



February 15, 2013

The Honorable Rebecca Blank  
Acting Secretary of Commerce  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

Dear Madam Secretary:

On behalf of its member companies in the U.S. retail industry, the National Retail Federation (NRF) is writing to express our concern about the current antidumping administrative review on imported lightweight thermal paper (LWTP) from Germany. In that review, the International Trade Administration (ITA) calculated a dumping margin of 75.36 percent based on the application of adverse facts available (AFA), allegedly for deficiencies in the information provided by the German respondent, Papierfabrik Koehler AG (Koehler). Koehler had heretofore never been assigned a margin higher than 6.5 percent.

LWTP is used in every cash register, credit card terminal, and ATM in the United States and is, therefore, absolutely essential in retail store operations. Koehler produces approximately 40-45 percent of all the LWTP used in the United States. The U.S. petitioner, Appleton Papers, Inc., accounts for a similar percentage. Thus, between them, the two companies control 80-90 percent of the U.S. market in LWTP.

The antidumping law is intended to be a remedial, rather than punitive remedy. As recently as early February, the U.S. Court of International Trade in two separate decisions reaffirmed the principle that DOC must provide substantial evidence to corroborate the assignment of an AFA rate that reflects "commercial reality."<sup>1</sup> The court also highlighted that, DOC may select an AFA rate that is high enough to deter companies from refusing to cooperate, but not so high as to be punitive or be so unreasonably high as to have no relationship to the actual dumping margin.<sup>2</sup>

We in the retail industry believe that applying AFA in a manner that results in a twelve-fold increase in Koehler's antidumping margin would be punitive, especially when the likely consequence would be to price Koehler out of the U.S. market and hand Appleton an effective monopoly. As a capital-intensive industry, it would be virtually impossible for domestic LWTP producers to make up for a substantial decrease in supply within any reasonable timeframe. Therefore, significant shortages of LWTP in the United States are a very real possibility for U.S. retailers and other business consumers of LWTP, which would deal a serious blow to retailers as they struggle to revive their businesses in a weak economy.

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<sup>1</sup> Lifestyle Enterprise, Inc. v. U.S. Dept. of Commerce, Slip-Op. 13-17 at 3 (CIT, Feb. 4, 2013); Nan Ya Plastics Corp., Ltd v. United States, Slip-Op. 13-18 at 5 (CIT, Feb. 6, 2013).

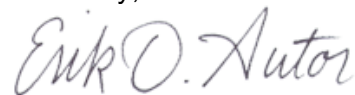
<sup>2</sup> Lifestyle Enterprises, at 7.

Therefore, we urge the ITA to reconsider the AFA dumping margin and to apply a rate based on commercial reality that is sufficient to offer such deterrence as may be appropriate under the circumstances, while avoiding such draconian results that will severely impact other American industries.

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's [Retail Means Jobs](#) campaign emphasizes the economic importance of retail and encourages policymakers to support a [Jobs, Innovation and Consumer Value Agenda](#) aimed at boosting economic growth and job creation.

Should you have any questions or comments, please contact me at (202) 626-8104 or [autore@nrf.com](mailto:autore@nrf.com).

Sincerely,

A handwritten signature in dark ink that reads "Erik O. Autor". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Erik O. Autor  
Vice President, Int'l Trade Counsel

Cc: Francisco J. Sánchez, Undersecretary of Commerce for International Trade