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MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Lightweight Thermal Paper from  
Germany

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## SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on lightweight thermal paper (LWTP) from Germany. The review covers one producer and exporter of the subject merchandise, Papierfabrik August Koehler SE (formerly Papierfabrik August Koehler AG) (Koehler). The period of review (POR) is November 1, 2011, through October 31, 2012. We have preliminarily determined that Koehler did not make sales below normal value (NV) during this POR. In addition, we have preliminarily determined that Papierfabrik August Koehler SE is the successor-in-interest to Papierfabrik August Koehler AG.

## BACKGROUND

In response to the Department's notice of opportunity to request an administrative review,<sup>1</sup> on November 30, 2012, Koehler requested an administrative review of the antidumping duty order on LWTP from Germany with respect to its exports of subject merchandise to the United States during the POR. Also on this date, Appleton Papers Inc. (now known as Appvion, Inc.<sup>2</sup>), a domestic producer of the subject merchandise and the petitioner in the original less-than-fair-value investigation (the petitioner), requested an administrative review with respect to Koehler.<sup>3</sup>

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<sup>1</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 77 FR 66437 (November 5, 2012).

<sup>2</sup> On May 17, 2013, the petitioner informed the Department that it had changed its name to Appvion, Inc.; however, the petitioner stated that it continues to produce subject lightweight thermal paper, and thereby, remains an interested party in this proceeding pursuant to section 771(9)(C) of the Tariff Act of 1930, as amended (the Act).

<sup>3</sup> See Koehler's and the petitioner's November 30, 2012, letters to the Department.



Accordingly, we published in the Federal Register a notice of initiation of an administrative review of the antidumping duty order on LWTP from Germany covering the POR.<sup>4</sup>

On January 4, 2013, we issued the antidumping duty questionnaire to Koehler. In February and March 2013, Koehler timely submitted its responses to our questionnaire. On January 30, 2013, the petitioner requested, pursuant to 19 CFR 351.213(j), that the Department determine whether antidumping duties have been absorbed by Koehler during the POR. See “Duty Absorption” section below.

On March 20, 2013, the petitioner filed a company-specific sales-below-cost allegation against Koehler. On April 15, 2013, we initiated a sales-below-cost investigation and instructed Koehler to respond to section D of the Department’s questionnaire.<sup>5</sup> See “Cost of Production Analysis” section below.

From April 2013 through June 2013, we issued supplemental sales and cost questionnaires to Koehler. We received responses to these supplemental questionnaires from May 2013 through July 2013. On April 10, 2013, the petitioner requested that the Department conduct verification of the questionnaire responses submitted in this review by Koehler, pursuant to 19 CFR 351.307(b)(1)(v).

On May 30, 2013, we extended the time period for issuing the preliminary results of this review until December 2, 2013.<sup>6</sup> As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.<sup>7</sup> Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department’s practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now December 18, 2013.

In August and September 2013, we conducted verifications at Koehler’s facilities in Germany and the United States. At our request, Koehler submitted revised sales databases in November 2013, to incorporate certain corrections and revisions arising from verification.

On November 18, 2013, the petitioner provided comments for consideration in the preliminary results. Koehler responded to those comments on November 26, 2013,<sup>8</sup> to which the petitioner replied on December 6, 2013. On December 12, 2013, Koehler filed a response to the petitioner’s December 6, 2013, submission.

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<sup>4</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 77017 (December 31, 2012).

<sup>5</sup> See Memorandum entitled “The petitioner’s Allegation of Sales Below the Cost of Production for Papierfabrik August Koehler AG (Koehler),” dated April 15, 2013 (COP Initiation Memo).

<sup>6</sup> See Memorandum entitled “Lightweight Thermal Paper from Germany: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated May 30, 2013.

<sup>7</sup> See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013).

<sup>8</sup> This submission was refiled on December 4, 2013, to revise the bracketing of certain information.

We are conducting this administrative review of the order in accordance with section 751(a) of the Act.

