*) to compensate for any such temporary currency fluctuations. We have reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822. January 9. 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855. April 27. 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero. Accordingly, respondent would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

Comment 2

Petitioner contends that the Department should consider sales made through respondent's related sales agent in the United States on the basis of ESP, not purchase price. Petitioner maintains that KNP's related selling agent plays the leading role with respect to CGP pricing and sales, functioning as more than a processor of sales-related documentation and a communications link. Petitioner also claims that KNP does not enter into the negotiation of price and quantity with customer, but is limited to issuing an order confirmation, producing the merchandise, and issuing an invoice. Furthermore, KNP does not always ship the merchandise to the customer. Since KNP has not reported indirect expenses, the Department should determine indirect selling expenses on the basis of BIA.

Respondent contents that all of KNP's U.S. sales are purchase price transactions because they meet the four criteria enumerated by the Department in numerous recent cases. First, the sale is made prior to importation. Second, the related selling agent only facilitated the transaction as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyer. Third, with one exception during the POI, direct shipments from KNP to the printer was the customary channel of distribution. And forth, shipments did not enter the related party's physical inventory.

DOC Position

Pursuant to section 772 of the Act and 19 CFR 353.41, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for ESP sales, however, may be set either before or after importation. The Department's practice on this issue, however, is to examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manfacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) this arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) the related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the above criteria are met, we classify the sales in question as purchase price.

Analysis of the responses submitted by KNP indicates that the related party does not introduce the merchandise into its inventory. Nor does the related party sell through more than one commercial channel. Regarding the third criterion (*i.e.*, whether the related agent is merely a processor of sales-related docmentation and a communication link with the unrelated purchaser), we disagree with petitioners that the related party plays the leading role with respect to pricing and sales of the subject merchandise. The related party merely quotes prices to printers on KNP's behalf and receives a commission for these sales. Therefore, we conclude that the related party only acts as a processor of sales-related documents and as a communication link with the unrelated customer. Thus, we will continue to consider the U.S. sales made by the related party as purchase price sales.

Comment 3

Respondent claims that the Department should use the U.S. prime rate to calculate KNP's U.S. credit expenses. KNP claims that it is a "AAA" rated company in Belgium and borrows in the home market at the Belgian equivalent of the U.S. prime rate. Therefore, if it were to finance its U.S. receivable in the United States, it would borrow at the U.S. prime rate. Respondent also claims that the court in *LMI-Metalli Industriale* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990), required that the Department impute the expense in a manner that is commercially consistent and reasonable, *i.e.*, that it is not reasonably for the Department to impute a charge must greater than that which could actually have been obtained. Respondent further states that a company need not borrow in U.S. dollars in the U.S. market before the Department will use a U.S. interest rate to calculate an imputed U.S. credit expense.

Petitioner maintains that KNP's credit rating in Belgium has no bearing on imputed credit expenses for U.S. sales. Accordingly, because KNP borrowed funds in the home market during the POI and did not borrow U.S. dollars in the U.S. market, the Department should apply KNP's actual home market interest rate to impute credit expenses for its U.S. sales. Petitioner further claims that the court's decision in *LMI* does not apply in this instance because the respondent in that case, unlike the respondent here, was able to provide evidence that it had obtained several short-term U.S. dollar-denominated loans.

DOC Position

We agree with petitioner that KNP's credit rating in Belgium has no bearing on imputed credit expenses on U.S. sales. We interpret *LMI* to mean that a respondent must show that it had actual borrowings in the United States before we will consider imputing credit expenses based upon U.S. rates. In this instance, KNP did not have U.S. borrowings. Accordingly, in order for us to determine what interest rates would be available to it would not only require us to determine the company's access to U.S. banks, but would also require us to make an independent judgment on the company's creditworthiness. We do not accept that this type of speculation is appropriate in the context of an AD investigation. Furthermore, even if it were, we do not have information available that would allow us to make such a determination. Accordingly, we have used KNP's home market interest rate to calculate imputed U.S. credit expenses. In the recent final determination of Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea (FR 56 16305), the Department used a U.S. dollar denominated borrowing rate to calculate credit expenses on U.S. sales because we confirmed that the U.S. subsidiary had actual U.S. dollar-denominated borrowings. However, unlike respondents in PET Film, KNP did not borrow any funds in the U.S. market, and therefore we cannot assume that it could have borrowed U.S. dollars in the U.S. market.

Comment 4

Respondent claims that critical circumstances do not exist because there was no massive increase in imports. In fact, KNP's shipments decreased by almost 32 percent over the five month comparison period, and therefore, do not meet the Department's requirement of a 15 percent increase.

DOC Position

We agree with respondent that critical circumstances do not exist because imports decreased during the five-month comparison period.

Comment 5

Respondent claims that the Department should allow home market direct advertising expenses for both rolls and sheets. Since CGP is not a consumer product with many levels in the sales chain between producer and consumer, all advertising is directed at the ultimate user, *i.e.*, the printer. KNP's advertisements for both CGP rolls and sheets are directed at the end-users, and therefore, should be treated as direct selling expenses. Respondent also maintains that the Department should include all verified home market advertising expenses in the final determination.

Petitioner contends that the Department should reject KNP's claim that its advertising for CGP in rolls is directed at the only level in the sales chain and is thus a direct selling expense. The Department only allows a circumstance of sale adjustment for the seller's expense incurred on advertising and sales promotion when it is directed at the customer's customer. It does not allow the adjustment when the target is the party purchasing from the manufacturer.

DOC Position

We agree with petitioner and have reclassified all advertising expenses for rolls as indirect advertising expenses. In this case, the advertising for rolls is not directed at the customer's customer, but rather at the customer, *i.e.*, the printer, which is also the ultimate user in this instance. Therefore, we have treated KNP's advertisement expenses on sales of rolls as indirect selling expenses.

Comment 6

Petitioner maintains that the Department should use actual dates of payment for certain installment sales. KNP was paid in several installments, but it reported the date of the first payment as the date of payment for all four installments. If the Department does not have the dates of actual payment for each installment, then the Department should use October 23, 1990 as best information available because it is the date of last payment for the sale.

DOC Position

We disagree with petitioner and have used the average number of days between the date of the first payment and the date of the last payment as the payment date for this sale. Since we do not know how much was paid on each installment date, we cannot accurately impute a credit expense for each payment period in one installment sale. Accordingly, we have used an average number of days to approximate the amount of credit incurred on the installment sale.

Continuation of Suspension of Liquidation

In accordance with section 735(d)(1) of the Act, for KNP and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from Belgium that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage (percent)
KNP Belgie, N.V	33.61
All Others	33.61

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chlorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26541 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-405-801]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (54 FR 27233), the following events have occurred.

We conducted verification of the questionnaire responses between June 17 and June 27, 1991, in Finland for all of the respondents in this investigation (Kymmene Corporation, Metsa-Serla Oy, United Paper Mills, Ltd./Repola Oy, and Veitsiluoto Oy). We conducted verification of the third country sales section of the questionnaire response of Metsa-Serla on June 28, 1991, in the United Kingdom.

On June 20, 1991, the petitioners in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry and its nine individual members requested a public hearing. On June 21, 1991, Metsa-Serla, United/Repola, and Veitsiluoto also requested a public hearing. Kymmene concurred in the requests for a hearing on July 2, 1990.

On July 1, 1991, respondents requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20. On July 1, 1991, petitioners submitted a letter opposing the postponement request.

On July 8, 1991, the Department published a notice in the Federal Register (56 FR 30898) preliminarily determining that critical circumstances do not exist with respect to imports of coated groundwood paper from Finland.

On July 17, 1991, the Department published a notice in the Federal Register (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

On July 22, 1991, respondents submitted aggregated statistics on Finnish exports of subject merchandise for purposes of the critical circumstances investigation. On July 31, 1991, each respondent submitted data on its individual exports of subject merchandise.

The Department conducted verification of the questionnaire responses of all the respondents between August 5 and August 9, 1991, in New York. On August 23, 1991, Metsa-Serla, United/Repola, and Veitsiluoto submitted revised computer tapes of their sales listings correcting errors in their data found at verification. On August 28, 1991, the tapes were returned to these respondents because they contained information not requested or verified by the Department. On September 6, 1991, Metsa-Serla, United/Repola and Veitsiluoto submitted proposed changes to their computer tapes. On September 23, 1991, we advised respondents that we would only accept new computer tapes which reflected changes to data already on the record found as a result of verification. On September 27, 1991, Metsa-Serla, United/Repola, and Veitsiluoto submitted a new set of revised computer tapes correcting errors found during verification. On September 30, 1991, Kymmene also submitted a revised computer tape correcting errors found during verification.

Petitioners and respondents filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 7, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of (1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

Coated groundwood paper is currently classifiable under items 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Critical Circumstances

On July 8, 1991, we published in the Federal Register (56 FR 30898) preliminary negative determinations of critical circumstances for coated groundwood paper from Belgium, Finland, and France. In that notice we articulated the Department's methodology for determining whether critical circumstances exist. Also in that notice, we indicated that we used U.S. Department of Commerce IM-146 import statistics for four months from the month after the petition was filed and compared that four-month period to the four-month period including and immediately prior to the filing of the petition. Our analysis of the imports of coated groundwood paper from Finland showed that the volume of imports from the basis period to the comparison period did not increase by 15 percent or more, and thus, we found that there had not been massive imports of the subject merchandise since the filing of the petition.

Since the publication of the preliminary negative determination of critical circumstances for Finland, we verified the company-specific shipment data submitted by each of the four respondents in this investigation. We examined data for five months from the month after the petition was filed and compared that five months of data to the five-month period including and immediately prior to the filing of the petition. Export data for a sixth month (June 1990) were submitted by one respondent (United/Repola) during the U.S. verification of another respondent in this investigation (Veitsiluoto). However, because these data (1) were submitted after the deadline specified by the Department, and (2) contained data on exports made after the date on which suspension of liquidation began, we have not used these data in our analysis. (For further discussion, see United/Repola "Comment 1" in the Interested Party Comments section of this notice.)

Based on our analysis of the exports of coated groundwood paper submitted by Kymmene, Metsa-Serla, United/Repola, and Veitsiluoto, we find that exports of coated groundwood paper by Kymmene, Metsa-Serla, and Veitiluoto have not increased by at least 15 percent. Therefore, we find that exports by these companies have not been massive over a relatively short period of time. However, we find that exports of coated groundwood paper by United/Repola have increased by at least 15 percent from the base period to the comparison period. We examined United/Repola's export data to ensure that the increase in exports did not simply reflect seasonal trends. There is no indication that the increases in shipments were occasioned by seasonal trends. Therefore, in accordance with 19 CFR 353.16(f)(2), we find that exports by United/Repola have been massive over a relatively short period of time.

Because the dumping margin for United/Repola is sufficient to impute knowledge of dumping, and because imports have been massive, in accordance with section 735(a) of the Act, we find that critical circumstances exist with respect to imports of coated groundwood paper produced and sold by United/Repola.

Based on our analysis of the cumulative export data for coated groundwood paper submitted by all four respondents, we find that cumulative exports of coated groundwood paper have not increased. Therefore, in accordance with 19 CFR 353.16(f)(2), we find that exports by all producers/manufacturers/exporters other than United/Repola have not been massive over a relatively short period of time. As a result, we find that critical circumstances do not exist with respect to exports of coated groundwood paper by producers/manufacturers/exporters other than United/Repola.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from Finland to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in Finland (for Kymmene, United/Repola, and Veitsiluoto) and to sales of identical or similar coated groundwood paper in the United Kingdom (for Metsa-Serla).

United States Price

We based USP on purchase price for all companies, in accordance with section 772(d) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate since the subject merchandise was not introduced into the inventory of respondents' related U.S. selling agent(s), this was the customary commercial channel for sales of this merchandise between the parties involved and respondents' related sales agent(s) acted mainly as processors of sales-related documentation and communication links with the unrelated U.S. customer. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.)

A. Kymmene

We excluded from our analysis certain sales, which respondent claimed were sales of defective merchandise which could not be sold in normal commerce, because these sales were made in small quantities. We also excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trail sales, see General "Comment 5" in the "Interested Party Comments" section of this notice.) Finally, we excluded resales from our analysis because the original sales occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage, foreign handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage, and U.S.inland freight charges, in accordance with section 772(d)(2) of the Act In addition, we made deductions, where appropriate, for discounts and rebates. Kymmene did not estimate cash discounts for any transaction for which payment had not been received from its customer. Therefore, we used best information available (BIA) to impute a cash discount for sales where a cash discount would still have been possible as of the date of verification. (For further discussion, see Kymmene "Comment 1" in the Interested Party Comments" section of this notice.) Regarding rebates, for two customers, Kymmene's narrative response did not correspond to the amounts reported on the computer tape. Accordingly, we calculated rebate amounts for these customers based on Kymmene's narrative response. In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of the Finnish value-added tax that would have been collected had the merchandise not been exported.

B. Metsa-Serla

We excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trial sales, see General "Comment 5" in the Interested Party Comments" section of this notice.) We also excluded from our analysis resales of damaged or "obsolete" merchandise because the original sale occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we deducted a fee charged for freight-forwarding services by Metsa-Serla's related ocean freight company. Because Metsa-Serla's did not report this fee, we used BIA to calculate this amount. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.) In addition, we made deductions, where appropriate for discounts and rebates. Metsa-Serla did not estimate certain discounts for any transaction for which payment had not been received from its customer. Therefore, we used BIA to impute this discount for sales where a discount would still have been possible as of the date of verification. (For further discussion, see General "Comment 16" in the "Interested Party Comments" section of this notice.)

C. United/Repola

We excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trial sales, see General "Comment 5" in the "Interested Party Comments" section of this notice.) We also excluded from our analysis one resale because the original sale occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. We used BIA to calculate foreign inland freight, foreign brokerage, and ocean freight for certain of United/Repola's sales to the United States. (For further discussion of the BIA used for foreign inland freight and foreign brokerage expenses, see United/Repola "Comments 1 and 2," respectively, in the "Interested Party Comments" section of this notice. For further discussion of the BIA used for ocean freight, see General "Comment 12" in the "Interested Party Comments" section of this notice.) In addition, we deducted a fee charged for freight-forwarding services by United/Repola's related ocean freight company. Because United/Repola did not report this fee, we used BIA to calculate this amount. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.) We also made deductions, where appropriate, for discounts and rebates. United/Repola did not estimate certain discounts for any transaction for which payment had not been received from its customer. Therefore, we used BIA to impute this discount for sales where a discount would still have been impossible as of the date of verification. (For further discussion, see General "Comment 16" in the "Interested Party Comments" section of this notice.) In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of Finnish value-added tax that would have been collected if the merchandise had not been exported.

D. Veitsiluoto

We excluded trial sales from our analysis because these sales were made in small quantities. We also excluded from our analysis certain sales of inferior "Grade-B" merchandise because these sales were made in small quantities. (For further discussion of trial sales and "Grade-B" sales, see General "Comment 5", in the "Interested Party Comments" section of this notice.) We excluded resales of damaged or obsolete merchandise from our analysis because the original sales occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we deducted a fee charged for freight-forwarding services by Veitsiluoto's related ocean freight company. Because Veitsiluoto did not report this fee, we used BIA to calculate this amount. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.) We also made deductions, where appropriate, for discounts and rebates. Veitsiluoto did not estimate certain discounts for any transaction for which payment had not been received from its customer. Therefore, we used BIA to impute this discount for sales where a discount would still have been possible as of the date of verification. (For further discussion, see General "Comment 16" in the "Interested Party Comments" section of this notice.) In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of Finnish value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of coated groundwood paper in the home market to serve as a viable basis for calculating FMV in accordance with section 733(a)(1) of the Act, we compared the volume of home market sales of coated groundwood paper to the volume of third country sales of coated groundwood paper. For Kymmene and United/Repola, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV for these companies, in accordance with 19 CFR 353.48. Veitsiluoto also reported that the volume of its home market sales was greater than five percent of the aggregate volume of its third country sales. We were unable to verify to our satisfaction Veitsiluoto's reported third country volume and value information. Therefore, we have resorted to BIA on the question of Veitsiluoto's viability. Since we have no information on third country sales, and since, from all the information available to us, we cannot conclude that the home market is not viable, we have determined to use Veitsiluoto's home market information as the BIA for this purpose. (For further discussion, see Veitsiluoto "Comment 5" in the "Interested Party Comments" section of this notice.)

For Metsä-Serla, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV for Metsä-Serla, in accordance with 19 CFR 353.48. In selecting the third country market for computing FMV, we considered the criteria set forth in 19 CFR 353.49(b). Because similarity of merchandise was not an issue for Metsä-Serla, we selected the United Kingdom as Metsä-Serla's third country market because this was the third country market having the largest sales volume. The volume of sales to the third country we selected was "adequate" within the meaning of 19 CFR 353.49(b)(1).

A. Kymmene

We excluded trial sales and certain sales of damaged merchandise from our analysis because these sales were made in small quantities.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding home market credit expenses, we found at verification that Kymmene reported as dates of payment the dates on which payment was recorded in the accounting records of its related selling agents, not the dates on which payment was deposited in the agents' bank accounts. Therefore, we adjusted the credit period to account for the average time between deposit of the funds in the agents' bank accounts and the recording of these deposits in the agents' books, based on our observations at verification. We then recalculated home market credit expenses using the revised payment dates. Regarding U.S. credit expenses, although Kymmene borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales consistent with the Court of Appeals' remand in *LMI-La Metalli Industriale, S.p.A. v. United States*, 912 F.2d 455 (Fed. Cir. 1990), of Brass Sheet and Strip from Italy (*LMI*). We found at verification that the calculation of Kymmene's reported U.S. interest rate contained clerical errors. We recalculated credit expenses using the reported interest rate revised to correct for these errors. In addition, for sales in either market which either had not been shipped by Kymmene and/or had not been paid for by the customer as of the time of verification, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. In addition, we updated warehousing expenses for those shipments remaining in the U.S. warehouse as of the date of the U.S. verification, as well as for shipments invoiced after the submission of Kymmene's deficiency response. We also made a circumstance of sale adjustment for technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.) Further, we made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

B. Metsa-Serla

We excluded trial sales and certain sales of damaged merchandise from our analysis because these sales were made in small quantities. In addition, we excluded from our analysis all sales of one product (control number 09) because we found at verification that the date of sale for the only order reported for this product was outside the POI. Finally, we excluded from our analysis sales made to one of Metsa-Serla's related customers because these sales could not be verified by the Department. (For further discussion, see Metsa-Serla "Comment 2" in the "Interested Party Comments" section of this notice.) We determined at verification that the prices paid by other related customers were comparable to the prices paid by unrelated customers.

