



C-475-819

Administrative Review


POR: 1/1/2011 – 12/31/2011

**Public Document**

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August 2, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Countervailing  
Duty Administrative Review: Certain Pasta from Italy

### Summary

The Department of Commerce (“the Department”) is conducting an administrative review of the countervailing duty (“CVD”) order on certain pasta (“pasta”) from Italy.<sup>1</sup> The period of review (“POR”) is January 1, 2011, through December 31, 2011. We preliminarily find that Molino e Pastificio Tomasello S.p.A. (“Tomasello”), received countervailable subsidies during the POR, and that Delverde Industrie Alimentari S.p.A. (“Delverde”) and Valdigrano di Flavio Pagani S.R.L. (“Valdigrano”) received *de minimis* countervailable subsidies during the POR.

### Background

On July 2, 2012, the Department published a notice of “Opportunity to Request Administrative Review” for the CVD order on pasta from Italy for the calendar year 2011.<sup>2</sup> Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (“the Act”) and 19 CFR 351.213(b)(2), Tomasello, Validgrano, and Delverde each requested an administrative review of itself. Each company is both a producer and exporter of subject merchandise. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review on August 30, 2012.<sup>3</sup>

Because Tomasello, Valdigrano and Delverde were the only parties to request administrative

<sup>1</sup> See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) From Italy, 61 FR 38544 (July 24, 1996) (“Order”).

<sup>2</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 77 FR 39216, 39217 (July 2, 2012).

<sup>3</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 52688, 52691 (August 30, 2012).



reviews, we selected them as the three mandatory respondents. We issued initial questionnaires to these companies and to the Government of Italy (“GOI”) on September 19, 2012. The GOI submitted its response on November 7, 2012,<sup>4</sup> Tomasello and Valdigrano submitted their responses on November 9, 2012,<sup>5</sup> and Delverde submitted its response on November 19, 2012.<sup>6</sup>

On December 5, 2012, we issued our first supplemental questionnaire to Delverde, and received its response on January 2, 2013.<sup>7</sup> On December 7, 2012, we issued first supplemental questionnaires to Valdigrano, Tomasello and the GOI, and received their responses on December 21, 2012,<sup>8</sup> December 28, 2012,<sup>9</sup> and February 4, 2013,<sup>10</sup> respectively.

We issued second supplemental questionnaires to Valdigrano and the GOI on December 19, 2012, and December 20, 2012, respectively. Valdigrano submitted its response on January 21, 2013,<sup>11</sup> and the GOI submitted its response on January 23, 2013.<sup>12</sup> We issued our second supplemental questionnaire to Delverde on May 29, 2013, and received Delverde’s response on June 26, 2013.<sup>13</sup> We issued our third supplemental questionnaire to the GOI on May 31, 2013. We received the GOI’s response in two parts, on June 13 and July 5, 2013.<sup>14</sup>

On October 31, 2012, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all

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<sup>4</sup> See Letter from the GOI to the Department, “16<sup>th</sup> Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy (January 1, 2011 – December 31, 2011). Response of the Government of Italy to the Questionnaire” (November 7, 2012) (“GQR”).

<sup>5</sup> See Letter from Tomasello to the Department, “Pasta from Italy: Tomasello questionnaire response” (November 9, 2012) (“TQR”); Letter from Valdigrano to the Department, “Pasta from Italy; Valdigrano questionnaire response” (November 9, 2012) (“VQR”).

<sup>6</sup> See Letter from Delverde to the Department, “Certain Pasta from Italy: CVD Questionnaire Response of Delverde Industrie Alimentari S.p.A.” (November 19, 2012) (“DQR”).

<sup>7</sup> See Letter from Delverde to the Department, “Certain Pasta from Italy: Supplemental CVD Questionnaire Response of Delverde Industrie Alimentari S.p.A.” (January 2, 2013).

<sup>8</sup> See Letter from Valdigrano to the Department, “Pasta from Italy; Valdigrano first supplemental questionnaire response” (December 21, 2012) (“V1SR”).

<sup>9</sup> See Letter from Tomasello to the Department, “Pasta from Italy; Tomasello supplemental questionnaire response” (December 28, 2012) (“T1SR”).

<sup>10</sup> See Letter from the GOI to the Department, “Sixteenth Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy (January 1, 2011 – December 31, 2011). Response to the First Supplemental Questionnaire” (February 4, 2013). The GOI’s February 4, 2013 response contained a number of filing errors. The GOI filed a corrected response at our request on February 19, 2013 (“G1SR”).

<sup>11</sup> See Letter from Valdigrano to the Department, “Valdigrano second supplemental questionnaire response” (January 21, 2013) (“V2SR”).

<sup>12</sup> See Letter from the GOI to the Department, “Sixteenth Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy (January 1, 2011 – December 31, 2011). Response to the Second Supplemental Questionnaire” (January 23, 2013) (“G2SR”).

<sup>13</sup> See Letter from Delverde to the Department, “Certain Pasta from Italy: Second Supplemental CVD Questionnaire Response of Delverde Industrie Alimentari S.p.A.” (June 26, 2013) (“D2SR”).

<sup>14</sup> See Letter from the GOI to the Department, “Sixteenth Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy (January 1, 2011 – December 31, 2011). Response to the Third Supplemental Questionnaire – Section I.” (June 13, 2013) (“G3SR1”); Letter from the GOI to the Department, “Sixteenth Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy (January 1, 2011 – December 31, 2011). Response to the Third Supplemental Questionnaire Sections II and III.” (July 5, 2013) (“G3SR2”).

deadlines in this segment of the proceeding have been extended by two days.<sup>15</sup> Then, on February 15, 2013, the Department extended the time limit for completion of these preliminary results by 120 days. As a result of these extensions, the new deadline for the preliminary results of this review is August 2, 2013.<sup>16</sup>

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Act.

### **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. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

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 authorized body and accompanied by a National Organic Program import certificate for organic products.<sup>17</sup> 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.<sup>18</sup>

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.

### **Rulings Relevant to Scope**

The Department has issued the following rulings and determinations, among others, to date concerning the scope of the *Order*:

- (1) Multicolored pasta, imported in kitchen display bottles of decorative

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<sup>15</sup> See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy" (October 31, 2012).

<sup>16</sup> See Memorandum from Christopher Siepmann, International Trade Compliance Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Pasta from Italy: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review" (February 15, 2013); see also section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

<sup>17</sup> See Memorandum from Yasmin Nair to Susan Kuhbach, entitled "Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy" (October 10, 2012), which is on file in the Department's Central Records Unit ("CRU") in Room 7046 of the main Department building.

