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October 16, 2019

MEMORANDUM TO: Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Administrative Review of the Antidumping Duty Order on  
Stainless Steel Butt-Weld Pipe Fittings from Italy; 2017-2018

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by interested parties in the 2017-2018 administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings (SSBW pipe fittings) from Italy.<sup>1</sup> The administrative review covers one producer/exporter of the subject merchandise: Filmag Italia SpA (Filmag). Following the *Preliminary Results*,<sup>2</sup> and based on the analysis of the comments received, we made certain changes to the home market and margin calculation programs for Filmag. We recommend that you approve the positions described below in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Product Characteristics and Control Numbers  
Comment 2: Indirect Selling Expense Ratio  
Comment 3: Overhead Cost Adjustment  
Comment 4: Cost of Manufacture Adjustment  
Comment 5: Commission Expenses Adjustment  
Comment 6: Deduction of Antidumping Duties from Capped Freight Revenue

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<sup>1</sup> See *Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines*, 66 FR 11257 (February 23, 2001) (*Order*).

<sup>2</sup> See *Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 16464 (April 19, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



## II. BACKGROUND

On April 19, 2019, Commerce published the *Preliminary Results* of the administrative review of the *Order* for the period February 1, 2017 through January 31, 2018, and invited comments from interested parties.<sup>3</sup> On May 18, 2019 and May 20, 2019, respectively, Filmag and the petitioners, Shaw Alloy Piping Products, LLC, Core Pipe Products, Inc., and Taylor Forge Stainless, Inc., timely submitted case briefs.<sup>4</sup> On May 28, 2019, the petitioners and Filmag each timely submitted rebuttal briefs.<sup>5</sup> On August 9, 2019, Commerce extended the deadline for these final results until October 16, 2019.<sup>6</sup>

## III. SCOPE OF THE *ORDER*

For purposes of the *Order*, the product covered is certain stainless steel butt-weld pipe fittings. Stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and “commodity” and “specialty” fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the *Order* are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (e.g., DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the *Order*.

The *Order* does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The butt-weld fittings subject to the *Order* is currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive

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<sup>3</sup> See *Preliminary Results*, 84 FR at 16464.

<sup>4</sup> See Petitioner’s Letter, “Stainless Steel Butt-Weld Pipe Fittings from Italy” Petitioners’ Case Brief,” dated May 20, 2019 (Petitioners’ Case Brief); see also Filmag’s Letter, “Stainless Steel Butt-weld Pipe Fittings from Italy; Case Brief,” dated May 18, 2019 (Filmag Case Brief)

<sup>5</sup> See Petitioners’ Letter, “Stainless Steel Butt-Weld Pipe Fittings from Italy, Petitioners’ Rebuttal Brief,” dated May 28, 2019 (Petitioners’ Rebuttal Brief); see also Filmag’s Letter, “Stainless Steel Butt-weld Pipe Fittings from Italy; Rebuttal Brief,” dated May 27, 2019 (Filmag Rebuttal Brief).

<sup>6</sup> See Memorandum, “Stainless Steel Butt-Weld Pipe Fittings from Italy: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2017-2018,” dated August 9, 2019.

#### IV. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received from interested parties, we made certain changes to our margin calculations for Filmag.

- We revised the control number (CONNUM) matching criteria.<sup>7</sup>
- We revised the indirect selling expense (ISE) ratio.<sup>8</sup>

#### V. DISCUSSION OF THE ISSUES

##### **Comment 1: Product Characteristics Adjustment**

###### *Petitioners' Comments:*<sup>9</sup>

- The petitioners note that Commerce's antidumping duty questionnaire to Filmag instructed Filmag to use additional number codes for any additional type, grade, size, and wall thickness of fittings.
- Filmag reported various additional codes, as Filmag's products generally do not fit within Commerce's CONNUM build-up.
- Commerce's revisions to Filmag's reported CONNUMs resulted in systemic errors.
- Commerce should use Filmag's reported product characteristic codes for CONNUMs in order to achieve the best possible model-matching accuracy.
- Commerce's past practices, and decisions from the Court of International Trade (CIT), support the petitioners' contention that the proper emphasis of the CONNUM should be to create the most similar product matches possible.
- Notwithstanding these arguments, the petitioners aver that Commerce should change the reporting code for "60 Degree Long Radius Elbow" fittings in the TYPE field, stating that neither the code which Commerce assigned to these products nor the code reported by Filmag result in the best product matches.

