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Administrative Review
POR 7/1/03-6/30/04
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November 21, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Certain Pasta from Italy (Period of Review: July 1, 2003, through June 30, 2004)

SUBJECT: Issues and Decisions for the Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part

Summary:

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Interested Party Comments section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the parties:

I. List of Comments

Barilla G.e.R. Fratelli, S.p.A.

Comment 1: Freight Expenses For Certain U.S. Sales
Comment 2: U.S. Indirect Selling Expense

Industria Alimentare Colavita, S.p.A. and Fusco S.r.l.

Comment 3: Liquidation Instructions
Comment 4: Treatment of Negative Dumping Margins
Comment 5: Treatment of Affiliated Party G&A

II. Background

On July 22, 2005, the Department of Commerce (the Department) published the preliminary results of the eighth administrative review of the antidumping duty order on certain pasta from Italy. See Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Revocation of the Antidumping Duty Order in Part: For the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 70 FR 42303 (July 22, 2005) (Preliminary Results). The merchandise covered by this review is described in the Federal Register notice issued the same date as this memorandum. The review covers six manufacturers/exporters: (1) Barilla G.e.R. Fratelli, S.p.A. (Barilla) (formerly Barilla Alimentare, S.p.A.), (2) Corticella Molini e Pastifici S.p.A. and its affiliate Pasta Combattenti S.p.A., (3) Industrie Alimentare Colavita, S.p.A. and Fusco S.r.l. (Indalco), (4) Pastificio F.lli Pagani S.p.A. (Pagani), (5) Pastificio Antonio Pallante S.r.L. and its affiliate Vitelli Food LLC (Pallante), and (6) Pastificio Riscossa F.lli Mastromauro, S.r.L. Two respondents, Pagani and Pallante, requested revocation of the order. The period of review (POR) is July 1, 2003, through June 30, 2004. On August 22, 2005, we received case briefs from petitioners[1] and from Barilla, Indalco, Pagani, and Pallante. On August 26, 2005, we received rebuttal briefs from petitioners and Indalco, and from Pagani and Barilla on August 29, 2005. On October 5, 2005, at the request of Pagani, the Department held a public hearing on Pagani's interest/exchange revenue claim.

[1] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, Borden Foods Corporation and American Italian Pasta Company.

III. Discussion of Interested Party Comments

BARILLA

Comment 1: Freight Expenses For Certain U.S. Sales

Petitioners state that in the Preliminary Results calculation, the Department failed to deduct the freight expense from certain U.S. sales, which was provided in Barilla's May 25, 2005, supplemental questionnaire response. Petitioners argue that the Department must update its final results margin program to reflect the actual freight amounts reported by Barilla. In addition, petitioners contend that the Department should apply the average positive freight amount for other U.S. sales that incurred freight expenses, when no freight expenses were reported. See Petitioner's Case Brief for Barilla G. E. R. Fratelli S. P. A. and Barilla America Inc., August 22, 2005, at 1-2.

Barilla argues that it reported its POR U.S. freight expenses actually incurred, if and when it had been charged by its freight carriers. According to Barilla, Barilla does not incur freight costs unless and until it receives a freight invoice from its service provider and pays such invoice. Barilla asserts that as of May 24, 2005, when it submitted its latest supplemental response and almost a year after the end of the POR, Barilla America had not been charged for freight for a very limited number of POR sales. Therefore, Barilla argues that it had incurred no actual freight expense for those sales. Barilla argues that petitioners provided no legal basis for imputing U.S. freight expenses, and that imputing freight expenses would be inconsistent with Barilla America's actual expenses as booked in its accounting system kept in the ordinary course of business.

Department's Position

For the final results, the Department will use the actual freight expenses that Barilla reported in the updated freight information. The record shows that Barilla reported its actual freight expenses for the sales during the POR. Barilla did not incur freight expenses on a very small number of the POR sales, because it was not charged for freight. We have examined the record and find that the use of an average positive freight amount is not warranted under these facts because Barilla reported its actual freight expenses.