We calculated FMV based on delivered prices to related and unrelated customers in the United Kingdom. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for discounts, rebates, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.K. brokerage and handling, and U.K. inland freight charges. We used BIA to recalculate Metsa-Serla's reported U.K. marine insurance charges based on differences found at verification between the reported charges and the actual charges. (For further discussion, see Metsa-Serla "Comment 5" in the "Interested Party Comments" section of this notice.) We deducted U.K. packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding U.S. credit expenses, although Metsa-Serla borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales consistent with the Court of Appeals' remand in *LMI*. For sales which had not been paid for by the customer in either market as of the date of verification, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. Further, we made a circumstance of sale adjustment for technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.)

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57. Because we have not used U.K. sales of control number 09 in our analysis, we rematched all U.S. sales of products formerly matched with control number 09. For one match, we were unable to calculate the exact amount of the difference in merchandise adjustment. Therefore, we used BIA to calculate the difference in merchandise adjustment for this match. As BIA, because Metsa-Serla failed to provide the information to calculate the correct adjustment, we have used the largest difference in merchandise adjustment calculated for any other product match.

C. United/Repola

We excluded trial sales from our analysis because these were made in small quantities.

We calculated FMV based on delivered prices to related and unrelated customers in the home market. For purposes of the final determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we determined that the prices paid by those customers were comparable to the prices paid by unrelated customers.

We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding home market credit expenses we found at verification that United/Repola reported as dates of payment the dates on which payment was recorded in the accounting records of its related selling agent, not the dates on which payment was deposited in the agent's bank account. Therefore, we adjusted the credit period to account for the average time between deposit of the funds in the agent's bank accounts and the recording of these deposits in the agent's books, based on our observations at verification. We then recalculated home market credit expenses using the revised payment dates. For sales in either market which had not been paid for by the customer as of the time of verification, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. Regarding U.S. credit expenses, although United/Repola borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales consistent with the Court of Appeals' remand in *LMI*. We also made a circumstance of sale adjustment for technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.)

We made adjustments, where appropriate, for commissions paid to unrelated parties in the United States in accordance with 19 CFR 353.56(b). We offset these commissions by the amount of indirect selling expenses incurred by United/Repola's related selling agent in the home market. (For further discussion, see General "Comment 10" in the "Interested Party Comments" section of this notice.) We also made a circumstance of sale adjustment for differences in the amount of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

D. Veitsiluoto

We excluded from our analysis certain sales of damaged merchandise because these sales were made in small quantities.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. For those U.S. sales where no packing costs were reported, we deducted the same charge as reported for sales of identical merchandise.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding home market credit expenses, we found at verification that Veitsiluoto reported as dates of payment the dates on which payment was recorded in the accounting records of its related selling agent, not the dates on which payment was deposited in the agent's bank account. Therefore, we adjusted the credit period to account for the average time between deposit of the funds in the agent's bank accounts and the recording of these deposits in the agent's books, based on our observations at verification. We then recalculated home market credit expenses using the revised payment dates. For sales in either market which had not been paid for by the customer as of the time of verification, we recalculated credit expense using the weighted-average credit period for all sales for which payments had been made. Regarding U.S. credit expenses, although Veitsiluoto borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales consistent with the Court of Appeals' remand in *LMI*. We disallowed home market warranty expenses because we discovered at verification that Veitsiluoto incorrectly calculated these expenses. (For further discussion, see Veitsiluoto "Comment 2" in the "Interested Party Comments" section of this notice.) We also made a circumstance of sale adjustment for U.S technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.)

We made adjustments, where appropriate, for commissions paid to unrelated parties in the United States in accordance with 19 CFR 353.56(b). We offset these commissions by the amount of indirect selling expenses incurred by Veitsiluoto's related selling agent in the home market. (For further discussion, see General "Comment 10" in the "Interested Party Comments section of this notice.) We also made a circumstance of sale adjustment for differences in the amount of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Currency Conversion

Prior to the preliminary determination in this investigation all four respondents requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of temporary fluctuations in the exchange rates between the Finnish markka and the U.S. dollar and between the British pound and the U.S. dollar during the POI. We were unable to consider respondents' requests in our preliminary determination due to the late date on which the claims were made. We now determine that the special rule for currency conversion as outlined in section 353.60(b) does not apply in this investigation. Accordingly, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. (For further discussion of this topic, see General "Comment 3" in the "Interested Party Comments" section of this notice.)

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

General

Comment 1

Respondents argue that coated ground wood paper in sheet form and all types of machine-finished paper (MFC) should not be included in the scope of this investigation. Citing Flat Panel Displays from Japan (56 FR 32380), respondents claim that the Department should determine that these products are not "like products" to those produced in the United States. Based on this assertion, respondents contend that the Department should determine that petitioners are not interested parties within the meaning of 19 USC 1677(a)(2) because they are not producers of the newly defined like products. Therefore, they maintain, petitioners have no standing to file for relief with respect to these products.

Petitioners maintain that the scope of the investigation includes all coated groundwood paper, including sheets and MFC. Petitioners contend that because the Department's definition of the class or kind and the ITC's definition of like product encompass all forms of coated groundwood paper, regardless of form, petitioners are necessarily interested parties. Additionally, petitioners maintain that there is no basis for excluding sheet and MFC from the scope of this investigation since respondents fail to demonstrate any meaningful differences between the various types of coated groundwood paper that rise to the level of different classes or kinds of merchandise or different like products. Finally, petitioners state that respondents' challenge is untimely because it comes well after the regulatory deadline of ten days prior to the preliminary determination.

DOC Position

We disagree with respondents. According to 19 CFR 353.31(c)(2), challenges to a petitioner's standing must be raised not later than ten days prior to the Department's preliminary determination. In this case, the latest date that a challenge to standing could have been raised was May 28, 1991. Respondents first raised this issue on September 26, 1991, 32 days before the deadline for our final determination, and, thus, were untimely under our regulations. This regulation exists precisely to allow the Department sufficient time to make a complete and accurate analysis of issues such as these, which almost invariably are complex and technical. We, therefore, reject the standing challenge raised by respondents because it was untimely and denied the Department the time to collect and analyze the information necessary to make an informed judgment on it. Accordingly, we do not need to address respondents' arguments regarding the Flat Panels Displays from Japan decision.

Comment 2

Metsa-Serla and United/Repola argue that the Department erred in its preliminary determination that they were sufficiently related to warrant the calculation of a single margin for both companies. These respondents argue that the calculation of a single margin is inappropriate because both Metsa-Serla and United/Repola are separately controlled and managed. Therefore, they contend, it is neither within their ability, nor in their interest, to undertake joint pricing or production decisions to avoid dumping duties. Respondents maintain that the "minor ties" between Metsa-Serla and United/Repola were due to a failed hostile takeover attempt of United Paper Mills (which was, at the time of the attempt, an independent company rather than part of United/Repola) by Metsa-Serla. Finally, respondents argue that factors, such as similarity of production processes and joint sales channels, cited by petitioners to support the alleged threat of concerted action are, in fact, shared by many wholly unrelated paper mills in Finland.

Petitioners maintain that the degree of company cross-ownership, the sharing of company directors, the fungibility of the product, the companies' joint investment in a pulp mill, and their cooperation in basic research and development (R&D) indicate that the Department acted correctly in consolidating these respondents. Specifically, petitioners contend that Metsa-Serla and United/Repola have the same principal shareholder and that there is significant cross-ownership of stock as a result of the April 1990 takeover attempt. Further, petitioners cite Metsa-Serla's 1990 annual report which refers to the joint mill investment. Petitioners also point out that the focus of the Department's inquiry should be on the question of the future ability to make joint production decisions, rather than the question of whether respondents have taken advantage of this capacity in the past.

DOC Position

The Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. Past Department determinations of whether to "collapse" firms for purposes of margin calculations have focused on whether the firms in question operate as separate and distinct entities. (See, e.g., Certain Residential Doorlocks and Parts Thereof from Taiwan (54 FR 53153, December 27, 1989).) Central to a Department decision on whether to collapse companies for purposes of applying a single margin is the degree to which each firm in question operates in conjunction with the other relevant firm. Among the criteria used to make such a determination, the Department examines the degree of common ownership, the degree of cooperation between the parties in the marketplace, and the ability of management in either company to share in the day-to-day decision making processes of the other.

Since the preliminary determination where we collapsed Metsa-Serla and United/Repola, we have reevaluated our determination. We examined this issue at length at verification and found that, although there is some cross-ownership between these companies, the degree of ownership is not such that either company can compel the other to take actions. Specifically, we found at verification that United/Repola is currently controlled by two groups of companies, neither of which owns a significant interest in either Metsa-Serla or Metsa-Serla's largest shareholder. We also found that, although Metsa-Serla's ownership percentage in the former United Paper Mills made it the principal shareholder, this percentage was not enough to stop the merger of United Paper Mills and another paper company into the present United/Repola, a move which considerably diluted Metsa-Serla's interest.

Regarding cooperation between the two companies, we determine that the level of the cooperation is not such that the two companies are acting in concert in the marketplace. Specifically, we found that the cooperation between Metsa-Serla and United/Repola is limited to shared investment in a mill which manufacturers chemical pulp (an input used in coated groundwood paper) and some joint R&D. As to the joint production of chemical pulp, we do not believe that, given the other considerations in this case, production of an input is dispositive. With respect to shared R&D, we note that this R&D is basic R&D (*i.e.*, on wood technology in general) and is not directly related to the products marketed by either company.

Regarding executives of either Metsa-Serla or its largest shareholder sitting on United/Repola's Board of Directors, we found at verification that this board does not share in the day-to-day management activities of United/Repola. Rather, control of United/Repola is held by United/Repola's Executive Board, which is composed of representatives of United/Repola's industrial groups. None of these representatives are members of Metsa-Serla's Board of Directors.

Given these considerations, we determine that Metsa-Serla and United/Repola currently constitute two separate manufacturers or exporters under the antidumping law. Therefore, we have calculated a separate margin for the purposes of the final determination for each of these companies. We will, however, reexamine the nature and extent of the relationship between these two companies in any future administrative reviews if an antidumping duty order is issued.

Comment 3

Respondents argue that the Department should use the provisions of 19 CFR 353.60(b) and disregard the U.S. dollar/Finnish markka and U.S. dollar/British pound exchange rates in existence during the POI in making fair value comparisons. Respondents maintain that during the POI temporary, volatile exchange rate fluctuations occurred, due to the crisis in the Persian Gulf, and that once the crisis was resolved the dollar's value began to recover. Further, respondents claim that they were not able to revise their U.S. prices to reflect the rate changes, given the temporary nature of the exchange rate fluctuations and the industry's inexperience with short-term price swings. Finally, respondents maintain that a large portion of the apparent difference between home market and U.S. prices is a result of the exchange rate disparity.

As evidence the temporary fluctuations occurred during the POI, respondents maintain that the Finnish markka/U.S. dollar exchange rate varied by five percent or more from the quarterly rate on 28 separate days and that the pound sterling/U.S. dollar exchange rate varied by five percent or more from the quarterly rate on 51 days. In addition to identifying specific days which constitute periods of temporary fluctuations, respondents maintain that the dollar's rapid depreciation during the POI made the POI itself a temporary period which should be compared to the period just after the POI, as this would illustrate the kind of pattern for which the temporary fluctuation provision in the special rule was adapted.

In order to correct for the exchange rate fluctuations, respondents argue that the Department should use the exchange rates prevailing during the first and second quarters of 1990 instead of those in effect during the POI (*i.e.*, the Department should lag exchange rates during the POI by 180 days). Respondents maintain that a lag period of less than 180 days would be inadequate because a lesser time period would capture rates that were themselves subject to temporary fluctuations.

Respondents maintain that the special rule as it applies to temporary fluctuations is applicable in cases in which the remedy for temporary fluctuations reduces that does not entirely eliminate dumping margins that would be present if current exchange rates were used to calculate the FMV of the imported merchandise. In support of this contention, they point to Truck-Trailer Axle and Brake Assemblies from the Hungarian People's Republic, 46 FR 46152 (1981). They argue that the special rule literally refers to the Department's disregarding "any difference" between U.S. price and FMV "resulting solely" from temporary fluctuations. They contend that if this were not so, 19 CFR 363.60(b) would refer to disregarding a "dumping margin" that "resulted solely" from the exchange rate fluctuations.

Petitioners argue that the Department should use its standard practice of applying the quarterly rates in effect during the POI. Petitioners contend that it is invalid to determine whether an exchange rate movement is "temporary" by reference to a period after the POI. Therefore, petitioners maintain that the Department should look to the period during and preceding the POI and conclude that, contrary to experiencing temporary and volatile fluctuations, the exchange rates (in Finnish markka and pound sterling per dollar) exhibited a sustained appreciation over the year and a half prior to and including the POI. According to petitioners, since the steady rise in exchange rates was not a temporary fluctuation, respondents should have adjusted their prices to eliminate the dumping margins resulting from continuing to sell at prices established in reference to a previously existing exchange rate.

Petitioners also argue that, even if fluctuations in the exchange rates during the POI could, *arguendo*, be viewed as "temporary," the Department should not apply the "special rule" because the differences between U.S. price and foreign market value would not result solely from these fluctuations. Petitioners cite *Melamine Chemicals Inc.* versus *United States* (732 F.2d 924, 933 (Fed. Cir. 1984)) in which the Court of International Trade held that the dumping margin must be due solely to exchange rate fluctuations.

Petitioners contend that the language of the Truck-Trailer Axle and Brake Assemblies from the Hungarian People's Republic should have no bearing on the Department's decision because it was merely a preliminary determination whose reasoning has been subsequently rejected by the Court of International Trade (CIT). *See, e.g., NTN Bearing Corporation of American* versus *United States* (747 F. Supp. 726 (CIT 1990)), and *Melamine supra*.

Finally, petitioners argue that, if the Department decides to use exchange rates from a prior quarter, the lag period should be no more than the average number of days in which respondents expect payment to be made. Petitioners state that this is the amount of time that a rational business organization would take into account when looking at exchange rates for purposes of setting prices.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the markka and the pound sterling that, while not entirely steady (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/markka exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in Melamine to compensate for any such temporary currency fluctuations. We have reconsidered our actions in Melamine and find that the Department's actions in Melamine were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondents' margins do not fall to *de minimis* or zero. Accordingly, respondents would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for circumstances of sale adjustments except in extraordinary cases, such as in hyperinflationary economies.

Comment 4

Petitioners contend that the Department should classify all Finnish sales to the United States made through the Madden Corporation (respondents' related selling agent) as ESP sales. Petitioners argue that the role of Madden is substantially more than that of a processor of sales-related documentation and a communication link between the company and the unrelated purchaser. Specifically, petitioners state that Madden conducts substantial marketing and promotional activities in the United States in furtherance of its sales of Finnish coated groundwood paper. Petitioners also note that Madden identifies new customers for the mills, markets the mills' products in trade shows, and keeps the mills up to date on the U.S. paper industry. Finally, petitioners argue that Madden's role in the negotiation of contracts with U.S. customers indicates that Madden is involved in the setting of U.S. prices.

Respondents contend that the Department correctly classified their

U.S. sales as purchase price transactions. Kymmene argues that in practice the Department generally finds that sales are classified as purchase price transactions if the terms of sale are set prior to importation because (1) the selling agent accepts no risk that the merchandise will not be sold and therefore is more a processor of sales-related documentation than an active participant in the sales process, (2) the merchandise, by definition, cannot enter the selling agent's inventory, and (3) if the majority of a company's sales are made prior to importation, then that is the customary commercial channel for those sales. Finally, Kymmene states that Madden did not sign the contract referenced by petitioners. According to Kymmene, this proves that Madden is not important enough in the sales process to sign the contract on its own.

Metsa-Serla, United/Repola and Veitsiluoto maintain that Madden is not a reseller, but a facilitator in the sales process. These respondents note that Madden does not introduce the merchandise into its inventory. Finally, they state that Madden does not set prices for the Finnish mills; rather, prices are set by the individual mills themselves.

DOC Position

Pursuant to section 772 of the Act and 19 CFR 353.41, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for ESP sales, however, may be set either before or after importation. Therefore, where the terms of sale are set prior to the date of importation, the Department must examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) This arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) The related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the aforementioned criteria are met, we classify the sales in question as purchase price.

Petitioners have not addressed the first two criteria. Analysis of the responses submitted by the Finnish respondents indicates that the first two criteria are met in that Madden did not introduce the merchandise into its inventory, nor does it customarily do so. Regarding the third criterion, we established at verification that Madden merely functions as a communication link between the mills and their customers with regard to the setting of prices. Moreover, we found that while Madden does undertake additional activities such as providing some technical services, participating in trade shows on behalf of the mills, and identifying and maintaining contact with customers for the mills, we conclude that the extent of these additional sales-related activities is not enough in this instance for the Department to reclassify these sales as ESP sales. If, however, we determine in any future administrative reviews of any antidumping duty order issued in this proceeding that Madden does undertake significant additional activities, we will reconsider this issue.

Comment 5

Petitioners maintain that the Department should include certain sales in its analysis of USP. Specifically, petitioners contend that the Department should include (1) trial sales made by Metsä-Serla, United/Repola and Veitsiluoto, and (2) sales of defective merchandise made by Kymmene and Veitsiluoto. According to petitioners, section 772 of the Act does not provide for the exclusion of U.S. sales made outside of the "ordinary course of trade." Moreover, petitioners state that it is the usual practice of the Department to include these types of sales in its analysis.

Metsä-Serla, United/Repola and Veitsiluoto contend that case law permits the Department to exclude sales, which are outside the ordinary course of business, from both the U.S. and home markets. Respondents cite Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan, 55 FR 34585 (1990), as one example where the Department excluded such sales from its analysis of USP. Respondents contend that the Department was correct in its preliminary determination that the insignificant volume of these sales was sufficient grounds to exclude them from the analysis. However, respondents maintain that if the Department were to include U.S. trial sales in its calculations, it should compare these to trial sales in the home market.