<sup>18</sup> See *Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634 (May 12, 2011).

glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the *Order*.<sup>19</sup>

(2) Multipacks consisting of six one pound packages of pasta that are shrink-wrapped into a single package are within the scope of the *Order*.<sup>20</sup>

(3) Effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the *Order*.<sup>21</sup>

(4) Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the *Order* pursuant to section 781(a) of the Act and 19 CFR 351.225(g).<sup>22</sup>

(5) Valdigrano's pasta made from a dough that contains 2.5 percent egg white, by weight, is within the scope of the *Order*.<sup>23</sup>

### **Use of Facts Otherwise Available and Adverse Inferences**

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available," subject to section 782(d) of the Act, if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available ("AFA") information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and

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<sup>19</sup> See Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

<sup>20</sup> See Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is on file in the CRU.

<sup>21</sup> See Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is on file in the CRU.

<sup>22</sup> See *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

<sup>23</sup> See Memorandum from Joseph Shuler, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "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.

accurate information in a timely manner.”<sup>24</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>25</sup>

Valdigrano reported receiving a tax benefit under Tremonti Ter during the POR.<sup>26</sup> We requested information from the GOI regarding this program, including responses to the Standard and Tax appendices, in a supplemental questionnaire.<sup>27</sup> The GOI failed to provide a translation of the law governing this program and to respond to the Standard appendix.<sup>28</sup> This information is essential to our analysis of the program: a translation of the law governing the program is required in order to analyze *de jure* specificity and the other information requested in the Standard appendix is necessary to analyze *de facto* specificity. The statute identifies specificity as one of three necessary elements of a countervailable subsidy.<sup>29</sup> The Department normally relies upon information from the government to determine whether a program is specific.<sup>30</sup> Although it was given opportunities, the GOI’s responses left us without the necessary information to determine whether Tremonti Ter is countervailable.

Tomasello reported receiving a grant under PO FESR Measure 4.1.1.1.,<sup>31</sup> which the GOI confirmed.<sup>32</sup> The GOI, however, failed to provide certain information that the Department needed to analyze the specificity of the funds given by the regional government of Sicily under this program.<sup>33</sup> In particular, in both its initial questionnaire response and its supplemental questionnaire response,<sup>34</sup> the GOI failed to provide usage data for the portion of funds provided under this program by the regional government of Sicily. This information is essential to our specificity analysis.

We preliminarily determine that the GOI has withheld necessary information that was requested of it for these programs. Because the record is incomplete, the Department must rely on “facts available.”<sup>35</sup> Moreover, the GOI has failed to cooperate by not acting to the best of its ability to comply with our requests for information, so we are applying an adverse inference in our use of facts available.<sup>36</sup> Due to the GOI’s failure to cooperate, we are finding as AFA that benefits

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<sup>24</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>25</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994), at 870 (“SAA”).

<sup>26</sup> See V2SR at 1-2.

<sup>27</sup> See December 20, 2012 supplemental questionnaire to the GOI, “Certain Pasta from Italy: Second Supplemental Questionnaire to the GOI” at 3.

<sup>28</sup> See G2QR at 3. See also G3SR2 at 22, where the GOI again failed to provide usage data for this program, as requested by the Department.

<sup>29</sup> See sections 771(5)(A) and 771(5A) of the Act.

<sup>30</sup> See, e.g., *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) and accompanying Issues and Decision Memorandum (“IDM”) at Comment 6.

<sup>31</sup> See TQR at 13 and Attachments 8, 9.

<sup>32</sup> See GQR at 26.

<sup>33</sup> *Id.* at 20-2.

<sup>34</sup> See G1SR at 6.

<sup>35</sup> See sections 776(a)(1), 776(a)(2)(A) and 776(a)(2)(B) of the Act.

<sup>36</sup> See section 776(b) of the Act.

from these programs are specific.<sup>37</sup> An analysis of these programs is found in the “Analysis of Programs” section below.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”<sup>38</sup> Our determinations regarding the specificity of these programs are based on an adverse inference under section 776(b) of the Act arising from the unwillingness of the GOI to provide necessary information pertaining to the access to, or the distribution of, the subsidies. The facts available decisions described above do not rely on secondary information. The corroboration requirement of section 776(c) of the Act is, therefore, not applicable for the use of facts available with respect to these programs in this review.

### **Subsidies Valuation Information**

#### **Allocation Period**

The average useful life (“AUL”) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System, as revised.<sup>39</sup> No party in this proceeding has disputed this allocation period.

#### **Attribution of Subsidies**

The Department’s regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of the recipient and other companies if: (1) cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department’s regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department’s regulations further clarifies the

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<sup>37</sup> See section 771(5A) of the Act.

<sup>38</sup> See SAA at 870.

<sup>39</sup> See U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods, publicly available at <http://www.irs.gov/publications/p946/ar02.html>.

Department's cross-ownership standard. According to the *Preamble*, relationships captured by the cross-ownership definition include those where

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>40</sup>

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade ("CIT") has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>41</sup>

### Delverde

Delverde responded to the Department's questionnaire on behalf of itself. It is part of the Molinos Group, an international group of companies specializing in food production and related activities.<sup>42</sup> Molinos Group companies are located in Argentina, Brazil, Chile, Spain, Switzerland, Ukraine, the United States, and Uruguay.<sup>43</sup> During the POR, Delverde was ultimately owned by Molinos Rio De La Plata S.A., which is headquartered in Buenos Aires, Argentina.<sup>44</sup>

A company that preceded Delverde, Delverde S.p.A., was last reviewed by the Department in the fifth administrative review.<sup>45</sup> According to Delverde, Delverde S.p.A. later became insolvent and entered bankruptcy proceedings in 2005.<sup>46</sup> Delverde S.p.A.'s going concern and assets were sold to Delverde, which was organized and owned by Faro S.r.l. ("Faro").<sup>47</sup> Faro is a "turnaround" investment fund. Over time, Faro sold its interest in Delverde to the Molinos Group, eventually giving the Molinos Group sole ownership of Delverde in July 2010.<sup>48</sup>

We examined the information regarding the ownership and structure of the Molinos Group

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<sup>40</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) ("*Preamble*").

<sup>41</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>42</sup> See DQR at 2.

<sup>43</sup> *Id.* at 2-3.

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

<sup>45</sup> See *Certain Pasta from Italy: Final Results of the Fifth Countervailing Duty Administrative Review*, 67 FR 52452 (August 12, 2002).

<sup>46</sup> See DQR at 5.

<sup>47</sup> *Id.* at 6.