## **SCOPE OF THE ORDER**

The scope of the order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter ( $\text{g/m}^2$ ) (with a tolerance of  $\pm 4.0 \text{ g/m}^2$ ) or less; irrespective of dimensions;<sup>9</sup> with or without a base coat<sup>10</sup> on one or both sides; with thermal active coating(s)<sup>11</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>12</sup> and without an adhesive backing. Certain LWTP is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3703.10.60, 4811.59.20, 4811.90.8000, 4811.90.8030, 4811.90.8040, 4811.90.8050, 4811.90.9000, 4811.90.9030, 4811.90.9035, 4811.90.9050, 4811.90.9080, 4811.90.9090, 4820.10.20, and 4823.40.00.<sup>13</sup> Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

## **SUCCESSOR-IN-INTEREST**

In determining whether one company is the successor to another for purposes of the antidumping law, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.<sup>14</sup> Although no single or even several of these factors is a dispositive indication of successorship, generally the Department will consider one company to be a successor to another company if its resulting operation is not materially dissimilar to that of its predecessor.<sup>15</sup> Thus, if the totality of circumstances demonstrates that, with respect to the production and sale of the subject

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<sup>9</sup> LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of the order.

<sup>10</sup> A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

<sup>11</sup> A thermal active coating is typically made of sensitizer, dye, and co-reactant.

<sup>12</sup> A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

<sup>13</sup> HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for "other," including LWTP).

<sup>14</sup> See, e.g., Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision at Comment 1.

<sup>15</sup> See, e.g., Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 64 FR 9979 (March 1, 1999) (Salmon); and Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006).

merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor.<sup>16</sup>

Koehler reported in the February 25, 2013, response to section A of the Department's questionnaire (QRA) that, as of November 2012, it converted its legal form and its name from Papierfabrik August Koehler AG to Papierfabrik August Koehler SE.<sup>17</sup> In our April 3, 2013, supplemental questionnaire, we requested that Koehler address the four factors noted above (*i.e.*, management, production facilities for the subject merchandise, supplier relationships, and customer base) in order to determine whether Papierfabrik August Koehler SE is the successor-in-interest to Koehler.

In its May 15, 2013, supplemental questionnaire response (SQR), Koehler reported that the only change that had occurred to the company was its legal form (*i.e.*, from an Aktiengesellschaft, or "AG," to Societas Europaea, or "SE").<sup>18</sup> According to Koehler, the change to its legal form had no effect on the company's operations.<sup>19</sup> For instance, Koehler stated that there was no change in ownership, management or organization of the company, or in the company's production/production facilities, supplier relationships, or how it sells the subject merchandise.<sup>20</sup> In addition, Koehler reported that there had been no significant changes in its customers or customer relationships since the change in its legal form.<sup>21</sup> The petitioner provided no comments on this topic. Based on the information on the record, including our verification results, we preliminarily find that Koehler's organizational structure, management, production facilities, supplier relationships, and customer base have remained largely unchanged from the period prior to the change in legal form and name. Further, we preliminarily find that Papierfabrik August Koehler SE operates as the same business entity as Papierfabrik August Koehler AG with respect to the production and sale of LWTP. Thus, we preliminarily find that Papierfabrik August Koehler SE is the successor-in-interest to Papierfabrik August Koehler AG.

## **DISCUSSION OF THE METHODOLOGY**

### Date of Sale and Universe of U.S. Sales

Pursuant to 19 CFR 351.401(i), in identifying the date of sale of the subject merchandise or foreign like product, the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. However, a date other than the date of invoice may be used if the Department is satisfied that a different date reflects the date on which the exporter or producer establishes the material terms of the sale. For example, the Department's consistent practice is to use the shipment date as the

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<sup>16</sup> See Salmon at 64 FR 9979, 9980; Brass Sheet and Strip from Canada: Final Result of Administrative Review, 57 FR 20461 (May 13, 1992) at Comment 1.

<sup>17</sup> See QRA at 6 and Exhibit A-46.

<sup>18</sup> See SQR at 20.

<sup>19</sup> Id. at 22-23.

<sup>20</sup> Id. at 21-23.

<sup>21</sup> Id. at 23.

date of sale where the shipment date occurred before the invoice date because the material terms of the sale are fixed at the time of shipment.<sup>22</sup>

Koehler reported three different sales channels for U.S. sales: Channel 1) U.S. constructed export price (CEP) direct shipment sales which were made by its affiliate, Koehler America, Inc. (Koehler America), and shipped directly to the U.S. customer from the factory; Channel 2) CEP warehouse sales which were made by Koehler America and shipped to the U.S. customer from the U.S. warehouse; and Channel 3) U.S. export price (EP) sales which were made by Koehler and shipped directly to the U.S. customer from the factory.<sup>23</sup> For each of these three sales channels, Koehler reported invoice date as the date of sale.<sup>24</sup>