Kymmene also maintains that its trial sales should be excluded from the fair value analysis because this merchandise was normally provided free of charge or at reduced prices. In addition, it maintains that its sales of defective paper should not be included in the analysis of USP. Kymmene states that the Department has excluded sales of defective merchandise in other cases where these sales were made in small quantities. (See, e.g., Generic Cephalexin Capsules from Canada, 54 FR 26,820.) Furthermore, Kymmene notes that these sales would be excluded in any case because they were resales of defective goods sold at distress prices with initial dates of sale outside the POI.

Veitsiluoto maintains that its sales of defective merchandise were examined at verification and were found to be both outside the ordinary course of trade and made in small quantities.

DOC Position

We agree with respondents. In its less-than-fair-value investigations, the Department is not required to review every sale and frequently excludes certain sales from its analysis. (See, e.g., Sweaters Wholly or in Chief Weight of Man-made Fiber from Taiwan, 55 FR 34585 (1990), Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea, 55 FR 32661 (1990.)) Because these sales represent only a small portion of the total volume of U.S. sales made by each respondent and would have an insignificant effect on our calculations, we have excluded them from our analysis.

Comment 6

Petitioners contend that, in the event that the Department uses purchase price methodology for USP, it should deduct commissions paid by respondents to their related sales agents. Petitioners maintain that these commissions are directly related to the sales at issue and were paid at arm's-length. Petitioners argue that the direct relationship is borne out by the fact that such commissions are calculated as percentages of actual sales values. Petitioners maintain that the need to reduce the commission arrangements to writing indicates that such arrangements are by nature at arm's-length.

Petitioners also argue that the Department should adjust the commission amounts reported for two portions of a special commission's surcharge discovered during verification. The first portion of this surcharge applies to a lag in commission payments from the mills after Madden switched computer systems. The second portion was related to Madden's cost structure. Petitioners argue that the evidence provided at verification does not prove that either the first or second portion of the special commissions surcharge applied to stock sold prior to the POI. Petitioners therefore maintain that the Department should include the full amount of the special charges in deducting commissions to calculate USP.

Kymmene contends that commissions paid to Madden were improperly deducted because they were paid to a related party and are more accurately characterized as related party transfers. Kymmene further maintains that it is the Department's practice not to make adjustments for commissions paid to related parties. Kymmene states that the commissions paid to Madden were not at arm's length because these commissions exactly covered Madden's expenses and, consequently, each of the mills had an interest in minimizing Madden's costs.

Metsä-Serla, United/Repola and Veitsiluoto respond that a circumstance of sale adjustment should not be made for payments to related parties. These respondents also argue that the relationship between the commission's structure and Madden's costs is such that commissions cannot be considered at arm's-length.

Regarding the special commission surcharge, Metsä-Serla, United/Repola and Veitsiluoto argue that this surcharge was due to the change in computer systems and a resulting lag in commission payments prior to the POI. These respondents maintain that their calculation of the "effective" commission rate correctly adjusted for this portion of the special payment and was in fact verified by the Department.

DOC Position

The Court of Appeals' remand in *LMI* instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be (1) at arm's-length and (2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commissions. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions.

In this investigation, none of the respondents used unrelated commissionaires to sell subject merchandise in the United States. Nor did Madden act as a commissionaire for unrelated producers. The fact that these arrangements are in writing is not in itself an appropriate standard against which to measure the arm's-length nature of the transaction. Therefore, because we have no appropriate benchmark against which to test the arm's-length nature of the commission arrangement between respondents and Madden, we are not satisfied that these payments are at arm's-length. Accordingly, we have not adjusted for them.

Regarding the question of the additional commissions surcharge, this issue is moot as we are not deducting commissions paid to Madden.

Comment 7

Petitioners contend that the Department should deduct the administrative fee charged for freight fowarding services rendered by Finnpap's shipping subsidiary, Transfennica. According to petitioners, it is the Department's practice to consider such expenses directly related to the export of merchandise to the United States. They cite CPTs from Japan, 55 FR 37915, in which the Department deducted fees charged to cover administrative expenses incurred by a related freight company.

Metsa-Serla, United/Repola, and Veitsiluoto maintain that the Transfennica charge should not be deducted from USP because it is not a direct selling expense; rather, they maintain that this fee is an intracorporate transfer of funds. They further maintain that this portion of Transfennica's fees has not been established as being paid at arm's-length.

DOC Position

We agree with petitioners. During the POI, Transfennica charged its members a fee for its freight-forwarding services. We find that this fee is payment for a legitimate expense that would have to be borne either by an unrelated freight company or respondents' related agency, Transfennica. Therefore, we are deducting the expense in calculating USP as it is our standard practice to back out all movement charges from USP, including freight forwarding expenses.

However, because these respondents did not report the amount of this fee, we have used BIA. As BIA, we used the highest amount for freight forwarding reported by Kymmene in a public version of its response.

Comment 8

Petitioners maintain that the Department should disallow any rebate or discount paid to related parties. According to petitioners, it is the Department's practice to consider such payments intracompany transfers of funds, rather than expenses directly related to sales.

DOC Position

We disagree with petitioners. It is not the Department's practice automatically to disallow discounts or rebates paid to related parties. Because we determined that respondent's sales to related parties were at arm's-length by reference to the price of these sales, net of selling expenses (including discounts and rebates paid to the related parties) and movement charges, we have allowed these discounts and rebates as deductions from FMV.

Comment 9

Metsa-Serla, United/Repola, and Veitsiluoto contend that it was proper to include interest savings in their calculation of their short-term U.S. interest rate. Respondents state that these savings reduced the cost of borrowing for the Madden Corporation, their common U.S. sales agent. They note that their U.S. sales agent considered these savings when calculating its effective cost of borrowing because the savings were reflected on an interest rate worksheet prepared by this agent in the normal course of business.

Petitioners contend that these respondents failed to take into account the time value of money in reporting Madden's borrowing rate. Petitioners state that, because respondents only reported the gain associated with the interest savings, it is inappropriate to include these savings in the interest rate calculation. Therefore, petitioners state that the Department should exclude these savings from the interest rate reported by these respondents.

DOC Position

We agree with respondents. Because the rate reported is the rate used in Madden's ordinary course of business to assess its costs of borrowing and the fact that the savings at issue are actual as opposed to imputed savings, we conclude that use of this rate will produce an accurate reflection of the costs associated with having receivables outstanding. Therefore, we have used this rate in our calculations.

Comment 10

United/Repola, and Veitsiluoto maintain that the commissions paid to Phoenix National, an unrelated party, were made at arm's length and therefore warrant a circumstance of sale adjustment. These respondents maintain that the amount of the commissions paid in the home market accordingly should be an adjustment to the home market price with respect to the fair value of sales matched with Phoenix National sales in the U.S. market.

Petitioners maintain that the commission paid to Phoenix National should only be offset to the extent of respondents' indirect selling expenses up to the amount of the Phoenix National commission.

DOC Position

We agree with respondents. We have not made an adjustment for the Suomen Paperi fees as commissions, since we determined that these were not made at arm's length. (See General "Comment 6" in the Interested Party Comments section of this notice.) At verification, we found that the amount of indirect selling expenses incurred by Suomen Paperi, United/Repola's and Veitsilouto's related home market sales agent, was equivalent to the amount of fees charged to these respondents. Therefore, we have allowed these fees as indirect selling expenses in the home market, and have used these amounts as offsets to the arm's-length commissions paid to Phoenix National, up to the amount of the Phoenix National commissions.

Comment 11

Metsa-Serla, United/Repola and Veitsiluoto maintain that they provided the Department with detailed correction lists of errors found while preparing for verification and that the Department verified these lists. They maintain that they subsequently submitted aggregated lists of such corrections to the Department and proposed that they be allowed to make all of these changes on their computer tapes. They further maintain that the Department erroneously instructed them to exclude marine insurance calculations, ocean freight corrections, VAT updates, and port charges corrections from the new tapes. Respondents maintain that the Department should accept these changes.

Petitioners maintain that the Department appropriately did not accept the information submitted by respondents because it was new and unverified information. They maintain that the Department should continue to reject this information. Petitioners also maintain that because Kymmene served them with a new computer printout without explaining what changes were made to its listings, the printout and its accompanying tape should be rejected and removed from the record.

DOC Position

We agree in part with petitioners. Of the changes proposed to the computer tapes by respondents, we accepted only those items which were clearly not new and unverified data. Regarding Kymmene's revised computer tape, we have accepted this tape because it was timely submitted. We also note that Kymmene explained the changes made to its revised computer tape in the record of this investigation.

Comment 12

Petitioners maintain that United/Repola and Veitsiluoto incorrectly reported the 1990 ocean freight charge for shipments made in 1991. In addition, petitioners maintain that United/Repola, incorrectly reported ocean freight expenses for containerized shipments. As BIA for United/Repola, petitioners state that the Department should apply the weighted average expense for ocean freight for non-containerized shipments to the containerized shipments. As BIA for Veitsiluoto, petitioners maintain that the Department should deduct the actual 1991 ocean freight rate in determining USP for 1991 shipments.

DOC Position

At verification we found that both United/Repola and Veitsiluoto incorrectly reported ocean freight expenses for certain shipments. Specifically, we found that United/Repola and Veitsiluoto applied the 1990 rates to 1991 shipments, despite the fact that the rates increased. In addition, we found that United/Repola did not report the correct ocean freight for containerized shipments. As regards the incorrectly reported expenses for uncontainerized shipments made in 1991, we are using the rate found at verification for all uncontainerized 1991 shipments. As regards the expenses for the containerized shipments incorrectly reported by United/Repola, since the average uncontainerized expense reported is lower than the expense for a containerized mill order examined at verification we are not using petitioners' suggested BIA methodology. Instead, we are using the expense found for the one containerized shipment examined at verification for all containerized shipments made by United/Repola.

Comment 13

Petitioners maintain that because certain Kymmene and United Paper sales were made through Madden's fine paper department, and since such sales engender a higher commission, the Department should deduct the higher commission on any sale made through that channel. Petitioners further contend that if the Department is unable to determine which sales were made through the fine paper department, it should apply, as BIA, the fine paper commission on all sales made by these companies through Madden.

United/Repola maintains that the effective commissions rate for book paper sales made through Madden's fine paper department is lower than that noted in the verification report. United/Repola contends that it has identified which sales were made through the fine paper department and that this department's commission rate should apply only to such sales in the event that a circumstance of sale adjustment is made for commissions.

DOC Position

Because we determined that the commissions paid to Madden were not paid at arm's-length, we did not deduct these commissions from USP. Therefore, the amount of commissions paid on sales through the fine paper department is moot. (For further discussion, see General "Comment 6" in the Interested Party Comments section of this notice.)

Comment 14

Petitioners contend that the Department should disallow certain rebates paid to home market or third country customers. Specifically, petitioners argue that neither Metsa-Serla nor United/Repola provided the Department with key information regarding these rebates. Petitioners contend that these respondents did not adequately describe the circumstances under which such rebates were made.

Petitioners further contend that the verification of one type of rebate offered by Metsa-Serla indicated that such rebates were unusual because of the type of paper for which these rebates were originally created. Moreover. petitioners maintain that these rebates were likely to have been determined after the date of sale and even after the initiation of this investigation. Regarding one home market rebate offered by United/Repola. petitioners question the fact that this rebate was offered to only one customer. Therefore. petitioners maintain that the Department should not deduct these rebates in calculating FMV.

Metsa-Serla contends that there is no evidence to support petitioners' allegations that it paid such rebates for any purpose other than for its ordinary business practice.

United/Repola maintains that the fact that only one customer qualified for this special rebate does not make it improper. and that its explanation of this rebate was fully verified by the Department.

DOC Position

We agree with respondents. At verification. we fully examined the circumstances surrounding these rebates. as well as rebate payments to the customers. Because we found no problems with these rebates at verification. we are allowing them as deductions to FMV.

Comment 15

Metsa-Serla and United/Repola maintain that the Department should not impute warehousing charges for those sales where no warehousing expenses were reported. These respondents state that they did not report warehousing expenses for certain containerized shipments because containerized shipments often go directly to the customer and therefore are not warehoused.

DOC Position

We agree with respondents. We found at verification that no warehousing expenses were incurred on certain containerized shipments. Therefore. we have not imputed warehousing expenses for those shipments.

Comment 16

Petitioners maintain that wherever United/Repola failed to report the estimation of a certain discount when it was likely that it would be granted. the Department should deduct the weighted average of such discounts paid during the POI as BIA. United/Repola claims that this is an outdated argument since any discrepancies were corrected by means of the newly submitted computer tape.

DOC Position

We agree with petitioners. However. we are applying BIA only to those sales for which it was possible. as of the date of verification. for the customer to receive the discount. As BIA. we are applying the weighted-average of the reported discounts for all those transactions for which terms allowed the discount. While petitioners did not raise this issue with respect to Metsa-Serla and Veitsiluoto. we note that this issue applies to them as well. Therefore. we have also used BIA to calculate these discounts for these respondents.

Kymmene

Comment 1

Petitioners maintain that the Department should use BIA to calculate cash discounts on certain U.S. sales made by Kymmene. Specifically. petitioners state that the Department should calculate cash discounts on sales for which payment had not been received by the date of the U.S. verification because Kymmene failed to estimate a discount for those sales. As BIA. petitioners state that the Department should deduct the weighted average of cash discounts paid during the POI.

Kymmene contends that it is speculative for the Department to estimate cash discounts for sales which have not been invoiced because the company does not know if the discount will be taken. However. ti states that. if the Department does estimate discounts for these sales. ti should base this estimate on the weighted-average discount paid on sales for which the U.S. customer's payment terms allowed for cash discounts.

DOC Position

We agree with petitioners that it is appropriate to adjust for cash discounts on sales not yet invoiced. It is highly likely that discounts will be taken on some of these sales when payment is finally made. However. we agree with Kymmene that it is not appropriate to estimate discounts on sales for which the discount period has already elapsed. Therefore. we have not imputed discounts for these sales. For the remaining sales. we calculated a cash discount based on the weighted-average discount paid on other sales in the purchase price database having payment terms which would allow a cash discount. Because Kymmene aggregated other discounts with its reported cash discounts. we capped the weighted-average discount at the highest discount allowed in any of its payment terms.

Comment 2

Petitioners state that the Department should ensure that storage expenses reported for the OSI warehouses include the first month's storage costs. If they are not. petitioners maintain that the Department should impute an additional month's fee for those sales as BIA. Kymmene maintains that the Department examined the documents used to calculate its OSI storage expenses and found that it had provided all of the information requested by the Department.

DOC Position

We verified that Kymmene correctly reported the first month's warehousing expense for the OSI warehouse.

Comment 3

Petitioners maintain that rebate payments to one of Kymmene's home market customers should be disallowed because Kymmene has provided no clear information regarding eligibility for this rebate or the circumstances under which it was granted. Petitioners also argue that manner in which this deduction was obtained seem irregular.

Kymmene contends that petitioners misidentified the customer in question. Kymmene also maintains that the Department verified that this rebate was negotiated before the sales were made. Therefore. Kymmene states that the Department should allow this rebate.

DOC Position

We agree with Kymmene. At verification. Kymmene explained the circumstances in which it granted this rebate. In addition. Kymmene demonstrated at verification that the rebate was negotiated prior to the sale and actually paid to the customer. Therefore. we have allowed this rebate as a deduction to FMV.

Comment 4

Petitioners argue that Kymmene's cash discounts paid on home market sales should be disallowed because (1) Kymmene has not stated whether the cash discount was agreed upon in advance of the sale. (2) Kymmene has not provided any information concerning the class of customers to which the discount is available. and (3) Kymmene granted discounts to customers who failed to comply with terms of the discount program.

Kymmene argues that the Department correctly adjusted for each discounts in the home market. Kymmene contends that it is normal business practice to allow customers in substantial compliance with payment terms to take cash discounts and that it has reported the discount actually taken by the customer.

DOC Position

We agree with Kymmene. At verification, we examined the cash discounts granted in the home market and found that the discounts reported had actually been taken by the customer. Because these discounts were actually taken, we have allowed them as adjustments to FMV.

Comment 5

Petitioners state that the fee paid by Kymmene to a related freight company for arranging for inland transportation should be disallowed. Petitioners state that Kymmene has failed to provide any documentation that this fee is an arm's-length fee.

Kymmene states that it is the Department's practice to market prices. Kymmene maintains that it has demonstrated that the fees paid to its freight company are equivalent to market prices because the financial statement of this company shows that the company made a small profit in 1990 (and therefore it charged an adequate fee for its services). Finally, Kymmene states that it pays these fees on both home market and U.S. sales. Therefore, it would be unfair to make an adjustment for the fee only for U.S. sales.

DOC Position

We agree with Kymmene. The fee charged by its related freight company is equivalent to a freight forwarding fee. It is the Department's standard practice to make adjustments for these types of fees. However, because we are unable to compare these fees to fees paid to unrelated parties in order to determine whether these fees are at arm's-length, we are using them as BIA. Because Kymmene pays this fee on services provided for both home market and U.S. sales, we have made an adjustment for these fees in both markets.

Comment 6

Kymmene argues that is not valid to use "stop" orders to determine the date of sale for its merchandise because these orders merely serve to reserve a place in the company's production schedule.

DOC Position

We agree. We established at verification that a binding commitment on the terms of sale was not made at the time that a "stop" order was placed by a customer. Therefore, it would be inappropriate to use the date of the "stop" order as the date of sale.

Comment 7

Kymmene argues that U.S. customs duties and customs fees are properly calculated on the price shown on the customers invoice because this is the price on which the U.S. Customs Service assesses duties.

DOC Position

We agree. We verified that Kymmene correctly reported the amount of duties and customs fees actually paid on each sale.

Comment 8

Petitioners maintain that Kymmene has provided insufficient information concerning home market warranty expenses. Specifically, petitioners state the Kymmene has not described its warranty policy, quality control, and rejection rate by customers, nor has it provided information about the circumstances under which warranty expenses were incurred. Therefore, petitioners maintain that these expenses should be disallowed.

Kymmene maintains that its warranty expenses should be allowed. It contends that it has provided all the information requested by the Department and that the accuracy of its response has been verified by the Department.

DOC Position

We agree with Kymmene. Although we did not specifically examine warranty expenses at verification, we did verify the accuracy of Kymmene's response in general. Therefore, we have not disallowed Kymmene's reported warranty expenses.