###### *Filmag's Comments:*<sup>10</sup>

- Filmag agrees with the petitioners that Commerce should not change the reported CONNUMs.
- Filmag believes that its reported product characteristics are correct and comport to the actual physical characteristics of the subject merchandise, as well as Commerce's questionnaire instructions.
- Filmag asserts that Commerce's reclassification of CONNUMs is contrary to the findings of the CIT.
- Notwithstanding these arguments, Filmag asserts that Commerce should not change the reported TYPE code for 60 Degree Long Radius Elbow fittings.

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<sup>7</sup> See Memorandum, "Analysis of Data Submitted by Filmag Italia S.p.A. in the Final Results of the 2017/2018 Administrative Review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Italy," dated concurrently with this memorandum (Filmag Final Analysis Memorandum) at 4.

<sup>8</sup> *Id.* at 4-6.

<sup>9</sup> See Petitioners' Case Brief at 3-10.

<sup>10</sup> See Filmag Rebuttal Brief at 1-13.

- Filmag contends that the reported TYPE code for “60 Degree Long Radius Elbow” fittings was “consistent with the questionnaire’s moving in increments of ten from one TYPE to the next.”
- Filmag states that Commerce asked no supplemental questions concerning the TYPE code for “60 Degree Long Radius Elbow” fittings.
- Filmag also states that “60 Degree Long Radius Elbow” fittings constitute a small portion of Filmag’s production and that none were sold in the United States.

### **Commerce’s Position:**

We agree with both parties and are relying on Filmag’s reported product characteristics in the CONNUMs, except for “60 Degree Long Radius Elbow” fittings. We agree with Filmag that the assignment of TYPE code “020” to these fittings is improper, as it is not the same as “45 Degree Long Radius Elbow” fittings, which are assigned the same code. At the same time, we agree with the petitioners that Filmag’s reported TYPE code of “060” is improper, as it results in potential matches that are not identical or most similar.

Commerce matches identical or most similar CONNUMs in its analysis. In determining most similar matches, we look at the costs of similar CONNUMs. However, in order to account for most similar comparisons, we design the SAS computer program to look at each matching criterion in descending order and look at the sequential coding within each matching criterion. The codes should reflect the most similar physical aspects of each product under comparison, and should be sequential, with the distance between each code being roughly equal to the similarity of the physical aspect being reported.

In creating the codes for the control number variable TYPE (TYPEH for home market, TYPEU for the U.S. market), Filmag reported that it manufactured fittings with 45, 60, and 90 degrees for long radius elbows.<sup>11</sup> Filmag assigned a TYPEH code of “010” for 90 degree long radius elbows, and a code of “020” for 45 degree long radius elbows.<sup>12</sup> For 60 degree long radius elbows, Filmag assigned a code of “060.”<sup>13</sup> However, as 60 degrees falls between 45 degrees and 90 degrees, Filmag should have assigned a code between “010” and “020.” Consequently, for “60 Degree Long Radius Elbow” fittings we are assigning the code “015” in the TYPE field.

### **Comment 2: Indirect Selling Expense Ratio**

#### *Petitioners’ Comments:*<sup>14</sup>

- Commerce should recalculate the ISE ratio for Filmag, as Filmag failed to provide record evidence for how it determined the allocation of certain account balances between the home market, U.S. market, and third country sales.
- Filmag did not fully explain its reported selling activities in both the home and U.S. markets, where Filmag stated that it provides higher levels of selling activities in the

<sup>11</sup> See Filmag’s Letter, “Stainless steel butt weld pipe fittings from Italy; Section B-C Questionnaire Response of Filmag SpA,” dated June 28, 2018, at 12.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See Petitioners’ Case Brief at 11-15.

United States, while at the same time calculating a higher ISE ratio for the home market than for United States.