Comment 2: U.S. Indirect Selling Expenses

Petitioners argue that Barilla's U.S. indirect selling expenses were under-reported because an expense numerator, which was related to the food service sector, was allocated to an overall sales denominator. Petitioners contend that allowing expense allocations to particular accounts affords a respondent an opportunity for manipulation. According to petitioners, the indirect selling expenses, by their nature, are general and should be spread over all sales. They request that the

Department reject Barilla's allocation methodology and use an indirect selling expense ratio by calculating an overall expense as a percentage of overall sales.

Petitioners further argue that if the Department accepts Barilla's "food service" allocation, it should include certain large expenses, or a proportional share of all expense amounts, in the expense numerator unless Barilla demonstrates that these expenses either unambiguously relate to non-subject merchandise or are not indirect selling expenses. In addition, petitioners request that the Department reject the other income offsets because there is no evidence that such over-accrued expenses were related to semolina or were allocated to subject merchandise in previous reviews.

Barilla asserts that its calculation of the U.S. indirect selling expenses is correct because the methodology is based on Barilla America's previously verified accounting system kept in the ordinary course of business. Barilla contends that petitioners' claim that no allocation was made to subject merchandise for certain large expense is factually incorrect. According to Barilla, it fully allocated the expenses in question based on gross sales of subject merchandise and included them in the U.S. indirect selling expense calculation.

Barilla also contends that the other income offset represents the reversal of all over-accrued expenses, which is not broken out between subject and non-subject merchandise. Barilla states that it has reported an allocated portion of the other income for subject merchandise.

Department's Position

The amount Barilla has reported as "other income" is not an appropriate offset to indirect selling expenses. Any accrual of indirect selling expenses by a company, or reversal or correction of the same expense, would normally be accounted for within the same accounting codes as the expenses themselves. Barilla has failed to demonstrate through accounting documentation that the "other income" adjustment is related to the same expenses that are included in their reported indirect selling expenses in the previous review. Therefore, we have not allowed "other income" as an offset to indirect selling expenses for these final results.

INDALCO

Comment 3: Liquidation Instructions

Indalco makes three suggestions with regard to the draft liquidation instructions which were provided to parties for comment on July 19, 2005. First, Indalco suggests identifying the manufacturers as "Industria Alimentare Colavita, S.p.A., or Fusco S.r.L.," instead of "Industria Alimentare Colavita, S.p.A., and Fusco S.r.L." Indalco states that the Department should clarify that the product comes from either company, rather than merchandise produced by both companies. Second, Indalco suggests referencing the manufacturers by the U.S. Customs and

Border Protection (CBP) three digit sub-number. Finally, Indalco asserts that the instructions should list Colavita USA, since the liquidation rate applies to it because it is the customer.

Petitioners did not comment on this issue.

Department's Position

We have made the suggested changes to the liquidation instructions.

Comment 4: Treatment of Negative Dumping Margins

Indalco argues that the Department should not raise negative margins to zero because that distorts the weighted-average margin upward. First, Indalco argues that this "zeroing" practice has been found to violate the provisions and terms of the World Trade Organization (WTO). Indalco argues that the WTO has determined that a comparison of all transactions should be included in the Department's analysis. See Softwood Lumber from Canada, WT/DS264/9 (04-3767) (Appellate Body Report and Panel Report, 8 September 2004). Further, Indalco argues that pasta from Italy is included among the orders which the EU has specifically challenged before the WTO and therefore, the Department should decline to apply the zeroing methodology in the final results. In addition, Indalco asserts that the Court of International Trade (CIT) has recently stated, "a party may reasonably assume that the agency will interpret U.S. law so as to avoid a conflict with international obligations." See Timken Co. v. United States, 240 F. Supp. 2d 1228, 1242 (CIT 2002) at 36. Finally, Indalco argues that the U.S. statute does not require zeroing and that, since it violates the WTO Antidumping Agreement, the Department should revise its methodology to calculate an average margin without zeroing out all negative margins.