Comment 9

Kymmene contends that the Department improperly disallowed its home market indirect selling expenses and inventory carrying costs as offsets to Kymmene's U.S. selling commission. Kymmene states that these expenses should be used to offset the U.S. commission in addition to the home market commission offset allowed by the Department. Petitioners state that this claim should be rejected out of hand because this methodology would result in the double-counting of home market expenses.

DOC Position

We agree with petitioners. However, we are no longer making an adjustment for either U.S. or home market commissions because we have determined that these are not arm's-length transactions. Therefore, this issue is moot. (For further discussion, see General "Comment 6" in the Interested Party Comments section of this notice.)

Metsä-Serla

Comment 1

Petitioners maintain that the Department should use BIA to calculate U.S. inland freight charges where no charge was reported by Metsä-Serla because no other Finnish company claimed that it did not incur U.S. inland freight charges on containerized shipments. As BIA, they suggest the Department deduct the weighted-average charge for all other shipments.

DOC Position

We disagree with petitioners. At verification in Finland we found that U.S. inland freight expenses are sometimes included in the amounts reported by Metsä-Serla for ocean freight to Metsä-Serla's sales to Alliance. We verified the accuracy of these expenses. Therefore, we are accepting Metsä-Serla's reported inland freight expenses. Because each respondent reported its charges and adjustments differently, it is inappropriate to generalize using another respondent's data.

Comment 2

Petitioners maintain that Metsä-Serla's sales to its related third-country customer, Alliance Paper Group, Ltd., should be disregarded in accordance with 19 CFR 353.45(a). Petitioners argue that Metsä-Serla has not provided any documentation concerning its sales to Alliance, and the Department should therefore disregard these sales. However, petitioners contend that if the Department does accept Metsä-Serla's sales to Alliance, it should reject the commissions paid to Alliance on these sales because these were intracompany transfers of funds rather than expenses directly tied to these sales.

Metsä-Serla maintains that contrary to petitioners' assertion, the Department has verified that Metsä-Serla's sales to Alliance were made at arm's-length prices. It maintains that the prices reported were those which Alliance charged to the first unrelated customer. Metsä-Serla claims that it demonstrated at verification that the prices charged to

Alliance were comparable to the prices charged by Alliance to its customers.

DOC Position

We agree with petitioners. At verification in the United Kingdom, company officials provided us with incomplete documentation for the sale preselected by the Department. Although we allowed Metsä-Serla to complete the documentation for the preselected transaction during its U.S. verification, the documents produced by Metsä-Serla, while complete, were for sales *other* than the one specified by the Department. Because Metsä-Serla did not produce the documents which we requested at verification, we were unable to verify Metsä-Serla's sales to Alliance. Consequently, we are not using the Alliances sales reported for the purposes of the final determination. The question of Alliance commissions is therefore moot.

Comment 3

Petitioners contend that Metsä-Serla incorrectly reported certain U.K. discounts when they should not have been reported. Therefore, petitioners maintain that the Department should not deduct these in calculating FMV.

Metsä-Serla contends that circumstances in which it allowed these discounts do not provide a basis for disallowing verified discounts.

DOC Position

We agree with respondents. We verified that Metsä-Serla actually paid the discounts in question. Therefore, we deducted them in calculating FMV.

Comment 4

Petitioners maintain that the Department should disallow marine insurance expenses reported for Metsä-Serla's third country sales because (1) Metsä-Serla was unable to show the Department how it had derived these charges, and (2) the amounts reported did not correspond to the invoices produced during verification. Metsä-Serla claims that the policy for its world-wide marine insurance was reviewed at the Finnish verification and that the method of calculating the charge was explained. Metsä-Serla maintains that the Department incorrectly rejected its recalculation of its marine insurance expenses based on CIF prices.

DOC Position

We disagree with Metsä-Serla. At verification in Finland, Metsä-Serla explained that marine insurance charges reported for both the U.S. and U.K. markets were calculated on an incorrect base price. However, because Metsä-Serla was unable to provide the correct base price, we were unable to provide the correct base price, we were unable to establish whether Metsä-Serla had correctly identified the problem. Therefore, we are using BIA to calculate U.S. and U.K. marine insurance expenses. As BIA, we have adjusted the amounts reported by Metsä-Serla for the difference observed at verification between the reported charges and the amounts actually paid to the marine insurance company. Regarding U.S. expenses, we are using the amounts reported by Metsä-Serla as BIA because the charges examined at verification were all lower than the reported amounts.

Comment 5

Petitioners maintain that the Department should not deduct the "margin" added by Metsä-Serla's U.K. freight company to the handling and inland freight charges incurred in the United Kingdom for services rendered by an unrelated vendor. Rather, petitioners argue that the Department should deduct only the handling and inland freight expense as charged by the unrelated vendors as only these are made at arm's-length. These charges, and the margin added, were paid through Lamco, Metsä-Serla's related U.K. selling agent.

Metsä-Serla contends that the Department verified that these charges were at arm's-length, since the charges to Lamco were shown to be comparable to those charged to unrelated customers.

DOC Position

We agree with Metsä-Serla. At verification, the Department verified that the "margin" which was charged to Lamco was similar to that charged to several other large unrelated customers in 1990. Therefore, we have determined that this amount was charged at arm's length and, accordingly, we have deducted it from FMV.

Comment 7

Petitioners maintain that Metsä-Serla improperly reported the amount of the value added tax (VAT) agreed to by the parties, not the amount of the VAT actually due to the U.K. government. More specifically, petitioners question the validity of the VAT amount reported to the Department when the customer and the seller agreed not to adjust VAT through the issuance of a credit note. Petitioners contend that this results in a higher reported amount than the amount actually paid to the U.K. government. Petitioners contend that the VAT should therefore be decreased by the amount of VAT refunded due to the contingent discount.

Metsä-Serla contends that the Department verified that it was not required to refund VAT when it paid a rebate to a customer, but that it is an option under the tax code of the United Kingdom. Respondent also argues that it was not established that its selling agent, Lamco, never refunded VAT on rebates.

DOC Position

Because it is not necessary to make a circumstance of sale adjustment for VAT paid in third country markets, we have reconsidered our treatment of VAT in this case. Accordingly, we have not made a circumstance of sale adjustment for Metsä-Serla's U.K. VAT for purposes of the final determination.

Comment 8

Petitioners maintain that the documentation provided by Metsä-Serla at verification indicate that Metsä-Serla may have reported foreign port charges twice, first in its reported brokerage expense and then as a separate charge. Petitioners maintain that the Department should ensure that it does not double-count port charges when calculating FMV.

Metsä-Serla maintains that there has been no double-counting of port charges.

DOC Position

We agree with Metsä-Serla. We have adjusted FMV only once for foreign port charges.

Comment 9

Petitioners contend that the cost differential for a paper production process noted in the Department's verification report between two different brands of coated groundwood paper produced by Metsä-Serla should be disregarded because the two products were not matched as comparable products.

DOC Position

We agree with petitioners. We have disregarded this differential because the two products were not matched.

Comment 10

Petitioners maintain that Metsä-Serla's response concerning warehousing expenses incurred through one warehousing company contains substantial errors and omissions and should be disregarded in favor of BIA. Petitioners state that when the Department attempted to duplicate the reported charges using the documentation for a preselected sale, the computation yielded an amount very different from that reported.

Respondent maintains that the problem in duplicating the reported charges from the documentation at hand arose because the invoices contained clerical errors involving the weight of the product, and that other documents, such as the mill order and customs invoice, support their contention that the correct unit of weight for the written figure is short tons. Respondent also maintains that the Department's recalculation incorrectly included the first month's storage expense. Respondent claims that when these discrepancies are taken into account, the calculation of the charge is very close to that reported to the Department.

DOC Position

We agree with respondent. The documentation provided was unclear and contained clerical errors. However, the explanations given by respondent for the resulting discrepancies are satisfactory.

United/Repola—Comment 1

United/Repola contends that critical circumstances do not exist with respect to its exports. According to United/Repola, critical circumstances determinations should be made on a country-wide basis. United/Repola argues that, if the Department were to examine the level of exports of coated groundwood paper from Finland made by all Finnish exporters, it would find that total exports declined in the aggregate during the five-month period prior to the Department's preliminary determination when compared to the previous five-month period.

However, United/Repola states that, if the Department bases its determination on company-specific data, the Department still should not find that critical circumstances exist for its exports. United/Repola contends that its exports declined if comparisons are made using either four-month or six-month comparison periods. United/Repola argues that the increase shown using the five-month period from January to May 1991 is due to its acquisition of a customer who formerly purchased coated groundwood paper from another Finnish mill. Therefore, this increase is compensated by a decrease in exports by another Finnish producer.

Petitioners contend that critical circumstances exist with respect to exports of subject merchandise by United/Repola. Petitioners contend that the Department should reject United/Repola's claim that an analysis of critical circumstances should be based on imports from all Finish mills. Quoting from Antifriction Bearings from the Federal Republic of Germany, 54 FR 18992, they maintain that "company specific determinations better fulfill the objective of the critical circumstances provision in deterring specific companies that may try to increase imports massively prior to the suspension of liquidation."

Petitioners claim that United/Repola has attempted to manipulate the data by using a six-month analysis. Petitioners note that data for the sixth month, June 1991, is unverified. They also contend that since the six-month period includes all of June 1991 and since the Department suspended liquidation on June 13, 1991, use of the June data would distort the analysis. Petitioners maintain that a five-month comparison is a more accurate reflection of United/Repola's exports. Finally, petitioners argue that respondents' claim that the surge in imports was due to a shift in production is both unverified and irrelevant.

DOC Position

We agree with petitioners. Where possible, it is the Department's practice to make critical circumstances determinations on a company-specific basis, especially when the determination is based, in part, upon whether the importer knew or had reason to know that the imports in question were dumped. This practice is supported by the language in section 735(a)(3) of the Act, which provides for determinations of importer knowledge of dumping by reference to the exporter selling the merchandise which is the subject of the investigation at less than its fair value. Therefore, we have not considered whether imports from Finland declined as a whole. (For a full discussion of the Department's criteria, see the preliminary negative determinations of critical circumstances for coated groundwood paper from Belgium, Finland and France cited in the Critical Circumstances section of this notice.) Regarding the use of United/Repola's June data, we concur with petitioners that it is inappropriate to use data on exports made after the suspension of liquidation began because we are only concerned with the amount of exports prior to suspension of liquidation. In this case, it is especially inappropriate to use these data because our preliminary determination was published on June 13, 1991. Regarding the use of four-month comparison periods, there is no reason to use a shorter comparison period if it is possible to use an additional month of data. Therefore, we have not based our comparison on four-month periods.

Comment 2

Petitioners maintain that foreign inland freight expenses incurred by United/Repola for two of its three mills (Rauma and Kaipola) should be based on BIA because United/Repola reported estimated costs for these mills. Petitioners note that United/Repola claimed that it had reported actual costs for these mills and that it was unable to provide any documentation at verification supporting its estimated freight expenses or the derivation of its average costs. As BIA, petitioners state that the Department should use the weighted-average freight charge reported for United/Repola's third mill (Jamsankoski).

United/Repola maintains that Kaipola was unable to use actual foreign inland freight charges because such expenses were not maintained in its computer system. United/Repola claims that these charges represent a reliable approximation of the actual charges incurred and should be used by the Deprtment.

DOC Position

We agree with petitioners. At verification, United/Repola was unable to provide any documentation of its estimated freight charges incurred by the Rauma mill. In addition, although it was able to provide a worksheet for its Kaipola freight estimates at verification, it was unable to substantiate the numbers on this worksheet nor was it able to explain how it derived these data. Therefore, because we could not verify the freight expenses reported for sales from the two mills in question, we are using BIA to calculate these expenses. Because petitioners' suggested methodology is reasonable, we are basing BIA on this methodology.

Comment 3

Petitioners maintain that brokerage charges incurred for shipments from United/Repola's Kaipola mill should be based on BIA because the Department discovered at verification that United/Repola reported average costs for this mill, although United/Repola had stated in its questionnaire response that it reported actual brokerage and handling charges. Petitioners note that at verification United/Repola could not show the derivation, nor the validity, of the average costs which were reported. As BIA, petitioners state that the Department should use the average cost plus the largest percentage difference in cost between average and actual costs, as verified by the Department.

United/Repola argues that it is a matter of course that randomly selected brokerage charges will differ from the average of all such charges, and that the unreliability of the average is not proven by showing differences when the average is compared to a small set of randomly selected actual expenses. United/Repola maintains that if any deviation from the average were to be used as BIA, it should be the average deviation, not the highest.

DOC Position

We agree with petitioners. At verification, we found that, contrary to its assertion, United/Repola had based its brokerage expenses for the Kaipola mill on average costs. In addition, we found that United/Repola was not able to show how it derived these average expenses. Therefore, we determined that these expenses did not verify and have used BIA. As BIA, we have used the average cost reported by United/Repola plus the largest percentage difference in cost between average and actual costs found at verification.

Comment 4

Petitioners maintain that the Department should use BIA to calculate port charges for all of United/Repola's shipments to the United States. Petitioners note that United/Repola failed to report these charges for exports made from its Rauma and Jamsankoski mills. In addition, petitioners maintain that the Department was unable to verify the average charges reported for the Kaipola mill. As BIA, petitioners state that the Department should use information supplied in the petition.

United/Repola states that the port charges for the Rauma and Jamsankoski mills were discussed at verification in Finland. United/Repola further states that the Department should accept the charges provided at verification because these charges do not constitute new information.

DOC Position

We agree in part with respondents. At verification, company officials provided us with port charges for each sale for which no charge had been reported. Because this is the most accurate information on the record and because we verified the accuracy of this information, we are using these charges. Regarding the port charges reported for the Kaipola mill, we verified that these charges were accurately reported.

Comment 5

United/Repola contends that its direct Finnish sales provided at verification should be included in the margin calculation. It states that the Department was provided with a complete list of these sales at the beginning of verification. Respondent claims that these sales were omitted from the sales listing by mistake. Respondent further claims that the Department would be in plain error to exclude these sales from its calculations, since this is information that has passed verification scrutiny. Respondent claims that our instructions not to include these sales on the post-verification computer tape submitted by United/Repola was incorrect, and that the Department's rejection of the sales as new information is merely a procedural nicety.

Petitioners state that the Department should continue to reject pricing information concerning United/Repola's direct sales. They note that the verification report states that the values on the invoices did not appear to match for one-half the values reported on the worksheet provided at verification. According to petitioners, this information failed verification.

DOC Position

We disagree with respondent. The sales in question were not a minor addition to, nor a simple clarification of, information already on the record. These sales constitute a significant portion of United/Repola's home market sales and were not submitted to the Department in a timely manner as required by 19 CFR 353.31(a)(1)(i) of the Department's regulations. They therefore constitute new information. As such, we informed United/Repola at verification that we would not accept this information. Moreover, although United/Repola provided information on charges and adjustments at verification for a portion of the sales in question, we did not examine these charges and adjustments precisely because they related to new sales not previously reported to the Department. Finally, we agree with petitioners that a portion of the information provided at verification failed because the information provided by United/Repola to verify the data on one of its two worksheets did not support the values shown.

Comment 6

United/Repola maintains that the brightness of Jamsa Smooth, one of its MFC grades of paper produced by the Jämsänkoski mill, can reasonably be classified as either grade 04 or 05. Further, respondent argues that it does not make sense to differentiate in brightness among different MFC products, as the differences which exist are insignificant.

DOC Position

During verification, we discovered that the brightness for Jamsa Smooth was classified as brightness grade 05, even though its brightness on the ISO scale qualified it as grade 04. Examining the verification exhibit closely, we found that another product produced by the Jämsänkoski mill, Jamsa Bulky, was also classified as brightness 05 while actually being brightness 04 and that United/Repola had combined both of these products with additional products in the same control number used purportedly to identify unique products. These discrepancies affect product matching for all products produced by the Jämsänkoski mill. We have examined the information on the record and have concluded that re-matching these products is not possible without making several assumptions for which there is no basis. Therefore, because this problem was discovered so late in the proceeding, we have decided to use the reported data as BIA because there is no other available data to match against the product group sold in the United States.

Veitsiluoto—Comment 1

Petitioners argue that the Department should reject Veitsiluoto's claim that travel and salary expenses related to technical services are only indirectly related to U.S. sales, because the Department was unable to verify the nature of these expenses. Petitioners maintain that because such expenses are variable and may be tied to specific sales, the Department should deduct them in determining U.S. price.

Veitsiluoto contends that the expenses to which petitioners refer cover all products handled by Madden for all the Finnish paper mills and relate to basic research on paper quality and characteristics, promotion of goodwill, and potential for future sales, in addition to the investigation of specific complaints. Moreover, Veitsiluoto maintains that these general services cannot be segregated from investigations of specific complaints, which may take place on the same trip. Veitsiluoto also notes that it volunteered to respond to questions regarding technical services the week following verification since the person in charge of that department at Madden was on vacation during verification there, but that no questions from the Department were forthcoming. Finally, while the respondent does not support the Department's preliminary methodology with respect to commissions, it maintains that such a methodology applied in this final determination would moot petitioners' argument, as the commissions cover all of Madden's operating costs.

DOC Position

We agree with petitioners in part. Because Veitsiluoto was unable to show that these expenses are indirectly related to U.S. sales at verification, we have treated as direct selling expenses the entire amount incurred for travel during the POI as BIA. Since Madden incurs these expenses on behalf of each of the respondents, we have allocated this total amount among all sales made by each respondent through Madden. We have not included salaries as direct selling expenses because these are typically considered to be indirect selling expenses. As for Veitsiluoto's offer to respond to questions the week following verification, it is not the Department's standard practice to allow respondents to submit new information subsequent to verification.

Comment 2

Petitioners contend that Veitsiluoto reported its warranty expenses in an inconsistent manner for its U.S. and home market sales because it reported warranty expenses for its U.S. sales net of the revenue earned on the sale of damaged merchandise (*i.e.*, its salvage sales), but reported home market warranty expenses without offsetting salvage value. Arguing that such an inconsistency distorts the adjustment to home market value, petitioners contend that, lacking an ability to deduct salvage value from home market warranty expenses, the Department should calculate FMV by adjusting for only the full amount of warranty expenses incurred on U.S. sales.

Veitsiluoto maintains that the reporting of such expenses cannot be made consistent between markets when the actual experience with warranty expenses differs between markets, as a result of the ordinary course of business. Veitsiluoto contends that it could report only actual expenses incurred in each market. Veitsiluoto also asserts that since customers paid VAT originally, and since Veitsiluoto remits the VAT on warranty payments or credits, it is reasonable to include VAT as a warranty expense.