- There are “additional discrepancies within the ISE ratio” that allocate higher costs to home market sales than appropriate.
- Citing to *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*,<sup>15</sup> the petitioners state that Commerce accepted a market-specific ISE ratio only “because it found that the smaller U.S. ISE ratio and larger home market ISE ratio accurately reflected the difference in selling activities between the two markets.”<sup>16</sup>
- Record evidence does not indicate a similar fact pattern for Filmag with respect to the ISE ratios and selling activities in both markets.<sup>17</sup>

*Filmag’s Comments:*<sup>18</sup>

- The allocation of account balances in the calculation of ISE ratios “is according to the company’s personnel records.”
- Filmag points to Exhibit 10 of the section D questionnaire response, stating that the exhibit is the source of the calculation of the ISE ratios reported in sections B and C of the questionnaire response.

**Commerce’s Position:**

We agree with the petitioners and are recalculating an overall ISE ratio for Filmag. In its rebuttal brief, Filmag references Exhibit D-10 of the section D response and states that “this is the source of the breakdown of the ISE” expenses.<sup>19</sup> Filmag also states that Exhibit D-10 provides a “person-by-person allocation of labor costs.”<sup>20</sup> Our examination of Exhibit D-10, however, shows that none of the sales personnel were assigned any selling expenses associated with U.S. sales.<sup>21</sup> Filmag reported that it provided selling functions in the United States equal to those provided in the home market.<sup>22</sup> An examination of Exhibit D-10 does not indicate that the expenses that would be associated with providing such selling functions are the same or similar between the home market and the United States market. Filmag assigns expenses in Exhibit D-10 either to home market or third country ISEs, but does not assign any such expenses to U.S. sales. Exhibit D-10 contains a person-by-person allocation of labor costs between direct labor, general and administrative expenses, packing labor, fixed general labor, and ISEs for either the

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<sup>15</sup> See *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

<sup>16</sup> See Petitioners’ Case Brief at 14-15.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> See Filmag Rebuttal Brief at 13.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See Filmag’s Letter, “Stainless steel butt weld pipefittings from Italy; Section D Questionnaire Response of Filmag SpA,” (Fimag Section D Response) dated June 28, 2018, at Exhibit D-10.

<sup>22</sup> See Filmag’s Letter, “Stainless steel butt weld pipefittings from Italy; §A QR,” (Fimag Section A Response) dated June 7, 2018, at 12.

home market, third-country markets, or the U.S. market.<sup>23</sup> While some labor costs have been allocated to home market or third country ISEs, none have been allocated to U.S. ISEs.<sup>24</sup> Thus, we are unable to discern how Filmag provides the same level of selling functions in both the home and U.S. markets if there are no labor expenses allocated to U.S. ISEs. Filmag has not provided any other explanation as to why the reported ISEs are not the same or similar for both markets. Consequently, we find that the ISEs as reported do not accurately reflect the services provided by Filmag in both markets. We are calculating a single ISE ratio for all markets to replace the reported ISE ratios for the home and U.S. markets.<sup>25</sup>

### **Comment 3: Overhead Cost Adjustment**

#### *Petitioners' Comments:*<sup>26</sup>

- Commerce should reverse the adjustment from the *Preliminary Results* with respect to Filmag's reported overhead costs.
- Commerce reallocated amounts from certain of Filmag's accounts from fixed overhead to variable overhead<sup>27</sup> costs. The reallocations are inappropriate because record evidence is insufficient to support the reallocations.
- Specifically, the costs in question are not related to indirect materials, do not vary with the volume of merchandise produced, and that the materials associated with these costs are not used in factory administrative activities.
- Indirect materials are properly classified as variable overhead, but such materials are inputs into the production process.
- Some of the reclassified costs do not vary with the volume of merchandise produced at the factory.
- Additionally, there is no record evidence that the material costs in question are not consumables used in activities related to factory administration, which are properly classified in fixed overhead.

#### *Filmag's Comments:*<sup>28</sup>

- The petitioners are "merely substituting their judgement for Commerce's without showing any specific errors in Commerce's judgement."
- All of the materials in question are "supplies" and more of these supplies are used when production is high while less are used when production is low.

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<sup>23</sup> See Filmag Section D Response at Exhibit D-10.

<sup>24</sup> *Id.*

<sup>25</sup> See Filmag Final Analysis Memorandum for further discussion, which includes business proprietary information.