Petitioners argue that the Department should abide by its longstanding practice of zeroing negative dumping margins. Petitioners assert that Indalco ignores all binding precedent from the United States Court of Appeals for the Federal Circuit (CAFC) and CIT upholding the Department's practice of zeroing. Further, petitioners argue that Indalco is aware that the WTO's decision in Softwood Lumber from Canada was limited to the facts in the related antidumping investigation and does not apply to the eighth review of pasta from Italy. In addition, petitioners argue that the EU's challenge to the pasta order has no relevance, because there still remains an appeals process at the WTO and, where U.S. law is in conflict with international law, the former is to govern.

Moreover, petitioners argue that the CAFC recently upheld numerous decisions that denied offsets to dumping based on export transactions that exceed NV. See Timken Co. v. United States, 354 F.3d 1334, 1342-43 (Fed. Cir. 2004) (Timken Co.). More recently, petitioners argue that the CIT has found that zeroing properly checks the practice of hiding a few dumped sales under the curtain of multiple fair price sales. See SNR Roulements et al v. United States, 341 F. Supp. 2d 1334, 1346 (CIT 2004). Finally, petitioners argue that the Department has no authority to change its practices, because 19 U.S.C. 3533(g) recognizes that WTO rulings do not have the status of "supreme law" in the United States.

Department's Position

The Department's practice in calculating weighted-average dumping margins is to deny offsets to dumping where export transactions exceed NV. As discussed below, we include U.S. sales that were not priced below NV in the calculation of the weighted-average dumping margin as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow U.S. sales that were not priced below NV to offset dumping margins found on other sales. This practice has repeatedly been upheld by the CAFC. See Timken Co. 354 F.3d at 1342-45; Corus Staal BV v. United States, 395 F.3d 1343, 1347 (Fed. Cir. 2005).

This practice is consistent with international obligations of the United States. With regard to Indalco's argument concerning the WTO Appellate Body report in Softwood Lumber from Canada, at the instruction of USTR, the Department implemented the WTO report on May 2, 2005, pursuant to section 129 of the URAA. See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada, 70 FR 22636 (May 2, 2005). Under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO: the antidumping duty investigation of softwood lumber form Canada. See 19 U.S.C. 3538. The implementation of Softwood Lumber has no bearing on this or any other antidumping duty proceeding. See Corus Staal v. United States, Crt. No. 04-00316, Slip Op. 05-85 (July 19, 2005). Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed NV.

Comment 5: Treatment of Affiliated Party G&A

Indalco argues that the Department replaced Fusco's actual general and administrative (G&A) expense ratio with an arbitrary number which the Department found in an earlier submission. First, Indalco argues that it did not fail to report Fusco's G&A expense. Instead, Indalco argues that it rounded the number to zero. Second, Indalco asserts that the Department incorrectly used Indalco's G&A expense. Indalco argues that it provided the Department with a detailed explanation of the offsets to Fusco's G&A and that the Department must accept those accounts as accurate.

Further, Indalco argues that the Department should not substitute Fusco's actual G&A with another number because it is prohibited by statute. Indalco argues that there is no minimum G&A that must be used. In addition, Indalco states that the Department is required to use "an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product." See Section 733(b)(3)(B) of the Tariff Act of 1930, amended (the Act).

Petitioners argue that the Department normally calculates a weighted-average cost of production for the subject merchandise produced in different production facilities used by a respondent. Further, petitioners argue that the Department's questionnaire and practice instructs respondents to calculate G&A using the company-wide G&A expenses. See DOC Antidumping Questionnaire, Section D.13; see also Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada, 69 FR 75921 (Dec. 20, 2004) and accompanying Decision Memorandum at Comment 23 (Softwood Lumber). Furthermore, petitioners argue that the Department recently rejected the division-specific G&A rate calculated by the respondent. See Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 17411, 17415 (Apr. 6, 2005). In addition, petitioners argue that Indalco's and Fusco's production facilities are equivalent to divisions. Finally, petitioners argue that the record does not contain sufficient evidence to support Fusco's offset to its G&A. Therefore, petitioners argue that the Department should use Indalco's most recent rate submitted in Exhibit D-27 of its May 31, 2005, supplemental response.

