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

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

SUBJECT: Issues and Decision Memorandum for the 2011-2012 Final Results
of the Administrative Review on Lightweight Thermal Paper from
Germany

Summary

We analyzed the comments of the interested parties in the 2011- 2012 administrative review of the antidumping duty order covering lightweight thermal paper (LWTP) from Germany. As a result of this analysis, we made no changes to the margin calculated for Papierfabrik August Koehler SE (formerly Papierfabrik August Koehler AG) (Koehler). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

Issues

1. *Exclusion of Certain Sales from Normal Value (NV) Calculations*
2. *Application of Adverse Facts Available (AFA) to Unreported U.S. Sales Quantity*
3. *Recalculation of Indirect Selling Expenses Incurred in the United States*
4. *Differential Pricing and Application of Average-to-Transaction Methodology*
5. *Ministerial Errors in Margin Calculation Program*

Background

On December 26, 2013, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of LWTP from Germany.¹ The period of review (POR) is November 1, 2011, through October 31, 2012. We invited parties to comment on the preliminary results. We received case briefs from the petitioner, Appvion, Inc. (the petitioner), and the respondent Koehler on February 10, 2014 (Petitioner Brief and Koehler Brief,

¹ See Lightweight Thermal Paper From Germany: Preliminary Results of Antidumping Duty Administrative Review; 2011 -2012, 78 FR 78335 (December 26, 2013) (Preliminary Results), and accompanying Decision Memorandum entitled “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Lightweight Thermal Paper from Germany” (Preliminary Decision Memorandum).



respectively), and rebuttal briefs from both parties on February 18, 2014 (Petitioner Rebuttal and Koehler Rebuttal, respectively). On March 13, 2014, the Department held both a public and a closed hearing at the request of the petitioner.

Successor-In-Interest

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.² In the Preliminary Results, we conducted a successor-in-interest analysis and concluded that:

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.³

Neither the petitioner nor Koehler commented on this preliminary finding, and we have no additional record information since the Preliminary Results to cause us to reconsider it. Accordingly, we determine that Papierfabrik August Koehler SE is the successor-in-interest to Papierfabrik August Koehler AG.

Margin Calculations

We calculated export price (EP), constructed export price (CEP), and NV using the same methodology stated in the Preliminary Results, except as follows:

- We corrected an error in the margin calculation program in which we added, rather than subtracted, the rebate amounts Koehler received from its international freight forwarder. See Comment 5 below.

This change did not affect the margin calculation results.

Discussion of the Issues

Comment 1: Exclusion of Certain Sales from NV Calculations

In the previous administrative review, the POR of which was November 1, 2010, through October 31, 2011 (AR3), Koehler admitted that it engaged in a transshipment scheme in which certain home market sales ultimately destined for German customers were shipped to a third

² See QRA at page 6 and Exhibit A-46.

³ See Preliminary Decision Memorandum at page 4.

country and intentionally excluded from Koehler's home market sales reporting. Consequently, we applied total AFA to Koehler in AR3.⁴ Koehler also acknowledged that the transshipments began prior to the POR of AR3 and ended during the POR of the instant review (AR4), accounting for a significant portion of Koehler's home market sales during this review.⁵

In contrast to AR3, in its home market sales reporting in this review, Koehler fully disclosed the transshipment sales channel and the sales data for the merchandise sold through this sales channel, known as Channel 2. The other home market sales made during the POR of AR4 were sold either through Channel 1 (direct shipments) or Channel 3 (consignment sales). We examined the transshipped sales as part of our sales verification⁶ and included them in our calculation of normal value (NV) in the Preliminary Results.⁷

Prior to the preliminary results of this review, the petitioner argued that, even though Koehler disclosed and reported the Channel 2 sales (all of which were of product type KT 48), the existence of sales through this channel during a portion of the POR distorted the contemporaneous prices of the Channel 1 and Channel 3 KT 48 sales, according to the petitioner's analysis. The petitioner argued that those Channels 1 and 3 KT 48 sales should thus be treated as outside the ordinary course of trade, or as constituting a fictitious market, and excluded from the comparison to U.S. sales.⁸ We disagreed with the petitioner's arguments in the Preliminary Results, finding no basis to treat the sales as outside the ordinary course of trade, and stating that the fictitious market allegation was unsubstantiated, in addition to being untimely.⁹

A. Whether certain Channels 1 and 3 KT 48 sales are outside the ordinary course of trade

The petitioner contends that the Department should determine that, while Koehler's transshipment scheme was in place, sales of KT 48 products through Channels 1 and 3 were outside the ordinary course of trade, as defined by section 771(15) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.102(b)(35). According to the petitioner, these sales were made at artificial prices that were aberrationally low and not determined by commercial considerations nor market-based supply and demand, in part because of the particular manner in which Koehler established prices for these sales.¹⁰ The petitioner states that the Department determined in AR3 that Koehler was

⁴ See Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review: 2010-2011, 78 FR 23220 (April 18, 2013) (AR3 Final), and accompanying Issues and Decision Memorandum (AR3 Decision Memo) at Comment 1.

⁵ See QRA at pages 15 – 17.

⁶ See Memorandum entitled "Verification of the Sales Responses of Papierfabrik August Koehler," dated October 24, 2013, (SVR).

⁷ See Preliminary Decision Memorandum at page 14.

⁸ All of Koehler's U.S. sales during the POR were of product type KT 48. In the German home market, Koehler sold a substantial quantity of KT 48 merchandise as well as other products. In the Preliminary Results, we were able to match all U.S. sales to identical KT 48 German sales. Accordingly, only German KT 48 sales were relevant for the calculation of NV in the Preliminary Results. See margin calculations included in Memorandum entitled, "Preliminary Results Margin Calculation for Papierfabrik August Koehler" (Preliminary Results Calculation Memo) at Attachment 2.

⁹ See Preliminary Decision Memorandum at pages 14-15.

¹⁰ See Petitioner Brief at pages 4-32 (referring to certain business proprietary information concerning Koehler's selling practices, which was discussed in Koehler's May 15, 2013, supplemental questionnaire response (SQRABC) at

“artificially manipulating prices attributable to those sales of 48-gram thermal paper shipped directly to its German customers,” (i.e., Channels 1 and 3 sales).¹¹

The petitioner claims its price analysis in its case brief supports its contention, because, when comparing Koehler’s home market KT 48 sale prices to its home market KT 55 sale prices, the prices of Channel 2 KT 48 sales make commercial sense and meet market expectations, similar to the sales of KT 55, while the prices of the other KT 48 sales (i.e., through Channels 1 and 3) do not.¹² As part of this argument, the petitioner claims that, on a per-weight basis, KT 48 products should carry a price premium because at the same weight, KT 48 products have more surface area than KT 55 products. The petitioner states that Channel 2 KT 48 sale prices fit this model, while the contemporaneous prices of Channels 1 and 3 KT 48 sales do not. After the transshipment scheme ended, the petitioner contends that price levels for the Channels 1 and 3 sales increased dramatically to conform to the expected commercial pattern. Although Koehler has previously asserted that there are commercial reasons why KT 48 products may be sold at a lower per-kilogram price than KT 55 products, the petitioner does not accept Koehler’s explanation and responds that the rationale derives from Koehler’s attempts to manipulate its prices through the transshipment scheme rather than any commercial basis.¹³

In addition, the petitioner claims that its profitability analysis shows that KT 48 Channels 1 and 3 sales were sold with artificial and aberrationally low profitability during the period in which the transshipment scheme was in place.¹⁴ As with selling prices, the petitioner contends that, when comparing the profitability of KT 48 sales with the profitability of KT 55 sales, the profit margin for the Channel 2 KT 48 sales was more in line with the profit margins of KT 55 sales than the profitability of other KT 48 sales sold at the same time. When the transshipment scheme was discontinued, the petitioner asserts that the profitability of the Channels 1 and 3 KT 48 sales increased dramatically to reach the level of the KT 55 sales.

According to the petitioner, under similar circumstances, the Department has disregarded home market sales found to be sold consistently at lower prices and with lower profit margins because it determined them to be outside the ordinary course of trade.¹⁵ While the petitioner acknowledges the Department’s Preliminary Results finding that it found no evidence at verification that the terms of sale, product specifications, prices, or other selling factors involving KT 48 sales sold in any channel were aberrational, the petitioner contends that the Department did not include the pricing and profit level data derived from Koehler’s own data in its analysis.¹⁶ Therefore, the

Exhibit SA-23).

¹¹ See id. at page 26 (quoting AR3 Decision Memo at page 2).

