

to assess duties on all entries of subject merchandise by that importer.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of purified CMC from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) The cash-deposit rates for ANFC and CP Kelco will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in the less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 14.57 percent, which is the all-others rate established by the Department in the LTFV investigation. See *Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). These cash-deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely, written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 8, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I—Comments in the Issues and Decision Memorandum

Clerical Errors

Comment 1: Physical Characteristic Codes of Comparison-Market Sales.

Comment 2: Double-counting of Warehousing Expenses Incurred in the Country of Manufacture.

Comment 3: Inventory Carrying Costs Incurred in the United States on Certain Sales.

Comment 4: Calculation of U.S. Indirect Selling Expenses Incurred in the Country of Manufacture.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-840]

Lightweight Thermal Paper From Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the

antidumping duty order on lightweight thermal paper from Germany. For the period November 20, 2008, through October 31, 2009, we have preliminarily determined that Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, "Koehler") did not make sales of subject merchandise at less than normal value ("NV") (*i.e.*, sales were made at *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to liquidate appropriate entries without regard to antidumping duties. See "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 14, 2010.

FOR FURTHER INFORMATION CONTACT:

Stephanie Moore or George McMahan, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3692 or (202) 482-1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2009, the Department issued a notice of opportunity to request an administrative review of this order for the period of review ("POR") November 20, 2008, through October 31, 2009. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 56573 (November 2, 2009).

On November 30, 2009, we received a timely request from Appleton Papers, Inc. ("petitioner") for the Department to conduct an administrative review of Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH and Mitsubishi International Corporation (collectively, "Mitsubishi"), and Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, "Koehler"). We also received a request from Koehler for the Department to conduct an administrative review of Koehler.

On December 23, 2009, the Department published the notice of initiation of this antidumping duty administrative review covering the period November 20, 2008, through October 31, 2009, naming Mitsubishi and Koehler as respondents. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in*

Part, 74 FR 68229 (December 23, 2009) (“Initiation Notice”). On December 23, 2009, the Department also issued initial questionnaires covering Sections A, B, C, and E to Mitsubishi and Koehler with a due date of January 29, 2010.

On January 26, 2010, petitioner, the sole party that requested a review of Mitsubishi timely withdrew its request for a review of Mitsubishi. Accordingly, the Department rescinded the administrative review with respect to Mitsubishi. See *Lightweight Thermal Paper from Germany: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 11135 (March 10, 2010).

On January 29, 2010, Koehler submitted its response to Section A of the Department’s initial questionnaire. On February 16, 2010, Koehler submitted its response to Sections B and C of the Department’s initial questionnaire. On March 8, 2010, petitioner requested that the Department conduct an investigation of sales below cost of production by Koehler (March 8th Cost Allegation). On March 19, 2010, the Department issued questions to petitioner to obtain additional information regarding its March 8th Cost Allegation. On March 23, 2010, petitioner responded to the Department’s March 19, 2010, questionnaire regarding the sales below cost allegation it filed with respect to Koehler, and on March 25, 2010, Koehler commented on petitioner’s March 23, 2010, response. In the letter of March 23, 2010, Koehler asserted that the basis for petitioner’s March 8th Cost Allegation is unrepresentative of Koehler’s costs and should be rejected. On April 6, 2010, the Department requested additional information from petitioner regarding its allegation of below cost sales made by Koehler, and petitioner responded on April 8, 2010. On April 16, 2010, Koehler commented on petitioner’s April 8, 2010, response to the Department’s questions regarding its March 8th Cost Allegation.

On April 16, 2010, the Department found that petitioner had provided a reasonable basis to believe or suspect that Koehler is selling lightweight thermal paper (“LTWP”) at prices below its cost of production, and initiated a sales below cost investigation on April 20, 2010. See Memorandum to Melissa Skinner, Director, Office 3 from the Team titled “Petitioner’s Allegation of Sales Below the cost of Production for Papierfabrik August Koehler AG,” (“Sales Below Cost Memo”) dated April 16, 2010.