Department's Position

The Department will not combine Indalco's and Fusco's G&A expenses to calculate one G&A rate. The Department's practice is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of sales and not on a consolidated, divisional, or product-specific basis. See Softwood Lumber at Comment 23. This practice is also reflected in the Department's standard section D questionnaire, which instructs that the G&A expense rate should be calculated as the ratio of total company-wide G&A expenses divided by cost of goods sold. See Section D Questionnaire at D-15. The Department's methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally among divisions.

Indalco and Fusco reported their G&A rate as they had done in prior reviews by calculating the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of sales. It is important to note that Fusco's G&A calculation has not been done on a consolidated, divisional, or product-specific basis. Further, the record shows that Indalco and Fusco are separate companies that do not report on a consolidated basis. Therefore, the Department will not combine Indalco and Fusco's G&A expenses to calculate one G&A rate.

Additionally, we have included Fusco's year-end correction to a previous estimated tax charge as an offset to G&A. It is the Department's practice to include certain expenses and revenues that relate to the general operations of the company as a whole, as opposed to including only those expenses that directly relate to the production of subject merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From Taiwan, 64 FR 56308, 56323 (Oct. 19, 1999).

Accordingly, the G&A category covers a diverse range of items. In this situation, the non-operating revenue in question was incurred for the company as a whole and there is no indication that these costs were extraordinary. Id.

Comment 6: Ministerial Errors

Indalco argues that the Department made several errors in its programming. First, Indalco argues that the Department made a ministerial error in its program by dropping 2709 home market sales and including 14 sales at zero price that should have been removed from the comparison market program. Second, Indalco argues that the Department should use the date of its last submission where no payment date was provided. Third, Indalco argues that the Department should ensure that it has removed all free goods invoices from the home market and U.S. sales database. Finally, Indalco argues that the Department should match sales by specific manufacturer as it has in previous reviews.

Petitioners did not comment on this issue.

Department's Position

We have made the necessary changes in the programs to correct these errors.

Comment 7: Home Market Level-of-Trade

Petitioners disagree with the Department's analysis regarding the level of trade in the home market. Petitioners argue that there is only one level of trade in the home market, not two. Petitioners also claim that the Department's determination in the Preliminary Results that there are two levels of trade in the home market is inconsistent with the Department's past practice.

Petitioners argue that there is no significant differences in selling functions or a consistent pattern of price differences associated with the different selling functions. Further, petitioners argue that the quantity of sales is not considered by the Department and that whether or not trucks are partially full is not an indicator of a selling function, but a movement expense factor. See Indalco's May 2, 2005, supplemental response at Exhibit A.19.

Petitioners further argue that the differences in categories between the two channels are a matter of degree, not of presence or absence of certain selling functions. Further, petitioners argue that there is no evidence that customers bear the cost of a marketing activity in one category, but not the other. Petitioners point to Indalco's allocation of selling expenses, which was not predicated on a particular channel of distribution, but applied as a universal allocation. See Indalco's May 2, 2005, supplemental response at Exhibit B.16.

Petitioners state that the Department did not systematically address differences in selling functions between channels of distribution and also failed to address any additional criteria beyond selling functions. Further, petitioners maintain that the Department's position that the inventory selling function is a separate level of trade is contradictory to its usual practice in analyzing selling functions.

Petitioners maintain that in Stainless Steel Bar from Italy, the Department found that the company in question had a single level of trade despite the company's claim that they had two; one level included warehousing and the other did not. See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002). The petitioners assert that Indalco did not adequately support its claim that there are significant differences in its marketing stages to warrant two levels of trade in the home market.