Koehler also reported the date of shipment for each of these sales channels. For U.S. EP sales (Channel 3 sales) and CEP direct shipment sales (Channel 1 sales), Koehler reported the date of shipment from the factory as the shipment date.<sup>25</sup> For CEP warehouse sales (Channel 2 sales), Koehler reported the date of shipment from the U.S. warehouse as the shipment date.<sup>26</sup>

At verification, we discovered that Koehler's reported shipment date reflected the port shipment date, rather than the factory shipment date, for EP and CEP direct shipment sales (Channel 3 and Channel 1 sales, respectively), and the invoice date, rather than the warehouse shipment date, for CEP warehouse sales (Channel 2 sales).<sup>27</sup> In most instances, the actual shipment dates (from the factory or warehouse) preceded the reported shipment and invoice dates.<sup>28</sup> As a result, we have determined the date of sale based on the earlier of shipment date from the factory (for Channels 1 and 3) or warehouse (for Channel 2), or invoice date, based on information obtained at verification.

In addition, in providing the universe of U.S. sales to be considered for this POR, Koehler explained that it reported U.S. sales for this POR according to entry date for EP sales (Channel 3 sales), and invoice date for all CEP sales (Channel 1 and Channel 2 sales), consistent with its methodology in previous reviews.<sup>29</sup> Because Koehler relied on invoice date to determine the universe of sales for reporting POR CEP sales (Channel 1 and Channel 2 sales), the adjustments to the date of sale as stated above may affect the identification of reportable sales, as discussed in detail at pages 26-27 of the SVR. With respect to CEP warehouse sales (Channel 2 sales), the quantity of unreported sales shipped from the warehouse during the POR but invoiced after the POR is very small, according to our verification findings.<sup>30</sup> With respect to CEP direct shipment

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<sup>22</sup> See, e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007), and the accompanying Issues and Decision Memorandum at Comments 4 and 5.

<sup>23</sup> See QRA at 26-28, and SQR at 28 and Exhibit SA-9.

<sup>24</sup> See QRC at C-13.

<sup>25</sup> Id. at C-14.

<sup>26</sup> Id.

<sup>27</sup> See Memorandum entitled "Verification of the Sales Responses of Papierfabrik August Koehler" (SVR), dated October 24, 2013, at 25-28.

<sup>28</sup> Id. at 8, 26, and 27.

<sup>29</sup> See QRC at 34; see also Koehler's December 4, 2013, submission at 15.

<sup>30</sup> See SVR at 27.

sales (Channel 1 sales), the quantity of unreported sales shipped from the factory during the POR but invoiced after the POR is also small, according to our verification findings.<sup>31</sup>

Koehler explained its sales reporting methodology for all U.S. sales, and its basis for not reporting entry dates for CEP direct shipment sales in its questionnaire response. As noted above, this reporting methodology was consistent with that Koehler employed in past reviews, and the Department did not request further information regarding entry dates or CEP direct shipment sales entered but not shipped or invoiced during the POR. Therefore, for purposes of this review, we have accepted Koehler's methodology for reporting these U.S. sales. However, we note that the Department's normal practice with respect to CEP sales made before importation, such as Koehler's CEP direct shipment sales, is to require that these sales be reported based on entry date when the U.S. customs entry information is available to the respondent.<sup>32</sup> At verification, we determined that Koehler possessed entry information for CEP direct shipment sales.<sup>33</sup> Therefore, in subsequent reviews, we intend to request that Koehler report CEP direct shipment sales based on entry date. With regard to Koehler's CEP warehouse sales, which were made after importation, we intend to request that Koehler report them based on the earlier of warehouse shipment date or invoice date, consistent with our practice as discussed above.

### Fair Value Comparisons

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Koehler's sales of LWTP from Germany were made to the United States at less than NV, we compared the export price (EP) or constructed export price (CEP) to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum, below.

#### *A. Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) (or CEPs) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.<sup>34</sup> In recent investigations and reviews, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a

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<sup>31</sup> Id. at 26.

<sup>32</sup> See, e.g., Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 28190 (May 14, 2013), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>33</sup> See SVR Exhibits 45 and 60.

<sup>34</sup> See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>35</sup> The Department finds the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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<sup>35</sup> See, *e.g.*, Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3; Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011-2012, 78 FR 34640 (June 10, 2013), unchanged in Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65274 (October 31, 2013).