<sup>26</sup> See Petitioners' Case Brief at 16-20.

<sup>27</sup> On page 16 of Petitioners' Case Brief, petitioners state that Commerce "reallocated costs from variable overhead to fixed overhead" and restate the same later on the same page. However, from page 17 through page 20, the petitioners discuss the reallocation of costs from fixed overhead to variable overhead. In the *Preliminary Results*, Commerce reclassified certain materials reported as fixed overhead, to variable overhead. See Memorandum, "Analysis of Data Submitted by Filmag Italia SpA in the Preliminary Results of the 2017/2018 Administrative Review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Italy," dated April 9, 2019, (Preliminary Analysis Memorandum) at page 4.

<sup>28</sup> See Filmag Rebuttal Brief at 14.

- Filmag notes that it initially reported only electricity and gas as variable overhead, but accepts Commerce’s reclassification.

### **Commerce’s Position:**

We agree with Filmag and continue to reclassify certain expenses as variable overhead. Commerce’s section D questionnaire defines variable overhead costs as:

those production costs that generally vary in total with changes in the volume of merchandise produced at a given level of operations. Variable overhead costs may include the costs incurred for indirect materials, indirect labor, utilities, and other variable overhead costs.<sup>29</sup>

As we stated in the Preliminary Analysis Memorandum,<sup>30</sup> the materials in question are variable in nature. Specifically, the material costs in question vary based upon the levels of production.<sup>31</sup> Attachment 6 of the Preliminary Analysis Memorandum lists the materials in question, and how the usage of these materials (and hence the cost) varies with the volume of merchandise produced.<sup>32</sup> As the usage and cost are dependent upon the level of production, these are by definition not fixed costs.<sup>33</sup> Consequently, we are not changing our adjustments from the *Preliminary Results*.<sup>34</sup>

### **Comment 4: Cost of Manufacture Adjustment**

#### *Petitioners’ Comments:*<sup>35</sup>

- Commerce should adjust the cost of manufacturing, as there is a unreconciled difference between Filmag’s cost of production database and its cost reconciliation.

#### *Filmag’s Comments:*<sup>36</sup>

- Filmag’s reported costs reconcile with the accounting system.
- Filmag states that its original reconciliation mistakenly placed “Partial X” products in with subject merchandise, and that these products should be excluded from subject merchandise and added to non-subject merchandise totals.
- Filmag provides a step-by-step reconciliation, using information on the record, to demonstrate that the corrected cost reconciliation is accurate.

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<sup>29</sup> See Commerce’s Letter to Filmag, dated May 10, 2018, at page D-18.

<sup>30</sup> See Preliminary Analysis Memorandum at 4.

<sup>31</sup> *Id.* at 4 and Attachment 6; see also Filmag Section D Response, at 34-35, and Excel file: 2018-06-28- FILMAG-BILDUMP, dated June 28, 2018, at tab “Allocation FIXGEN.”

<sup>32</sup> See Preliminary Analysis Memorandum at Attachment 6.

<sup>33</sup> See Filmag Final Analysis Memorandum for further discussion, which includes business proprietary information.

<sup>34</sup> See *Preliminary Results* PDM at 10 and n.32.

<sup>35</sup> See Petitioners’ Case Brief at 20-21.

<sup>36</sup> See Filmag Rebuttal Brief at 14-20.

## **Commerce's Position:**

We agree with Filmag. Filmag has demonstrated that the reported cost of production database reconciles to Filmag's cost accounting system.<sup>37</sup> As Filmag has stated, its original reconciliation mistakenly placed "Partial X" products in with subject merchandise, products which should have been excluded from subject merchandise and added to non-subject merchandise totals.<sup>38</sup> We examined the corrected cost reconciliation and find that it properly places "Partial X" products with non-subject merchandise.<sup>39</sup> Therefore, we are not making any further adjustments to Filmag's reported total cost of manufacture.