¹² See id. at pages 24-29 (referring to the price analysis at pages 8-11 and 18-21, and Exhibits 1, 2, 4, and 5). The petitioner’s price analysis relies on Koehler’s business proprietary information and cannot be detailed in this public memorandum.

¹³ See id.

¹⁴ See id. at pages 29-32 (referring to the profitability analysis at pages 11-12 and Exhibit 3). As with the petitioner’s price analysis, the profitability analysis relies on Koehler’s business proprietary information and cannot be detailed in this public memorandum.

¹⁵ See id. at pages 30-31 (citing Mantex, Inc. v. United States, 841 F. Supp. 1290, 1295 (CIT 1993) (Mantex); and CEMEX, S.A. v. United States, 133 F.3d 897, 899 (CAFC 1998) (CEMEX)).

¹⁶ See id. at pages 31-32.

petitioner maintains that the Department should consider the evidence presented in the petitioner's analysis and determine, based on this evidence, that the home market sales of KT 48 merchandise through Channels 1 and 3 were outside the ordinary course of trade during the period of the existence of KT 48 sales through Channel 2.

Koehler disputes the petitioner's contention that its sales through Channels 1 and 3 were outside the ordinary course of trade. Koehler asserts that the Department properly determined this matter in the Preliminary Results, in which the Department found that there was

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....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.¹⁷

Koehler asserts that its pricing practice was consistent with practices on the part of respondent companies to reduce or eliminate dumping that have been accepted by the Department and the courts.¹⁸ Koehler responds to the petitioner's price and profitability analysis with its own analysis that, according to Koehler, shows that its home market sales at issue were made at market-based, arm's-length prices that incorporated a variety of customer-specific factors and market conditions.¹⁹ Koehler notes that one set of price comparisons proffered by the petitioner is irrelevant because these comparisons involve sales made during the two months prior to the POR and were not used for matching purposes because there are home market sales identical to U.S. sales in each month of the POR.²⁰ With respect to a second set of comparisons between KT 48 sales made in Channels 2 and 3, Koehler states that its price comparison shows that these affiliates purchased the same product through two different channels at very similar prices, thus undermining the petitioner's argument.²¹ Moreover, Koehler discusses additional market factors, such as customer preference and home market demand, which support its contention that its home market prices were market-based and not artificially manipulated.²² Similarly, as Koehler states that its Channels 1 and 3 sales at issue were not sold at aberrationally low prices, neither were those sales sold with aberrationally low profitability.

Lastly, Koehler takes issue with the petitioner's reliance on Mantex and CEMEX to support the petitioner's argument that the KT 48 Channels 1 and 3 sales at issue were outside the ordinary course of trade. Koehler notes that the Department considered four factors in making its ordinary

¹⁷ See Koehler Rebuttal Brief at page 4 (citing Preliminary Decision Memorandum at page 14).

¹⁸ See id. at pages 6, 9-10 (citing Mantex, 841 F. Supp. at 1308 n.14; Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review, 64 FR 12951, 12954 (March 16, 1999); and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four inches or Less in Outside Diameter, and Components Thereof, From Japan, Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825, 11831 (March 13, 1997)).

¹⁹ See id. at pages 5-17 (referring to the analysis at Attachments A and B). Koehler's analysis relies on its business proprietary sales information and cannot be detailed in this public memorandum.

²⁰ See id. at pages 9 and 11 (citing Petitioner Brief at pages 10-11).

²¹ See id. at pages 11-13 (referring to the price analysis at Figure 1 of Attachment A).

²² See id. at pages 8-14 and Attachment A. Koehler has claimed proprietary treatment for specific pricing pattern information and customer/market factors.

course of trade determination in Mantex, of which “price and profit differentials” was only one factor.²³ According to Koehler, the other three factors involved non-standard product specifications, low sales volumes, and non-prime merchandise – all factors that Koehler contends are not present in this review.²⁴ In addition, Koehler states that, in CEMEX, the Department based its findings on four factors particular to that case that are not present in this review.²⁵ Koehler concludes that, because the Department found no basis to consider the Channels 1 and 3 sales at issue as outside the ordinary course of trade in the Preliminary Results, it should affirm that finding in the final results.

Department’s Position:

Section 771(15) of the Act defines “ordinary course of trade” as the “conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.” The SAA²⁶ further clarifies this portion of the statute, when it states that: “Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.”²⁷ Section 771(15) specifically establishes that sales made below the cost of production, as defined under section 773(b)(1) of the Act, and sales to affiliated parties, as defined under section 773(f)(2) of the Act, are outside the ordinary course of trade. Section 351.102(b)(35) of the Department’s regulations further defines sales outside the ordinary course of trade as:

sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm’s length price.

The petitioner seeks to define a subset of Koehler’s POR sales of KT 48 products to be outside the ordinary course of trade and, thus, for the Department to disregard such sales for purposes of calculating NV for comparison to U.S. sales. This subset comprises those KT 48 products sold through Channels 1 and 3 during the portion of the POR in which Koehler also sold these products through Channel 2 (i.e., the portion of the POR in which Koehler’s transshipment scheme was still in effect). The petitioner bases its argument on the contention that, for the relevant portion of the POR, these sales were sold at aberrational prices relative to contemporaneous Channel 2 sales in particular, but also in comparison to KT 55 sales. As a result, the petitioner also contends that the sales at issue were sold with abnormally low profits. However, as explained below, the record

²³ See id. at pages 15-16 (citing Mantex, 841 F. Supp. at 1295).

²⁴ See id. (citing Mantex, 841 F. Supp. at 1295).

²⁵ See id. at 16 (citing CEMEX, 133 F.3d at 901) (describing these factors as: a) low sales volume for the sales at issue; b) unusual shipping arrangements; c) low profit margins; and d) promotional nature of the sales at issue).

²⁶ The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA).

²⁷ See SAA at page 834.

does not support the petitioner's conclusions, and we find no other basis to consider the sales at issue to be outside the ordinary course of trade.

The price comparison graph presented in Figure 1 at page 9 of the Petitioner Brief is the basis for the petitioner's aberrational price argument. The petitioner compared the monthly average net price per kilogram for KT 48 FA sales sold through Channel 2 to the monthly average net price of KT 48 FA sales sold through Channels 1 and 3. According to this graph, the Channels 1 and 3 sales were sold at a significant discount relative to the Channel 2 sales. For comparison, the graph includes the monthly average net prices for KT 55 sales sold through Channels 1 and 3. The petitioner includes those prices as a benchmark, as well as to demonstrate its argument concerning the relationship between KT 48 and KT 55 prices.

However, the price patterns identified by the petitioner are generated, in part, because the petitioner has aggregated the pricing for two different channels – direct sales Channel 1 and consignment sales Channel 3. A distinctly different pattern emerges when these prices are disaggregated. In Figure 1 of Attachment A to the Koehler Rebuttal, Koehler presents a graph comparing the monthly average net prices of KT 48 sales by channel and customer. This graph supports Koehler's explanation that the pricing trend observed by the petitioner can be attributed by the replacement of the Channel 2 customer by the Channel 3 customer.²⁸ We conducted our own analysis of Koehler's home market pricing to supplement the analyses submitted by both parties. Our results show no indication that the pricing of Koehler's sales of KT 48 FA through Channels 1 and 3 is evidence that these sales were outside Koehler's ordinary course of trade during the existence of the transshipment scheme.²⁹

The petitioner reasons that one should expect the KT 48 product to be of higher value than the comparable KT 55 product because, on a per-kilogram basis, a KT 48 product has more surface area than the comparable KT 55 product. Koehler previously explained that the price and cost differences between these types of products are not necessarily as straightforward as the petitioner assumes.³⁰ While Koehler does not sell KT 55 products to the United States, it continues to find significant demand for these products in its home market.³¹ Given this market situation, we do not find the petitioner's price comparisons between KT 48 and KT 55 prices to be persuasive in determining the KT 48 sales at issue to be outside the ordinary course of trade.

²⁸ See Koehler Rebuttal at page 12.

²⁹ See Memorandum to the File entitled "Additional Analysis of Koehler's Home Market Prices and Profitability" (Price Analysis Memo), which includes a more detailed comparison of Koehler's product pricing based on the business proprietary sales data Koehler submitted in this review.

³⁰ See SQRABC at pages 38 – 40 and 54 – 55. These discussions include information for which Koehler requested proprietary treatment. See also Lightweight Thermal Paper From Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review, 75 FR 77831, 77833 (December 14, 2010) (AR1 Preliminary Results), which summarized Koehler's explanation of the market factors influencing the pricing of KT 48 F20 and KT 55 F20 sales in Germany during the 2008-2009 POR (AR1).