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of EPs or CEPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that passes the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of EPs or CEPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

#### B. *Results of the Differential Pricing Analysis*

Based on the results of the differential pricing analysis, the Department finds that between 33 percent and 66 percent of Koehler’s export sales confirm the existence of a pattern of EPs or CEPs for comparable merchandise that differs significantly among purchasers, regions, or time periods.<sup>36</sup> Therefore, the results support consideration of the application of an average-to-transaction methodology to those sales identified as passing the Cohen’s *d* test, and application of the average-to-average methodology to those sales identified as not passing the Cohen’s *d* test

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<sup>36</sup> Further discussion of the differential pricing analysis is included in the Memorandum entitled, “Preliminary Results Margin Calculation for Papierfabrik August Koehler,” dated concurrently with this memorandum (Preliminary Results Calculation Memo).

(mixed alternative methodology). However, because there is no meaningful difference in the weighted-average dumping margin when calculated using the average-to-average method and the mixed alternative method, the Department preliminarily determines that it is appropriate to apply the average-to-average method in making comparisons of EP or CEP and NV for Koehler.<sup>37</sup>

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Koehler covered by the description in the “Scope of the Order” and sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(f), we compared Koehler’s U.S. sales of LWTP made during a particular month to its sales of LWTP made in the home market in the same month. Where there were no contemporaneous sales within the same month, pursuant to 19 CFR 351.414(f)(2), we compared Koehler’s U.S. sales of LWTP to its sales of LWTP made in the home market in the most recent of the three months prior to the month of the U.S. sales. Finally, if Koehler did not make home market sales of LWTP during any of these months, pursuant to 19 CFR 351.414(f)(3), we compared Koehler’s U.S. sales of LWTP to Koehler’s home market sales of LWTP in the earlier of the two months following the month of the U.S. sales in which Koehler made a home market sale of LWTP. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Koehler in the following order: form, thermal active coating, top coating, basis weight, maximum optical density units, static sensitivity, dynamic sensitivity, coating color, printing, width, length, and core material.

Based on our analysis, we were able to match all of Koehler’s U.S. sales during the POR to contemporaneous sales in the home market that were identical according to these product matching criteria within the meaning of section 771(16)(A) of the Act. Accordingly, in calculating Koehler’s NV, we made product comparisons without having to account for cost differences associated with differences in the physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

### Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We based EP on the packed, delivered prices to unaffiliated purchasers in the United States. Where appropriate, pursuant to 19 CFR 351.401(c), we adjusted the starting prices for early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, international freight (inclusive of U.S. inland freight), inland and marine insurance, and U.S. brokerage and handling (including harbor

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<sup>37</sup> In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs or CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

maintenance fees and merchandise processing fees). We also adjusted movement expenses for rebates paid to Koehler by its freight services provider.

Pursuant to section 772(b) of the Act, we calculated CEP for those sales where the subject merchandise was first sold or agreed to be sold in the United States before or after the date of importation by or for the account of the producer or exporter or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We based CEP on the packed, ex-factory or ex-U.S. warehouse prices to unaffiliated purchasers in the United States. We excluded from the CEP calculation a sales transaction which was reported by Koehler (and verified by the Department) as a sample.<sup>38</sup> Where appropriate, pursuant to 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments, rebates, and early payment discounts. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, international freight (inclusive of U.S. port to U.S. warehouse transportation), marine insurance, U.S. brokerage and handling (including harbor maintenance fees and merchandise processing fees), U.S. inland freight from U.S. warehouse to customer, and warehousing expenses. We also adjusted movement expenses for rebates paid to Koehler by its freight services provider. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit expenses and credit insurance expenses), and indirect selling expenses (including inventory carrying costs). We recalculated indirect selling expenses incurred on U.S. sales by reallocating certain payroll expenses incurred by Koehler's U.S. affiliate P.L. Thomas Co. equally over each month of the respective year of the POR, rather than as posted in the company's financial statements.<sup>39</sup>

We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Koehler and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales. We further adjusted CEP based on verification findings.<sup>40</sup>

## Normal Value

### A. *Home Market Viability and Selection of Comparison Market*

To determine whether there is a sufficient quantity of sales in the home market to serve as a viable basis for calculating Koehler's NV, we compared the volume of Koehler's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) and 19 CFR 351.404. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), Koehler had a viable home market during the POR because the volume of Koehler's home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise.

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<sup>38</sup> See QRC at C-50 and SVR at 25.