<sup>48</sup> *Id.* at 5-7.

provided by Delverde,<sup>49</sup> and found no indication that Delverde had affiliates in Italy. Therefore, we have attributed Delverde's subsidy benefits solely to Delverde. Additionally, Delverde chose not to contest the Department's presumption that non-recurring subsidies continue to benefit the recipient over the allocation period, so we have allocated non-recurring subsidies received prior to 2005 by Delverde S.p.A. to Delverde as well.<sup>50</sup>

### Tomasello

Tomasello responded to the Department's questionnaire on behalf of itself. Tomasello reported that it is a corporation founded in 1964, and that it is not affiliated with any other company. Therefore, we are attributing Tomasello's subsidies to the sales of Tomasello only.

### Valdigrano

Valdigrano responded to the Department's questionnaire on behalf of itself and a company which it established during the POR, Paganiprint S.r.L. ("Paganiprint"). Paganiprint is a producer of food packaging film and Valdigrano reported that it made purchases of food packaging film from Paganiprint during the POR.<sup>51</sup> Valdigrano also reported that Paganiprint did not receive any subsidies.<sup>52</sup> We have attributed Valdigrano's subsidies to the sales of Valdigrano only.

### **Loan Benchmarks and Discount Rates**

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>53</sup> If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."<sup>54</sup>

Delverde, Tomasello and Valdigrano did not report receiving any comparable commercial loans, so we used a national average interest rate for comparable commercial loans as our benchmark. Consistent with our past practice in this proceeding, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer.<sup>55</sup> For benefits received in 1995-2004, we used the Italian Bankers' Association ("ABI") prime interest rate (as reported by the Bank of Italy), increased by the

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<sup>49</sup> *Id.* at Exhibit 1.

<sup>50</sup> *Id.* at 11; *see also Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003).

<sup>51</sup> *See* VQR at 2.

<sup>52</sup> *Id.* at 2-3.

<sup>53</sup> *See* 19 CFR 351.505(a)(3)(i).

<sup>54</sup> *See* 19 CFR 351.505(a)(3)(ii).

<sup>55</sup> *See, e.g., Certain Pasta From Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review*, 70 FR 17971, 17974 (April 8, 2005), unchanged in *Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005).



average spread charged by banks on loans to commercial customers plus an amount for bank charges.<sup>56</sup> The Bank of Italy ceased reporting this rate in 2004.<sup>57</sup> Because the ABI prime rate was no longer reported after 2004, for 2005-2011, we have used the “Bank Interest Rates on Euro Loans: Outstanding Amounts, Non-Financial Corporations, Loans With Original Maturity More Than Five Years” published by the Bank of Italy and provided by the GOI.<sup>58</sup> We increased this rate by the mark-up and bank charges described above.

Also, none of the companies reported loan interest rates that could be used as discount rates. Therefore, in order to allocate non-recurring benefits over time, we calculated discount rates for these companies by using the national average cost of long-term, fixed-rate loans pursuant to 19 CFR 351.524(d)(3)(i)(B).

## **Analysis of Programs**

Based upon our analysis and the responses to our questionnaires, we preliminarily determine the following:

### **I. Programs Preliminarily Determined To Be Countervailable**

#### **A. Industrial Development Grants Under Law 488/92**

In 1986, the European Union (“EU”) initiated an investigation of the GOI’s regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) areas by the EU. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible regions and sectors (manufacturing, mining, and certain business services) could apply for industrial development grants.<sup>59</sup>

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, *etc.* Grants are then made based on this ranking.<sup>60</sup> Delverde and

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<sup>56</sup> See *Certain Pasta from Italy: Preliminary Results of the 12th (2007) Countervailing Duty Administrative Review*, 74 FR 25489, 25491 (May 28, 2009) (“*Twelfth Administrative Review Prelim*”), unchanged in *Certain Pasta from Italy: Final Results of the 12th (2007) Countervailing Duty Administrative Review*, 74 FR 47204 (September 15, 2009) (“*Twelfth Administrative Review*”).

<sup>57</sup> *Id.*

<sup>58</sup> See GQR at Exhibits 4-6.

<sup>59</sup> See *Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review*, 64 FR 17618, 17620 (April 12, 1999) (“*Second Administrative Review Prelim*”), unchanged in *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999) (“*Second Administrative Review*”).

<sup>60</sup> See, e.g., *Certain Pasta From Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 18806, 18809 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386 (June 29, 2010).

Tomasello both received grants under Law 488/92 that conferred benefits during the POR.<sup>61</sup>

In the *Second Administrative Review*, the Department determined that Law 488/92 grants confer a countervailable subsidy within the meaning of section 771(5) of the Act.<sup>62</sup> They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant.<sup>63</sup> Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.<sup>64</sup> In the instant review, neither the GOI nor the respondent companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.<sup>65</sup>

In the *Second Administrative Review*, the Department treated these industrial development grants as non-recurring.<sup>66</sup> No new information has been placed on the record of this review that would cause us to depart from this treatment. Therefore, we have followed the methodology described in 19 CFR 351.524(b) and, because the grants received by Delverde and Tomasello under Law 488/92 exceeded 0.5 percent of their sales in the year in which the grants were approved, we allocated the benefits over time using the grant methodology described in 19 CFR 351.524(d). We divided the amounts allocated to the POR by the respective total sales of Delverde and Tomasello in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.42 percent *ad valorem* for Delverde and 1.05 percent *ad valorem* for Tomasello.<sup>67</sup>

#### B. Measure 3.14 of the POR Sicilia 2000/2006

Measure 3.14 of the POR Sicilia 2000/2006 (“Measure 3.14”) is a regional development program designed to encourage stable economic growth in southern Italy.<sup>68</sup> Measure 3.14 provides assistance in the form of grants to companies that undertake approved industrial research projects. According to the GOI, Measure 3.14 is co-funded by the European Regional Development Fund (“ERDF”), the Italian national government and by the regional government

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<sup>61</sup> See DQR at 13 and D2SR at 1; TQR at Exhibit 5.

<sup>62</sup> See *Second Administrative Review Prelim*, 64 FR at 17620, unchanged in *Second Administrative Review*.

<sup>63</sup> See section 771(5)(D)(i) of the Act; see also 19 CFR 351.504(a).

<sup>64</sup> See *Second Administrative Review Prelim*, 64 FR at 17620, unchanged in *Second Administrative Review*.

<sup>65</sup> See *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408, 52429 (October 7, 1996) (“{I}t is well-established that where the Department has determined that a program is (or is not) countervailable, it is the Department’s policy not to reexamine the issue of that program’s countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration.”).

<sup>66</sup> See *Second Administrative Review Prelim*, 64 FR at 17620, unchanged in *Second Administrative Review*.