³¹ See, e.g., the product-specific sales volume information included at Attachment B to the Koehler Rebuttal, which derives from the home market sales data previously reported to the Department. See also SVR at page 23, and Koehler's June 6, 2011, supplemental questionnaire response in the 2009-2010 review at pages 7-8, included in this review record at Exhibit 15 of the petitioner's May 17, 2013, submission of factual information from previous reviews.

The petitioner also refers to the relative pricing of KT 48 F20 products sold through Channel 2 to those products sold through Channels 1 and 3. We agree with Koehler that comparisons between these products sold through these channels are not very meaningful due to the limited sales data available for such comparisons, with most of the comparison data falling outside the POR and, thus, not relevant for comparisons to U.S. sales.³² Further, as Koehler notes, the quantity of sales involved in the POR comparisons are not significant enough to draw a meaningful conclusion.³³

Finally, the petitioner contends that Koehler sold the KT 48 products at issue at aberrationally low profit levels. Even using the petitioner's data presented in the Petitioner Brief, it is difficult to determine that the profitability of these KT 48 sales was "aberrationally low," given the magnitude of the profit levels in the petitioner's analysis.³⁴ However, as we found with price comparisons, the profitability patterns identified by the petitioner result from the reliance on comparisons that aggregate Channel 1 and 3 price data. Notwithstanding that fact, it is reasonable to assume that because a company sets prices based on a variety of factors, including customer, sales quantities, terms of sale, *etc.*, the profitability of its sales may vary widely in response to those factors. Thus, profitability alone does not necessarily indicate sales outside the ordinary course of trade. As Koehler correctly noted, in such cases as Mantex and CEMEX, profitability (as well as price levels) was only one of at least four factors that led to a finding of sales outside the ordinary course of trade.³⁵ Those remaining factors—non-standard product specifications, low sales volumes, and non-prime merchandise—have not been raised in this review.³⁶

Nevertheless, we conducted our own analysis of the estimated profitability of the sales of Koehler products used in the pricing analysis. Our analysis finds that the profitability of the Koehler sales at issue was not aberrational and, thus, does not support a finding that these sales were outside the ordinary course of trade.³⁷

Furthermore, at verification, we examined sales in all three home market channels and found no evidence that the terms of sale, specifications, prices, quantities, or other selling factors were atypical of Koehler's normal commercial behavior.³⁸ Thus, we continue to find that Koehler's Channels 1 and 3 KT 48 sales at issue are not outside the ordinary course of trade because: (1) the like product was sold in commercial quantities; (2) the merchandise was not produced according to unusual product specifications; (3) the merchandise was not sold at aberrational price or profit levels; and (4) the merchandise was not sold pursuant to unusual terms of sale.

Finally, with respect to the petitioner's reference to our statement in the AR3 Final that Koehler was "artificially manipulating prices attributable to those sales of 48-gram thermal paper shipped

³² In the Preliminary Results, we were able to match all U.S. sales with identical home market sales sold during the POR, without resorting to comparisons with home market sales made in the three months prior to the POR.

³³ See Koehler Rebuttal at pages 13 – 14, which includes information for which Koehler has requested proprietary treatment.

³⁴ The profitability levels discussed at pages 11 – 12 of the Petitioner Brief include Koehler's business proprietary information. We note, however, that neither party stated that any of these sales were not profitable.

³⁵ See Mantex, 841 F. Supp. at 1295; CEMEX, 133 F.3d at 901.

³⁶ See Mantex, 841 F. Supp. at 1295; CEMEX, 133 F.3d at 901.

³⁷ See Price Analysis Memo.

³⁸ See SVR at pages 9-13, 17-25, and 32.

directly to its German customers,” we address that point below as part of our response to the petitioner’s fictitious market allegation.

For all of the reasons discussed above, we affirm our Preliminary Results conclusion that there is no record evidence that Koehler’s Channels 1 and 3 sales were made outside the ordinary course of trade.

B. Whether certain Channel 1 and 3 KT 48 sales constitute a fictitious market

Despite Koehler’s disclosure in this review of the information and sales data concerning home market Channel 2 sales, the petitioner contends that the existence of these sales during this POR continues to distort the pricing of KT 48 sales in Koehler’s home market data base. If the Department does not determine certain home market KT 48 sales sold through Channels 1 and 3 to be outside the ordinary course of trade, then the petitioner contends that the Department should consider these sales made contemporaneously with KT 48 sales sold through Channel 2 as creating a fictitious market under section 773(a)(2) of the Act and, therefore, should disregard them for comparison to U.S. sales. The petitioner challenges the Department’s declaration in the Preliminary Results that it could not perform a fictitious market analysis because the petitioner had not submitted a timely and adequately substantiated allegation. The petitioner claims that, in fact, it raised issues relevant to a fictitious market allegation at several points earlier in this review, including its comments on Koehler’s questionnaire responses submitted on March 20, 2013. Moreover, the petitioner asserts that there is no specific regulatory or statutory deadline for presenting a formal fictitious market allegation. Rather, the petitioner contends that the record of this review contains sufficient information for the Department to make a fictitious market finding and it should do so in these final results.

To that end, the petitioner cites to the statute, which states that “the occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product.”³⁹ The petitioner also cites the legislative history of the Omnibus Trade and Competitiveness Act of 1988 as providing an example of the establishment of a fictitious market:

For example, a chemical product may be produced and sold in powder and granular forms, both of which have similar uses and production costs. If a foreign manufacturer who produces and sells both products in his home market is found to be dumping the powder product in the United States, the only form that the manufacturer exports, he can minimize any antidumping duties finally assessed, and avoid a finding of sales at less than fair value during any review under section 751, by lowering his home market price for the powder product while maintaining or raising his home market price for the granular product.⁴⁰

³⁹ See Petitioner Brief at page 33 (citing section 773(a)(2) of the Act).

⁴⁰ See id. at pages 33-34 (quoting S. Rep. No. 100-71, at 126 (1987)).

The petitioner contends that Koehler’s transshipment scheme represents the type of behavior that the “fictitious market” provision was intended to prevent. According to the petitioner, Koehler attempted to manipulate its dumping margin by making sales intended to be used in the NV calculations (i.e., the Channels 1 and 3 KT 48 sales) at below-market prices, while at the same time maintaining market prices for sales it believed would not be used in the dumping calculations (i.e., the Channel 2 KT 48 sales involved in the transshipment scheme that Koehler intended to conceal from the Department). The petitioner states that evidence of this manipulation includes the price disparities and movements shown in its pricing analysis discussed above. Noting that the Department already found that Koehler was “artificially manipulating prices attributable to those sales of 48-gram {i.e., KT 48} thermal paper shipped directly to its German customers {i.e., via Channels 1 and 3},”⁴¹ the petitioner asserts that the Department should find in this review that the KT 48 sales sold through the same channels during the existence of the transshipment scheme in the instant review should be disregarded as sales made to a “fictitious market” under section 773(a) of the Act.

Koehler dismisses the petitioner’s fictitious market allegation and supports the Department’s Preliminary Results finding that the petitioner’s fictitious market allegation is untimely and unsubstantiated, and that there was no evidence of a fictitious market. Koehler rejects the petitioner’s contention that the issues raised by the petitioner early in the instant review were sufficient to constitute a formal fictitious market allegation obligating the Department to obtain the additional quantitative and/or qualitative information necessary for such an analysis.⁴² While Koehler acknowledges that the petitioner is technically correct that the Department’s regulations do not establish a specific deadline for making fictitious market allegations, the similar provisions of 19 CFR 351.301 and 19 CFR 351.404 regarding market viability and particular market situations demonstrate that a formal fictitious market allegation needs to be made at an early, information-gathering stage of the investigation or review, in order to permit the Department to collect and analyze the relevant data. Koehler notes that a fictitious market allegation must be adequately substantiated, as well as timely. Koehler asserts that the Department correctly determined in the Preliminary Results that the petitioner’s allegation was neither, and contends that the Department should continue to make that finding in the final results, as the facts have not changed.

If the Department addresses the fictitious market allegation, as the petitioner advocates, Koehler agrees with the Department’s Preliminary Results assessment that there is no evidence of a fictitious market pursuant to section 773(a)(2) of the Act. According to Koehler, the Department explained that a fictitious market is usually where an exporter has created a small, commercially unsustainable set of sales in a different form of the product to serve as the basis for comparisons to U.S. sales.⁴³ Moreover, Koehler continues, the courts have held that “there is no danger of foreign producers thwarting Congressional intent by creating fictitious markets ... via arm’s

⁴¹ See AR3 Decision Memo at page 2.