<sup>39</sup> See SVR at 36-37 and the Preliminary Results Calculation Memo.

<sup>40</sup> See Preliminary Results Calculation Memo.

Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based Koehler's NV on its home market sales.

## B. *Level of Trade*

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act,<sup>41</sup> to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.<sup>42</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative expenses, and profit for CV, where possible.

To determine whether comparison market sales are at a different LOT than export price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.<sup>43</sup> If the comparison market sales are at a different LOT and the difference affects price comparability, as described in 19 CFR 351.412(d) and as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In this administrative review, we obtained information from Koehler regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by Koehler for each channel of distribution.<sup>44</sup> Our LOT finding is summarized below.

Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) warehousing and inventory; and (4) warranty and technical support.<sup>45</sup> Koehler reported that during the POR it made sales of LWTP in the home market through three channels of distribution: direct sales to the customer (Channel 1), transshipments through a third-country (Channel 2), and consignment sales (Channel 3). Based on our analysis, we found that Koehler performed activities in each of the four selling function

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<sup>41</sup> See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

<sup>42</sup> See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

<sup>43</sup> See 19 CFR 351.412(c)(2).

<sup>44</sup> See QRA at 19-23 and Exhibit A-9, and the March 4, 2013, response to section B of the Department's questionnaire (QRB) at B-27-B-28.

<sup>45</sup> See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7); and Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 74 FR 9991, 9996 (March 9, 2009), unchanged in Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33409 (July 13, 2009).

categories for the three channels of distribution in the home market.<sup>46</sup> Therefore, we preliminarily determined that there is only one LOT in the home market.

In the U.S. market, Koehler sold LWTP through three channels of distribution. Koehler made CEP sales in the U.S. market through two channels of distribution: sales made by Koehler America and shipped directly from Germany to the unaffiliated U.S. customer (Channel 1), and sales made by Koehler America from a warehouse located in the United States (Channel 2). In addition, Koehler made EP sales in the U.S. market through one channel of distribution: direct sales to unaffiliated U.S. customers in Puerto Rico (Channel 3). Based on our analysis, we found that, except for warehousing activities performed for CEP Channel 2 sales, Koehler performed virtually the same selling activities in each of the above-described selling function categories for all three channels of distribution in the U.S. market.<sup>47</sup> Although Koehler performed additional warehousing activities for its CEP sales through Channel 2, we do not find that this selling function constitutes a substantial difference in selling functions which is significant enough to warrant a separate LOT in the U.S. market. As explained at 19 CFR 351.412(c)(2), “[s]ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.” Therefore, we preliminarily determine that there is one LOT in the U.S. market because Koehler performed essentially the same selling functions for all CEP sales.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for home market sales are either performed at the same degree of intensity as, or vary only slightly from, the selling functions performed for U.S. sales. Therefore, we find that the single home market LOT and the single U.S. LOT are the same and, as a result, no LOT adjustment or CEP offset is warranted. Accordingly, we matched U.S. and home market sales at the same LOT.

### C. *Cost of Production Analysis*

On March 20, 2013, the petitioner alleged that Koehler made sales in the home market during the POR that were below the COP. Based on our analysis of the allegation made by the petitioner, we found that Koehler’s home market sales which allegedly fell below the COP were representative of the broader range of sales which may be used as a basis for NV. Therefore, we determined that there were reasonable grounds to believe or suspect that Koehler’s sales of LWTP in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Koehler’s sales were made at prices below its COP.<sup>48</sup> We examined Koehler’s cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data, adjusted as described below.

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<sup>46</sup> See QRA at 19-21 and Exhibit A-9.

<sup>47</sup> See QRA at 21-23 and Exhibit A-9.

<sup>48</sup> See COP Initiation Memo.

## 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondent's COP based on the sum of its costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses).

We revised the denominators of the general and administrative (G&A) and financial expense rate calculations to incorporate the minor correction reported by Koehler on the first day of the cost verification. In addition, we deducted energy-related liabilities and carbon credit purchases from the denominator and added them to the numerator of the G&A expense rate calculation. For further discussion of these adjustments, see the memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results."