<sup>67</sup> See Memorandum from Christopher Siepmann, International Trade Compliance Analyst to Nancy Decker, Program Manager, “Preliminary Results Calculation Memorandum for Delverde Industrie Alimentari S.p.A.” (August 2, 2013); and Memorandum from Joseph Shuler, International Trade Compliance Analyst to Nancy Decker, Program Manager, “Preliminary Results Calculation Memorandum for Molino e Pastificio Tomasello S.p.A.” (August 2, 2013) (“Tomasello Prelim Calc Memo”).

<sup>68</sup> See G3SR2 at 16; see also G1SR at Exhibit 10, which states, “The European Commission has decided to contribute actively to the development of Italy’s Mezzogiorno by co-financing the Objective 1 programme for the 2000-2006 period for Sicily.” Sicily is listed as an Object 1 region. See G2SR2 at 16.

of Sicily.<sup>69</sup>

The ERDF is one of the European Union's Structural Funds. It was created pursuant to the authority in Article 130 of the Treaty of Rome to reduce regional disparities in socio-economic performance within the European Union. The ERDF program provides grants to companies located within regions which meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) under the Structural Funds.<sup>70</sup>

In the two prior reviews, the Department determined that grants under Measure 3.14 confer a countervailable subsidy within the meaning of section 771(5) of the Act.<sup>71</sup> In this review, Tomasello reported that it received no grants under this program during the POR. However, Tomasello disputed our prior findings of countervailability, providing certain information about the distribution of grants and arguing that Measure 3.14 is a law of the regional government of Sicily, and arguing that the assistance it provides is generally available within Sicily and that the pasta sector had not disproportionately benefitted under the program.<sup>72</sup> The GOI was provided an opportunity to submit information about the usage of this program within the region but did not do so.<sup>73</sup>

Therefore, consistent with our prior findings, we preliminarily determine that Measure 3.14 confers a countervailable subsidy. The grants given under this program are a direct transfer of funds bestowing a benefit in the amount of the grant.<sup>74</sup> The GOI provided information in this review about the shares of funding provided by the EU, the GOI, and the regional government of Sicily.<sup>75</sup> The portions given by the EU and GOI are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. With respect to the portion given by the regional government of Sicily, as explained above, the GOI has provided no new information which would warrant reconsideration of our prior determination that Measure 3.14 grants are specific.

Also consistent with our prior treatment of Measure 3.14 grants, we are treating the grants as non-recurring pursuant to 19 CFR 351.524(b). Because the amount of the grant that was approved exceeded 0.5 percent of the reported total sales in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit over time. We divided the benefit attributable to the POR by the value of Tomasello's total sales in the POR.

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<sup>69</sup> See G1SR at 7.

<sup>70</sup> See, e.g., *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004) ("Seventh Administrative Review") and accompanying IDM at 11.

<sup>71</sup> See *Certain Pasta From Italy: Final Results of the 2009 Countervailing Duty Administrative Review*, 77 FR 7129 (February 10, 2012) ("Fourteenth Administrative Review") and accompanying IDM at 12-13; *Certain Pasta from Italy: Preliminary Results of the 15<sup>th</sup> (2010) Countervailing Duty Administrative Review and Rescission, in Part*, 77 FR 45582 (August 1, 2012) ("Fifteenth Administrative Review Prelim"), unchanged in *Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 69793 ("Fifteenth Administrative Review").

<sup>72</sup> See TQR at 10.

<sup>73</sup> See the Department's December 5, 2012 supplemental questionnaire, "Certain Pasta from Italy: First Supplemental Questionnaire to the GOI;" see also the Department's May 31, 2013 supplemental questionnaire, "Certain Pasta from Italy: Third Supplemental Questionnaire to the GOI."

<sup>74</sup> See Section 771(5)(D)(i) of the Act and 19 CFR 351.504(a).

<sup>75</sup> See G1SR at 7.

On this basis, we preliminarily determine the countervailable subsidy from the Measure 3.14 grants to be 0.18 percent *ad valorem* for Tomasello.<sup>76</sup>

C. PO FESR Measure 4.1.1.1.

Tomasello reported that it entered into a partnership to develop a project related to food safety. The partnership entitled Tomasello to receive a grant under PO FESR Measure 4.1.1.1. (“PO FESR”).<sup>77</sup> The GOI reported that PO FESR is associated with the ERDF regional operational program for Sicily and is jointly financed by the EU’s Structural Funds, the national Italian government and the regional government of Sicily.<sup>78</sup>

We preliminarily determine that PO FESR confers a countervailable subsidy. The grants given under this program are a direct transfer of funds bestowing a benefit in the amount of the grant.<sup>79</sup> The GOI provided information in this review about the portions of the grants provided by the EU, the GOI, and the regional government of Sicily.<sup>80</sup> The portions given by the EU and GOI are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. With respect to the portion given by the regional government of Sicily, as explained above under “Use of Facts Otherwise Available and Adverse Inferences,” the GOI has not provided information about the usage of this program within the region of Sicily despite being asked for such information by the Department. Therefore, we preliminarily determine as AFA that the portion of the funding provided by the regional government of Sicily is specific.

Based on our prior treatment of other ERDF-based grants,<sup>81</sup> we considered treating PO FESR grants as non-recurring pursuant to 19 CFR 351.524(b). However, in this instance, the amount of the grant Tomasello received is less than 0.5 percent of its total sales in the year the grant was approved.<sup>82</sup> Therefore, in accordance with 19 CFR 351.524(b)(2), we have expensed benefits from this program to the year of receipt.

On this basis, we preliminarily determine the countervailable subsidy from the PO FESR program to be 0.17 percent *ad valorem* for Tomasello.<sup>83</sup>

D. European Social Fund

The Department countervailed this program in the previous administrative review.<sup>84</sup> Tomasello reported no new or additional assistance under this program for the POR.<sup>85</sup>

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<sup>76</sup> See Tomasello Preliminary Calc Memo.

<sup>77</sup> See TQR at 13.

<sup>78</sup> See G1SR at 5.

<sup>79</sup> See section 771(5)(D)(i) of the Act and 19 CFR 351.504(a).

<sup>80</sup> See G1SR at 5.

<sup>81</sup> See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) From Italy*, 61 FR 30288, 30294 (June 14, 1996) (“*Final Investigation*”).

<sup>82</sup> See T1SR at 5.

<sup>83</sup> See Tomasello Preliminary Calc Memo.

<sup>84</sup> See *Fifteenth Administrative Review Prelim*, 77 FR at 45585, unchanged in *Fifteenth Administrative Review*.

<sup>85</sup> See TQR at 13.