⁴² See Koehler Rebuttal Brief at page 17 (citing Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27357 (May 19, 1997) (Preamble)).

⁴³ See id. at pages 21-23 (citing Tubeless Steel Disc Wheels From Brazil; Final Results of Antidumping Duty Administrative Review, 56 FR 14083, 14085 (April 6, 1991)).

length transactions.”⁴⁴ As Koehler stated with respect to the previous issue discussed above, Koehler asserts that its KT 48 Channels 1 and 3 sales were made at arm’s-length prices and the Department found no evidence of any atypical commercial factors affecting these sales. Koehler also emphasizes the significant volume of these sales, which demonstrates that these sales were not a small, commercially unsustainable set of sales, as further evidence that it did not create a fictitious market.⁴⁵

Department’s Position:

Section 773(a)(2) of the Act states that:

No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

When undertaking a fictitious market analysis, the Department will examine not only whether there are price movements, but also whether there are commercial or market factors that explain their price movements.⁴⁶

The Department does not undertake a fictitious market analysis as part of its normal antidumping duty investigation or review procedures:

There are a variety of analyses called for by section 773 that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party. For example, the Department does not engage in a fictitious market analysis under section 773(a)(2) absent an adequate allegation from a party.... In short, the Department’s AD methodology contains presumptions that certain provisions of section 773 do not apply unless adequately alleged by a party or unless the Department uncovers relevant information on its own. In our view, this is an eminently reasonable approach. A common feature of these provisions is that they call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard AD analysis.⁴⁷

⁴⁴ See id. at page 22 (quoting PQ Corp v. United States, 652 F. Supp. 724, 729 (CIT 1987)). However, the actual quote reads: “there is no danger of foreign producers thwarting Congressional intent by creating fictitious markets in the United States via arm’s length transactions. “ (Emphasis added).

⁴⁵ See id. at page 23 and Attachment B. The attachment includes POR home market sales volume data on a product-specific basis.

⁴⁶ See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 25803, 25804 (April 28, 1993) (“{T}he existence of a fictitious market is not necessarily established merely on the basis of price movements without regard to the reasons that may have caused those price movements. The presence of commercial factors other than the existence of an antidumping duty order is relevant in determining whether a fictitious market exists. Thus, we have found it appropriate to consider the business justifications offered by the respondent in determining whether a fictitious home market exists.”)

⁴⁷ See Preamble, 62 FR at 27357; see also Notice of Final Results of Antidumping Duty Administrative Review and

The inferences and intimations raised by the petitioner earlier in this review that the petitioner believes were sufficient to merit a fictitious market allegation, did not, in fact, constitute a “fictitious market allegation.” The petitioner dismisses the importance of using the term “fictitious market” in order to make such an allegation.⁴⁸ However, the specific use of that term, along with a fully substantiated allegation, is necessary before the Department undertakes this type of extraordinary analysis. The petitioner did not make a formal allegation using the term “fictitious market” until after all of Koehler’s questionnaire responses were submitted and analyzed, and the Department had conducted its sales and cost-of-production (COP) verifications.⁴⁹ While the petitioner is correct that neither the statute nor the regulations specifies a deadline for making a fictitious market allegation, we agree with Koehler that, consistent with the deadlines established for other allegations concerning the determination of NV, an explicit and substantiated fictitious market allegation must be made at an early, information-gathering stage of the investigation or review.

We note that the petitioner previously made a fictitious market allegation at an early, information-gathering stage in an earlier segment of this proceeding. In AR1, the petitioner alleged that Koehler had created a fictitious market with respect to its sales of KT 48 F20 sales in the home market. The petitioner made that allegation in a letter dated March 5, 2010, about three weeks after the submission of Koehler’s home market sales response, and five months before the preliminary results were due (the deadline for the preliminary results was subsequently extended an additional four months).⁵⁰ That timely and specific allegation allowed the Department to seek additional relevant information in supplemental questionnaires, analyze the data, and provide a preliminary finding in the preliminary results.⁵¹ In contrast, the petitioner did not make an allegation of a fictitious market in its March 20, 2013, letter that, among other things, addressed the petitioner’s concerns regarding Koehler’s sales responses, nor in any of the subsequent letters the petitioner submitted on Koehler’s sales responses. The petitioner did not make its fictitious market allegation until November 18, 2013, over eight months after Koehler submitted its home market sales response, nearly three months after we completed our sales verification, and only a month before the Department’s deadline for issuing the preliminary results in this review. Accordingly, as we explained in the Preliminary Results, we consider the petitioner’s allegation to be untimely.⁵²

Nevertheless, as requested by the petitioner, we examined its contention that Koehler’s home market sales of KT 48 sold through Channels 1 and Channel 3 during the portion of the POR when Channel 2 was in existence constituted a fictitious market. Based on our analysis, we find that the record evidence does not support such a finding. Specifically, the petitioner’s argument relies on the same price patterns it presented to support its position that these sales were outside the ordinary

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).

⁴⁸ See Petitioner Brief at pages 40-41.

⁴⁹ See petitioner’s November 18, 2013, submission.

⁵⁰ See AR1 Preliminary Results, 75 FR at 77832-33.

⁵¹ See id., 75 FR at 77833-34.

⁵² See Preliminary Decision Memorandum at pages 14-15.

course of trade. As discussed above and in the Price Analysis Memo, a more detailed analysis of Koehler's pricing patterns does not support the petitioner's price disparity arguments as they pertain to price movement under section 773(a)(2) of the Act.⁵³

Moreover, we agree with Koehler that the commercial nature of its KT 48 sales undermines any conclusion that these sales were established to create a fictitious market. As Koehler notes, the sales in question are not a small, commercially unsustainable set of sales. Rather, Koehler sold this merchandise through Channels 1 and 3 in significant quantities, to established customers, and through its normal sales channels.

The petitioner cites to the AR3 Decision Memo, in which the Department stated that Koehler was "artificially manipulating prices" of KT 48 sales shipped directly to its customers, as evidence of Koehler's creation of a fictitious market for those sales. However, the petitioner does not put this declaration into context. The Department continued in the AR3 Decision Memo to explain that these manipulated prices would affect the calculation of NV that would be used to compare Koehler's sales prices to the United States.⁵⁴ That is, by concealing the transshipped KT 48 sales from Koehler's home market sales reporting, the Department would calculate NV for KT 48 prices based only on the reported direct shipment sales. If the direct shipment sales were sold at lower prices than the transshipped sales, the weighted-average NV would be distorted as a result of this manipulation, which excluded the higher-priced transshipped sales from the NV calculation. In turn, with this artificially-manipulated NV to compare to U.S. sales, the resulting antidumping margin would be lower than if the transshipped sales were included in the NV. However, because Koehler fully disclosed all transshipped sales in this review, the manipulation found in AR3 did not occur in AR4.

For the above reasons, therefore, we find no basis to classify Koehler's KT 48 sales at issue as creating a fictitious market within the meaning of section 773(a)(2) of the Act and, therefore, there is no basis to disregard them for comparison to U.S. sales under that section.

C. Whether the Department should apply AFA to certain home market sales

If the Department does not disregard Koehler's sales of KT 48 through Channels 1 and 3 during the existence of the transshipment scheme as outside the ordinary course of trade, or as creating a fictitious market, the petitioner contends that the Department should apply AFA to those sales and disregard them for purposes of comparison to U.S. sales. The petitioner asserts that the Department should find that Koehler's reliance on the transshipment scheme for sales in this review significantly impeded this proceeding under section 776(a) of the Act, and that Koehler did not act to the best of its ability to cooperate under section 776(b) of the Act. The petitioner further contends that Koehler's behavior is a continuation of its efforts in past reviews to manipulate its dumping margin and, therefore, the Department should not accept these direct home market sales for purposes of calculating NV.

⁵³ See Price Analysis Memo.

⁵⁴ See AR3 Decision Memo at page 2.

In the alternative, the petitioner argues that, if the Department finds nothing wrong with the Channels 1 and 3 KT 48 home market sales during the existence of the transshipment scheme to justify disregarding those sales, the Department instead should disregard all of Koehler's sales (both home market and U.S. sales) made during the existence of the transshipment scheme and apply a rate based on total AFA for all sales made during that period. The petitioner contends that this application of AFA is warranted because, while the transshipment scheme was in place, it claims that Koehler's normal financial accounting system was corrupted, unreliable and "infected by fraud."⁵⁵ In support of this assertion, the petitioner points to the Department's verification report, which indicated that the Channel 2 sales that were ultimately destined for German customers "were recorded in Koehler's accounting system as third country sales....the Channel 2 sales cannot be distinguished from Koehler's sales to customer in {a third country} in Koehler's electronic records."⁵⁶ The petitioner claims that these circumstances and those involved in establishing the logistics for Channel 2 sales are evidence that the integrity of Koehler's financial accounting system is compromised and, thus, "cannot be verified" under section 776(a)(2)(D) of the Act.⁵⁷ The petitioner states that the Department has applied AFA in such circumstances,⁵⁸ and it should do so in this review for the quantity of reported U.S. sales during the months in which the transshipment scheme existed.