## **Comment 5: Commission Expenses Adjustment**

### *Filmag's Comments:*

- Commerce erred in treating a monthly fee paid to a selling agent as a commission in the *Preliminary Results*.
- Filmag states that it is a small company, and that it has one sales agent in the United States named "OEP." OEP is the sales agent for Filmag for sales in the United States and Canada, and receives a commission for sales to such customers, even if merchandise is shipped to another country.
- Filmag makes two types of payments to OEP; commissions on sales to the United States and Canada, and a fixed "monthly retainer."
- Filmag argues that Commerce should treat the monthly retainer as an ISE, since the retainer is paid regardless of sales, and that it reported the retainer as such an expense.
- Filmag cites to *CTL Plate from Italy*,<sup>40</sup> where Commerce drew a distinction between salaries and commissions, stating that salaries are paid where there are no sales while commissions are not.
- Filmag provided the single commission agreement to Commerce, as instructed, and contrary to Commerce's findings in the *Preliminary Results*.
- If Commerce continues to find that OEP's retainer is a commission, Filmag believes that Commerce should adjust the reported ISE for Filmag.

### *Petitioners' Comments:*<sup>41</sup>

- Commerce was correct to apply partial adverse facts available (AFA) to Filmag's retainer payments to OEP.

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<sup>37</sup> *Id.*

<sup>38</sup> See Filmag Rebuttal Brief at 16-20 (Filmag has provided a step-by-step reconciliation, using information on the record, to demonstrate that the corrected cost reconciliation is accurate).

<sup>39</sup> The original reconciliation contained two offsetting errors, where subject merchandise included the value of Partial X products and the non-subject merchandise did not include the value of Partial X products. The revised cost reconciliation moves the value of Partial X products from subject merchandise to non-subject merchandise. See Filmag Section D Response at Exhibits D-09 and D-18, and Excel files: 2018-06-24-Filmag-Table of costs.xlsx and 2018-06-25-Filmag-New cost reconciliation.xlsx, dated June 28, 2018.

<sup>40</sup> See *Carbon and Alloy Steel Cut-To-Length Plate: Final Determination of Sales at Less Than Fair Value*, 82 FR 16345 (April 4, 2017) (*CTL Plate from Italy*)

<sup>41</sup> See Petitioners' Rebuttal Brief at 1-18.



- The retainer fees are related to the sale of subject merchandise and, thus, are commissions. The contract with OEP is for services which facilitate Filmag's sales of subject merchandise.
- With respect to *CTL Plate from Italy*, the petitioners state that Commerce specifically rejected the idea of a retainer for an unaffiliated company being the same as salary for employees.
- Concerning Filmag's argument that the retainer is paid regardless of sales, the petitioners cite to *Ball Bearings from China*,<sup>42</sup> stating that Commerce has accepted instances where "commission payments" are not actually tied to specific sales.
- The methodology used in *Ball Bearings from China* to calculate commissions supports Commerce's methodology for calculating commissions for Filmag.
- It is not reasonable to conclude that Filmag would continue to pay the retainer to OEP absent any sales, as the payment of the retainer is tied to the execution of sales.
- The retainer paid to OEP involves more than just sales to the United States.
- The application of partial adverse facts available was appropriate, but should Commerce reverse its decision to apply partial AFA, it should apply neutral facts available.
- As neutral facts available, the petitioners argue that Commerce should allocate the retainer fees over all sales to the United States during the period of review, rather than only to sales of subject merchandise.
- If Commerce determines that the retainer fees are akin to salary, the petitioners further argue that Commerce should find Filmag and OEP affiliated and treat these sales as constructed export price sales, adjusting the SAS programming accordingly.

### **Commerce's Position:**

We continue to find that the application of partial AFA to Filmag's commissions is warranted.

In the *Preliminary Results*, we detailed our requests to Filmag for information regarding its commissions, and our discovery of the previously unreported fee paid to OEP.<sup>43</sup> As we stated in our decision memorandum with respect to the retainer fee, "these are payments that Filmag would not have made if the commission agent were not providing commission-related services."<sup>44</sup> In other words, Filmag would not incur this expense were it not for the efforts of OEP to act as a selling agent for Filmag. We are unpersuaded by Filmag's arguments, citing *CTL Plate from Italy*, equating this expense paid to OEP to salaries paid to employees.<sup>45</sup> There is no evidence on the record to suggest that OEP is an affiliated party, or that Filmag directly pays the salaries of OEP's employees. Rather, Filmag has a contractual agreement with an unaffiliated party (*i.e.*, OEP) and pays that unaffiliated party for activities related to securing sales for Filmag in the United States and Canada, as well as for sales for U.S. based companies

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<sup>42</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 68 FR 10685 (March 6, 2003), and accompanying IDM (*Ball Bearings from China*).