The Department normally considers the benefits from worker training programs to be recurring.<sup>86</sup> However, consistent with the Department's determination in the countervailing duty investigation of *Wire Rod from Italy*<sup>87</sup> that these grants relate to specific, individual projects, and consistent with the *Fifteenth Administrative Review*, we have treated these grants as non-recurring because each required separate government approval.<sup>88</sup>

Accordingly, we have followed the methodology described in 19 CFR 351.524(b) and, because the grants received by Tomasello under this program exceeded 0.5 percent of its sales in the year in which the grants were approved, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit. We divided the amount allocated to the POR by Tomasello's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the European Social Fund grants to be 0.09 percent *ad valorem* for Tomasello.<sup>89</sup>

E. Article 14 of Law 46/1982 (*Fondo Innovazione Tecnologica*)

The Department countervailed this program in the previous administrative review.<sup>90</sup> Tomasello responded that it received no new loans or grants under Article 14 of Law 46/1982 during the POR, but reported repayment of loans it had previously received under this program.<sup>91</sup>

We have previously treated the grants under this program as "non-recurring," and allocated the benefits over time.<sup>92</sup> Consequently, because the grant received by Tomasello under Article 14 of Law 46/1982 exceeded 0.5 percent of its sales in the year the grant was approved, we allocated the benefit over time using the grant methodology described in 19 CFR 351.524(d). We divided the amount allocated to the POR by Tomasello's total sales in the POR. We preliminarily determine the countervailable subsidy from the grant under Law 46/1982 to be 0.16 *ad valorem* for Tomasello.

Consistent with our previous treatment of Tomasello's loan under Article 14 of Law 46/1982, we calculated the countervailable benefit by computing the difference between the payments Tomasello made on the loan during the POR and the payments Tomasello would have made on a benchmark loan. *See* the "Benchmarks for Long-Term Loans and Discount Rates" section of this notice above. We divided the benefit received by Tomasello by its total sales in the POR.

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<sup>86</sup> *See* CFR 351.524(c)(1).

<sup>87</sup> *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40474, 40487 (July 29, 1998) ("*Wire Rod from Italy*").

<sup>88</sup> *See Fifteenth Administrative Review Prelim*, 77 FR at 45585, unchanged in *Fifteenth Administrative Review*; *see also Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40474, 40487 (July 29, 1998).

<sup>89</sup> *See* Tomasello Preliminary Calc Memo.

<sup>90</sup> *See Fifteenth Administrative Review Prelim*, 77 FR at 45585, unchanged in *Fifteenth Administrative Review*.

<sup>91</sup> *See* TQR at 12.

<sup>92</sup> *See Fifteenth Administrative Review Prelim*, 77 FR at 45585-86, unchanged in *Fifteenth Administrative Review*; *see also* 19 CFR 351.524(b).

On this basis, we preliminarily determine the countervailable subsidy from Law 46/1982 research loan to be 0.12 percent *ad valorem* for Tomasello.<sup>93</sup>

F. Article 23 of Legislative Decree 38/2000

The Department countervailed this loan program in the previous administrative review.<sup>94</sup> Tomasello responded that it received no new loans under Article 23 of Legislative Decree 38/2000, but reported repayment of a loan it previously received under this program.<sup>95</sup>

Consistent with our previous treatment of Tomasello's loan under Article 23 of Legislative Decree 38/2000, we calculated the countervailable benefit by computing the difference between the payments Tomasello made on the loan during the POR and the payments Tomasello would have made on a benchmark loan. *See* the "Benchmarks for Long-Term Loans and Discount Rates" section of this notice above. We divided the benefit received by Tomasello by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the loan under Article 23 of Legislative Decree 38/2000 to be 0.05 percent *ad valorem* for Tomasello.<sup>96</sup>

G. Tremonti Ter

Tremonti Ter is a measure under Article 5 of the Decree Law n. 78 of July 1, 2009, with additional amendments under Law n. 102 of August 3, 2009 (the so-called "Tremonti Ter").<sup>97</sup> The measure provides a deduction from taxable income in the amount of fifty percent of the value of certain investments in new machinery and new equipment.<sup>98</sup> According to the GOI, the measure is limited to purchases of equipment listed under Division 28 of the ATECO 2007 Classification ("Manufacture of machinery and equipment"), made between July 2009 to June 2010.<sup>99</sup> In response to our questions, the GOI stated that Tremonti Ter is not a continuation of previous Tremonti programs and that it is substantively different in both scope and measure.<sup>100</sup>

Valdigrano reported that it claimed a deduction under Tremonti Ter on the tax return filed during the POR.<sup>101</sup>

We preliminarily determine that the deductions provided under Tremonti Ter confer a countervailable subsidy within the meaning of section 771(5) of the Act. The deductions are a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone and they confer a benefit in the amount of the difference between the taxes that Valdigrano paid in 2010 and the taxes that Valdigrano would have been required to pay if it had

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<sup>93</sup> *See* Tomasello Preliminary Calc Memo.

<sup>94</sup> *See Fifteenth Administrative Review Prelim*, 77 FR at 45586, unchanged in *Fifteenth Administrative Review*.

<sup>95</sup> *See* TQR at 12.

<sup>96</sup> *See* Tomasello Preliminary Calc Memo.

<sup>97</sup> *See* G3SR2 at 23.

<sup>98</sup> *See* G2SR at 4.

<sup>99</sup> *See* G2SR at 4.

<sup>100</sup> *See* G3SR2 at 23.

<sup>101</sup> *See* V2SR at 2.

not taken advantage of the deduction. As explained above under “Use of Facts Otherwise Available and Adverse Inferences,” the GOI failed to provide requested information on this program that would have enabled the Department to conduct a specificity analysis. Therefore, we preliminarily determine as AFA that the tax deduction granted under Tremonti Ter is specific within the meaning section 771(5A)(D).

In accordance with 19 CFR 351.524(c), we generally treat income tax benefits as recurring subsidies. Accordingly, we divided the amount of Valdigrano’s tax savings during the POR by its total sales in the POR.<sup>102</sup>

On this basis, we preliminarily determine the countervailable subsidy from Tremonti Ter to be 0.35 percent *ad valorem* for Valdigrano.<sup>103</sup>

## **II. Programs Preliminarily Determined To Be Terminated**

### **A. Law 113/86 Training Grants**

In this review, the GOI asked us to find it had terminated a total of 13 programs.<sup>104</sup> We asked the GOI to provide a translated copy of the act, statute, regulation, or decree repealing each program, to demonstrate that no residual benefits are possible under the program, and to confirm that no substitute program to the terminated program had been introduced.<sup>105</sup> When evaluating termination of a program, the Department is guided by, or refers to, the program-wide change regulation.<sup>106</sup> The Department has evaluated similar information in other proceedings.<sup>107</sup>

In its response, the GOI provided excerpts of the repealing act or decree for only three programs: Law 1089/68 (Sgravi Unico), Tax Credits Under Article 280 of Law 296/06, and Law 113/86 Training Grants.<sup>108</sup> Without the repealing act or decree or similar documentation, we cannot evaluate the GOI’s claim that the other ten programs have been terminated. Accordingly, we have limited our analysis to the three programs for which the GOI provided this document. Furthermore, the GOI did not address whether Law 1089/68 and Tax Credits Under Article 280

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<sup>102</sup> See V2SR at 2.