Koehler argues that the Department should reject the petitioner's arguments that AFA is warranted. Koehler contends that the petitioner is attempting to incorporate the events of AR3, in which Koehler did not report the home market Channel 2 sales to the Department in its response to section B of the Department's AR3 questionnaire, into the instant review, in which Koehler reported all of its home market sales during the POR in its response to section B of the Department's questionnaire. Koehler asserts that there is no basis to conclude that Koehler did not act to the "best of its ability" by not putting forth its maximum effort to provide a full and complete response in this review.⁵⁹ Koehler points to the sales verification report, where the Department concluded that its "examination and testing of Koehler's home market sales reporting and reconciliation methodology, along with {its} series of completeness tests..., found no discrepancies in Koehler's home market sales reporting."⁶⁰ These verification results, Koehler asserts, demonstrate that the Department found that Koehler's accounting system was not corrupt. In contrast, Koehler continues, the petitioner's citation to Tianjin Magnesium refers to a situation where the respondent was found to have submitted falsified information, a situation completely different from the instant one.

⁵⁵ See Petitioner Brief, at page 43.

⁵⁶ See *id.* (quoting SVR at page 11).

⁵⁷ See *id.* at 43-45 (citing SVR at pages 11 and 22).

⁵⁸ See *id.* at 44-45 (citing Tianjin Magnesium Int'l Co. v. United States, Consol. Ct. No. 11-00006, Final Results of Redetermination (August 30, 2012) at page 8, *aff'd*, Tianjin Magnesium Int'l Co. v. United States, 878 F. Supp. 2d 1351, 1352-53 (CIT 2012), *aff'd*, 2014 WL 443952 (CAFC Feb. 5, 2014) (non-precedential)) (Tianjin Magnesium); and Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 11085 (March 16, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁹ See *id.* (citing section 776(b) of the Act and Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (CAFC 2003)).

⁶⁰ See *id.* at page 25 (quoting SVR at page 10).

Department's Position:

We find no basis to conclude that Koehler significantly impeded the conduct of this review under section 776(a) of the Act, nor do we find any basis to conclude that it did not act to the best of its ability to cooperate under section 776(b) of the Act. We also find no basis to determine that the integrity of Koehler's financial accounting system was compromised such that its home market sales could not be verified pursuant to section 776(a)(2)(D) of the Act.

In AR3, the Department applied total AFA to Koehler because Koehler:

(A) withheld information requested by the Department (*i.e.*, Koehler deliberately concealed relevant home market sales in its February 21, 2012, response to section A of the Department's questionnaire (QRA) and the QRBC {response to sections B and C of the Department's questionnaire});

(B) failed to provide such information in a timely manner or in the form or manner requested (*i.e.*, Koehler deliberately excluded home market sales from its submission of the QRA and the QRBC, and did not inform the Department it was unable to submit this information in the requested form or manner within the specified deadline);

(C) significantly impeded this proceeding (*i.e.*, Koehler created and executed a transshipment scheme in order to conceal home market sales from the Department, and provided information about these sales only in response to the petitioner's May 18, 2012, allegations); and

(D) provided information that cannot be verified (*i.e.*, QRA and QRBC were unreliable and unusable because Koehler deliberately submitted incomplete and inaccurate responses and created a transshipment scheme to conceal the omitted home market sales from the Department).⁶¹

In this review, Koehler did not withhold or otherwise fail to provide information in a timely manner or in the form or manner requested by the Department.⁶² Koehler did not significantly impede the conduct of this review by executing a transshipment scheme in order to conceal home market sales from the Department. Rather, Koehler fully disclosed its home market sales information, including the details of its transshipment scheme, in its initial questionnaire response.⁶³ Koehler reported its home market sales as requested by the Department, including those transactions sold through the transshipment scheme, in the first home market sales listing submitted in this review to the Department.⁶⁴ The information Koehler provided was successfully verified. In particular, the Department conducted a thorough verification of Koehler's home market sales reporting and found no evidence to suggest that Koehler had not fully cooperated in providing the requested home market sales data to the Department.⁶⁵

⁶¹ See AR3 Decision Memo at Comment 1.

⁶² Koehler refers to its "initial underreporting of home market sales" at page 2 of the Koehler Rebuttal Brief. The Department fully addressed the events of AR3 in the [AR3 Final Results](#) and is not revisiting those findings in this review.

⁶³ See, e.g., QRA at pages 15-17.

⁶⁴ See home market sales listing submitted as part of Koehler's March 4, 2013, response to section B of the Department's questionnaire.

⁶⁵ See SVR, *passim*.

Regardless of the manner in which Koehler behaved in AR3, this segment is a discrete review and there is no basis on this record to impute Koehler's behavior in AR3 to its behavior in AR4, as the petitioner implies.

The petitioner's arguments discounting the disclosure of the transshipped home market sales in this review seem to suggest that there is nothing Koehler could have done in this review to avoid an adverse result. Despite Koehler's full disclosure and cooperation in this review, the petitioner implies that the continued existence of the transshipment scheme during a portion of this POR requires some sort of action to penalize Koehler. However, the nature of the antidumping law is remedial, not punitive. As we explained in the AR3 Final Results,⁶⁶ the purpose of AFA is to induce respondents to provide the Department with complete and accurate information in a timely manner. The petitioner's approach is counter to this purpose and would remove the incentive for respondents to cooperate in the future.

With respect to the petitioner's specific argument concerning Koehler's accounting system, we conducted a thorough verification of Koehler's sales reporting, as discussed in the SVR. While we noted that Koehler's Channel 2 sales, which were transshipped through a third country, could not be distinguished in Koehler's normal accounting system from direct sales to that third country, we performed numerous tests of Koehler's sales records⁶⁷ and found no evidence that Koehler's financial accounting system was corrupt, infected by fraud, or otherwise unreliable for the purposes of this review. Our verification found no discrepancies in Koehler's home market sales reporting, and no evidence that Koehler concealed any reportable home market sales during this review.

We concluded our explanation of the application of AFA in the AR3 Final Results by noting that "Koehler is participating in this review {i.e., AR4} and has the opportunity to demonstrate its full cooperation with the Department by submitting full and complete questionnaire responses without resorting to fraudulent behavior or deception."⁶⁸ Based on the record of this review, including our verification results, Koehler has succeeded in demonstrating its full cooperation with the Department in this review. Accordingly, we find no basis to apply adverse facts available, either to Koehler's Channels 1 and 3 sales of KT 48 products, or to all of Koehler's sales during the transshipment scheme. Thus, we relied on all of Koehler's reported home market sales, as verified, in calculating NV for the final results, as we did in the Preliminary Results.

⁶⁶ AR3 Final Results at Comment 2, citing, *inter alia*, Narrow Woven Ribbons With Woven Selvedge From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 77 FR 32938, 32940 (June 4, 2012), unchanged in Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review: 2010-2011, 77 FR 72825 (December 6, 2012).

⁶⁷ See SVR at pages 10 – 13, 18 – 21, and 22 – 24.

⁶⁸ See AR3 Decision Memo at Comment 1.