DOC Position

We agree with petitioners. Veitsiluoto should have ensured that reported home market warranty expenses were net of salvage value to be consistent with reported U.S. warranty expenses. We disagree with respondent that VAT is properly included as a home market warranty expense. Veitsiluoto does not remit VAT to the Finnish government on a cancelled sale as well as to the customer that received the warranty. Because we have no information on home market salvage value, and because home market sales were reported inclusive of VAT, we have no information on actual net home market warranty expenses and therefore must disallow home market warranty expenses in this final determination.

Comment 3

Veitsiluoto asserts that it properly reported U.S. warranty expenses by reporting four years' historical experience in both the home and U.S. markets. Veitsiluoto maintains that the Courts and the Department have recognized that a claim of warranty expenses based on historical experience is reasonable and proper because actual warranty expenses for the POI would not be known until long after the POI. Moreover, Veitsiluoto notes that the Department never advised Veitsiluoto that its reported U.S. warranty expenses were in any way deficient. Veitsiluoto contends that the Department may not penalize parties without first giving them notice of its concerns.

DOC Position

We have accepted Veitsiluoto's reported U.S. warranty expenses for the final determination.

Comment 4

Petitioner contends that Veitsiluoto failed to substantiate the direct materials cost for its home market product 65 gram web offset paper, and that the Department should therefore disregard the difference in merchandise adjustment claimed by Veitsiluoto.

Veitsiluoto maintains that a careful reading of the verification report and the pertinent exhibit reveal that it correctly reported the direct materials costs in question.

DOC Position

We agree with respondent and have used its reported costs for the final determination.

Comment 5

Veitsiluoto contends that the Department successfully verified the accuracy of the data reported regarding total volume and value of sales for Finland, the United States, and third countries. Veitsiluoto notes that the integrity of the Finnpap and Madden data bases were checked by four import compliance specialists over approximately 17 days. Regarding third country volume and value, Veitsiluoto asserts that Veitsiluoto's sales ledgers adequately demonstrated the validity of Finnpap data.

DOC Position

We disagree with Veitsiluoto that the Department successfully verified the accuracy of the data submitted regarding total volume and value of third country sales. We were unable to verify these data because Veitsiluoto was unable to produce the source data from which the information in its questionnaire response was derived. Rather, Veitsiluoto provided its sales ledger to demonstrate the reasonableness of the information reported. Also, Veitsiluoto never indicated to the Department that it reported third country volume and value on the basis of invoice date, instead of on the basis of order date (date of sale) used in determining total home market and U.S. volume and value.

Thus, since we have concluded that the third country volume and value information has not been verified to our satisfaction, we must resort to BIA for this information. However, since we have no information on third country sales, and since, from all the information available to us, we cannot conclude that the home market is not viable, we have determined to use Veitsiluoto's third country volume and value figures as BIA for determining home market viability. Accordingly, we will use home market sales to calculate FMW.

Continuation of Suspension of Liquidation

In accordance with section 735(d)(1) of the Act, for Kymmene, Metsa-Serla, Veitsiluoto, and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from Finland, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination of the Federal Register.

In accordance with section 735(c)(4)(B) of the Act, we also are directing the Customs Service to suspend liquidation of entries of coated groundwood paper exported from Finland by United/Repola, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after March 15, 1991, which is 90 days prior to the date of publication of the preliminary determination of the Federal Register.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Kymmene Corporation	28.20	No.
Metsa-Serla Oy	35.20	No.
United Paper Mills, Ltd./Repola Oy	31 27	Yes.
Veitsiluoto Oy	32.96	No.
All others	30.84	No.

ITC Notification

In accordance with section 733(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26542 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-803]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From France

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3773.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991, (56 FR 27237) the following events have occurred.

On June 20, 1991, the petitioner in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, requested a public hearing. On June 22, 1991, the respondent, Feldmuehle Beghin, S.A. (Feldmuehle), request a public hearing.

On June 21 through 25, 1991, the Department conducted verification in France of the questionnaire response submitted by Feldmuehle. On June 28, 1991, Feldmuehle requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20(5)(b). On July 2, 1991, petitioner submitted a letter opposing the postponement request.

On July 8, 1991, the Department published in the **Federal Register** (56 FR 70898) its preliminary negative determination of critical circumstances with respect to imports from France. On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

On August 8, 1991, the Department conducted verification of Feldmuehle's questionnaire response at the offices of the company's U.S. sales agent, Feldmuehle North America (FNA), located in New York, New York.

Petitioner and respondent filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 7, 1991. On October 10, 1991, Feldmuehle submitted a revised computer tape reflecting changes to U.S. movement charges.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined that the produce covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper (CGP) from France to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical CGP in France.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price methodology is not appropriate since the subject merchandise was not introduced into the inventory of Feldmuehle's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between the parties involved, and Feldmuehle's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer. (*See*, "Comment 5" in the Interested Party Comments section of this notice.)

We made miscellaneous adjustments to Feldmuehle's reported data based on information acquired at verification. We disregarded trial and sample sales made during the POI because these accounted for a very small percentage of U.S. sales by volume. (*See*, "Comment 6" in the Interested Party Comments section of this notice.)

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for loading, foreign inland freight, freight forwarding, movement insurance, ocean freight, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the French value-added and parafiscal sales taxes that would have been collected had the French government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Feldmuehle had a viable home market with respect to sales of CGP during the POI.

We calculated FMV based on f.o.b. Factory and delivered prices to unrelated customers in the home market. We made miscellaneous adjustments of Feldmuehle's reported data based on information discovered at verification. We disregarded sales made through a related party in the home market because these accounted for a very small percentage by volume of home market sales. We also disregarded sales of CGP to French customers but delivered to printers outside France, because we did not consider these to be home market sales. We made deductions, where appropriate, for loading, foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. Packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sales adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, and warranty expenses. We recalculated Feldmuehle's imputed credit expenses incurred on home market sales based on a price net of VAT and discounts. We recalculated Feldmuehle's imputed credit expenses incurred on U.S. Sales by using the home market interest rate. Although Feldmuehle borrowed in both markets, the French interest rate was the lower of the rates in both markets. This use of the lower of the interest rates in both markets is consistent with the Court of Appeals' remand in *LMI-La Metalli Industriale, S.p.A.* v. *United States (LMI)*, 9122 F.2d 455 (Fed. Cir. 1990), of *Brass Sheet and Strip from Italy*. We also made circumstance of sale adjustments, where appropriate, for differences in the amounts of value-added and sales taxes.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.46(a)(2). We determined that the related party commission paid on U.S. Sales is at arm's-length, and, therefore, recalculated commission amounts incurred on all U.S. Sales. (*See*, "Comment 1" in the *Interested Party Comments* section of this notice.) Where commissions were paid only in the United States, we allowed an adjustment for indirect selling expenses incurred in France to offset commissions paid in the United States, in accordance with 19 CFR 353.56(b). We did not make an adjustment for the commission paid to the related party in France, because we were not satisfied that this commission was at arm's-length. (*See*, "Comment 1" in the *Interested Party Comments* section of this notice.)

We recalculated Feldmuehle's inventory carrying costs incurred on its home market sales by backing out all charges and adjustments from gross unit price.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. Sales as certified by the Federal Reserve Bank.

On May 13, 1991, Feldmuehle requested that the Department adjust for fluctuations in the exchange rate between the U.S. Dollar and the French franc under 19 CFR 353.60(b). We were unable to consider Feldmuehle's request in our preliminary determination due to the late date on which the claim was made. We now determine that the special rule for currency conversion as outlined in section 353.60(b), does not apply in this investigation. We have explained our position regarding Feldmuehle's request for currency conversion in "Comment 4" in the *Interested Party Comments* section of this notice.

Verification

As provided in section 776(b) of the Act, we verified the information that we used in making our final determination by using standard verification procedures, including on-site inspection of sellers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (B-099) of the Main Commerce Building.

Critical Circumstances

On July 8, 1991, we published in the Federal Register (56 FR 30898) preliminary negative determinations of critical circumstances for CGP from Belgium, Finland, and France. In that notice we articulated the Department's methodology in determining whether critical circumstances exist. Also in that notice, we indicated that we compared company-specific shipment data for the five month period beginning with the month after the filing of the petition (comparison period) to the five month period including and immediately prior to the filing of the petition (base period). Our analysis of the imports of coated groundwood paper from France showed that the volume of imports from the base period to the comparison period decreased, and thus, we found that there have not been massive imports of the subject merchandise since the filing of the petition.

Since the publication of the preliminary negative determination of critical circumstances for France, we verified the company-specific shipment data submitted by Feldmuehle. Accordingly, we now determine that critical circumstances do not exist with respect to imports of CGP from France.

Interested Party Comments

Comment 1

Respondent argues that the mark-up paid to FNA by Feldmuehle should not be treated as a commission because FNA performs a number of additional selling and administrative functions not undertaken by commission agents, including ensuring that production, shipping, and deliveries meet printers' scheduling requirements, taking title to the merchandise, performing sales accounting and collection functions, arranging for the provision of technical services, and participating in trade shows and other events. Respondent claims that a buyer of a product cannot receive a commission per section for its own purchases. Respondent also states that if the Department proceeds to adjust for related commissions, only that portion of the U.S. commission paid to employees who act as typical sales agents should be adjusted for, as opposed to that portion of the commission paid to others to perform accounting and traffic functions, in short, overhead. Additionally, respondent maintains that if the Department treats the FNA mark-up as a commission, it should similarly treat the payment from Feldmuehle to its related agent in the home market, BFL, as an arm's-length transaction.

Petitioner argues that the commission paid to FNA by Feldmuehle is directly related to the sales at issue because the commissions are paid as a percentage of sales. Petitioner asserts that these sales reflect arm's-length transactions because FNA pays all of its sales-related expenses and because the magnitude of the commissions is consistent with industry practice among U.S. Companies. Petitioner also states that there is no support in law for respondent's argument that only the portion of the commission paid to employees for sales should be included in any adjustment for commissions the Department may decide to make. Lastly, petitioner contends that the Department is not required to treat related commissions in the home market and U.S. Consistently, especially because respondent has never claimed that home market commissions are at arm's-length.

DOC Position

The Court of Appeals' remand in *LMI*, 912 F.2d 455 (Fed. Cir. 1990), of Brass Sheet and Strip from Italy instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be (1) at arm's-length and (2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commission. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions.

In this investigation, we find that the related party commissions paid in both the United States (to FNA) and France (BFL) were directly related to the sales at issue because both commissions were paid as a percentage of sales. However, while we are satisfied that commissions paid by Feldmuehle to FNA are at arm's-length, we are not satisfied that the related party commission paid by Feldmuehle to BFL is at arm's-length since we do not have a valid benchmark to which we can compare these commissions. The commissions paid to unrelated merchants on home market sales cannot be used as a valid benchmark to which we can compare the commission paid to BFL because Feldmuehle pays those commissions downstream (*i.e.*, on the same sale on which Feldmuehle also pays its commission to BFL).

We find that the related party commission paid by Feldmuehle to FNA is at arm's-length for the following reason. Depending on the customer, Feldmuehle's commission to FNA is split between unrelated agents, FNA, and FNA employees. On some sales, all of the commission is paid to FNA. However, since, on other sales, almost all of the commission is paid on unrelated agent, we determine that an appropriate benchmark exists. Because the commission percentage paid to unrelated agents is identical to the commission paid to FNA in these situations, we determine that the FNA commission is at arm's-length.

Comment 2

Respondent maintains that the freight forwarding services provided by a related company, Nord-Ostsee, should not be deducted from U.S. price because these are simply intra-firm mark-ups. However, respondent states that if the Department were to deduct such a mark-up, Nord-Ostsee's charge to Feldmuehle is at arm's-length despite the fact that Nord-Ostsee's profit margin on related company business is slightly higher than its profit margin on unrelated company business. Respondent argues that the difference in profit is the result of economies of scale since over three-fourths of Nord-Ostsee's business is with its affiliates.

Petitioner argues that these expenses should be deducted, and that the charges reported are not at arm's-length because the terms of the transaction are more favorable for related parties than unrelated parties (*i.e.*, the rate of Nord-Ostsee profit on related company transactions is less than the rate of profit on unrelated company transactions). Therefore, petitioner recommends that the Department rely on best information available for determining the gross profit rate charged by Nord-Ostsee as the verified rate charged to unrelated customers, and that the Department adjust Feldmuehle's freight forwarding services to reflect the difference in gross profit rate from Nord-Ostsee services to Feldmuehle vis-a-vis unrelated customers.

DOC Position

We agree with petitioner that these charges should be deducted as they are directly related to U.S. sales. We agree with respondent, however, that the difference in Nord-Ostsee's profit margins between Feldmuehle family business and non-Feldmuehle family business is not only insignificant, but explainable in terms of economies of scale. In any event, the amount of Nord-Ostsee' charge to Feldmuehle clearly exceeds the cost of the services provided. Therefore, we determine that it is appropriate to deduct these charges from U.S. price.

Comment 3

Petitioner holds that the Department should exclude Feldmuehle's sales of non-standard width CGP from stock in determining FMV because these sales are outside the ordinary course of trade. Petitioner claims that the Department evaluates the quantity and prices of sales in relation to other home market sales to determine whether the sales were made according to the company's typical business practice, and, hence, in the ordinary course of trade. Petitioner points out that there are few such sales in the home market sales listing, and that the verification report notes that the prices of these sales were not consistent with other home market sales. Petitioner argues that the fact that non-standard width CGP is made of the same material as standard width CGP is irrelevant.

Respondent argues that non-standard width CGP sold from stock is of identical quality and technical specifications to wider width prime material, and that the definition of CGP adopted by the Department excludes width as an element to be considered. Therefore, respondent holds that the Department cannot determine that this is off-specification paper because the Department never established a criterion for determining how wide paper must be before it is treated as non-standard. Respondent also states that these sales should not be excluded simply because they were at lower prices. Respondent. moreover. maintains that the sales in question were on a regular repeat basis to one customer. and that the quantities sold were well within the range of typical sales. Lastly. respondent states that different trade terms to a single customer with a different end use does not make sales excludable. nor do low volume sales through a different distribution channel make for unusual reasons or unusual circumstances.

DOC Position

We agree with respondent. Petitioner specifically recommended excluding width from consideration in determining the characteristics of CGP earlier in this investigation. Therefore. the width of the CGP in question is simply not an applicable criterion for matching products. Moreover. because the quantities of these sales were within the typical range. and because there is no reason to believe that this was not the normal commercial practice for these sales prior to the POI. we do not believe that these sales fall outside the ordinary course of trade. We. therefore. have included these sales in the Department's calculation of FMV.

Comment 4

Respondent argues that. pursuant to 19 CFR 353.60(b). the Department should lag the U.S. date of sale 180 days in converting foreign currency to U.S. dollars because of alleged temporary fluctuations in the franc/dollar exchange rate that occurred during the POI. Specifically. respondent contends that the unanticipated. exogenous shock to the currency markets caused by the Persian Gulf conflict resulted in a period (corresponding to the POI) during which exchange rates temporarily varied from prevailing exchange rates. Respondent maintains that these fluctuations are precisely the type contemplated by the special rule (19 CFR 353.60(b)) that is intended to prevent the application of artificial dumping margins resulting from temporary periods of currency fluctuation. Respondent notes that the dollar fell to its lowest point against the franc since 1987 during the POI. and that the dollar recovered swiftly once it appeared that the United States would achieve its foreign policy goals. In addition. respondent assets that exchange rates became impossible to predict during this period based on prior currency exchange rates. and therefore. no rational pricing adjustments could be made. Respondent cites *Melamine Chemicals* 732 F.2d 925 (Fed. Cir. 1984) (*Melamine*) in which the court upheld the Department's application of a lag (the previous quarter's exchange rate) in situations involving temporary currency fluctuation. Lastly. respondent asserts that the special rule should be applied even if currency fluctuations do not account for the entire weighted-average margin for Feldmuehle because it would be irrational for the Department to calculate the amount of the dumping margin attributable to currency fluctuation. but then to ignore the result in setting the margin. In addition. respondent notes that the margin calculated by the Department plays an important role in the analysis of possible injury to the U.S. industry by the ITC.

Petitioner contends that the Department should follow its standard practice of applying the quarterly rates in effect during the POI in the conversion of foreign currency. Because the appreciation of the franc against the dollar followed a steady. non-volatile trend for virtually the entire POI. a trend which already had been in existence for a fully years prior to the POI. petitioner maintains that the steady rise in the value of the franc against the dollar was not a temporary fluctuation. but a sustained change. Petitioner contrasts the volatility of the West German mark in *Melamine*. where it jumped six percent in value against the dollar during the first quarter of 1979 and then dropped 3.4 percent during the second quarter. to the sustained appreciation of the franc in this investigation. Since the franc's steady rise was not a temporary fluctuation. according to petitioner Feldmuehle should have adjusted its prices. but failed to do so. Petitioner also contends that even if fluctuations in the exchange rates during the POI could. *arguendo*. be viewed as "temporary." the Department should not apply the special rule because the differences between the U.S. price and FMV would not result solely from the exchange rate fluctuations. as required under the special rule. Additionally. petitioner states that if the Department still decides to apply the special rule in this case. a 180-day lag period is unprecedented and excessive. because the Department has never used a lag period of more than 90 days. Finally, petitioner argues that a circumstance of sale adjustment to account for exchange rate fluctuations is likewise unprecedented because the Department has only made such an adjustment where hyperinflation was a problem. and then only to constructed value. No such situation is present here.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations. producers. reseilers. and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations. the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate. and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change. then we will use an appropriate lag period to convert foreign currency. (See. Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fitting From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent). we will following present policy. also use the quarterly exchange rate for those days in our LTFV analysis. but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See. Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822. January 9. 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855. April 27. 1987). Accordingly. we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case. we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the franc that. while not entirely steady. (*i.e.*. on occasion the daily rate varied from the quarterly rate by more than five percent). began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates. no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/franc exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine* to compensate for any such temporary currency fluctuations. We have reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. *See, e.g.*, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero.