<sup>103</sup> See Memorandum from Joseph Shuler, International Trade Compliance Analyst to Nancy Decker, Program Manager, “Preliminary Results Calculation Memorandum for Valdigrano di Flavio Pagani S.R.L.” (August 2, 2013).

<sup>104</sup> These programs are: Industrial Development Grants under Law 64/86; Law 183/76; Measure 3.14 of the POR Sicilia 2000/2006; Industrial Development Loans under Law 64/86; Law 1089/68 (Sgravi Unico); Law 289/02, Article 62 (Investments in Disadvantaged Areas); Law 289/02, Article 63 (Increase in Employment); Tax Credits Under Article 280 of Law 296/06; Law 317/91 Benefits for Innovative Investments; Grants Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA); Law 10/91 Grants to Fund Energy Conservation; Preferential Financing for Export Promotion Under Law 394/81; and Law 113/86 Training Grants. See GQR at 1-3.

<sup>105</sup> See Letter from the Department to the GOI, “Certain Pasta from Italy: First Supplemental Questionnaire to the GOI” (December 5, 2012) at 1-2.

<sup>106</sup> See 19 CFR 351.526(b)(2), 351.526(d)(1) and 351.526(d)(2).

<sup>107</sup> See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Countervailing Duty Administrative Review*, 76 FR 22868 (April 25, 2011) and accompanying IDM at 13-16 (regarding the program “Presumed Tax Credit for the Program of Social Integration and the Social Contributions of Billings on Inputs Used in Exports (PIS/COFINS)”).

<sup>108</sup> See G1SR at 1-3 and Exhibits 1-3.

of Law 296/06 have been replaced with other programs.<sup>109</sup> We intend to seek more information for these two programs, and address whether they have been terminated in a post-preliminary analysis.

However, the GOI confirmed that there is no replacement program for Law 113/86.<sup>110</sup> Also, we have previously found Law 113/86 to provide recurring benefits, so there are no residual benefits that would allocate to future reviews.<sup>111</sup> The GOI provided a translated excerpt from Legislative Decree 112/2008, the legal instrument that repealed this program. According to this decree, “[s]tarting from the one hundred and eightieth day after the date of entry into force of this decree the provisions listed in Annex A to the application of paragraphs 14 and 15 of Article 14 of the Law of 28 November 2005, no. 246 (105) are or remain repealed.”<sup>112</sup> In Annex A, “Law n. 113 of April 11, 1986... Special Plan for Youth Employment” is listed.<sup>113</sup> Therefore, because Law 113/86 has been repealed, because there are no residual benefits, and because it has not been replaced with another program, we preliminarily find that Law 113/86 has been terminated.

### **III. Programs Preliminarily Determined to be Non-Countervailable**

#### **A. Regional Law 35/96**

Valdigrano reported that it received a grant under Regional Law 35/96 (RL 35/96).<sup>114</sup> According to the GOI, small- and medium- size businesses in Lombardy are eligible for grants under RL 35/96 if they meet one of two conditions: if they increase their workforce, or if they make investments in the environment, worker safety, or energy conservation.<sup>115</sup> Valdigrano qualified for a grant under RL 35/96 because it reported an increase in its workforce. Grants under RL 35/96 are intended to cover fifty percent of the interest on loans made by banks approved to distribute interest offset payments to qualifying companies.<sup>116</sup> Valdigrano reported that its loan had been repaid prior to the POR, but that the last subsidy payment was received within the POR.<sup>117</sup>

The GOI confirmed Valdigrano’s usage of this program<sup>118</sup> and clarified that RL 35/96 is entirely funded by the regional government of Lombardy.<sup>119</sup> The GOI also provided the information requested in the Standard appendix.<sup>120</sup> Based on our analysis of the relevant laws and the users of the program, we preliminarily determine that grants under this program are neither *de jure* nor

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<sup>109</sup> See G1SR at 1-3.

<sup>110</sup> See GQR at 3 (“...the activities and the relevant appropriations foreseen by Laws n. 113/86... are terminated, as the financial engagements were not renewed through further laws.”).

<sup>111</sup> See, e.g., *Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 65 FR 48479, 49486 (August 8, 2000), unchanged in *Certain Pasta from Italy: Final Results of the Third Countervailing Duty Administrative Review*, 66 FR 11269 (February 23, 2001).

<sup>112</sup> See G1SR at Exhibit 3.

<sup>113</sup> *Id.*

<sup>114</sup> See VQR at 12.

<sup>115</sup> See GQR at 24.

<sup>116</sup> See GQR at 23.

<sup>117</sup> See VQR at 12.

<sup>118</sup> See GQR at 23.

<sup>119</sup> See G3SR1 at 1.

<sup>120</sup> See GQR at 23 and G3SR1 at 1.



*de facto* limited to specific enterprises or industries or groups of enterprises or industries within the meaning of section 771(5A)(D) of the Act. Specifically, the laws do not limit the types of small and medium companies that can apply<sup>121</sup> and the grants are, in fact, provided to a wide variety of industries.<sup>122</sup> Moreover, the usage data does not reveal a disproportionate distribution of benefits to any industry, enterprise, or group thereof in Lombardy.<sup>123</sup> Accordingly, we preliminarily determine that the GOI is not bestowing a countervailable subsidy under RL 35/96.