Comment 2: Application of AFA to Unreported U.S. Sales Quantity

Koehler reported that it sold LWTP to U.S. customers through three different sales channels:

Channel 1 – LWTP sold by Koehler America and shipped directly to the U.S. customer (CEP direct shipment sales)

Channel 2 – LWTP sold by Koehler America from U.S. inventory and then shipped to the U.S. customer (CEP warehouse sales)

Channel 3 – LWTP sold by Koehler and shipped directly to U.S. customers in Puerto Rico (EP sales)

Koehler stated in its questionnaire response that it reported the invoice date as the date of sale for all U.S. sales, and the date the merchandise left the factory (Channels 1 and 3) or the warehouse (Channel 2) as the shipment date. In determining which U.S. sales to report for this review, Koehler relied on the sale date for all CEP sales, and the entry date for all EP sales, consistent with its methodology in previous reviews.⁶⁹

As discussed in the Preliminary Decision Memorandum, we discovered at verification that Koehler's reported shipment date reflected the port shipment date, rather than the factory shipment date, for Channel 1 and 3 sales (which was also the date that Koehler issued the invoice), and the invoice date, rather than the warehouse shipment date, for Channel 2 sales. In most instances, the actual shipment dates (from the factory or warehouse) preceded the reported shipment and invoice dates. Accordingly, we determined the date of sale in the Preliminary Results 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.⁷⁰

In addition, because Koehler relied on invoice date to determine the universe of sales for reporting POR CEP sales (Channels 1 and 2 sales), the adjustments to the date of sale affected the identification of reportable sales. We noted in the Preliminary Results that the quantity of unreported sales affected by the correction of the shipment date and date of sale was relatively small, according to our verification findings. We also observed that Koehler's U.S. sales reporting methodology was consistent with the methodology Koehler employed in past reviews, and we did not request further information regarding entry dates or Channel 1 sales entered but not shipped or invoiced during the POR. Therefore, we preliminarily accepted Koehler's U.S. sales reporting methodology for this review. However, we also explained that the Department's normal practice with respect to CEP sales made before importation is to require that these sales be reported based on entry date when the U.S. customs entry information is available to the respondent. Therefore, we stated that, in subsequent reviews, we intended to request that Koehler report CEP direct shipment sales based on entry date, and CEP warehouse sales based on the earlier of warehouse shipment date or invoice date.⁷¹

⁶⁹ See Koehler's May 4, 2013, response to section C of the Department's questionnaire (QRC) at page 34; see also Koehler's December 4, 2013, submission (Koehler December 4 Comments) at page 15.

⁷⁰ See Preliminary Decision Memorandum at page 5, which includes cites to the record.

⁷¹ See Preliminary Decision Memorandum at pages 5-6, which includes cites to the record.

The petitioner contends that, even if the Department continues to accept Koehler's methodology for reporting U.S. sales in this review, Koehler provided erroneous shipment dates for the U.S. sales reported to the Department, which resulted in an incomplete U.S. sales database. The petitioner notes that the Department held that the failure to report complete U.S. sales data is "one of the most serious errors a respondent can commit."⁷² The petitioner states that, in its questionnaire responses, Koehler claimed to have correctly reported shipment dates based on factory or warehouse shipment dates, but at verification it was discovered that Koehler incorrectly reported these dates. At this point, the petitioner continues, it was too late for the Department to request a corrected sales database. Accordingly, the petitioner asserts that, as Koehler failed to cooperate by not acting to the best of its ability to report a complete U.S. sales database using accurate shipment and sale date information, the Department should apply AFA to the unreported quantity of U.S. sales identified by the Department.⁷³

Noting that Koehler defended its reporting of shipment date and sale date for Channels 1 and 3 sales by claiming that the port shipment date was the appropriate date of sale, the petitioner asserts that Koehler based its reasoning on obsolete case precedent.⁷⁴ As more recent case precedent established the shipment date from the factory (or warehouse) as the date of sale when it precedes the invoice date, the petitioner contends that AFA is warranted because Koehler failed to report the complete universe of Channel 1 and 3 sales. In addition, the petitioner asserts that Koehler failed to act to the best of its ability by not reporting the correct warehouse shipment date for Channel 2 sales. The petitioner contests Koehler's assertion that it would be "extremely burdensome" to do so as such information can "only be obtained by manually reviewing third-party warehousing company documents."⁷⁵ Even if that were true, the petitioner continues, Koehler should have notified the Department in a timely manner of this difficulty. The petitioner concludes that the Department's practice when a respondent fails to act to the best of its ability to provide a complete U.S. sales database is to apply partial AFA to the unreported quantity.⁷⁶ Therefore, the petitioner advocates applying the AFA rate from the AR3 Final Results, 75.36 percent, to the unreported quantity of sales identified by the Department.

Koehler responds that the Department should reject the petitioner's arguments, just as the Department did in the Preliminary Results. Koehler defends its reporting methodology, which it states is consistent with its accounting system. Koehler asserts that the record confirms that its exported merchandise remains in its inventory accounting system until it is shipped from the port, at which time the merchandise is invoiced to the customer. Koehler claims that if the product has not left its inventory accounting system and generated an invoice, the material terms of sale could

⁷² See Petitioner Brief at page 50, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy, 64 FR 30750, 30757 (June 8, 1999) .

⁷³ The petitioner identifies the quantity of the purportedly unreported U.S. sales at page 55 of its brief, which it derives from information at Exhibit 35 of the SVR and the Department's memorandum to the file dated December 17, 2013, entitled "Correction of Data in Sales Verification Report" (Data Correction Memo).

⁷⁴ See Petitioner's Brief at pages 51-52, citing Koehler's December 4 Comments at pages 15-16, where Koehler cited Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 14, 2000) (Stainless Steel Bar from Japan).

⁷⁵ See id. at page 54 (citing Koehler December 4 Comments at page 19).

⁷⁶ See id. (citing Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 31.)

change prior to the port shipment. As a result, Koehler claims it was appropriate for it to report the invoice date as the date of sale for Channel 1 sales, as it has for prior reviews.⁷⁷

In turn, Koehler asserts that, as Koehler believed it had reported the correct date of sale for its U.S. sales, it had no reason to believe that its U.S. sales listing was incomplete and, therefore, there is no basis to apply AFA for this alleged failure to cooperate fully with the Department. Koehler explains that it does not maintain the warehouse shipment information for Channel 2 sales; that information is maintained by the unaffiliated warehouse. Thus, Koehler was able to identify the actual shipment dates for a sample set of sales only by manually reviewing warehouse company documents it obtained during verification. Koehler notes that it had reported in the questionnaire response that the Channel 2 shipment dates were an approximation, occurring “within a day or two of the issuance of the invoice,”⁷⁸ and that the Department’s verification confirmed that it would be burdensome for Koehler to report the actual shipment date for all POR Channel 2 sales.⁷⁹ Furthermore, Koehler states that it fully complied with the Department’s instructions to provide revised information, including alternative shipment date information, following the verification. In sum, Koehler concludes that, as it fully cooperated with the Department in providing all requested information concerning its U.S. sales, there is no basis to apply AFA with respect to its reporting of U.S. sales.

Department’s Position:

We stated in the Preliminary Results that, for purposes of this review, we preliminarily accepted Koehler’s methodology for reporting its U.S. sales.⁸⁰ We also explained that we 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. We find no reason to do otherwise for the final results, nor do we find a basis to apply AFA to account for any unreported U.S. sales transactions.

As Koehler explained in the Koehler Rebuttal (and consistent with the verification results), Koehler’s U.S. sales reporting was based on the manner in which Koehler recognizes sales in its normal course of business.⁸¹ Koehler states that it used this methodology in previous segments of the proceeding and the Department accepted Koehler’s reporting on that basis.⁸² We note, however, that until verification in this review, we were not aware of any discrepancies in Koehler’s reporting of shipment date, and the possible impact of these discrepancies on the determination of the date of sale and the universe of reportable U.S. sales.

⁷⁷ See Koehler Rebuttal at pages 27-28 (citing Stainless Steel Bar from Japan, Issues and Decision Memorandum at Comment 1 (“...the shipment date from the Japanese port is the date closest to what would have been the appropriate date of sale, i.e., invoice date, but for the fact that invoicing took place after shipment.”)).

⁷⁸ See Koehler Rebuttal at page 30, footnote 106, citing the QRA at page 28.

⁷⁹ See Koehler Rebuttal at page 30, citing the SVR at page 27.

⁸⁰ See Preliminary Decision Memorandum at pages 4 –6. The petitioner claimed that Koehler failed to report the complete universe of both Channel 1 and 3 sales. However, as we noted at page 5 of the Preliminary Results Decision Memo, Koehler reported the Channel 3 (EP) sales on the basis of entry date, the appropriate methodology for such sales.

⁸¹ See SVR at pages 13 – 16 .

⁸² See QRC at page C-34; see also Koehler December 4 Comments at page 15.

The discrepancies between the reported shipment dates and the actual shipment dates, as well as the identification of the reportable U.S. sales for this review, were not discovered until Koehler analyzed the information more thoroughly in preparation for verification. However, in this case, the discrepancies observed with respect to the shipment dates and potentially unreported sales quantities are relatively small.⁸³ Further, we acknowledge that Koehler relied on this reporting methodology without objection from the Department or the petitioner in previous reviews. In sum, the errors and omissions at issue are not significant, and the record U.S. sales data meets the criteria under section 782(e) of the Act. Accordingly, any deficiencies in Koehler's U.S. sales data reporting do not rise to the level of declaring Koehler to be an uncooperative respondent warranting the application of AFA under section 776(b) of the Act, as the petitioner advocates.

However, we note that Koehler is incorrect when it states that it reported the correct date of sale for Channel 1 sales by reporting the port shipment/invoice date for both shipment date and sale date. Koehler's explanation is based in part on post-hoc reasoning, as Koehler clearly stated in its questionnaire responses that it intended to report the factory shipment date for these sales:

... for sales in both markets other than consignment sales, invoices are issued at the time of shipment...there may be certain exceptional instances in which the shipment date is prior to the invoice date. **Koehler notes that in such instances, it intends to report date of sale as date of shipment, based on its understanding the "date of sale" shall normally be no later than date of shipment.**⁸⁴ (emphasis added)

Koehler has reported shipment date to the customer. Invoices are normally issued at the time of **shipment from the factory in Germany** for direct shipments (i.e., Channels 1 and 3), and from the U.S. warehouse for warehouse sales (Channel 2).⁸⁵ (emphasis added)

Koehler notes that in Stainless Steel Bar from Japan, published in 2000, the Department accepted port shipment date as the date of sale. We acknowledge that the Department permitted that date of sale methodology for the situation described in that review. However, the Department subsequently made clear in the various cases cited by the petitioner that its consistent practice is to rely on shipment date as the date of sale where the shipment date occurred before the invoice date.⁸⁶ While we recognize that it may have been burdensome for Koehler to identify the actual shipment date for all Channel 2 sales during the short time period of the verification,⁸⁷ we do not find that it would be too burdensome for Koehler to provide the actual shipment dates for all U.S. sales in response to questionnaires issued in subsequent reviews. Accordingly, in the 2012-2013 administrative review initiated in December 2013, we emphasized in our questionnaire that Koehler should report the actual shipment date for all sales (i.e., factory shipment date for Channels 1 and 3, and warehouse shipment date for Channel 2).

⁸³ See SVR at pages 26-27 and verification exhibit 35, and Data Correction Memo.

⁸⁴ See QRA at page 31.

⁸⁵ See QRC at page C-14.

⁸⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 77 FR 17413, (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 30.

⁸⁷ See SVR at page 27.

Comment 3: Recalculation of Indirect Selling Expenses Incurred in the United States

In the Preliminary Results, we recalculated indirect selling expenses incurred on U.S. sales (represented by the computer variable INDIRSU) by reallocating the payroll expenses incurred by the president of Koehler's U.S. affiliate P.L. Thomas Co. (PLT) equally over each month of the respective year of the POR, rather than as posted in the company's financial statements. The recalculation resulted in a new ratio, which we applied to Koehler's U.S. sales prices to revise INDIRSU for each sale.⁸⁸

Koehler objects to the Department's recalculation of the INDIRSU ratio because the recalculation is inconsistent with "the Department's general practice of basing indirect selling expenses on the amounts recorded in a company's books and records during the period under review."⁸⁹ Koehler states that the Department confirmed how PLT posted its president's salary expense in the PLT accounts in a consistent manner in both fiscal years that include the POR. Koehler adds that Department has never found this expense reporting to be inconsistent with generally accepted accounting principles (GAAP).

Moreover, Koehler claims that the Department's recalculation methodology is inconsistent with the Department's standard indirect selling expense methodology, which is not to parse expenses into POR and non-POR components, nor to split expenses that are normally recorded on a semi-annual or annual basis into a different basis.⁹⁰ Koehler compares the posting of the PLT president's salary to a company recording an expense on a semi-annual or annual basis and, thus, a circumstance where the Department does not reallocate expenses, consistent with Liberty Foods. According to Koehler, Liberty Foods recognizes that the Department would reallocate indirect selling expenses if the POR were six months long, rather than twelve months long, or if the record expenses would distort the amount consistent with the POR; however, that these circumstances are not applicable in this instance.⁹¹

Koehler also asserts that it calculated and reported the INDIRSU ratio in this same manner in previous segments of this proceeding and the Department accepted Koehler's methodology. In this review, Koehler contends that the Department has not explained its reasoning for changing its methodology, nor whether it will continue to do so in future reviews, thus risking double-counting expenses over time. Koehler suggests that the Department could rely on the calendar year (coincident with Koehler's fiscal year) to calculate indirect selling expense ratios, consistent with the methodology used to calculate selling, general, and administrative (SG&A) expenses for COP reporting purposes. Unless the Department adopts this practice, Koehler asserts that the Department should accept a respondent's reporting of expenses as they are recorded in its accounting system over the POR.

⁸⁸ See Preliminary Decision Memorandum at page 10; see also SVR at pages 36-37 and the Preliminary Results Calculation Memo at page 3.

⁸⁹ See Koehler Brief at page 4 (quoting Liberty Frozen Foods Private Ltd., v. United States, 819 F. Supp. 2d 1346, 1347 (CIT 2012) (Liberty Foods)).

⁹⁰ See id. at page 5 (citing Liberty Foods, 819 F. Supp. 2d at 1349).

⁹¹ See id. (citing Liberty Foods, 819 F. Supp. 2d at 1349).

The petitioner defends the Department's recalculation of the INDIRSU ratio, contending that the Department's methodology was appropriate to smooth out fluctuations in order to avoid distortion. Citing the SVR, the petitioner explains that the timing of the recording of the PLT president's salary in the 2011 and 2012 financial statements was different, which resulted in a distorted amount of the expense recorded during the POR.⁹² Accordingly, the petitioner asserts that the Department's recalculation methodology was a reasonable response to eliminate the distortion observed in Koehler's calculation of the INDIRSU ratio.

Department's Position:

We affirm our Preliminary Results methodology and continue to use the recalculated INDIRSU ratio in the final results. As we outlined in the SVR, the particular payroll expenses at issue were not recorded consistently over 2011 and 2012 but, rather, were recorded disproportionately throughout PLT's fiscal years. In turn, when the expenses were incorporated into a POR-based calculation, we observed a distortion in the calculation because a disproportionate amount of the the PLT president's salary expense fell outside the POR.⁹³ Furthermore, we observed that all other PLT payroll expenses were reported in a consistent manner during each month of 2011 and 2012; it is only the PLT president's salary that was drawn and recorded disproportionately at certain times of the year.⁹⁴ At the same time, there is no evidence on the record, including in the verification findings, that the PLT president provided his services to his company disproportionately during those same times of the year. Rather, the PLT president earned his salary proportionately throughout the POR, but his compensation was recorded in PLT's financial system in a disproportionate manner.

Contrary to Koehler's argument, the PLT president's salary expense was not akin to a company's normal recording of an expense on a semi-annual or annual basis. That approach may be appropriate when, for example, a company pays its insurance premium on such a basis, even though it receives insurance coverage throughout the year. In such a case, regardless of when the annual payment was made, the review of a one-year period would capture one year's worth of insurance expense. In this case, PLT's disproportionate recognition of its president's salary expense in its normal accounting, which at the end of PLT's fiscal year results in the recognition of the total annual expense for purposes of its GAAP-based financial statements, fails to recognize the president's full salary expense on a POR basis. Thus, because the president's salary is not fully recorded on a systematic basis (e.g. monthly, quarterly or annually) in the company's financial accounting,⁹⁵ incorporating the posting of the president's salary as recorded by PLT during the POR would either over- or understate the president's salary and distort the calculation of the indirect selling expenses on a POR basis. In this case, the record is clear that this salary

⁹² See Petitioner Rebuttal at page 2. This discussion includes proprietary information that cannot be summarized in this memorandum. See also SVR at page 36 and SVR exhibits 62 and 63.

⁹³ See SVR at pages 36-37 and exhibits 62 and 63 (PLT monthly trial balances for 2011 and 2012, respectively).

⁹⁴ See *id.* at exhibits 62 and 63.

⁹⁵ The basis for recording the PLT president's salary is addressed at page 36 of the SVR. Koehler requested proprietary treatment for that particular information.

expense was recorded in a manner inconsistent with the manner in which it was incurred. Thus, there was no systematic or rational recognition of the expense.

In Liberty Foods, the case Koehler cites in support of its position, the CIT upheld the Department's decision not to pro-rate the fiscal year bad debt expenses from the company's normal books between POR and non-POR periods despite apparent contradictory practices in Saccharin from PRC⁹⁶ and Pipe from Korea⁹⁷ where the Department did pro-rate such expenses. The CIT found that, while the Department's standard methodology in calculating indirect selling expenses is not to parse the expenses into POR and non-POR components, "the standard methodology is inadequate when the POR is incongruent with the period over which an expense is realized. It is this fact that distinguishes Saccharin from PRC and {Pipe from Korea} as exceptions to the standard methodology."⁹⁸ For example, the CIT noted that in Pipe from Korea, where, with respect to a bad debt provision, "including the entire allowance of doubtful accounts from both years {i.e., the two fiscal years represented in the POR of that review} would result in overstating the bad debt allowance. With two years of bad debt expenses on the record of a one-year POR, Commerce prorated the two years of data to arrive at a non-distortive amount consistent with the POR — a reasonable deviation from the standard methodology on these facts."⁹⁹ Similarly, in this review, PLT's disproportionate recognition of its president's salary expense in its normal financial accounting would result in expenses which are incongruent with the POR and would distort PLT's POR indirect selling expenses.

Furthermore, section 773(f)(1)(A) of the Act directs the Department to rely on a company's normal accounting if such records reasonably reflect the costs associated with the production and sale of the merchandise. Here, PLT's normal books fail on a POR basis to reflect twelve months of the president's salary expense. Accordingly, the Department appropriately deviated from its standard methodology to recalculate INDIRSU in order to eliminate a distortion, consistent with Pipe from Korea.

With regard to Koehler's argument that this adjustment does not comport with the calculation of INDIRSU in the prior segments of this proceeding, we note again that each review is an independent proceeding segment. Departures from prior treatment of an expense may be due to the fact that such distortions were not present or discovered in the prior reviews.¹⁰⁰ In any event, the Department's adjustments or changes from prior reviews are permissible when warranted by the record evidence in the review and accompanied by an adequate explanation. The revised INDIRSU expense does not double-count any expenses from the prior review because the

⁹⁶ Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003) (Saccharin from China), and accompanying Issues and Decision Memorandum at Comment 10.

⁹⁷ Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 75 FR 34980 (June 21, 2010) (Pipe from Korea).

⁹⁸ Liberty Foods, 819 F. Supp. 2d at 1349.

⁹⁹ Id. at 1351 (citing Pipe from Korea Issues and Decision Memorandum at Comment 4).

¹⁰⁰ See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No. Shipment Determination, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum at Comment 10.

Department assigned Koehler a margin based on AFA in AR3.¹⁰¹ The Department can control for not double-counting the INDIRSU expense in the subsequent administrative review.

Finally, with respect to Koehler's alternative suggestion to calculate the indirect selling expense ratio on a fiscal-year basis, rather than a POR basis, we note that it is the Department's longstanding practice to calculate indirect selling expense ratios based on the POR (or period of investigation, as appropriate).¹⁰² Under this methodology, we are able to match expenses incurred and sales revenue recognized (or cost of goods sold) during the same period of time as the sales to which the indirect selling expense is applied. In this case, we are able to follow our normal practice while adjusting only the one element of the expense that is distortive.

Comment 4: Differential Pricing and Application of Average-to-Transaction Methodology

In the Preliminary Results, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction methodology is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. Based on the results of the differential pricing analysis, the Department found that 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. These results supported consideration of the application of an average-to-transaction methodology to those sales identified as passing the Cohen's *d* statistical test, and application of the average-to-average methodology to those sales identified as not passing the Cohen's *d* test (mixed alternative methodology).¹⁰³ However, because we found 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 determined that it was appropriate to apply the average-to-average methodology in making comparisons of EP or CEP to NV for Koehler.¹⁰⁴

The petitioner contends that, if the Department were to make the adjustments to the margin calculation advocated by the petitioner in the Petitioner Brief, as outlined in the comments above, there would be a meaningful difference in the weighted-average dumping margin when calculated

¹⁰¹ See AR3 Final and AR3 Decision Memo at Comment 1.

¹⁰² See, e.g., Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 21.C; Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 26; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Luxembourg, 66 FR 67223, 67225 (December 28, 2001), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Luxembourg, 67 FR 35488 (May 20, 2002); and Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Germany, 61 FR 38166, 38183-84 (July 23, 1996).

¹⁰³ See Preliminary Decision Memo at pages 6 – 8, and Preliminary Results Calculation Memo at pages 1 – 2 for further discussion of the differential pricing analysis as applied in the Preliminary Results.

¹⁰⁴ In the 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.

using the mixed alternative methodology, as the petitioner believes the margin would be above de minimis. Accordingly, the petitioner asserts that the Department should apply the average-to-transaction methodology in making comparisons of EP or CEP to NV for Koehler.

Koehler contends that the petitioner's argument concerning the application of average-to-transaction methodology will be moot, because Koehler asserts that the petitioner's arguments to alter the preliminary results margin calculation lack merit. Nevertheless, Koehler challenges any application of an average-to-transaction methodology. Koehler argues that the Department lacks legal authority to conduct a targeted dumping analysis (which includes the Department's differential pricing analysis) or apply the alternative average-to-transaction methodology in administrative reviews, as the Department relied on statutory authority for antidumping investigations, rather than for administrative reviews.¹⁰⁵ With respect to the Department's differential pricing methodology, Koehler complains that the Department failed to explain and document the various "default" definitions and benchmarks used in the analysis, such as those for purchasers, regions, time periods, and statistical thresholds, and how they apply to Koehler's data. Finally, Koehler states that the petitioner failed to demonstrate exactly what differences would be "meaningful" to support application of an alternative margin methodology. Specifically, Koehler claims that if the petitioner intends that any difference that increases the margin to above a de minimis level is "meaningful," such a difference hypothetically could be too small and arbitrary to be properly considered as "meaningful" in order to warrant a change in the margin methodology.

Department's Position

We revised the Preliminary Results calculations to correct the ministerial error identified in the comment below, but made no further changes. The results of the Cohens *d* test remain the same as in our Preliminary Results. Therefore, for the reasons discussed in the Preliminary Results, we continued to rely on the average-to-average methodology for the final results. Accordingly, Koehler's arguments regarding the differential pricing methodology are moot and we will not address them in these final results.¹⁰⁶

Comment 5: Ministerial Errors in Margin Calculation Program

Koehler contends that the Department erred in the Preliminary Results margin calculation by adding, rather than subtracting, the rebate amounts granted to Koehler by its freight forwarders, which were reported as negative values in the U.S. sales listing.

¹⁰⁵ Koehler cites section 777A(d)(2) of the Act for its argument.

¹⁰⁶ We note, however, that the Department addressed similar methodological issues in recent determinations. See Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5; and Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 11406 (February 28, 2014), and accompanying Issues and Decision Memorandum at Comments 1, 3, 4, 5, and 8.

The petitioner contends that the Department erred in the preliminary results margin calculation by failing to include certain U.S. direct selling expenses from the calculation of CEP profit, and by failing to deduct these same expenses from the net U.S. price.

Neither party responded to the other's assertion.

Department's Position

We agree with Koehler with respect to the adjustment for freight rebates and revised the margin calculation program to correct this error for the final results. However, the petitioner's claims that the Department made a ministerial error regarding U.S. direct selling expenses are incorrect. The Department made a methodological decision to account for these expenses elsewhere in the margin calculation and, therefore, we did not make the programming changes proposed by the petitioner.

The direct selling expenses at issue are warranty and credit insurance expenses (collectively, USDIRSELL) incurred by Koehler in Germany.¹⁰⁷ The petitioner correctly observes that USDIRSELL was not deducted from the U.S. net price calculation. However, the petitioner failed to note that we accounted for USDIRSELL elsewhere in the margin calculation program, where we added the weighted-average USDIRSELL to the comparison market price in the calculation of NV.¹⁰⁸ This programming fulfilled the requirement to make adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

Under section 772(d)(1) and (3) of the Act, the Department calculates CEP by, among other things, deducting the profit allocated to direct selling expenses incurred by (or for the account of) the producer or exporter, or the affiliated seller in the United States. Only those direct selling expenses deducted from CEP, pursuant to section 772(d)(1) of the Act are considered in the calculation of CEP profit pursuant to section 772(d)(3) of the Act. Therefore, these expenses were properly excluded from the calculation of CEP profit.

¹⁰⁷ See QRC at pages 39 and 43, and SVR at pages 13, 34 and 35 (demonstrating that Koehler in Germany obtains and pays for the credit insurance and processes any warranty concerns and incurs any expense attributable to product defects for its sales in both the U.S. and home markets; the affiliated U.S importer is not involved).

¹⁰⁸ See page 62 of the SAS Margin Program Calculation Log included at Attachment 2 to the Preliminary Margin Calculation Memo, and page 71 of the SAS Macro Program included at Attachment 3 to the Preliminary Margin Calculation Memo.

Recommendation:

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

Agree Disagree 

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 11, 2014
(Date)