Accordingly, respondents would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements are characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

Comment 5

Petitioner asserts that the Department should determine U.S. price on the basis of exporter's sales price (ESP) because Feldmuehle's related selling agent in the United States (FNA) acted as more than a processor of sales-related documents and as more than a communication link between FNA and Feldmuehle. Specifically, petitioner notes that Feldmuehle itself contends that FNA takes title to the merchandise after importation and acts as the importer of record. FNA engages in promotional activities at trade shows and other events, and FNA performs numerous other administrative functions, such as the arrangement for the provision of technical services by mill personnel. Additionally, petitioner alleges that FNA has considerable responsibility and authority with respect to sales of CGP, and is in fact itself the seller of the CGP subject to investigation. Lastly, petitioner argues that the Department should use the information contained in the petition regarding indirect selling expenses as BIA, since Feldmuehle did not report FNA's indirect selling expenses.

DOC Position

Pursuant to section 772 of the Act and 19 CFR 353.41, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for ESP sales, however, may be set either before or after importation. The Department's practice on this issue, however, is to examine several additional criteria when making a decision as to whether a sale should be considered as purchase price of ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) this arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) the related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the above criteria are met, we classify the sales in question as purchase price. Petitioners have not addressed the first two criteria. Analysis of the responses submitted by Feldmuehle indicates that the first two criteria are met in that FNA did not introduce the merchandise into its inventory, nor does it customarily do so. Regarding the third criterion (*i.e.*, whether the related agent is merely a processor of sales-related documenfation and a communication link with the unrelated purchaser), we disagree with petitioners that the promotional activities and other administrative functions performed by FNA are significant. Nor do we believe that the fact that FNA takes title to the merchandise after importation and acts as importer of record are significant. Therefore, we believe that FNA only acts as a processor of sales-related documentation and a communication link with the unrelated customer. Thus, we will continue to consider the U.S. sales made by Feldmuehle as purchase price sales.

Comment 6

Respondent argues that, consistent with prior Department practice, U.S. trial and sample sales are properly excludable from the Department's determination of U.S. price because the volume of these sales during the POI was insignificant.

Petitioner argues that trial and sample sales should be used in the Department's determination of U.S. price because section 772 of the Act does not provide for the exclusion of U.S. sales made outside the ordinary course of trade. Petitioner notes that the Department has stated that there is no requirement that a U.S. sale be in the ordinary course of business; that is only a requirement for home market sales.

DOC Position

We agree with respondent. Neither the Department nor respondent has ever maintained that these trial and sample sales are outside the ordinary course of trade; indeed, they are not. However, the Department is not required to review every U.S. sale in conducting its LTFV investigations, and routinely disregards U.S. sales in its investigations when it determines that the volumes of such sales involved are insignificant.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, for Feldmuehle and all other producers/manufacturers/exporters, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of CGP from France that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Feldmuehle Beghin, S.A.	32.44
All Others	32.44

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26543 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-808]

Notice of Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Steve Alley, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3773.

Final Determination

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (56 FR 27239), the following events have occurred.

From June 17 through June 19, 1991, and on June 20 through June 23, 1991, the Department conducted verifications in Germany of the questionnaire responses submitted by MD Papier, GmbH (MD) and Haindl Papier, GmbH (Haindl), the respondents in this investigation.

On June 20, 1991, the petitioner in this investigation, the Committee on the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, requested a public hearing.

On June 20 and June 24, 1991, MD and Haindl requested a public hearing. On June 28 and July 2, 1991, Haindl and MD requested that the Department postpone the final determination in this investigation for 60 days, pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). On July 2, 1991, petitioner submitted a letter opposing the postponement request. On July 12, 1991, MD submitted a revised computer tape with changes required as a result of the verification process.

On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

From August 6 through August 7, 1991, the Department conducted verification of Haindl's questionnaire response at the offices of the company's U.S. sales agent located in New York, New York.

Petitioner and respondents filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 7, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of (1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. Although the HTS item numbers are provided for convenience and customs purposes our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from Germany to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in Germany.

United States Price

For MD and Haindl, we based USP on purchase price, in accordance with section 772(b) of the Act, where U.S. sales were made to an unrelated party prior to importation into the United States. For Haindl, exporter's sales price (ESP) methodology is not appropriate because the subject merchandise was not introduced into the inventory of Haindl's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between the parties involved, and Haindl's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer. (See "Comment 1", Haindl, of the Interested Party Comments section of this notice for further discussion). Miscellaneous adjustments were made to both Haindl's and MD's reported U.S. sales data based on information found at verification.

Haindl Papier GmbH

We calculated purchase price based on packed, delivered prices. We excluded trial sales from our analysis because these sales were made in very small quantities. (See "Comment 5," Haindl, of the Interested Party Comments section of this notice for further discussion). We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, ocean freight, marine insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the U.S. price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

MD Papier GmbH

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for containerization expenses, handling charges, foreign inland freight, ocean freight, transportation insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the U.S. price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of coated groundwood paper in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of coated groundwood paper to the volume of third country sales of coated groundwood paper, in accordance with section 733(a)(1) of the Act. For both Haindl and MD, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 153.48. Miscellaneous adjustments were made to both Haindl's and MD's reported home market sales data based on information discovered at verification.

Haindl Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to unrelated customers in the home market. We excluded all home market sales to related parties in our analysis because they constituted a very small percentage by volume of home market sales made during the POI. We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, discounts and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. We recalculated packing costs for both U.S. and home market sales because we did not consider machinery costs to be part of packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and technical service expenses. We recalculated Haindl's imputed credit expenses incurred on home market sales by deducting both discounts and rebates from the gross unit price to be consistent with Haindl's narrative response. We recalculated imputed credit expenses incurred on U.S. sales by deducting discounts and rebates from gross unit price.

We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes in the two markets.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). We determined that the related party commission paid on U.S. sales is at arm's-length because the commission rate was comparable to that which Haindl's related selling agent received on sales of CGP in the U.S. market from another, unrelated CGP manufacturer. (See "Comment 2," Haindl Papier, GmbH of the Interested Party Comments section of this notice for further discussion). Where commissions were paid only in the United States, we allowed an adjustment for indirect selling expenses incurred in Germany to offset commissions paid in the United States, in accordance with 19 CFR 353.56(b).

We recalculated Haindl's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price. In addition, we reclassified credit insurance, reported as a direct selling expense by Haindl, as an indirect selling expense because these expenses were not directly related to sales. These expenses were included as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

MD Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to related and unrelated customers in the home market. We included sales to a related customer, pursuant to 19 CFR 353.22(b), since we determined at verification that the prices paid by this customer were at arm's length. We excluded from FMV sales made in U.S. dollars because they were made in very small quantities. We made deductions, were appropriate, for foreign inland freight, transportation insurance, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstances of sale adjustments, where appropriate, for differences in credit expenses and warranty expenses. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated MD's imputed credit expenses incurred on U.S. and home market sales by deducting discounts from the gross unit price. We recalculated credit expenses for those sales where payment had not yet been received by MD. For these sales, we used the weighted-average number of days between the date of shipment and the date of payment for all sales during the POI as the number of days for which payment was outstanding. We also recalculated MD's home market warranty expenses based on actual 1990 warranty expenses.

We also allowed an adjustment for home market indirect selling expenses to offset commissions paid in the U.S. market, in accordance with 19 CFR 353.56(b). We recalculated MD's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price. In addition, we reclassified credit insurance, reported by MD as a direct selling expense, as an indirect selling expense because this expense was not directly related to sales. This expense was included as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

Prior to the preliminary determination in this investigation, respondents requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of what respondents characterized as temporary fluctuations in the exchange rate between the Deutschemark and the U.S. dollar during the POI.

We were unable to consider Haindl's and MD's requests in our preliminary determination due to the late date on which the claims were made. We now determine that the special rule for currency conversion as outlined in section 353.60(b) does not appiy in this investigation. Accordingly, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. We have explained our position regarding Haindl's and MD's request for currency conversion in "Comment 1" in the Interested Party Comments section of this notice.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondents by using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination of this investigation. We received case and rebuttal briefs from the petitioner and both respondents.

Comment 1

Respondents maintain that the Department should invoke the special rule for currency conversion provided for in section 353.60(b) of the Department's regulations because a significant portion of Haindl's and MD's margins resulted solely from the aberrational dollar/mark exchange rate during the POI that resulted from the conflict in the Persian Gulf.

Respondents have requested that because these fluctuations were merely temporary, the Department should lag the exchange rate and use either the July 1990 exchange rate or second quarter rates which reflected conditions before the crisis began. In support of their contention that there have been temporary exchange rate fluctuations, respondents provided charts showing that the U.S. dollar had declined noticeably against the deutschemark during the POI and that the dollar began to appreciate again at the end of January 1991 (the month after the end of the POI). Respondents assert that this decline of the dollar was aberrational and primarily attributable to the Iraqi invasion of Kuwait, and that once the crisis was resolved the dollar recovered to its pre-POI level.

Under these circumstances, respondents maintain that they were not obliged to adjust their U.S. prices to account for the temporary fluctuations. Although respondents recognize that in past cases the Department has interpreted § 353.60(b) as applying only where the entire margin results from the exchange rate fluctuation, respondents contend that an adjustment for that part of the dumping margin that results solely from exchange rate fluctuations is consistent with the rationale underlying the regulation. Furthermore, respondent Haindl claims it is appropriate for the Department to use a circumstance of sale adjustment to take account of exchange rate anomalies that do not fall within the Department's narrow reading of § 353.60(b).

Petitioner contends that the Department should use the quarterly exchange rate in effect during the POI, because contrary to respondents' assertions, the German exchange rate did not experience temporary and volatile fluctuations during the POI. Rather the mark/dollar exchange rate exhibited a sustained and gradual trend during the POI which had already been in existence for the preceding year. Because the exchange rate was not part of a temporary fluctuation, respondents should have adjusted their prices. Even if fluctuations in the exchange rates during the POI could be viewed as temporary, Petitioner maintains that the special rule still does not apply because the differences between U.S. price and FMV would not result solely from temporary exchange rate fluctuations. The "special rule" was not intended to deal with calculating the amount of a dumping margin, rather only to adjust for margins which exist entirely because of temporary exchange rate fluctuations. Moreover, Petitioner also states that a 180-day lag period is unprecedented and excessive. Finally, petitioner argues that a circumstance of sale adjustment is inappropriate because the Department has only made such an adjustment to adjust constructed value for hyperinflation, which facts do not exist in this case.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the deutschemark that, while not entirely steady, (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/deutschemark exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine Chemicals* 732 F.2d 924 (Fed. Cir. 1984) (*Melamine*) to compensate for any such temporary currency fluctuations. We havé reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero. Accordingly, respondents would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

MD Papier, GmbH

Comment 1

Respondent claims that the Department should change its calculation in the final determination so that it deducts both quantity and cash discounts from the gross unit price of the U.S. sale when calculating credit expenses, as it did in its calculation of home market credit expenses in order to be consistent.

DOC Position

We agree with respondent and have deducted both quantity and cash discounts from the gross unit price in calculating U.S. credit expenses.

Comment 2

Petitioner contends that the Department should include all bank and credit expenses incurred by MD on its U.S. sales in its circumstances of sale adjustment.

DOC Position

In our preliminary and final determinations, we included all bank and credit expenses incurred on U.S. sales in our circumstance of sale adjustment.

Comment 3

Petitioner claims the Department should disallow the circumstance of sale adjustment for MD's home market warranty expenses because MD has failed to identify the precise nature of the expenses incurred for each customer. Since respondent has failed to segregate direct and indirect expenses (or variable and non-variable expenses), the Department should treat the entire claim as an indirect selling expense.

Respondent contends that it has clearly stated that it incurred home market warranty expenses for defective merchandise delivered to its customers, and that fixed expenses were not included in its claim. All fixed expenses, such as salaries, utilities, rent, and other general administrative costs, were properly reported as indirect selling expenses.

DOC Position

We agree with respondent. The expenses associated with MD's warranty claim were verified for completeness and accuracy. Only those expenses directly related to warranty claims for sales under investigation were reported. No fixed expenses were included in this claim. Therefore, we consider these expenses to be direct selling expenses.

Comment 4

Petitioner contends that MD has improperly included mill-to-warehouse expenses in its freight deduction to FMV. Since these expenses are all pre-sale and are not directly related to sales, these expenses should be disallowed.

Respondent maintains that the Department's current policy is to deduct both pre-sale and post-sale freight charges from U.S. price and FMV. MD has claimed only those home market freight expenses that it could tie directly to sales during a particular month. In addition, MD also adjusted the quantity of merchandise shipped to eliminate the double-counting of quantities. Therefore, the Department should deduct both pre sale and post-sale home market freight expenses from foreign market value.

DOC Position

We agree with respondent that all movement charges, both pre-sale and post-sale, reported by MD should be deducted. We verified that the home market freight expenses reported by MD were both accurate and complete. In Gray Portland Cement and Clinker From Japan (56 FR 12156), the Department determined that because it deducted all pre- and post-sale movement expenses incurred in transporting the merchandise from the plant to the point of sale in calculating U.S. price, a fair price-to-price comparison requires a similar deduction to FMV, consistent with the Department's policy. Therefore, we have deducted all verified pre-sale and post-sale freight expenses from FMV.

Haindl Papier, GmbH

Comment 1

Petitioner argues that all sales made by Haindl to the United States should be regarded as ESP sales, not purchase price. Petitioner supports this argument by stating that Haindl's U.S. subsidiary, Perkins-Goodwin (P–G), is involved significantly in the pricing, marketing and selling of CGP in the United States, and is not just a processor of sales-related documentation and communications link between Haindl and its unrelated U.S. customers. Accordingly, all sales should be considered ESP sales. The Department should then determine an amount for indirect selling expenses for Haindl based on BIA, which petitioner claims is information provided in the petition.

Respondent contends that all sales made through P–G should be treated as purchase price sales. Respondent claims that P–G only helps to facilitate the sale, and does not maintain an inventory of CGP. Respondent further argues that P–

G does not conduct significant marketing and promotional activities in the United States. Rather, respondent states that P–G spends a small amount on advertising, and that this advertising should be treated as an indirect selling expense. Finally, respondent argues that there is nothing on the record to support petitioner's claim that P–G maintains authority to renegotiate contracts with customers in the United States.

DOC Position

We agree with respondents. Pursuant to section 772 of the Act and section 353.41 of the Department's regulations, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for exporters sales price (ESP) sales, however, may be set either before or after importation. Therefore, where the terms of sale are set prior to the date of importation, the Department must examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) This arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) The related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the above criteria are met, we classify the sales in question as purchase price. In the case of Haindl, Petitioners have not addressed the first two criteria. Analysis of the responses submitted by Haindl indicates that the first two criteria are met in that P–G did not introduce the merchandise into its inventory, nor did it customarily do so. Regarding the third criterion (*i.e.*, whether the related agent is merely a processor of sales-related documentation and a communication link with the unrelated purchaser), we disagree with petitioners that the marketing and promotional activities conducted by P–G are significant. In fact, the advertising done by P–G is of a generic nature and does not refer specifically to the merchandise under investigation. In addition, P–G acts only as an intermediary in the pricing negotiations between Haindl and its U.S. customers; it does not set prices independently. Therefore, we conclude that P–G only acts as a processor of sales-related documentation and a communication link with the unrelated customer. Thus, we will continue to consider the U.S. sales made by Haindl as purchase price sales.

Comment 2

Petitioner contends that if sales made by Haindl to the United States are regarded as purchase price sales, then the commissions paid by Haindl to P–G should be deducted from the U.S. price. Petitioner argues that these commissions are directly related to certain sales since the commissions are earned at the time a particular sale occurs. Petitioner further argues that these commissions are arm's-length transactions.

Respondent argues that the commissions it pays to P–G are intracompany transfers of funds which should not be deducted from U.S. price.

DOC Position

The Court of Appeals' remand in LMI, 912 F.2d 455 (Fed. Cir. 1990), of Brass Sheet and Strip from Italy instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be (1) at arm's-length and (2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commission. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions.

In this investigation, we find that the related party commissions are arm's-length transactions and are directly related to sales under investigation. During verification, we examined the contracts establishing the commission relationship between P–G and Haindl and verified that these commissions are earned at the time a sale occurs. Furthermore, P–G receives a comparable commission rate for sales in the U.S. market of CGP from other unrelated manufacturers of CGP. Therefore, we have deducted from the U.S. price the commission Haindl paid to P–G on sales of CGP in the United States

Comment 3

Petitioner argues that the Department should disregard the freight forwarding fee calculated by Haindl and should rely instead on BIA, which petitioner argues is the largest freight forwarding percentage retained by Interot, a wholly-owned subsidiary of Haindl. Petitioner claims that it is unreasonable for respondent to allocate these expenses over the number of U.S. transactions rather than over the volume or value of U.S. sales.

Respondent contends that the method used to allocate freight forwarding expenses was reasonable. Respondent states that there was no other possible way to allocate these expenses since none of Interot's employees work exclusively on exports or domestic sales. However, because the size of U.S. shipments was typically much larger than that of home market shipments, and because the same amount of service is provided on a small shipment as a large shipment, respondent claims its methodology was reasonable and was accepted at verification.

DOC Position

We agree with respondent's methodology for calculation of freight forwarding expenses for purposes of our final determination. At verification we established the appropriateness and the reasonableness of such methodology. According to the shipping manager for Interot, the amount of work involved in preparing an export shipment was not any greater than that involved in domestic shipments. Based on these discussions and on a review of documents associated with the sales process, we accept the allocation of freight forwarding expenses over the total number of U.S. transactions.

Comment 4

Petitioner contends that the Department should include advertising expenses incurred by P–G in its circumstance of sale adjustment. Petitioner states that the verification report showed that some advertising done by P-G was directed at all parties involved in the production and sale of CGP, including the customer's customer (printers and publishers) and, therefore, is a direct selling expense and should be included as an adjustment to U.S. price.

Respondent states that the advertising expense should not be deducted in the calculation of U.S. price, since it is institutional advertising that is not product specific nor limited to Haindl's products, and, cannot be treated as a direct selling expense.

DOC Position

We disagree with petitioner. The P-G advertisement was not limited to CGP, nor was it limited to Haindl products. Therefore, it is not a direct selling expense and has not been included as an adjustment to U.S. price.

Comment 5

Petitioner argues that Haindl's trial sales should be included in the Department's calculation of U.S. price. Petitioner contends that the law does not provide for the exclusion of U.S. sales made outside the ordinary course of trade.

Respondent argues that the trial sale should be excluded from the Department's calculation of U.S. price. Respondent points out that unlike administrative reviews, there is no requirement in less-than-fair-value investigations that every import into the United States be covered. Given that, in the present case, the sales in question involve very small quantities, it was appropriate and consistent with Departmental practice, to exclude those few trial sales.

DOC Position

We disagree with petitioner. Neither the Department nor respondent has ever maintained that these trial and sample sales are outside the ordinary course of trade; indeed, they are not. However, the Department is not required to review every U.S. sale in conducting its LTFV investigation. The sales in question represent a very small percentage of U.S. sales by volume, and therefore have not been included in our analysis.

Comment 6

Petitioner contends that the Department should adjust FMV to reflect the correct loading costs that were verified by the Department.

DOC Position

We agree with petitioner and have used the verified figures for loading costs in our final determination.

Comment 7

Petitioner contends that the inventory carrying costs reported by Haindl should be disallowed since the Department was unable to verify this amount and since there was no supporting documentation for these figures on the record.

Respondent states that the inventory carrying costs were verified and that there is nothing in the verification report which indicates that there was a problem with this adjustment.

DOC Position

We agree with respondent. As the verification report states, we examined the computer program used to calculate the monthly quantities used in Haindl's inventory carrying cost calculation. No errors or discrepancies were noted. Therefore, we have allowed an adjustment for these expenses.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, for Haindl and MD and all other procedures/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage (percent)
Haindl Papier GmbH	39.49
MD Papier GmbH	31.40
All others	34.51

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26544 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-807]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of commerce, 14th Street and constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (56 FR 27241), the following events have occurred.

On June 20, 1991, the petitioners in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coasted Groundwood Paper Industry and its nine individual members, requested a public hearing.

From June 24 through June 26, 1991, the Department conducted verification of the questionnaire response submitted by Caledonian paper plc (Caledonian), the respondent in this investigation, in the United Kingdom.

On July 1, 1991, respondent requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20(5)(b). On July 1, 1991, petitioners submitted a letter opposing the postponement request.

On July 2, 1991, respondent requested a public hearing. On July 17, 1991, the Department published a notice in the Federal Register (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

On August 7 and August 8, 1991, the Department conducted verification of Caledonian's questionnaire response at the offices of the company's U.S. sales agent located in Tarrytown, New York.

Petitioners and respondent filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991.

On September 30, 1991, respondent submitted a revised computer tape correcting errors found during verification.

A public hearing was held on October 4, 1991.

Scope of Investigation

The product covered by this investigation is coated goundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, mounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded form the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012) inch or more in thickness.

Coated groundwood paper is currently classifiable under items 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in the United Kingdom.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate since the subject merchandise was not introduced into the inventory of respondent's related U.S. selling agent, respondent's related sales agent acted mainly as a processor of sales-related documentation and communication links with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 773(c) of the Act. We excluded from our analyses a resale of merchandise imported prior to the POI and rejected by the original purchaser because the sale subject to examination under the antidumping statute occurred outside the POI. We also excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trial sales, see "Comment 3" in the *Interested party Comments* section of this notice.)

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. Caledonian did not estimate cash discounts for any transaction for which payment had not been received from its U.S. customer. Therefore, we used best information available (BIA) to impute a cash discount for sales where a cash discount would still have been possible as of the date of verification. (For further discussion, see "Comment 4" in the Interested Party Comments section of this notice.) In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of the United Kingdom value-added tax that would have been collected had the merchandise not been exported.

We calculated ESP based on packed, delivered prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(e)92) of the Act, we made additional deductions for credit expenses, warranty expenses, post-sale warehousing expenses, reslitting costs, indirect selling expenses, and inventory carrying costs. At verification, we found that the calculation of Caledonian's reported U.S. interest rate contained clerical errors. We recalculated credit expenses using the reported interest rate revised to correct for these errors. We also recalculated credit expenses for shipments to a bankrupt customer, whose payment was still outstanding as of the date of the U.S. verification, based on the average payment period for all other ESP sales. We recalculated indirect selling expenses reported as per ton amounts to reflect a percentage of sales value. in accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of the Untied Kingdom value-added tax that would have been collected had the merchandise not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of coated groundwood paper in the home market to serve as a viable basis for calculating FMV, in accordance with section 733(a)(1) of the Act, we compared the volume of home market sales of coated groundwood paper to the volume of third country sales of coated groundwood paper. For Caledonian, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

We excluded trial sales from our analysis because these sales were made in small quantities. We based FMV on packed, delivered prices to unrelated customers in the home market. For comparison to purchase price sales, we made deductions, where appropriate, for billing errors. We also made deductions, where appropriate, for foreign inland freight, foreign loading charges, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, reslitting costs, and warranty expenses. Although Caledonian borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. This use of the lower of the interest rates in both markets is consistent with the Court of Appeals' remand in *LMI-La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990), of *Brass Sheet and Strip from Italy (LMI)*. At verification, we found that the calculation of Caledonian's reported U.S. interest rate contained clerical errors. We recalculated credit expenses using the reported interest rate revised to correct for these errors. For sales which, as of the date of the U.S. verification, either had not been shipped by Caledonian and/or had not been paid for by the customer, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. Regarding post-sale warehousing expenses, Caledonian incorrectly did not report a small number of its monthly warehousing fees for sales invoiced to the customer prior to verification. Therefore, we recalculated U.S. warehousing charges based on the formula provided at verification. In addition, Caledonian did not report expenses for U.S. sales which were in the warehouse as of the date of the U.S. verification. As BIA, therefore, we calculated this expense by applying the monthly fee charged by the warehousing company to the period between the date of entry of the merchandise and the date of the U.S. verification, based on the formula provided at verification. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

For comparisons to ESP sales, we made deductions, where appropriate, for billing errors. We also made deductions, where appropriate, for foreign inland freight, foreign loading charges, credit expenses, warranty expenses, and discounts. For sales which, as of the date of the U.S. verification, either had not been shipped by Caledonian and/or had not been paid for by the customer, we recalculated credit expenses using the weighted-average credit period for all sales for which payment has been made.

We also deducted home market indirect selling expenses, which included inventory carrying expenses and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Currency Conversion

Prior to the preliminary determination in this investigation, respondent requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of temporary fluctuations in the exchange rate between the British pound and the U.S. dollar during the POI.

We were unable to consider Caledonian's request in our preliminary determination due to the late date on which the claim was made. We now determine that the special rule for currency conversion as outlined in 19 CFR 353.60(b) does not apply in this investigation. Accordingly, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. (For further discussion of this topic, see "Comment 1" in the *Interested Party Comments* section of this notice.)

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Comment 1

Respondent argues that the Department should use the provisions of 19 CFR 353.60(b) and disregard the U.S. dollar/British pound exchange rates in existence during the POI in making fair value comparisons. Rather, respondent argues, the Department should use the exchange rates prevailing during the first and second quarters of 1990.

Respondent maintains that during the POI temporary, volatile excnange rate fluctuations occurred, due to the crisis in the Persian Gulf, and that once the crisis was resolved exchange rates resumed normal levels. Further, respondent claims that it was not able to revise its U.S. prices to reflect the rate changes, given the temporary nature of the exchange rate decline. Finally, respondent maintains that a large portion of the apparent difference between home market and U.S. prices is a result of the exchange rate disparity.

Petitioners argue that the Department should use its standard practice of applying the quarterly rates in effect during the POI. Petitioners contend that it is invalid to determine whether a exchange rate movement is "temporary" by reference to a period after the POI. Therefore, petitioners maintain that the Department should look to the period during and preceding the POI and conclude that, contrary to experiencing temporary and volatile fluctuations, the British exchange rate (in dollars per British pound) exhibited a sustained and gradual appreciation over the year and a half prior to and including the POI. According to petitioners, since the pound's steady rise was not a temporary fluctuation, Caledonian should have adjusted its prices to eliminate the dumping margins resulting from continuing to sell at prices established in reference to a previously existing exchange rate.

Petitioners also argue that, even if fluctuations in the exchange rates during the POI could be viewed as "temporary," the Department should not apply the "special rule" because the differences between U.S. price and foreign market value would not result solely from these fluctuations. Petitioners cite *Melamine Chemicals, Inc.* v. *United States* (732 F.2d 924, 933 (Fed. Cir. 1984)) and *NTN Bearing Corporation of America* v. *United States* (747 F. Supp. 726 (Ct. Int'l Trade 1990)), in which the Court of International Trade held that the dumping margin must be due solely to exchange rate fluctuations in order to make an adjustment to account for these differences.

In addition, petitioners argue that, if the Department decides to use exchange rates from a prior quarter, the lag period should be no more than the average number of days in which Caledonian expects payment to be made. Petitioners state that this is the amount of time that a rational business organization would take into account when looking at exchange rates for purposes of setting prices.

Finally, petitioners maintain that the Department only grants a circumstance of sale adjustment to account for exchange rate fluctuations under extremely limited circumstances: to adjust in a constructed value situation for the unusual case of hyperinflation.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but only if this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioners that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the pound that, while not entirely steady, (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/pound exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine* to compensate for any such temporary currency fluctuations. We have reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero. Accordingly, respondent would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

Comment 2

Petitioners argue that the Department should have included commissions paid to Caledonian's related U.S. sales agent in its adjustment to U.S. prices. Petitioners contend that these commissions are directly related to the sales at issue and represent arm's-length transactions. In support of these contentions, petitioners note that the commissions are (1) paid pursuant to a written contract, (2) paid as a percentage of the sales value, (3) calculated on each invoice, and (4) earned at the time a particular sale occurs. As Department precedent for its position, petitioners cite Cephalexin Capsules From Canada (54 FR 26820, June 16, 1989), Certain Iron Construction Castings From Canada (51 FR 2412, January 6, 1986), Drycleaning Machinery From West Germany (50 FR 32154, August 8, 1985), and Egg Filler Flats From Canada (50 FR 24009, June 7, 1985). Moreover, petitioners note that the commission paid to Caledonian's related party approximates a "standard" paper commission percentage found by the International Trade Commission (ITC). Finally, petitioners state that, although the commission paid to Caledonian's sales agent was not sufficient to meet its expenses, this fact does not negate the fundamental arm's-length nature of the commission.

Respondent argues that its payments to its related sales agent are not arm's-length commissions directly related to sales. Respondent contends that these commissions are not directly related to sales because (1) they are not the only method of transferring funds between the parties and (2) the sales agent does not pay all of its selling expenses. Therefore, respondent concludes that these payments are simply one way among many in which funds flow between related parties. Furthermore, because Caledonian does not pay commissions to unrelated parties, respondent contends that the Department was unable to verify that commissions paid to its related party were arm's-length transactions. Respondent contends that, absent verification of the arm's-length nature of these payments, it is inappropriate to determine that they are at arm's-length based on a "standard" commission level in the paper industry. Respondent notes that standard commission levels are irrelevant to the commission percentage that it pays unless it can be demonstrated that this "standard" commission covers the same services provided by Caledonian's related party.

Regarding commissions paid on ESP sales, respondent contends that the "commission" paid to its related party functions more as a discount from the selling price to the related party than a commission because the payment of this amount cannot be directly tied to the resale by the related party. Respondent states that this treatment of related party commissions is consistent with the policy articulated in the Generic Cephalexin Capsules From Canada determination noted above. Respondent states that the Department does not accept as adjustments discounts or rebates paid to related parties.

Finally, respondent maintains that treatment of related party commissions as arm's-length transactions in general could lead to manipulation of commission levels in the future in order for companies to avoid dumping deposits. Respondent contends that the possibility of this type of manipulation has led the Department to presume that commissions paid to related parties are not at arm's-length unless the respondent is able to prove otherwise. Respondent states that this presumption was recently upheld by the Federal Circuit in LMI, where the Court held that the burden is on the respondent to demonstrate that commissions paid to related parties are at arm's-length.

DOC Position

The Court of Appeals' remand in LMI instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be 1) at arm's-length and 2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commission. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions. In this case, Caledonian did not use an unrelated commissionaire to sell its merchandise in the United States. Nor was Caledonian's related U.S. sales agent the commissionaire for unrelated producers.

Petitioners have suggested that the arm's-length nature of the payments between Caledonian and its related agent can be tested by reference to the "standard" commission percentage found by the ITC in its investigation. Absent knowledge of what services are rendered in return for this standard commission, we are unable to determine if the commission paid by Caledonian is comparable.

Because we have no appropriate benchmark against which to test the arm's-length nature of the commission arrangement between Caledonian and its related sales agent, we are not satisfied that these payments are at arm's-length. Therefore, we have not adjusted for them.

Comment 3

Petitioners argue that the Department should include Caledonian's trial sales in its analysis of U.S. price because (1) it is the Department's usual practice to do so and (2) section 772 of the Act does not provide for the exclusion of U.S. sales made outside the ordinary course of trade. Petitioners argue that in the home market, however, the Department should not include Caledonian's trial sales in its analysis because (1) Caledonian charged lower prices for these sales and (2) because they are outside the ordinary course of trade.

Respondent contends that trial reels are properly excluded from the sales listing in both the United States and home market. Respondent states that these reels were provided at either no charge or at reduced prices and that inclusion of these reels would distort the margin analysis. Respondent maintains that it would be unfair to include these sales in one market and not the other.

DOC Position

We agree with respondent. Unlike administrative reviews, there is no requirement in less-than-fair-value investigations that the Department investigate all U.S. sales. In this case, not only would it be unfair to include trail sales in only one market, but inclusion or exclusion of these sales would not have a material impact on the final dumping margin, which is a weighted-average of all of the margins found in this investigation. (Caledonian made only a small number of trial sales, all of which were in very small quantities.) Therefore, we have not included trial sales in our analysis in either the home market or the United States.

Comment 4

Petitioners argue that, because respondent did not report cash discounts for ESP sales for which payment had not been made, the Department should use BIA to deduct cash discounts from USP for these sales. As BIA, petitioners contend that the Department should use the weighted average of cash discounts paid during the POI on those sales for which payment had been received.

Respondent argues that it is inapprpriate to use BIA to impute a cash discount for these sales. Respondent states that cash discounts will not be granted on these sales because the cash discount period has already expired.

DOC Position

We agree with respondent regarding discounts on ESP transactions. It is inappropriate to calculate a discount when the possibility of payment of the discount no longer exists. However, we noted at verification that respondent also did not impute a discount on unpaid purchase price transactions. We have determined that in certain instances it is appropriate to do so. Therefore, we have calculated a cash discount of those purchase price transactions for which payment had not been received by verification and for which a cash discount would still have been possible (*i.e.*, the payment terms allowed for cash discounts and payment was not untimely according to those terms by the date of the verification). As the imputed discount, we applied the weighted-average discount calculated for sales in the purchase price sales listing having payment terms which allowed for cash discounts and for which payment had been received. Because Caledonian sometimes aggregated other discounts with its reported cash discounts, we capped the weighted-average discount amount at the highest percentage offered in Caledonian's reported payment terms.

Comment 5

Respondent argues that the Department correctly adjusted for cash discounts taken by Calendonian's customers in both the home market and the United States, even though it appeared that at times these customers paid outside the period in which a cash discount was allowed. Petitioners argue that these discounts should be disallowed because Caledonian's explanation for this noncompliance has not been verified.

DOC Position

We agree with respondent. We examined cash discounts granted by Caledonian and found that the discounts reported had actually been taken by the customer. Because these discounts were actually taken, we have allowed them as adjustments to FMV.

Comment 6

Respondent maintains that the Department correctly excluded from the investigation sales made pursuant to a contract signed prior to the POI. Respondent contends that the customer's failure to meet all of the terms of the contract does not invalidate the binding commitment. In support of this position, respondent cites Gray Portland Cement and Clinker From Mexico (55 FR 29244, 29249, July 18, 1990).

DOC Position

We agree. At verification, we established that the parties entered into a binding agreement, and that it was executed prior to the POI. The fact that one of the parties failed to meet all of the essential terms is not controlling for date of sale purposes. Therefore, we have determined that these sales were properly excluded from the sales listing based on a date of sale prior to the POI.

Comment 7

Respondent argues that "stop" orders should not be used to determine the date of sale because these orders merely serve to reserve a place in the company's production schedule.

DOC Position

We agree. We established at verification that a binding commitment on the terms of sale was not made at the time that the "stop" order was placed by the customer. Therefore, it would be inappropriate to use the date of the "stop" order as the date of sale.

Comment 8

Respondent argues that U.S. customs duties and customs fees are properly calculated on the transfer price between Caledonian and its related sales agent because this is the price on which the U.S. Customs Service assesses duties.

DOC Position

We agree. We verified that respondent correctly reported the amount of duties and customs fees actually paid on each sale.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, for Caledonian and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the Federal Register.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
Caledonian Paper plc	35.61
All others	35.61

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26545 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject	:	COATED GROUNDWOOD PAPER FROM BELGIUM, FINLAND, FRANCE, GERMANY, AND THE UNITED KINGDOM
Inv. Nos.	:	731-TA-487 through 490 and 494 (Final)
Date and Time	:	October 30, 1991 - 9:30 a.m.

Sessions were held in connection with the investigations in the Main Hearing Room 101 of the United States International Trade Commission, 500 E St., S.W., Washington, D.C.

In Support of Imposition of
Antidumping Duties:

Weil, Gotshal & Manges
Washington, D.C.
On behalf of

The Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry

Terry R. Lock, Senior Vice President, Marketing and Sales, Boise Cascade Corporation

Alfred C. Wallace, President and Chief Executive Officer, Blandin Paper Company

James F. Kear, Manager for Coated Papers International Paper Company

-MORE-

In Support of Imposition of
Antidumping Duties Cont'd:

Bruce P. Malashevich, Economic Consulting Services, Incorporated

Maarten J. van de Geijn, Economic Consulting Services, Incorporated

Jerrie Varrone Mirga, Economic Consulting Services, Incorporated

A. Paul Victor)
Jeffrey P. Bialos)
)-OF COUNSEL
Angela J. Paolini Ellard)
Eric P. Salonen)

In Opposition to Imposition of
Antidumping Duties:

European Paper Institute and its individual respondent members

PANEL I - Floyd Abrams of Cahill, Gordon & Reindel

PANEL II - Magazine Publishers of America

John M. Hadlock of Whitman and Ransom

Donald D. Kummerfeld, President of Magazine Publishers of America

Donald W. Hopkins, Vice President and General Manager of Hearst Enterprises and Chairman of the MPA's Paper Committee

Vito J. Colaprico, Senior Vice President of the New York Times Magazine Group

-MORE-

In Opposition to Imposition of Antidumping Duties Cont'd:

PANEL II - Magazine Publishers of America, Cont'd

David Refkin, Assistant Director of Paper Purchasing for Time, Incorporated

Joel Reiss, Director of Materials of Newsweek, Incorporated

Mark Eisner, Director of Paper Purchasing of Hachette Magazines Incorporated

Robert G. Whitton, Associate Production Director of Reader's Digest Association, Incorporated

PANEL III - Catalog Printers

William Silverman of Dow, Lohnes and Albertson

Barbara Segers, National Manager of Catalog Production, Sears Roebuck and Company

PANEL IV - Economic Consultants

Robert E. Litan, Senior Fellow and Director of the Center for Economic Progress and Development of the Brookings Institution

Andrew R. Wechsler, Law and Economics Consulting Group, Incorporated

Larry Sorkin, Edward Krugman Consulting Group

-MORE-

In Opposition to Imposition of Antidumping Duties Cont'd:

PANEL V - Respondent Producers

Wilhelm Fuchs, Member of the Executive Board, Feldmuhle A.G., and Chairman of the Magazine Paper Group of the European Paper Institute

Carl G. Bjornberg, President of Myllykoski Oy, and Vice-Chairman of the European Paper Institute

PANEL VI - Caledonian Paper

Stewart A. Baker of Steptoe and Johnson

David Mackie, Marketing Director, Caledonian Paper PLC

Gene Nussbaum, Vice President of Manufacturing, U.S. News and World Report

Dan Fein, Assistant Manager, Production Materials Coordination, U.S. News and World Report

PANEL VII - KNP Belgie and Feldmuehle-Beghin

Gary N. Horlick of O'Melveny and Myers

Robert J. Bagdasarian of Breed, Abbott and Morgan

-MORE-

In Opposition to Imposition of Antidumping Duties Cont'd:

Philadelphia Port Authority
Philadelphia, Pennsylvania

John P. LaRue, Executive Director

- END -

APPENDIX B

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF COATED GROUNDWOOD PAPER FROM BELGIUM, FINLAND, FRANCE, GERMANY, AND THE UNITED KINGDOM ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, OR EXISTING DEVELOPMENT AND PRODUCTION EFFORTS

* * * * * * *

APPENDIX C

EXCERPTS FROM THE 1990 ANNUAL REPORTS OF BLANDIN, BOWATER, CHAMPION, AND INTERNATIONAL PAPER

EXCERPTS FROM THE 1990 ANNUAL REPORTS OF BLANDIN, BOWATER, CHAMPION, AND INTERNATIONAL PAPER

Blandin
(1990 annual report of Fletcher Challenge Canada Limited, parent of Blandin, p. 9, Director's Report to Shareholders)

Consumption of lightweight coated paper, produced by the Company's subsidiary Blandin Paper Company, increased substantially in 1990 compared with the depressed levels experienced in 1989. However, supply continued to exceed demand as offshore imports were offered at reduced prices and two new machines came into production in late 1989. Prices declined by about $60 (U.S.) per short ton during the year. Blandin's new No. 6 paper machine completed its start-up phase in October 1990 and is expected to make a significant contribution to earnings as markets recover. The $350 (U.S.) million project, which included simultaneous woodroom and pulp mill replacement, will increase Blandin's coated paper capacity to 500,000 short tons annually when the new machine achieves full operating rate.

Bowater
(1990 annual report, p. 6-17, Business and Financial Review)

The market for lightweight coated groundwood paper (LWC) held up reasonably well in 1990, despite the softening economy and the addition of substantial new worldwide capacity, particularly in Europe. Price discounting began in early 1989 as publishers worked down inventories in anticipation of two new paper machines entering the U.S. market. This capacity did not fully materialize as early as expected, and magazine advertising and catalog merchandising were unexpectedly strong late in the year. Prices stabilized temporarily, but softened again in 1990 as the slowing economy and excess worldwide capacity had their effect. Mass circulation magazines saw advertising pages diminish and also suffered from lagging newsstand sales. Catalog merchandisers also cut back in 1990, which was reflected in fewer issues and reduced page counts. However, other coated paper applications such as coupons and four color newspaper inserts remained strong. In all, shipments of coated groundwood papers in the U.S. in 1990 still managed a surprising 3.8 percent increase over 1989.

Bowater performed better than might have been expected in this competitive environment owing to its well-established customer base, intense marketing efforts and its ability to keep costs under control. Operating cost per ton rose only 0.8 percent in 1990. Bowater's production and sales increased 2.5 percent over 1989, with both machines at the Catawba, South Carolina, mill running full. However, with average transaction prices declining 2.5 percent during 1990, coated paper operating income fell 7.5 percent from 1989, which had been a very strong year with operating income only slightly below the record results of 1988.

The year 1988 was Bowater's best year on record for coated paper. Strong demand was accompanied by prices that average 24 percent higher than in 1987, and Bowater benefited by shipping 7.0 percent more paper as Catawba's new No. 2 machine reached capacity production.

Lightweight coated paper prospects in the near term are for slower growth due to a slump in magazine advertising and circulation as well as to the dampening effect of a 1991 postal rate increase on catalogs and mailed publications. Although demand is expected to pick up in 1992, excess capacity in Europe, which already has affected U.S. prices in 1990, is forecast by the European Paper Institute to be more than 1 million tons per year for several more years. Continuing pressure, therefore, is anticipated in the U.S. market from European suppliers.

Champion International
(1990 annual report, p. 8, Review of Operations)

1990 was a mixed year for publication papers, with only modest growth in demand from 1989. New industry capacity, increased imports, and a general fall off of advertising pages created pricing pressure on our products, ultimately translating into some discounting.

International Paper
(1990 annual report, p. 28, Management's Discussion and Analysis)

Mill productivity improvements helped International Paper's U.S. shipments of coated papers rise more that 10% in 1990, double the industry average. Prices fell slightly below 1989 levels. Competition from unusually low-priced coated papers imported from Europe also affected domestic markets in 1990. U.S. producers have filed an antidumping petition alleging unfair pricing of coated groundwood papers.

Demand is expected to weaken in 1991 due to reductions in magazine advertising pages and orders for catalog papers because of economic conditions and postal rate increases. Should the economy improve, a price recovery could be seen later in the year.

APPENDIX D

PURCHASER DATA

*   *   *   *   *   *   *

APPENDIX E

PRODUCERS' AND IMPORTERS' PRICES

Tables E-1 through E-16

*   *   *   *   *   *   *

APPENDIX F

SELLING PRICE TRENDS FOR IMPORTED PAPER

SELLING PRICE TRENDS FOR IMPORTED PAPER

Belgium

One importer, ***, reported spot sales over the investigation period of coated groundwood paper imported from Belgium (table E-4). Net delivered prices reported by *** for sales of products 3, 5, 7, 9, and 11 all declined in the range from 2.2 percent for product 11 to 8.9 percent for product 9. Prices for each product were at a peak between the third quarter of 1988 and the second quarter of 1989 and declined somewhat irregularly thereafter. No contract sales of Belgian paper to either agents, brokers, and merchants, or publishers and printers were reported by any importers over the investigation period.

Finland

Two importers, ***, reported spot sales of Finnish paper in the United States during the period of investigation. Sufficient pricing data were reported for sales of Finnish coated groundwood paper products 3-9 (table E-5). Price trends for spot sales of Finnish paper were somewhat more erratic than spot price trends for domestic paper. Finnish spot prices generally reached a peak during 1989 and 1990, somewhat later in the investigation period than for domestic paper. Prices for products 3 through 8 declined over the investigation period in the range from 0.8 percent for product 5 to 11.5 percent for product 4. Prices for product 9 increased by 3.9 percent between January 1988 and June 1991.

*** was the only importer reporting contract sales of Finnish coated groundwood paper to agents, brokers, and merchants during the investigation period (table E-6). Prices for products 3, 7, and 9 were variable but increased over the period of investigation. Price increases ranged from 2.6 percent for product 3 to 12.7 percent for product 9. Prices for product 5 decreased by 2.4 percent between the first quarter of 1988 and the first quarter of 1991.

Pricing data for contract sales of Finnish paper to publishers and printers were reported by three different importers, *** (table E-7). Price declines were reported for products 1, 2, and 3 during various quarters in 1990 and 1991, the only quarters for which such prices were available. Declines in price for these three products ranged from 0.3 percent for product 2 to 9.9 percent for product 3. Product 7 also declined in price, by 2.4 percent over the full January 1988-June 1991 period. Prices for products 4, 5, 6, 8, 9, and 10 all increased over the period of investigation. Prices for these products were variable, and increases ranged in size from 1.2 percent for product 4 between October 1990 and June 1991 to 9.4 percent for product 5, with prices reported in all quarters of the investigation period.

France

Two importers, ***, reported prices for spot sales of coated groundwood paper from France for products 7 and 9. (table E-8).[49] Prices for these products fluctuated only slightly over the limited number of quarters for which data were reported. Product 7 declined by 1.2 percent between July 1988 and June 1991, while product 9 declined by 3.2 percent between July 1988 and December 1989.

*** also reported contract sales of products 4, 6, and 8 from France to publishers and printers during various quarters over the investigation period (table E-9). Prices for each of these products varied somewhat but declined during the period. The size of these price declines ranged from 4.5 percent for product 6 to 7.3 percent for product 4.

Germany

Price trends for all German products were fairly stable over the period of investigation. *** reported quarterly pricing in varying degrees of completeness for spot sales of products 1-12 (table E-10). Prices were variable over the investigation period. Products 2, 4, 7, and 11 all declined in price in a range from 1.9 percent between July 1988 and March 1991 for product 11 to 8.0 percent between April 1989 and March 1991 for product 2.[50] Products 3, 5, 6, 8, 9, 10, and 12 all increased in price during the period of investigation. The sizes of these price increases varied from 1.2 percent between the third quarter of 1989 and the fourth quarter of 1990 for product 10 to 17.6 percent between the first quarter of 1988 and the second quarter of 1990 for product 9.

***, ***, and *** all reported contract sales of various German coated groundwood paper products to publishers and printers over the investigation period (table E-11). At least some pricing was reported for sales of all products except product 5.[51] Prices declined over the investigation period for products 1-4, 7, 8, 11, and 12, and increased for products 6 and 10. Price declines ranged from 0.6 percent between January 1988 and June 1991 for product 4 to 4.7 percent between October 1988 and March 1991 for product 2. Product 6 increased in price by 1.8 percent over the full investigation period, while the price of product 10 increased by 4.3 percent between the second quarter of 1988 and the fourth quarter of 1990.

---

[49] Limited pricing in 1 to 3 quarters for spot sales of products 1, 3, 5, and 10 from France was also reported.

[50] Two quarterly prices of *** and *** per hundredweight were reported for spot sales of product 1 from Germany in the third and fourth quarters of 1990 respectively.

[51] Pricing for product 9 was reported in only the first quarter of 1990.

United Kingdom

*** reported spot sales in various quarters over the investigation period of products 1, 3, 5, 7, 9, and 11 imported from the United Kingdom (table E-12). Each of these products showed declines in price over the investigation period, in the range from 0.6 percent for product 9 between the third quarter of 1989 and the second quarter of 1991 to 10.0 percent over the same period for product 7. Prices for most products did not fluctuate by a large amount over the period of investigation and constant prices were often reported over a number of quarters in the series for each product.

*** also reported prices in a limited number of quarters for contract sales of U.K. products 5, 7, and 9 to publishers and printers (table E-13). Prices for all three products were generally stable over the investigation period. Product 5 prices did not change during the four quarters of 1990, the only quarters for which pricing were reported. Prices for product 7 decreased by 1.0 percent between the third quarter of 1989 and the first quarter of 1990 and remained at this level through the fourth quarter of 1990. Product 9 prices increased by 6.7 percent between the fourth quarter of 1989 and the first quarter of 1990 and did not change through the fourth quarter of 1990.

Canada

*** reported spot sales over the investigation period of coated groundwood paper imported from Canada (table E-14). Some pricing data were reported for all 12 products, although sales were reported in only 2 quarters for product 2 and 1 quarter for product 12. Prices for spot sales of most products were fairly stable throughout the investigation period and generally reached a peak sometime between the fourth quarter of 1988 and the fourth quarter of 1989. Prices for product 1 and products 3-10 all declined over the investigation period. The extent of these price declines ranged from 3.4 percent between October 1989 and June 1991 for product 1 to 10.9 percent between April 1988 and June 1991 for product 8. Product 11 was the only Canadian product sold on a spot basis that showed a price increase during the investigation period. Prices increased by 11.6 percent between the first quarter of 1990 and the second quarter of 1991, the only quarters during which pricing was reported.

*** was the one importer that reported contract sales of Canadian coated groundwood paper to agents, brokers, and merchants during the investigation period (table E-15). Pricing data were reported for products 1, 3-9, and 11, although sales were reported in only 3 quarters for products 4 and 11. Products 1, 3, and 5-8 all declined in price over the investigation period, in the range of 1.0 percent for product 5 to 11.4 percent between January 1989 and June 1991 for product 8. Product 9, which increased in price by 11.7 percent, was the only product for which a price increase was reported over the period of investigation. This overall price increase was accounted for largely by a 21.6-percent increase that occurred between the first and second quarters of 1988. Prices actually declined by 8.2 percent from the second quarter of 1988 through the end of the investigation period. With the exception of products 8 and 9, prices for contract sales of Canadian coated groundwood paper to agents, brokers, and merchants did not fluctuate substantially over the period of investigation. However, peak prices for each product were reached in a broad range of quarters and no clear trends were identifiable.

Contract sales of Canadian paper to publishers and printers were reported by two importers, *** (table E-16). Sales were reported for products 1, 3, and 5-10.[52] Prices decreased during the investigation period for products 1, 5, 6, 9, and 10, while prices increased for products 3, 7, and 8. The magnitude of price declines ranged from 1.9 percent between January 1990 and June 1991 for product 1 to 12.4 percent between January 1988 and June 1991 for product 5. Price increases ranged from 0.6 percent for product 8 to 4.0 percent for product 7 between January 1988 and June 1991. Prices for these products sold to publishers and printers generally reached a peak between the third quarter of 1989 and the second quarter of 1990.

[52] Sales in the second quarter of 1991 and the third quarter of 1989 were also reported for products 2 and 4 respectively.

APPENDIX G

MARGINS OF UNDERSELLING/(OVERSELLING)

Tables G-1 through G-3

*   *   *   *   *   *   *

APPENDIX H

PURCHASERS' PRICES AND MARGINS

Tables H-1 and H-2

*   *   *   *   *   *   *

APPENDIX I

PURCHASE PRICE TRENDS FOR IMPORTED PAPER

PURCHASE PRICE TRENDS FOR IMPORTED PAPER

Belgium

Prices were reported for spot purchase of products 7 and 9 from Belgium.[53] Product 7 prices increased slightly to a maximum during the fourth quarter of 1989 and then fell through June 1991 for an overall price decline of 0.2 percent. Prices for product 9 reached a peak in the first quarter of 1989 and then declined somewhat irregularly through the fourth quarter of 1990 for an overall price decline of 3.3 percent.

Pricing was also reported for contract purchases of products 7 and 11 from Belgium. Product 7 prices fluctuated somewhat, but showed no change between January 1988 and June 1991. Product 11 prices remained constant from the second through the fourth quarters of 1990, and then declined by 3.2 percent during the first 2 quarters of 1991.[54]

Finland

Pricing data were reported for spot purchases in 3 quarters for product 6 and in 4 quarters each for products 7 and 9 imported from Finland. Product 6 declined in price by 8.4 percent between July 1990 and March 1991, product 7 increased in price by 0.7 percent in four quarters between April 1988 and March 1990, and product 9 showed a 3.3 percent price increase during 1988.[55]

Prices were also reported for contract purchases of Finnish products 1, 5, and 7. Product 1 prices declined by 2.1 percent from the third quarter of 1990 through the end of the investigation period, product 5 prices increased incrementally by 9.1 percent between January 1988 and September 1990, and product 7 prices decreased steadily by 9.2 percent from the third quarter of 1988 to the second quarter of 1991.

Germany

Spot purchase prices were reported for products 4, 6, 8, and 10 imported from Germany.[56] Prices increased by 5.3 and 4.3 percent for products 4 and 6 respectively, and decreased by 1.8 percent and 3.6 percent for products 8 and 10 respectively. Pricing was available in a limited number of quarters over the investigation period for each of the four products.

---

[53] Prices for product 11 from Belgium were reported only for the third quarter of 1990.

[54] Prices for contract purchases of both products were reported by a single purchaser, ***, and did not vary for several quarters at a time.

[55] Single quarter prices were also reported for products 8, 11, and 12.

[56] Limited pricing was also reported for products 2 and 5.

Contract purchase prices were reported for German products 1-5, 7, and 8.[57] Prices for products 1-5 all declined over the investigation period in the range from 0.9 percent for product 5 to 12.4 percent for product 2. Products 7 and 8 increased by 1.4 and 2.6 percent respectively between January 1988 and June 1991.

United Kingdom

One purchaser reported spot purchases of product 5 from the United Kingdom during the investigation period.[58] Prices for this product declined by 8.0 percent during the 4 quarters of 1990. No contract purchases of coated groundwood paper from the United Kingdom were reported over the investigation period.

Canada

Pricing for spot purchases of Canadian products 1, 4-6, and 9 were reported in various quarters over the investigation period.[59] Products 1 and 6 each declined in price by 4.1 percent; product 1 over 3 quarters between January 1988 and June 1990, and product 6 over 4 quarters between July 1988 and March 1991. Product 4 declined by 22.0 percent between the fourth quarter of 1989 and the second quarter of 1991; most of this price decline occurred between the first and second quarters of 1991. Products 5 and 9 both increased in price, by 9.1 and 12.9 percent respectively, over the investigation period.

Prices were also reported for contract purchases of Canadian products 1 and 3-9 over the investigation period. Product 1 increased in price by 0.6 percent between January of 1990 and June of 1991, and product 3 increased by 2.2 percent from January 1988 to June 1991. Products 4 through 8 all showed price declines over the investigation period, ranging from 1.3 percent for product 5 to 7.0 percent for product 6. Prices for product 9, reported by one purchaser, remained constant from the second through the fourth quarters of 1990.

---

[57] Limited contract purchases were also reported for products 6 and 10.

[58] Pricing for one quarter was also reported for product 6 from the United Kingdom.

[59] Limited pricing was also reported for spot purchases of products 2, 3, 7, 8, and 10.