#### **IV. Programs For Which More Information Is Required**

##### **A. Law 56/87**

The Department first analyzed Law 56/87 in the *Seventh Administrative Review* and found that one of the respondents had received benefits under Law 56/87 and Law 25/55, but did not countervail these benefits.<sup>124</sup> In the eleventh administrative review, we found that “Legislative Decree 276/03 is a continuation of one or more other programs determined to be countervailable in the seventh administrative review (Law 25/55 or Law 56/87).”<sup>125</sup> We ultimately countervailed benefits received under Legislative Decree 276/03.<sup>126</sup> Finally, in the *Twelfth Administrative Review*, the Department found that “{b}ased on the GOI’s responses in this administrative review, we determine that this program is not specific and, hence, not countervailable. In particular, Law 25/55 as modified by L.D. 276/03 evidences no *de jure* or regional specificity... {a}lso, we find no evidence of *de facto* specificity.”<sup>127</sup> We added the following footnote: “Because the record of the eleventh review was not fully developed, in the final results, we also stated that, alternatively, L.D. 276/03 could be a continuation of another countervailable program, *i.e.*, Law 56/87.”<sup>128</sup>

Delverde reported making reduced social security payments under Law 25/55 and Law 56/87 during the POR.<sup>129</sup> Because our earlier determinations are unclear regarding how Law 56/87 is connected to L.D. 276/03 and Law 25/55, and whether Law 56/87 was included in the finding of non-countervailability made by the Department in the *Twelfth Administrative Review*, we intend to seek additional information from the GOI for this program. We intend to address Law 56/87 in a post-preliminary analysis.

##### **B. Training Grants from the Fondo Impresa**

Delverde has acknowledged that it “was reimbursed for approved training programs by the Fondo Impresa” during the POR.<sup>130</sup> According to Delverde, the Fondo Impresa is operated by

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<sup>121</sup> See 19 CFR 351.502(e)

<sup>122</sup> See GQR at 23 and G3SR1 at 1 and Exhibit 1.

<sup>123</sup> *Id.*

<sup>124</sup> See *Seventh Administrative Review* and accompanying IDM at 20 and Comment 1.

<sup>125</sup> See *Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review*, 74 FR 5922, 5923 (February 3, 2009).

<sup>126</sup> *Id.*

<sup>127</sup> See *Twelfth Administrative Review Prelim*, 74 FR at 25495, unchanged in *Twelfth Administrative Review*.

<sup>128</sup> *Id.*

<sup>129</sup> See DQR at 16-17.

<sup>130</sup> See D2SR at 5, Exhibit 22, and Exhibit 23.

Confindustria, a “voluntary federation of Italian member companies.”<sup>131</sup> Delverde argues that this program is non-countervailable because any industrial company in Italy can join Confindustria and Confindustria is not a government entity.<sup>132</sup> However, because we received Delverde’s response close to the deadline for these preliminary results, we have not yet requested information from the GOI regarding this program. We plan to request information regarding this program after we issue these preliminary results, and address this program in a post-preliminary analysis.

C. PON Program

Tomasello reported that it belongs to a group of companies formed to undertake developmental research relating to cereal production.<sup>133</sup> This project is funded under Piano Operativo Nazionale (National Operating Plan) (“PON Program”).

Tomasello further reported that, although the project has received approval, it was later suspended and Tomasello did not receive any benefits under this program in the POR. Although the GOI confirmed that the project was suspended, it also provided information that some funds may have already been granted to Tomasello.<sup>134</sup> We intend to seek additional information from the GOI to confirm whether Tomasello received funds under this program in the POR, and address this program in a post-preliminary analysis.

V. **Programs Preliminarily Found to Be Not Used or that Provided No Benefit During the POR**

A. Law 236/93 Training Grants

Delverde reported receiving a grant under this program in 2000.

The Department last examined this program in the *Seventh Administrative Review*.<sup>135</sup> In that review, the Department found this worker training subsidy to provide recurring benefits.<sup>136</sup> No new information on the record of this review would cause us to depart from our prior treatment of this program. Therefore, pursuant to 19 CFR 351.524(a), we have expensed Delverde’s benefits from this program to the year in which they were received. On this basis, we preliminarily find that this program did not convey a benefit to Delverde during the POR.

B. Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)

The Sabatini Law was enacted in 1965 to encourage the purchase of machine tools and production machinery. It provides, *inter alia*, for one-time, lump sum interest contributions from

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<sup>131</sup> *Id.* at 5.

<sup>132</sup> *Id.*

<sup>133</sup> *See* T1SR at 2.

<sup>134</sup> *See* G3SR2 at 24.

<sup>135</sup> *See Seventh Administrative Review* and accompanying IDM at 12-13.

<sup>136</sup> *Id.*

the Mediocredito Centrale toward interest owed on loans taken out to purchase these types of equipment.<sup>137</sup>

Delverde purchased forklifts and arranged for them to be paid for in installments over five years. It received an interest contribution under this program in 2007 to offset part of the interest due on the installment plan.<sup>138</sup>

The Department most recently analyzed these interest contributions in the *Seventh Administrative Review* and found that “any benefit would be countervailed in the year of receipt.”<sup>139</sup> No new information on the record of this review would cause us to depart from this finding. Therefore, because Delverde received these interest contributions in 2007 and our POR is 2011, we preliminarily find that Delverde did not receive a benefit from this program during the POR.

#### C. Bandi Monosettoriali Ob. 2.1.1.b

In 2001, following negotiations between the European Commission (“EC”), the national-level GOI, and the government of the Abruzzo Region, the EC approved the Regional Programming Document for the period 2000-2006 for the Abruzzo Region.<sup>140</sup> The Regional Programming Document describes the development objectives for this time period, outlines how these objectives will be financed, and describes procedures for operating aid programs.<sup>141</sup> A complementary implementing resolution was approved soon afterward by the government of the Abruzzo Region.<sup>142</sup>

Delverde reported receiving a grant for the purchase of machinery pursuant to Axis 2, Measure 1, Action 1 of the Regional Programming Document.<sup>143</sup> Grants under section 2.1.1 promote investments in the information technology capabilities of small-to-medium sized enterprises.<sup>144</sup> According to the GOI, these contributions “are co-financed by the European Regional Development Fund.”<sup>145</sup> Beneficiaries of the funds under this program must be located in regions classified by the EC as “Objective 2” areas, or areas suffering from industrial decline.<sup>146</sup> Not all parts of Abruzzo are considered to be Objective 2 areas,<sup>147</sup> but the GOI provided us with a list of Objective 2 areas located in Abruzzo.<sup>148</sup> Delverde is located in Fara San Martino,<sup>149</sup> which is on the list. Grants under this program are jointly financed by the EC (through the ERDF), the GOI, and the Abruzzo Region, similar to other structural fund programs that the Department has

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<sup>137</sup> *Id.* at 13.

<sup>138</sup> *See* DQR at 14-15.

<sup>139</sup> *See Seventh Administrative Review* and accompanying IDM at 13.

<sup>140</sup> *See* G3SR2 at 3-4.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *See* G3SR2 at 2; *see also* D2SR at 2-3 and Exhibits 19-20. This program was identified by Delverde as “Bandi Monosettoriali Ob. 2.1.1.b.”

<sup>144</sup> *See* G3SR2 at 1.