On April 19, 2010, petitioner submitted factual information from the investigation for the record of the

instant administrative review. On April 21, 2010, Koehler requested that it be allowed to report its costs based on its fiscal year 2009 costs instead of the POR, and the Department responded on the same date with a letter to Koehler requesting additional information. On April 23, 2010, Koehler submitted its reply to the Department’s April 21, 2010, letter seeking certain additional cost information. On April 28, 2010, and on May 7, 2010, petitioner submitted letters objecting to Koehler’s request to shift its cost reporting period, on the basis that weighted-average POR costs would be distorted if Koehler’s request to report its costs based on its fiscal year was granted. On April 29, 2010, the Department requested additional cost information from Koehler regarding Koehler’s request to shift the cost reporting period. On May 6, 2010, Koehler submitted its reply to the Department’s April 21, 2010, letter seeking certain additional cost information. On May 10, 2010, the Department denied Koehler’s request to shift its cost reporting period in this administrative review.

On May 25, 2010, Koehler submitted its response to Section D of the Department’s initial questionnaire which was issued on April 20, 2010. On June 11, 2010, petitioner submitted deficiency comments concerning Koehler’s supplemental sales and initial cost responses. On June 17, 2010, Koehler submitted a letter in response to the petitioner’s letter of June 11, 2010.

On July 16, 2010, the Department published a notice extending the time period for issuing the preliminary results of the administrative review from August 2, 2010, to December 7, 2010. See *Lightweight Thermal Paper from Germany: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 41439 (July 16, 2010).

The Department issued several supplemental questionnaires to Koehler and received timely responses to its requests for additional information.

On November 5, 2010, petitioner submitted “pre-preliminary results” comments to reiterate certain comments that it previously made in this review. Specifically, the petitioner argues that the Department should disregard Koehler’s home market sales of the 48 grams per square meter (g/m^2) product, alleging that such sales established a fictitious market and were made outside the ordinary course of trade. The petitioner argues that if the Department does not exclude Koehler’s sales of KT 48 F20 thermal paper from its margin calculations, then it should disallow certain rebates relating to those sales.

Period of Review

The POR is November 20, 2008, through October 31, 2009.

Scope of the Order

The scope of this order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of $\pm 4.0 \text{ g/m}^2$) or less; irrespective of dimensions;¹ with or without a base coat² on one or both sides; with thermal active coating(s)³ 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;⁴ and without an adhesive backing. Certain lightweight thermal paper 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, 4811.90.8040, 4811.90.9090, 4820.10.20, and 4823.40.00.⁵ Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (“the Act”), all products produced by Koehler covered by the description in the “Scope of the Order” section above and sold in Germany during the POR are considered to be foreign like products for purposes of determining appropriate product

¹ 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 these orders.

² 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.

³ A thermal active coating is typically made of sensitizer, dye, and co-reactant.

⁴ 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.

⁵ 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).

comparisons to U.S. sales. We have relied on 12 criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: (1) Form, (2) thermal active coating, (3) top coating, (4) basis weight, (5) maximum optical density units, (6) static sensitivity, (7) dynamic sensitivity, (8) color coating, (9) printing, (10) width, (11) length, and (12) core material. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

For purposes of these preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing ("VCOM") between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of LWTP from Germany were made in the United States at less than NV, we compared the export price ("EP") or constructed export price ("CEP") to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Allegation of a Fictitious Market

In petitioner's letter dated March 5, 2010, petitioner argued that the Department should scrutinize Koehler's pricing in the German market. Petitioner asserts that there is evidence in the pricing trends for certain products which indicate that Koehler has artificially manipulated prices for certain sales or created a "fictitious market" within the meaning of section 773(a)(2) of the Act. Citing *Stainless Steel Bar from India*,⁶ and *Gray Portland Cement and Clinker From Mexico*,⁷ the petitioner states that the Department investigates whether there might be a "fictitious market" where there is evidence of "different movements in prices at which forms of the foreign like product are sold," and

where such movements tend to reduce normal value for the like product matching to the respondent's U.S. sales.⁸

Petitioner states that heavier basis weight paper is more costly to produce, and thus, commands a higher price, than lighter basis weight paper on a per square meter basis because of the additional material required to produce the same area. However, petitioner states that, when priced on a per kilogram basis, heavier basis weight paper is generally less expensive than lighter basis weight paper. The petitioner asserts that Koehler's reporting of its sales prices in the home market does not follow this relationship and contends that Koehler's explanation based on the relative demand of the products does not explain the alleged distortions in Koehler's home market prices.⁹ The petitioner alleges that there is a significant difference in price movements between Koehler's home market sales of certain products.¹⁰ The petitioner asserts that Koehler has manipulated its sales in such a way that causes artificial price comparisons with Koehler's U.S. sales.