<sup>43</sup> See *Preliminary Results* PDM at 3-4.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> See Filmag Case Brief at 5 (citing *CTL Plate from Italy*, IDM at Comment 8).

that are shipped to third countries.<sup>46</sup> OEP is, therefore, a selling agent, earning a commission for its efforts on behalf of Filmag. Accordingly, Filmag's reliance on *CTL Plate from Italy* is misplaced. Specifically, in *CTL Plate from Italy*, Commerce made a distinction between the payment of salaries to employees (even if there are no sales) and payments of commissions.<sup>47</sup> Commerce treated the employee salaries as ISEs. As noted above, however, in this case, OEP is neither an employee nor an affiliated party. On that basis, because OEP is neither receiving a salary from Filmag nor receiving payment absent sales, Filmag's payments to OEP are commissions as defined in *CTL Plate from Italy*.

Additionally, Commerce is not changing the methodology used to calculate the additional commission, nor is it adjusting ISEs, as the additional commission expense is being calculated based on partial AFA. Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Tariff Act of 1930, as amended (the Act), provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 776(b) of the Act states that if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In the *Preliminary Results*, as partial AFA, Commerce chose to allocate the previously unreported retainer fees paid to OEP across Filmag's U.S. sales, and not to make an adjustment to ISE. We will continue to use this methodology for these final results.

#### **Comment 6: Deduction of Antidumping Duties from Capped Freight Revenue**

*Filmag's Comments:*<sup>48</sup>

- Commerce should not remove antidumping duties from service-related expenses which are used to cap service-related revenues.
- Commerce includes U.S. antidumping duties in the movement expenses which are used to apply the cap.
- The antidumping duties included in the freight revenue are not profit on the sale of services and should not be deducted from freight revenue.

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<sup>46</sup> See Filmag's Letter, "*Stainless steel buttweld pipefittings from Italy*"; Response to petitioners' pre-preliminary comments," dated March 11, 2019, at 1-2; see also Filmag's Letter, "*Stainless steel buttweld pipefittings from Italy*; Second supplemental questionnaire response," dated February 25, 2018 at Exhibit 6.

<sup>47</sup> See *CTL Plate from Italy*, IDM at Comment 8.

<sup>48</sup> See Filmag Case Brief at 9-10.

*Petitioners' Comments:*<sup>49</sup>

- The U.S. duties to which Filmag references, and which are deducted from U.S. price, do not include antidumping duties.
- Commerce has a longstanding policy of capping service-related revenues by the directly associated expenses, such that excess revenues cannot be used to increase U.S. price.
- There are no antidumping duty expenses among Filmag's reported selling expenses, and no associated revenues to offset.

**Commerce's Position:**

We agree with petitioners and are not changing our methodology from the *Preliminary Results*, with respect to antidumping duties.

Filmag conflates service-related revenues with service-related expenses.<sup>50</sup> The payment of estimated antidumping duties are not expenses associated with the provision of services or with other selling expenses, such as U.S. duties, nor are they revenue for Filmag. Rather, antidumping duties are expenses associated with an estimate of future antidumping duties due after the completion of an administrative review. Consequently, antidumping duties are not "profit earned on the sale of services," but rather an expense. And removing the estimated antidumping duties from the service-related expenses reduces those expenses, lowering the threshold used to cap service-related revenues.<sup>51</sup> Additionally, it is inappropriate to deduct antidumping duties, because the final expenses are unknown while Commerce is conducting the administrative review. The actual antidumping duty expense may be higher or lower at the completion of the administrative review. As the final disposition of these duties is not known at the time of entry or, logically, during the administrative review period, Commerce excludes these estimated duties from its calculation of service-related expenses.

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<sup>49</sup> See Petitioners' Rebuttal Brief at 18-19.

<sup>50</sup> See Filmag Case Brief at 9-10.

<sup>51</sup> See Preliminary Analysis Memorandum at 6.

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final results in the *Federal Register*.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

10/16/2019

**X**



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance