UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-475-818
Administrative Review
POR: 07/01/11 – 06/30/12
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DATE: February 21, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Certain Pasta from Italy (Period of Review: July 1, 2011, through June 30, 2012)

SUBJECT: Issues and Decision Memorandum for the Final Results of the 16th Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy; 2011-2012

Summary

We have analyzed the case and rebuttal briefs submitted by the Petitioners[1] and respondents. Based on our analysis of comments received, these final results differ from the *Preliminary Results* [2] for Pastificio Gallo Natale & F.lli S.r.L. (Gallo), and Rummo S.p.A. Molino e Pastificio and its affiliates Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni (collectively, Rummo), and six non-selected companies. We recommend that you approve the positions described in the *Discussion of Interested Party Comments*, section II *infra.*

I. Background

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty order on certain pasta from Italy on August 30, 2012, for each of the

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[1] The Petitioners are New World Pasta Company, Dakota Growers Pasta Company and American Italian Pasta Company.
[2] *See Certain Pasta From Italy: Antidumping Duty Administrative Review; 2011-2012*, 78 FR 48146 (August 7, 2013) (*Preliminary Results*).

aforementioned respondents.[3] On August 7, 2013, the Department published the *Preliminary Results* of this administrative review and invited interested parties to comment.[4] The Department conducted the verification of Rummo's cost and sales responses in Italy, from December 2 through 6, 2013, and December 9 through 13, 2013, respectively. On September 6, 2013, Gallo filed a case brief (Gallo's Case Brief). On January 15, 2014, Rummo filed a case brief (Rummo's Case Brief) and Petitioners submitted a case brief regarding Gallo (Petitioners' Case Brief). On January 22, 2014, Petitioners submitted a rebuttal brief regarding Gallo and a rebuttal brief regarding Rummo. On January 22, 2014, Gallo filed a rebuttal brief (Gallo's Rebuttal Brief). The review covers two mandatory respondents, Pastificio Gallo Natale & F.lli S.r.L. (Gallo), and Rummo S.p.A. Molino e Pastificio and its affiliates Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni (collectively, Rummo), and six companies not selected for individual examination (non-selected companies).[5] The period of review (POR) is July 1, 2011, through June 30, 2012.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union (EU) authorized body and accompanied by a National Organic Program import certificate for organic products.[6] Pursuant to the Department's May 12, 2011, changed circumstances review, effective January 1, 2009, gluten-free pasta is also excluded from the scope of the countervailing duty order.[7]

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

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[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 52688 (August 30, 2012).
[4] *See Preliminary Results.*
[5] The mandatory companies are Gallo and Rummo; and the six non-selected companies are Alberto Poiatti S.p.A (Poiatti); Delverde Industrie Alimentari S.p.A (Delverde); Fiamma Vesuviana S.r.L (Fiamma); Pastificio Zaffiri S.r.L (Zaffiri); Tandoi Filippo e Adalberto Fratelli S.p.A (Fratelli); and Valdigrano di Flavio Pagani S.r.L (Valdigrano).
[6] On October 10, 2012, the Department revised the "Scope of the Order" to recognize the EU-authorized Italian agents for purposes of the antidumping and countervailing duty orders on pasta from Italy. *See* Memorandum from Yasmin Nair to Susan Kuhbach, titled "Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy,"' dated October 10, 2012, which is on file in the Department's CRU. We have adopted this scope decision in this current administrative review of certain pasta from Italy.
[7] *See Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634 (May 12, 2011).

Valdigrano's Scope Request

On February 4, 2013, Valdigrano di Flavio Pagani S.r.L. (Valdigrano), a non-selected company in the instant review, requested a scope ruling with respect to pasta made from dough that contains 2.5 percent egg white, by weight. Because the scope of the order excludes pasta containing more than two percent egg white, Valdigrano requested that the Department find this product outside the scope. On March 25, 2013, the Department initiated a formal scope inquiry and concurrently issued its Preliminary Ruling that Valdigrano's product is within the scope because 1) the exclusion in the scope language for pasta with two percent or more egg white pertains to dry, finished pasta not pasta dough, and 2) the egg white content of the dry, finished pasta (based on egg white solids or egg-white solids plus egg white moisture) is less than two percent. On July 18, 2013, the Department issued its Final Scope Ruling finding that Valdigrano's pasta product is within the scope of the order.[8]

Delverde's Changed Circumstances Review

On July 18, 2012, Delverde Industrie Alimentari S.p.A (Delverde), a non-selected company in the instant review, requested a changed circumstances review (CCR) to show that because of a change in ownership, it was the successor-in- interest to Del Verde S.p.A., a company that was excluded from the antidumping duty order pursuant to the original antidumping duty investigation of certain pasta from Italy. Because we have completed these final results prior to issuing a final determination concerning the CCR request filed by Delverde,[9] for cash deposit and assessment purposes, we have assigned Delverde the rate applicable to firms for which a review was requested but that were not individually examined.

II. List of Comments

Company-Specific Issues

Comment 1: Program Language for Gallo's U.S. Warranty Expense

Comment 2: Treatment of Gallo's U.S. Warranty Expense

Comment 3: Certain U.S. Sales Not Reported by Rummo

Comment 4: The Commission Offset for Rummo's Constructed Export Price (CEP) sales

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[8] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, through Susan Kuhbach, Director, Office 1, Antidumping and Countervailing Duty Operations, from Joseph Shuler, Analyst, Office 1, Antidumping and Countervailing Duty Operations, titled, "Certain Pasta from Italy: Final Ruling on the Scope Inquiry Request Regarding Egg White Pasta from Valdigrano di Flavio Pagani S.r.L.," dated July 18, 2013.
[9] *See Certain Pasta from Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review*, 77 FR 47816 (August 10, 2012).

III. Analysis of Comments

A. Gallo

Comment 1: Program Language for Gallo's U.S. Warranty Expense

Petitioners' Argument

- The Department's SAS program for calculating product-specific warranty costs for Gallo's U.S. sales contains an error that results in an understatement of the actual U.S. warranty costs reported by Gallo and the dumping margin for Gallo.
- Revised SAS language would correct the error by calculating total extended warranty, instead of calculating total per unit warranty, and total quantity of the product in question, then dividing the two to get a per unit warranty expense that is accurately allocated over the sales in question. As a result, the margin program and the original total warranty expense would reconcile with the U.S. warranty expense reported by Gallo.

Gallo's Rebuttal

- Petitioners' argument is based on the erroneous assumption that U.S. warranty expenses should be allocated across sales other than the sale on which they were incurred. On the contrary, the U.S. warranty expense is directly related to a single U.S. sale, and the record contains no suggestion that Gallo had any policy that would warrant allocating the expense across more than one sale. Therefore, the Department should allocate the entire warranty expense to the sale on which it was incurred.

Department's Position: As further explained in the Department's position on Comment 2, because in these final results the Department is allocating the U.S. warranty expense over Gallo's total POR sales of subject merchandise, Petitioners' contention regarding the SAS program language for calculating product-specific warranty costs is moot.

Comment 2: Treatment of Gallo's U.S. Warranty Expense

Gallo's Argument

- The Department erred in its treatment of Gallo's U.S. warranty expense. The Department should apply the expense as it was reported because the total amount of the penne pasta on the invoice was equal to the total amount of the credit note, which was issued for damaged merchandise. This methodology complies with the principle that adjustments should reflect the real cost to the seller, and with the Department's general practice of tying direct expenses to the line item of the sale on which they were incurred. Moreover, U.S. warranty expense is a direct selling expense because it would not have been incurred if the sale had not been made.
- In a similar situation in *Certain Cold-Rolled Carbon Steel Flat Products from Brazil* and in *Cut- to-Length Steel Plate from Italy*, the Department determined that it is most appropriate to treat warranty expense as a direct expense and to allocate such expenses on a transaction-

specific basis.[10] The Department has discretion in its treatment of warranty expenses because of the wide variety of fact patterns concerning this type of adjustment. There is no evidence in the record that Gallo had any particular policy in place for warranty claims by U.S. customers; rather, in the only claim made in the POR, Gallo's approach was clearly *ad hoc* in nature, and did not rely on stated policies or specific histories of dealings with the individual customer or with the marketplace. Thus, in this particular case, it is proper for the Department to treat Gallo's U.S. warranty expense as related to the single sale on which it was incurred.[11]

- Alternatively, if the Department decides not to apply the warranty adjustment to the sale on which it was incurred, then the Department should allocate the total warranty expense over all U.S. sales. Gallo cites to several cases to support its statement that the Department's policy is to allocate warranty expenses over the total volume of sales in the market at issue where a company's warranty policy applies to all products and there are no significant differences between product lines and warranty terms for different customers.[12] Gallo's policy for sales to customers in the U.S. market is to provide the same warranty coverage to all customers and all products. Thus, Gallo's situation in this case fits squarely within the standard of precedent cases and should therefore be treated accordingly; that is, the U.S. warranty expense should be allocated over all U.S. customers and overall U.S. products.[13]
- In the alternative, the Department may allocate the warranty expense over total sales of the affected customer. The warranty expense should be allocated in the same manner as it was for home market sales, by customer.
- The Department should not allocate the warranty expenses by product. While it is arithmetically possible to allocate the warranty expense over total sales of penne pasta, the Department does not have a three-year baseline to determine if this is appropriate and non-distortive, and any such three-year baseline could not have been generated on a product-specific basis since Gallo does not maintain any warranty statistics. In support of its contention, Gallo cites to *Stainless Steel Plate in Coils From Belgium*, where the Department stated that "per unit warranty expense reported in the current review is not inconsistent with its model-specific warranty expenses reported for the three fiscal years."[14] Thus, since the

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[10] See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil,* 67 FR 62134 (October 3, 2002), and accompanying Issues and Decision Memo at Comment 16 (*Certain Cold-Rolled Carbon Steel Flat Products from Brazil*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy*, 64 FR 73234, 73242-43 (December 29, 1999) (*Cut-to-Length Steel Plate from Italy*).

[11] *See* Gallo's Rebuttal brief, at 2 – 3.

[12] *See* Gallo's Case Brief, at 3 – 4 (citing *Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010) and accompanying Issues and Decision Memorandum at Comment 4; *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea Final Results of Antidumping Duty Administrative Review*; 2010 to 2011, 78 FR 16247 (March 14, 2013) and accompanying Issues and Decision Memorandum, at Comment 8 (*CORE 18*); *Frozen Warmwater Shrimp From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 54847 (September 9, 2010), and accompanying Issues and Decision Memorandum at Comment 11 (*Frozen Warmwater Shrimp From Thailand*).

[13] *See* Gallo's Case Brief, at 5.

[14] *See Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 74 FR 53468 (October 19, 2009), and accompanying Issues and Decision Memorandum, at Comment 5 (*Stainless Steel Plate in Coils From Belgium*).

record in this instant case does not contain the information necessary to make this model-specific determination, it is improper for the Department to allocate the warranty expense across all sales of penne pasta.[15]

Petitioners' Rebuttal

- The product-specific methodology the Department used for its preliminary analysis is consistent with the instructions in the Department's antidumping duty questionnaire and the Department's practice. Thus, the Department properly calculated product-specific warranty expenses for Gallo's U.S. sales and should not make any changes for the final analysis.
- The Department should not adopt any of the alternative methods suggested by Gallo. First, Gallo failed to explain why the instructions to report model-specific warranty expenses in the Department's antidumping duty questionnaire are incorrect or improper, and why the Department should reject its stated practice of calculating model-specific warranty expenses for its analysis of Gallo's data.
- Second, none of the cases cited by Gallo support Gallo's suggested alternative methodologies. For example, in Gallo's citation to *CORE 18*, Gallo failed to include the Department's first sentence which states: "the Department agrees with U.S. Steel that warranty expenses should not be allocated on a transaction-specific basis." Thus, this case specifically rejects Gallo's assertion that the Department should use transaction-specific warranty expenses for its analysis. In addition, Gallo's citation does not provide a basis for the Department to revise its product-specific warranty expense calculations and adopt Gallo's suggestion to allocate the warranty expense over all U.S. sales of all pasta types.[16]
- Gallo's citation to *Stainless Steel Plate in Coils From Belgium* ignores two important points. First, in *Stainless Steel Plate in Coils From Belgium*, the Department requested that the respondent provide model-specific warranty expenses and the Department used the respondent's model-specific expenses for its analysis. Second, Gallo reported it incurred warranty expenses for only one type (model) of pasta and the Department used Gallo's data to calculate model-specific warranty expenses. Thus, Gallo's records did allow Gallo to report warranty expenses on a product-specific basis and Gallo's data demonstrate that its U.S. warranty expenses were not incurred evenly across all types of pasta Gallo sold in the United States.[17]
- With respect to Gallo's citation to *Frozen Warmwater Shrimp from Thailand*, Gallo failed to note that the Department allocated the warranty expenses across all of the respondent's U.S. sales because the respondent had excluded the sale of the defective merchandise from its U.S. sales database. Thus, the Department's decision in that case does not provide a basis for reviewing the warranty expense calculation for Gallo's U.S. sales. Finally, the Department has previously rejected claims that warranty expenses should be allocated on a transaction-specific basis or on a customer-specific basis.[18]

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[15] *See* Gallo's Case Brief, at 5 – 6.
[16] *See* Petitioners Rebuttal Brief, at 4 – 5.
[17] *Id.*, at 6.
[18] *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission*, 74 FR 11082 (March 16, 2009) (*CORE 14*), and accompanying Issues and Decision Memorandum, at Comment 13.

Department's Position: The Department does not agree with Gallo that its U.S. warranty expenses should be allocated on a transaction-specific basis. However, we agree with Gallo that the warranty expenses should not be allocated as they were in the preliminary results on a product-specific basis. Rather, based on the record in this case and consistent with our practice, Gallo's U.S. warranty expenses should be allocated to all of Gallo's U.S. sales of the subject merchandise.

The Department's discussion of warranty expenses in *CORE 18*, referenced by Gallo and Petitioner, reflects our current practice. The Department's general practice is not to allocate warranty expenses on a transaction-specific basis, but rather to allocate warranty expenses over all sales to a particular market or on a model specific basis within that market if the respondent tracks and records such in its books and records.[19] The nature of a warranty expense is that it is unknown and unforeseeable at the time of sale. As such, in setting prices sellers would be expected to build in a warranty and bad debt allowance across products and markets based on a company's historical experience.[20] Where a company has a warranty policy that applies to all products and all sales, and does not record its historical experience by model/product, our practice is to allocate warranty expenses over all sales. In circumstances where the warranty policy is limited to certain products, certain customers, or certain types of transactions, the Department may consider a narrower allocation.[21]

Gallo states that for one invoice in the U.S. sales database, the product was defective and that Gallo cancelled the line item and credited the customer.[22] Gallo allocated the U.S. warranty expense to the line item for the defective product. In the preliminary results, the Department reallocated the U.S. expense warranty to all sales of the subject penne pasta (*i.e.*, on a model-specific basis). A further review of the record, however, shows that Gallo's policy was not to track and record its warranty expenses in the home market or the U.S. market on a product- or model-specific basis.[23] Furthermore, there is no record information that indicates that Gallo differentiates the warranty service it provides its U.S. customers on a product- or model-specific basis. Thus, although Gallo's U.S. warranty expense in the instant POR was incurred on a certain product, it does not follow that the Department should reallocate Gallo's U.S. warranty

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[19] *Id.*, and accompanying Issues and Decision Memorandum, at Comment 13; *CORE 18*, and accompanying Issues and Decision Memorandum at Comment 8; *see also, e.g.*, *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comments 59 and 69 (where we stated that "consistent with the Department's practice, we have utilized all expenses incurred during the period of investigation and allocated such across all period of investigation sales using a value-based allocation methodology"); *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758 (November 9, 2010).

[20] *See Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

[21] *See CORE 14*, and accompanying Issues and Decision Memorandum at Comment 13; *see also CORE 18*, and accompanying Issues and Decision Memorandum at Comment 8.

[22] *See* Gallo's Section C Questionnaire Response dated February 18, 2013, at 103.

[23] *See* Gallo's Section B Questionnaire Response dated February 18, 2013, at 60.

expense on a product-specific basis.[24] Similarly, there is no basis in the record on which to conclude that Gallo's warranty practice, at the time of sale, only applied to the single transaction on which there happened to be a claim during the POR. Gallo's assertion in its Rebuttal Brief that this was a "one-off, unique situation," even if correct, misses the point. There is no evidence that the credit granted by Gallo on the transaction at issue was pursuant to a specific policy limited to that sale. Instead, Gallo treated the warranty claim in a manner typical of any general warranty policy.

Gallo also references *Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, asserting that the Department expressly determined to allocate warranty expenses on a transaction-specific basis in that case.[25] The Department acknowledges that it determined it appropriate in that case to apply the warranty expenses obtained at verification to the specific transactions to which the credit notes in question were issued. To the extent this decision may not reflect our current practice, we no longer follow this approach. In *CORE 14* and *CORE 18*, the Department determined that warranty expenses should not be allocated on a transaction-specific basis.[26] *CORE 14* and *CORE 18* reflect the Department's current practice and an analysis that is consistent with the nature of the warranty expenses at issue in each case.

Finally, with respect to Gallo's request that if we require an allocation, it should be done in the same manner as the allocation for domestic sales, namely, by customer, we disagree. As holds true for the U.S. market, there is no record evidence to suggest that Gallo differentiated its warranty policy in the home market by customer. Nor is there evidence that Gallo tracked and recorded its historical warranty experience in the home market by product. Therefore, we find that Gallo provides the same warranty across products and does not track expenses on a routine basis by customer or by products. Thus, for purposes of these final results, and consistent with our treatment of warranty expenses in the U.S. market, we are reallocating Gallo's home market warranty expenses across all of Gallo's home market sales during the POR.

B. <u>Rummo</u>

Comment 3: Certain U.S. sales Not Reported by Rummo

Rummo's Argument

- During Rummo's sales verification, the Department made a finding regarding a small number of sales transactions that were not reported in Rummo's U.S. sales database.[27] Specifically, Rummo originally based its universe of U.S. warehouse sales reported to the Department on an erroneous date of sale. Once the date of sale for U.S. warehouse sales

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[24] *See* Gallo's Supplemental Questionnaire Response dated April 1, 2013, at 2.
[25] *See Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, and accompanying Issues and Decision Memorandum at Comment 16.
[26] *See CORE 14*, and accompanying Issues and Decision Memorandum at Comment 13 and *CORE 18*, and accompanying Issues and Decision Memorandum at Comment 8.
[27] *See* Memorandum from George McMahon through Melissa Skinner and Eric Greynolds to the File, titled, "Verification of the Sales Response of Rummo in the 2011-12 Antidumping Review of Certain Pasta from Italy," (Sales Verification Report) at pages 2-3. Due to the business proprietary nature of the details regarding these transactions, see the Sales Verification Report for additional details.

(channel "1" sales) was corrected based on the actual bill of lading date from the U.S. warehouse, the change in the date of sale resulted in a finding that certain transactions were omitted in this POR. Such transactions are inconsequential to the Department's margin calculations and were, in fact, reported in its U.S. sales database for the 2012/13 administrative review of certain pasta from Italy. The sales at issue will be used to calculate a dumping margin for Rummo. Thus, there is no concern that the Department has either missed or double-counted Rummo's U.S. sales between the 2011/12 and 2012/13 consecutive reviews.
- The Department addressed a similar issue in a recent case in which the respondent, Koehler, reported its universe of U.S. warehouse sales base on sales date, rather than the actual shipment date.[28] For the *Preliminary Results* in that case, the Department found that no adjustment was necessary for the missing transactions. Thus, the Department should use the small number of U.S. sales at issue in its calculation of a dumping margin for Rummo in the ensuing 2012/13 administrative review period.

Petitioners did not comment on this issue.

Department's Position: Based on the circumstances of this review, we agree with Rummo that the U.S. sales transactions that were omitted from the 2011/12 review do not require an adjustment. The sales at issue constitute a negligible amount of Rummo's total U.S. sales volume.

Comment 4: The Commission Offset for Rummo's Constructed Export Price (CEP) sales

Rummo's Argument
- Due to a clerical error in the Department's standard margin programming language, the Department has inadvertently failed to apply a commission offset on Rummo's U.S. CEP sales transactions. Rummo references the relevant programming code regarding commissions, as applied in the *Preliminary Results*.
- Rummo states that the Department's commission offset logic is only evaluating these conditions for export price (EP) U.S. sales where U.S. commissions are reported and not for U.S. CEP sales where U.S. commissions are reported. As a consequence, no commission offsets are being correctly calculated or applied to U.S. CEP sales, because the U.S. commissions on CEP sales instead were moved to the aggregate margin variable in the margin program (CEPOTHER).
- Rummo argues that the Department's program should be modified to create a new data variable in its margin program that would consider all U.S. commissions reported on U.S. sales and that this new variable would be used to evaluate and apply the commission offsets for both EP and CEP U.S. sales.
- Rummo asserts that if the Department makes this change in its macros and margin program, the commission offsets will be applied correctly to both EP and CEP sales.

[28] *See Preliminary Results of Antidumping Duty Administrative Review: Lightweight Thermal Paper from Germany*, 78 FR 78335 (December 26, 2013), and accompanying Decision Memorandum, at pages 5-6, regarding Papierfabrik August Koehler AG (Koehler).

Petitioners' Rebuttal

- Rummo incorrectly claims that the Department's current margin program does not apply a commission offset to Rummo's CEP sales. As acknowledged by Rummo, the Department overhauled the standard market economy margin calculation programs in the latter half of 2012 to properly calculate commission offsets for CEP sales.[29] The Department is using its standard macro programming and is following the guidelines available to it, by assigning CEP commissions to correct variable stated in the Department's standard margin program.
- If the Department agrees that a change should be made in its assignment of the variable that evaluates commissions on CEP sales, there is alternate method that does not require changing the macro programming code that is used across all market economy cases, as suggested by Rummo.[30] Specifically, instead of assigning the variable the variable that evaluates commissions on CEP sales (CEPOTHER), the Department should assign the variable that evaluates commissions on CEP sales to the variable that accounts for indirect selling expenses reported for CEP sales (CEPISELL).
- This method of accounting for commissions on CEP sales was clearly contemplated by the Department, as clearly noted in the comment portion of the margin program used in the *Preliminary Results*.

Department's Position: We disagree with Rummo that the Department inadvertently failed to apply the commission offset on Rummo's U.S. CEP sales transactions. The Department's standard market economy margin calculation program, as implemented in this review, properly calculates adjustments for commissions on CEP sales.

There are two types of commissions that are possible for U.S. sales, commissions that are incurred in the United States and commissions that are not incurred in the United States. In Rummo's supplemental response, Rummo stated that "Rummo confirms that, with respect to commissions reported in COMM1U and COMM2U for CEP sales, these commission expenses are incurred in the United States after importation. *See* Exhibit SS1-13 for sample documentation for sale with a COMM1U commission."[31]

The sections of the SAS macro program and the three aforementioned conditions cited by Rummo, relate to commissions that are incurred outside the United States. We find that such language is not relevant for adjustments applied to Rummo's commissions on its CEP sales. Instead, Rummo's commissions, which are incurred in the United States, are deducted from the respective U.S. prices with profit, in accordance with the statute. Specifically, section 772(d)(1)(A) of the Tariff Act of 1930, as amended, (the Act) identifies the adjustments related to commissions for CEP sales, which states, in part:

> (d) Additional Adjustments to Constructed Export Price. For purposes of this section, the price used to establish constructed export price shall also be reduced by --

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[29] *See* Petitioners' Case Brief, at 2 (citing to Rummo's Case Brief, at 5, footnote 1).
[30] *Id.*, at 2-3
[31] *See* Rummo's Section A-C First Supplemental Questionnaire Response, dated March 26, 2013, at 26, and Exhibit SS1-13.

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)
(A) commissions for selling the subject merchandise in the United States;

Consistent with section 772(d)(1)(A) of the Act, the Department's standard market economy margin calculation program used in the instant review makes the adjustment for commissions on sales of subject merchandise in the United States. *See* the net price calculations at Section 4 of the Margin Program. Therefore, we find that no changes to the margin program regarding the accounting for commissions on Rummo's CEP sales are necessary for these final results.[32]

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

Agree: ✓ Disagree: ______

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 February 2014
Date

[32] *See* Rummo's Margin Program Log.