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examine, in accordance with sections 773(b)(1)(A) and (B) of the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Sales made at prices below the COP are made in substantial quantities if the volume of such sales represents 20 percent or more of the volume of the respondent's home market sales of a given product, or "the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales," in accordance with section 773(b)(2)(C) of the Act. Thus, we disregard the below-cost sales when: 1) they were made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Koehler's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. *Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on packed, delivered prices to unaffiliated customers. We excluded from the NV calculation certain sales transactions reported by Koehler (and verified by the Department) as samples by Koehler.<sup>49</sup> We adjusted the starting price for billing adjustments, early payment discounts, rebates, warehouse expenses, and inland freight, where appropriate, pursuant to section 773(a)(6) of the Act and 19 CFR 351.401(c). In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, credit insurance expenses, and other direct selling expenses) and adding U.S. direct selling expenses (credit expenses, credit insurance expenses, commissions, and warranty expenses), where appropriate, in accordance with 19 CFR 351.410. For comparisons to EP sales, where commissions were granted in the U.S. market but not in the home market, we made an downward adjustment to NV for the lesser of: (1) the amount of commission paid in the U.S. market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the home market, pursuant to 19 CFR 351.410(e). For comparisons to both EP and CEP sales, we deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Koehler incurred certain warehousing expenses related to sales sold through home market Channel 2. We treated these expenses as indirect selling expenses rather than movement expenses because they were incurred on a fixed monthly basis and not directly attributable to the movement of the merchandise in the sales transactions.<sup>50</sup>

In its November 18, 2013, submission, the petitioner contends that, based on the pricing analysis included in that submission, the Department should consider Koehler's sales of KT 48 merchandise sold through June 2012, via home market Channels 1 and 3, as either outside the ordinary course of trade, or as constituting a fictitious market, and thus exclude these sales from the calculation of NV. Based on our analysis of the record and our verification findings, we find no basis to conclude that these sales were outside Koehler's ordinary course of trade within the meaning of section 771(15) of the Act, nor do we find evidence of a fictitious market pursuant to section 773(a)(2) of the Act. We examined sales in all three channels during verification and found no evidence that the terms of sale, product specifications, prices, and other selling factors were atypical of Koehler's normal commercial behavior.<sup>51</sup> Further, we note that the Department normally does not engage in a fictitious market analysis unless it receives a timely and adequately substantiated allegation because the analysis would be based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard antidumping analysis.<sup>52</sup> The petitioner's submission was not timely, as it was submitted after verification and only a month prior to the deadline for these

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<sup>49</sup> See SVR at 7.

<sup>50</sup> See QRB at B-30.

<sup>51</sup> See SVR, *passim*.

<sup>52</sup> See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea, 62 FR 39809, 39821-39822 (July 24, 1997) (citing Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27357 (May 19, 1997) (Preamble)).

preliminary results, nor did it include an adequately substantiated allegation for conducting a fictitious market investigation.

### Duty Absorption

On January 30, 2013, the petitioner requested that the Department determine whether antidumping duties have been absorbed for U.S. sales of subject merchandise during the POR by Koehler. If a duty absorption inquiry is requested, section 751(a)(4) of the Act directs the Department to determine, during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer.

The current administrative review was initiated four years after the publication of the antidumping duty order on LWTP from Germany and the request was timely submitted to the Department by the petitioner.<sup>53</sup> In its questionnaire response, Koehler reported that Papierfabrik August Koehler AG was the importer of record for all its U.S. sales.<sup>54</sup> The petitioner provided no information to rebut Koehler's reporting. Because the subject merchandise was not sold through an importer who is affiliated with the foreign producer/exporter, we are not examining duty absorption with respect to Koehler.<sup>55</sup>

### Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

### Verification

As provided in section 782(i) of the Act, during August 2013 and September 2013, we verified the sales and COP information provided by Koehler and its U.S. affiliate using standard procedures such as the examination of company sales and financial records. Our verification results are outlined in the public and proprietary versions of our verification report, which are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).<sup>56</sup> IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of Commerce building.

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<sup>53</sup> See Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People's Republic of China, 73 FR 70959 (November 24, 2008).

<sup>54</sup> See QRC at C-53.

<sup>55</sup> See section 751(a)(4) of the Act and Agro Dutch Industries, Ltd. v. United States, 508 F.3d 1024, 1033 (Fed. Cir. 2007).

<sup>56</sup> See Memorandum entitled "Verification of the Cost Response of Papierfabrik August Koehler AG in the Antidumping Duty Administrative Review of Lightweight Thermal Paper from Germany," dated September 24, 2013, and the SVR.

Conclusion

We recommend applying the above methodology for these preliminary results.

✓

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

*Ronald K Lorentzen*

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

*December 17, 2013*

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(Date)