<sup>145</sup> *Id.*

<sup>146</sup> *See* G3SR2 at 2-3, 5, *see also Final Investigation*, 61 FR at 30291.

<sup>147</sup> *See* G3SR2 at 5.

<sup>148</sup> *Id.* at Exhibit 22.

<sup>149</sup> *See* DQR at 5.

analyzed in this and recent reviews.<sup>150</sup> The GOI informed us that the deadline for applications under this plan was September 30, 2006, and the last date on which companies could receive benefits under this program was June 30, 2010.<sup>151</sup>

According to the GOI, assistance may be provided in multiple tranches, but this program is not designed to provide ongoing assistance to recipients. Delverde received its grant as a lump sum and, as previously mentioned, received the grant for the purchase of machinery.

Based on the criteria found at 19 CFR 351.524(c)(2) and our prior treatment of other ERDF-financed grants,<sup>152</sup> we consider grants under this program to confer non-recurring benefits. Normally, the Department would allocate non-recurring benefits over the AUL period, pursuant to 19 CFR 351.524(b). However, in this instance, the amount of the grant Delverde received is less than 0.5 percent of its total sales in the year the grant was approved.<sup>153</sup> Therefore, in accordance with 19 CFR 351.524(b)(2), we have expensed benefits from this program to the year of receipt, and we preliminarily find that Delverde did not receive a benefit from this program during the POR.

#### D. Law 223/91, Article 8, Paragraph 4

Law 223/91, Article 8, Paragraph 4 is intended to encourage the hiring of workers on “mobility lists.” Companies who hire unemployed individuals on a permanent and full time contract are granted a credit equal to 50 percent of what the employee would have received in unemployment benefits. Delverde reported receiving benefits under Law 223/91, Article 8, Paragraph 4 during 2006, 2007, 2008, 2009, and 2010.<sup>154</sup> However, Delverde informed us that it did not receive benefits during the 2011 POR. The Department has previously found that this program confers recurring benefits.<sup>155</sup> There is no new information on the record of this review that would lead us to reconsider our prior finding. Therefore, we have expensed Delverde’s benefits under this program to the years in which they were received and we preliminarily find that Delverde did not receive a benefit from this program during the POR.

#### E. Aid to Economic Development

This program allows for a tax deduction for certain companies that have improved their net equity.<sup>156</sup> Although Valdigrano’s financial statement shows that the company took such a deduction, Valdigrano reported that it was not taken on the tax return filed during the POR.<sup>157</sup> Therefore, in accordance with 19 CFR 351.509(b), any potential subsidy under this program was

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<sup>150</sup> See G3SR2 at 4-5; see also *Fourteenth Administrative Review* and accompanying IDM at 13-15 (under “E. European Social Fund”).

<sup>151</sup> See G3SR2 at 13.

<sup>152</sup> See, e.g., *Final Investigation*, 61 FR at 30294.

<sup>153</sup> See D2SR at 3.

<sup>154</sup> *Id.* at 8-9.

<sup>155</sup> See *Certain Pasta from Italy: Preliminary Results of the Tenth Countervailing Duty Administrative Review*, 72 FR 43616, 43620 (August 6, 2007), unchanged in *Certain Pasta from Italy: Final Results of the Tenth (2005) Countervailing Duty Administrative Review*, 73 FR 7251 (February 7, 2008).

<sup>156</sup> See V1SR at 4.

<sup>157</sup> See V2SR at 2.

not received in the POR.

- F. Region of Sicily: Regional Law 15/93, as amended by Regional Law 66/1995
- G. Region of Sicily: Regional Law 34/88
- H. Tax Credits Under Article 280 of Law 296/06
- I. Industrial Development Grants Under Law 64/86
- J. Industrial Development Loans Under Law 64/86
- K. Industrial Development Grants Under Law 341/95
- L. Interest Contributions Under Law 488/92
- M. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
- N. European Regional Development Fund ("ERDF") Programma Operativo Plurifondo ("P.O.P.") Grant
- O. European Regional Development Fund ("ERDF") Programma Operativo Multiregionale ("P.O.M.") Grant
- P. Certain Social Security Reductions and Exemptions – Sgravi (including Law 1089/68 (Unico), Law 407/90, Law 449/97, Law 448/98, and Law 223/91 Article 25, Paragraph 9)
- Q. Development Grants Under Law 30 of 1984
- R. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans
- S. Law 317/91 Benefits for Innovative Investments
- T. Brescia Chamber of Commerce Training Grants
- U. Ministerial Decree 87/02
- V. Law 10/91 Grants to Fund Energy Conservation
- W. Export Restitution Payments
- X. Export Credits Under Law 227/77
- Y. Capital Grants Under Law 675/77
- Z. Retraining Grants Under Law 675/77
- AA. Interest Contributions on Bank Loans Under Law 675/77
- BB. Preferential Financing for Export Promotion Under Law 394/81
- CC. Urban Redevelopment Under Law 181
- DD. Industrial Development Grants Under Law 183/76
- EE. Interest Subsidies Under Law 598/94
- FF. Duty-Free Import Rights
- GG. Law 113/86 Training Grants
- HH. European Agricultural Guidance and Guarantee Fund
- II. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)
- JJ. Interest Grants Financed by IRI Bonds
- KK. Law 289/02
  - i. Article 62 – Investments in Disadvantaged Areas
  - ii. Article 63 - Increase in Employment
- LL. Law 662/96 – Patti Territoriali
- MM. Law 662/96 – Contratto di Programma

### Previously Terminated Programs

- A. Regional Tax Exemptions Under IRAP
- B. VAT Reductions Under Laws 64/86 and 675/55
- C. Corporate Income Tax (“IRPEG”) Exemptions
- D. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
- E. Export Marketing Grants Under Law 304/90
- F. Tremonti Law 383/01
- G. Social Security Reductions and Exemptions – Sgravi
  - 1) Article 44 of Law 448/01
  - 2) Law 337/90
  - 3) Law 863/84
  - 4) Law 196/97

### Disclosure and Public Comment

Due to the Department’s intention to release a post-preliminary analysis memorandum, interested parties may submit written comments (case briefs) no later than one week after the issuance of the post-preliminary analysis memorandum, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in case briefs. Parties who submit arguments 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.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce within 30 days after the date of publication of the *Federal Register* notice announcing these preliminary results. Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined.<sup>158</sup>

Parties are reminded that briefs and hearing requests are to be filed electronically using IA ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

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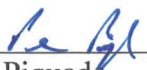
<sup>158</sup> See 19 CFR 351.310.

**Conclusion**

We recommend applying the above methodology for these preliminary results.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

2 AUGUST 2013  
(Date)