Koehler refutes petitioner's assertions that Koehler has artificially manipulated prices for certain sales or created a fictitious market. Koehler claims that it has been marketing KT 48 F20 in commercial quantities in the German and U.S. markets since February 2007, and that such sales are normal market transactions. Koehler states that the KT 48 F20 lowers transportation costs by 15 percent, because a reel of KT 48 F20 provides 15 percent more length than a reel of KT 55 F20. Koehler explains that there are relatively more sales of KT 48 F20 in the United States than in Germany because it is lighter and longer than KT 55 F20, which translates to fewer reels needed and a reduction in the cost of transportation. Koehler states that shipping costs are not as significant in Germany because all German destinations are much closer compared to U.S. destinations. Therefore, German companies tend to purchase less KT 48 F20 than U.S. companies. Koehler also points out what it claims to be other additional benefits for U.S. companies that purchase KT 48 F20, such as less waste paper and time lost due to changing reels that do not have the length of KT 48 F20.¹¹

Koehler states that data for the POR, plus sales data from the period of investigation ("POI"), show a consistent pricing pattern in Germany in which KT 55 F20 sells at a higher price than KT 48 F20. Koehler contends that petitioner's assertion relating pricing to grams per square meter of merchandise ignores the role of market demand in pricing, and further contends that there is no one-to-one relationship between grams per square meter and price. Furthermore, Koehler states that it needs to offer competitive prices in the home market to attract customers to this new product.

In accordance with section 773(a)(2) of the Act, 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.

In *Gray Portland Cement and Clinker From Mexico*, we stated that "the 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." See *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803, 25804 (April 28, 1993). Accordingly, the Department will examine not only whether there are price movements, but also whether there are commercial or market factors that explain these price movements. A review of the record of this case shows that the International Trade Commission ("ITC") examined U.S. market conditions in its report issued for its Preliminary Determination and noted a shift from the 55 g/m² product to the 48 g/m² product. Based on the analysis performed by the ITC, it stated that "the entire increase in subject import volume

Questionnaire response, dated April 15, 2010, at pages 8-10 and Exhibit S-8.

⁶ See *Stainless Steel Bar from India; Preliminary Results of New Shipper Review*, 64 FR 46350, 46352 (August 25, 1999) (citing *Tubeless Steel Disc Wheels from Brazil; Final Results of Antidumping Duty Administrative Review*, 56 FR 14085 (April 1, 1991)).

⁷ See *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803, 25804 (April 28, 1993).

⁸ See petitioner's comments, dated March 5, 2010, at pages 7-8.

⁹ See petitioner's comments, dated November 5, 2010, at pages 5-7.

¹⁰ See petitioner's comments, dated March 5, 2010, at page 8.

¹¹ See Koehler's March 16, 2010 letter, at pages 3-5; see also Koehler's Section A-C Supplemental

from Germany from 2005 to interim 2007 was attributable to increased shipments of the 48 gram product. At the same time, subject imports from Germany of the traditional 55 gram product have declined since 2005.” See ITC Preliminary Determination Report: Certain Lightweight Thermal Paper from China and Germany, Investigation Nos. 701-TA-451 and 731-TA-1126-1127 (“Preliminary Determination”) at 48-49, Publication 3964, November 2007. See also Preliminary Results Calculations in the 08/09 Administrative Review of Lightweight Thermal Paper from Germany at Appendix 3 (“Preliminary Results Calculation Memo”).

Similarly, the ITC’s Final Determination Report analysis of the trends in the basis weight of thermal paper sales stated that: “[a]ccording to Appleton, paper markets have, in general, been gravitating toward lighter basis weight products, and in recent years, certain LW thermal paper weighing 48 g/m² has been introduced into the U.S. market at a discount to the 55 g/m² product, which makes it appealing to some converters. However, Appleton contends that there has not been a big push by end users for lighter basis weights and that market acceptance of the 48 g/m² product has been limited because of certain disadvantages (e.g., thinner paper more prone to breaking during converting, smaller converted rolls, and the need to inventory more types of packaging). On the other hand, Koehler, which introduced its 48 g/m² certain LW thermal paper to the U.S. market in 2005, sees an advantage in the thinner paper in that it can be used to make a longer finished roll with the same diameter meaning less time spent by the end user changing rolls. Koehler also notes that the product has a freight advantage for converters because they can ship 10 percent more footage at the same shipping weight, and the firm expects sales of the 48 g/m² product to continue growing.” See *ITC Report: Certain Lightweight Thermal Paper from China and Germany*, Investigation Nos. 701-TA-451 and 731-TA-1126-1127 (Final) at I-8. Publication 4043, November 2008. See also Preliminary Results Calculations Memo.

The Department’s review of the marketing materials (i.e., product brochures) submitted by Koehler combined with the ITC discussion of the 48 g/m² product in the context of the underlying investigation provides evidence that this is a relatively new product with expected growth in the United States. See Koehler’s Section A-C Supplemental Questionnaire response, dated April 15, 2010, at pages

8-10 and Exhibit S-8. Koehler’s arguments about the effect of lower shipping costs, and the factual information on the record, are consistent with the ITC analysis of this product. This product’s sales growth appears to be more significant in the United States than in Germany because freight cost for shipping the subject merchandise is comparatively more important in the U.S. market than in Germany, as the United States is a larger country and the distances to deliver to the United States are much more significant than in Germany.

In addition, we find that petitioner’s allegation that there are different price trends for certain product(s) is inaccurate. Specifically, we disagree with the petitioner’s analysis because it examined only net prices and was predicated on a prior version of Koehler’s home market sales database, which has been corrected by Koehler to account for all of Koehler’s rebates during the reporting period covered by this review. Koehler reported that, in the first version of the home market sales database that it submitted in this review, it inadvertently excluded certain quarterly rebates which apply to the period immediately prior to the POR for KT 48 F20. See Koehler’s Section A-C Supplemental Questionnaire response, dated April 15, 2010, at pages 16-17. Once these rebates were accounted for, the Department’s analysis of this data shows the general price trend for the products at issue is consistent over time, based on the revised rebate amounts and corresponding gross and net prices for the pre-POR and POR time periods. Therefore, the Department preliminary finds that Koehler’s pricing of sales of certain products in Germany does not result in a fictitious market. Due to the proprietary nature of this issue, see Preliminary Results Calculations Memo.

Allegation of Sales Made Outside the Ordinary Course of Trade

The petitioner argues that the Department should disregard Koehler’s home market sales of the KT 48 F20 product, alleging that such sales were made outside the ordinary course of trade. The petitioner asserts that Koehler’s home market sales of the KT 48 F20 product comprise a relatively small portion of its home market sales and were made pursuant to unusual terms of sale based on the post-sale adjustments discussed below.

Koehler rebuts these arguments, claiming that it has been marketing KT 48 F20 in commercial quantities in the German and U.S. markets since February 2007, and that such sales are

normal market transactions. Koehler reports sales of KT 48 F20 during the investigation and this POR to multiple customers. Koehler states that the 48 g/m² product is still a relatively new product and faces relatively lower demand in the home market, as compared to its U.S. sales of 48 g/m² and its home market sales of other products. In regard to its sales terms, Koehler states that it bases its pricing and rebates on its customer-specific sales negotiations and the commercial demand of its products relative to its other products.¹²

The Department considers sales to be outside the ordinary course of trade when, “based on an evaluation of all of the circumstances particular to the sales in question,” they “have characteristics that are extraordinary for the market in question.” See 19 CFR 351.102(b)(35). Although there is no exhaustive list of such characteristics, {e}xamples 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. See 19 CFR 351.102(b)(35); see also section 771(15) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 at 834 (1994) (“SAA”).

We have examined the terms of sale for the products in question and the sales trends of the products in question. Koehler reported sales of KT 48 F20 to a number of customers in both the POI and the POR.¹³ Furthermore, we have evaluated all of the circumstances particular to the sales in question and do not find that such sales have characteristics that are extraordinary for the market in question. Based on our examination of the record, we find that there is no evidence on the record to demonstrate that Koehler’s sales of KT 48 F20 are based on transactions involving off-quality merchandise, 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

¹² See Koehler’s Section A-C Supplemental Questionnaire response, dated April 15, 2010, at pages 14-17.

¹³ See Koehler’s March 16, 2010 letter, at page 1.

affiliated party at a non-arm's length price.

In summary, the record of this review does not support a finding of sales outside the ordinary course of trade. Petitioner has not provided sufficient evidence to demonstrate that Koehler's sales of KT 48 F20 are outside the ordinary course of trade.

Allegation That Koehler's Home Market Rebates Are Not Bona Fide Adjustments

The petitioner argues that if the Department does not exclude Koehler's sales of KT 48 F20 thermal paper from its margin calculations on the basis that such sales were made outside the ordinary course of trade, then it should disallow certain rebates relating to those sales. Petitioner contends that the terms were not agreed to by the customers until after the respective sales occurred, and thus, the rebates are not within normal commercial considerations. Citing the *Thai Pineapple Final Results*,¹⁴ petitioner states that the Department's practice is to closely examine the circumstances surrounding the adjustment to determine whether it was a bona fide adjustment made in the ordinary course of business.

The petitioner argues that Koehler has significantly increased the rebates to a particular customer in the home market during the POR. The petitioner asserts that Koehler has manipulated its sales prices by applying rebates to certain product(s). In its letter dated March 5, 2010, the petitioner provided an analysis of certain products sold by Koehler in the home market using net prices for several months prior to the POR for comparison to the months during the POR. Based on this analysis, the petitioner asserts that Koehler artificially manipulated its home market pricing by applying higher rebates during the POR for the product(s) identified by petitioner, as compared to the months prior to the POR. The petitioner alleges that Koehler has applied a pricing scheme using post-sale adjustments and argues that these are not bona fide rebate adjustments where the customer knows the rebate amount at the time of sale.

Koehler reports customer-specific rebates which may apply to all products or be product-specific. Koehler paid rebates on a periodic basis (either monthly, quarterly, or annually). The rebate terms were all agreed to on a percentage of gross unit price basis and

differ by customer and by product. Koehler states that there are generally no written rebate agreements covering sales of subject merchandise during the POR. Koehler reports that it had these rebate agreements in place for several years and although there were initially written agreements with customers, the rebate practices had become routine enough by the POR that the parties did not bother with formalized written rebate agreements.¹⁵ Rather, the rebate percentage is simply specified on the relevant customer-specific price lists.

Koehler rebuts petitioner's allegation that its home market prices were artificially manipulated, stating that its home market pricing and rebate percentages cannot be examined in isolation; rather, the sales prices are based on customer-specific price negotiations in which the starting prices may differ by customer and product based on commercial demand considerations. Koehler acknowledges that, in its reporting for certain sales, the customer may not know the exact percentage of the rebate that will be received until after the sale date. Koehler states that regardless of whether this adjustment may be referred to as a post-sale billing adjustment or a rebate, it must be accounted for as a reduction to normal value in the Department's margin calculations.

The Department's practice is to reduce the gross selling price by the amount of the rebate when the seller establishes the terms and conditions under which the rebate will be granted at or before the time of sale. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 61 FR 13815, 13822–23 (March 28, 1996). Consistent with this practice, we have disallowed certain rebates that are instituted retroactively since such rebates could be designed to reduce the comparison market price for the purpose of reducing or eliminating dumping margins. *See id.* In the instant case, although certain customers may not always know the precise rebate amount at the time of the sale, the customer-specific price lists indicate the rebate percentages and the customers expect to receive rebates based on their existing, and in some cases, long-standing relationship with Koehler and their prior written rebate agreements.

We find that the fact pattern in this case is dissimilar to the fact pattern in

cases such as *Thai Pineapple Final Results*.¹⁶ In *Thai Pineapple Final Results*, the Department was concerned as to why post-sale price increases were made by the respondent, Vita, for only U.S. sales and not comparison market sales. The Department stated that in the *Thai Pineapple Preliminary Results*,¹⁷ it rejected the claimed post-sale price increases because (1) the record did not support Vita's rationale for the price increases; (2) Vita either could not supply an agreement providing for the price increases or supplied an agreement where virtually none of the terms of the agreement were followed; and, (3) the price increases appeared to be unique given there was no evidence that Vita made post-sale price adjustments to sales to any other markets or any other customers.¹⁸

In the *Thai Pineapple Final Results*, the Department stated "the circumstances surrounding the U.S. customers' payment of the post-sale price increases do not appear to be consistent with commercial realities and call into question the nature of these payments. As noted in the Preliminary Results, if these are, in fact, payments on the claimed post-sale price adjustments, it would mean that these customers were willing to pay significant charges imposed after the sale, even though, in the case of one U.S. customer, there was: (1) No agreement requiring the company to pay such amounts; (2) no understanding as to how these additional charges would be calculated; and (3) no limits placed on the amount of the additional charges. Similarly, another U.S. customer reportedly paid the post-sale price increases even though: (1) The purported agreement covering these additional charges was not followed; and (2) the price increases appear to be inconsistent with Vita's cost increases. Thus, regardless of how Vita labeled the payments, the payments do not demonstrate that Vita is entitled to the claimed post-sale price adjustments."¹⁹

In contrast, in the instant review, Koehler has reported rebates in both the U.S. and comparison market during the POI and POR and has provided rebate agreements covering sales dating back to 2002 and 2003. Koehler has explained

¹⁶ *See Canned Pineapple from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 70948 (December 7, 2006) (*Thai Pineapple Final Results*), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁷ *See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 44256 (August 4, 2006) (*Thai Pineapple Preliminary Results*).

¹⁸ *Id.*

¹⁹ *See Thai Pineapple Final Results*.

¹⁴ *See Canned Pineapple from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 70948 (December 7, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (*Thai Pineapple Final Results*).

¹⁵ *See* Koehler's April 15, 2010, Supplemental Questionnaire Response at Exhibits S-11 through S-13.

that the customers subject to the rebate programs are aware of the general rebate terms and expect the rebate, which is negotiated by Koehler on a product and customer-specific basis.

As referenced above, the petitioner's allegation that there are different movements in prices between certain products in the home market is inaccurate, and the petitioner's analysis was based on an incorrect prior version of Koehler's home market sales database which did not account for all of Koehler's rebates. Furthermore, as Koehler indicated in its June 11, 2010 letter, and as the Department's analysis confirms, there is not a significant difference in the rebate percentages applied to home market sales of KT 48 F20 during the investigation, as compared to the POR.

We have analyzed Koehler's home market rebates for two products KT 48 F20 and KT 55 F 20 using data from the POI and the POR. See Preliminary Results Calculations Memo. These data clearly show a consistent pattern. Regarding the nature of the sales documentation and whether these are "post-sale adjustments" as alleged by petitioner, we find that Koehler has a long-standing practice of allowing rebates. Koehler provided documentation to demonstrate that there was an original formal written rebate program in effect during 2002 and 2003.²⁰ Koehler then began documenting the rebate percentages on individually negotiated customer specific price lists which are updated periodically by Koehler. See, e.g., Koehler's Section A-C Supplemental Questionnaire response, dated April 15, 2010, at Exhibit S-14. In some instances, the rebate percentages were adjusted after certain shipments were made. However, it is clear the Koehler and its customers had a long-standing understanding that rebates would be applied. Therefore, based on the evidence on the record of this review, we preliminarily find Koehler's rebates to be bona fide, and we will allow the rebates as reported in Koehler's sales databases.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was first sold by the producer or exporter outside the

United States directly to the unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the first sale to the unaffiliated purchaser in the United States of the subject merchandise. See section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we adjusted prices to reflect billing adjustments, rebates, and early payment discounts, and commissions.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including U.S. warehouse expense, inland freight, inland insurance, brokerage & handling, international freight, marine insurance, freight rebate revenue, and U.S. customs duties.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and other direct selling expenses). These expenses also include certain indirect selling expenses incurred by affiliated U.S. distributors. See Preliminary Results Calculations Memo. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Koehler's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(i) of the Act, because Koehler had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Arm's-Length Test

Because Koehler reported that its sales of the foreign like product were made to unaffiliated customers, the arm's-length test is not applicable.

C. Cost of Production Analysis

The Department did not disregard any sales below the cost of production ("COP") in the underlying investigation.²¹ As a result, the Department did not initially issue a Section D questionnaire with the Section A-C questionnaire sent to Koehler on December 23, 2009. The petitioner subsequently submitted a sales below cost allegation and the Department initiated a "sales-below-cost" investigation because the Department determined that the petitioner provided a reasonable basis to believe or suspect that Koehler is selling lightweight thermal paper in Germany at prices below the COP. See Sales Below Cost Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated Koehler's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative ("G&A") expenses and interest expenses (see the *Test of Comparison Market Sales Prices* section below for the treatment of home market selling expenses). The Department relied on the COP data submitted by Koehler and its Section D supplemental questionnaire responses for the COP calculation. Based on the review of record evidence, Koehler did not appear to experience significant changes in the cost of manufacturing during the period of review. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

2. Test of Comparison Market Sales Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges,

²¹ See *Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value* 73 FR 57326 (October 2, 2008); see also Memorandum to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Koehler," dated September 25, 2008 ("Final Cost Memorandum"); see also Memorandum to The File, titled "Final Analysis Memorandum for Sales—Koehler," dated September 25, 2008 ("Final Sales Memo").

²⁰ See Koehler's April 15, 2010, Supplemental Questionnaire Response at Exhibits S-11 through S-13.

discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses which were excluded from COP for comparison purposes.

3. Results of the COP Test

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared the COPs of the models represented by control numbers to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of Koehler's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of Koehler's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we only disregarded below-cost sales that amounted to 20 percent or more of Koehler's sales of a given product. All other sales that were below cost but did not meet the 20-percent threshold were included in our calculation of normal value. See Preliminary Results Calculations Memo.

Our preliminary findings show that we did not find that more than 20 percent of Koehler's sales were at prices less than the COP. Therefore, we used all of Koehler's remaining home market sales as the basis for determining NV.

D. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Germany. The Department excluded certain sales transactions reported as samples by Koehler. 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. 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 expense, warranty directly linked to sales transactions, royalties, and other direct selling expenses) and adding U.S. direct selling expenses (credit, commissions, warranty directly linked to sales transactions, and other direct selling expenses), where appropriate. See 19 CFR 351.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using weighted-average costs. See 19 CFR 351.411(b).

E. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP sales. In identifying LOTs for EP and comparison market sales (*i.e.*, NV based on home market), 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 profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Federal Circuit 2001).

Consistent with 19 CFR 351.412, to determine whether comparison market sales were at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and

CEP affects price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-33 (November 19, 1997).

Koehler reported its sales in the home market and the U.S. market at the same single LOT. In the home market, Koehler reported that its sales were made through two channels of distribution: (1) Direct sales and (2) consignment sales. In the U.S. market, Koehler reported that its sales were made through three channels of distribution: (1) Market direct-shipment sales through its U.S. affiliated distributor, Koehler America, Inc. (*i.e.*, CEP sales), (2) warehouse sales made through Koehler America, Inc. (*i.e.*, CEP sales), (3) and direct sales from Koehler AG to the customer (*i.e.*, EP sales).

Based on our analysis, we found that Koehler's sales to the U.S. and home market were made at the same LOT, and as a result, no LOT adjustment was warranted. Furthermore, our analysis shows that Koehler's home market sales were not made at a more advanced LOT than Koehler's U.S. sales. Accordingly, we have not made a CEP offset to NV. See 773(a)(7)(B) of the Act.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see our analysis contained in the Preliminary Results Sales Calculation Memo.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margin exists for the following respondents for the period November 20, 2008, through October 31, 2010.

Manufacturer/exporter	Weighted-average margin (percent)
Papierfabrik August Koehler AG.	0.03 (<i>de minimis</i>).

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs

no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. See 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. See section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

Assessment Rate

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR

351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. For a full discussion of this clarification, see *id.*

Cash Deposit Requirements

To calculate the cash deposit rate for Koehler, we divided its total dumping margin by the total net value of its sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of lightweight thermal paper from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (“LTFV”) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 6.50 percent, the all-others rate established in the LTFV investigation. See *Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People’s Republic of*

China, 73 FR 70959 (November 24, 2008). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 7, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe (“CWP”) from the Republic of Korea (“Korea”). The period of review (“POR”) is November 1, 2008, through October 31, 2009. This review covers multiple exporters/producers, three of which are being individually reviewed as mandatory respondents. We preliminarily determine the mandatory respondents made sales of the subject merchandise at prices below normal value (“NV”). We have assigned the remaining respondents the weighted-average of the margins calculated for the mandatory respondents. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (“CBP”)