Petitioners state that in the previous two administrative reviews the Department has found that Indalco did not have separate levels of trade in its home market. Petitioners maintain that the Department should find that there is only one level of trade in order to maintain administrative consistency.

Indalco did not comment on this issue.

Department's Position

We find that Indalco did not provide sufficient evidence to support its claim for two separate levels of trade. In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the exporting country at the same level of trade as the export price ("EP") or constructed export price. To determine whether NV sales are at a different level of trade than EP, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level-of-trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, the Department makes a level of trade adjustment under section 773(a)(7)(A) of the Act.

In order to perform this analysis, the Department examines the selling functions provided to different customer categories to evaluate the level(s) of trade in a particular market. See 19 CFR 351.412(c)(2). We typically analyze selling functions in terms of the extent to which the producer provides sales and marketing support, services associated with freight and delivery, activities related to warehousing, and support in the form of advertising or quality assurance. In this administrative proceeding, the Department considered these selling functions, including selling functions unique to Indalco.

Indalco claims that there are two levels of trade based on two channels of distribution. See Indalco's November 1, 2004, response at A-12. Indalco explains that one channel of distribution involves sales from warehouse inventory, while the other channel involves sales on customer orders. Id. However, Indalco's May 2, 2005, supplemental response demonstrates that there are no substantial differences in the selling activities associated with the claimed levels of trade. In fact, most selling activities are common for both channels of distribution. Therefore, for the final results, we have treated all of Indalco's sales in the home market as one level of trade.

Comment 8: Cost Data Used to Calculate the Difference-in-Merchandise Adjustment

Petitioners maintain that Indalco has failed to include the additional cost of vitamins for enriched pasta in certain products produced by Fusco in its cost of production. Petitioners point to Indalco's narrative response in which it states that "other materials" includes vitamins; however, the reported cost does not show a difference between unenriched pasta and vitamin-enriched pasta. Petitioners maintain that the Department must adjust the cost data to correct the difference-in-merchandise adjustment by either opening the record for an extraordinary supplemental cost submission or applying partial adverse facts available to the cost of production.

Indalco maintains that it correctly calculated and reported the material cost components that make up the difference-in-merchandise adjustment and correctly included vitamin enrichment in the merchandise adjustment. Indalco maintains that the Preliminary Results correctly calculated the difference-in-merchandise adjustment by considering the cost difference for materials in the U.S. and Italian markets. Indalco states that the product characteristics for the control numbers sold in the U.S. market are otherwise identical to the home market.

Indalco maintains that for each "similar" match, the difference in merchandise that results from subtracting the reported total material cost of the U.S. product from the home market variant of the same control number is always the additional cost of vitamins for its enriched pasta.

Indalco maintains that for products manufactured by its affiliate, Fusco, the reported difference in merchandise between the enriched U.S. product and unenriched home market variant is zero, based on the materials costs derived directly from Fusco's accounts. Indalco also maintains that Fusco did not purchase any vitamins during the fiscal year that was used to derive the costs of the reported goods and therefore, had no material costs related to enrichment during the POR. Indalco states that Fusco's entire vitamin purchase was included in the difference-in-merchandise calculation in the previous review, and should not be included in the instant review.

Indalco claims that the information reported in its current form was submitted on November 1, 2004, and argues that petitioners had ample time to understand and comment on the resulting difference in merchandise. Indalco states that petitioners had up until ten days after the last submission of May 31, 2005, to challenge Fusco's factual cost submissions. Indalco argues that it is now too late to propose a different methodology or require Indalco to report "imputed" material costs.

Indalco argues that its reported difference in merchandise is appropriate and using facts available is inappropriate. Indalco contends that if the Department chooses to impute a difference in merchandise, the facts available rate suggested by petitioners is inappropriate. Indalco argues that the rate the petitioners ask the Department to use is nearly eight thousand percent higher than the actual costs reported. Indalco argues that using the highest "other material" as a facts available means to adjust for this cost incorrectly includes flavors and colors, which are more expensive than vitamins. Indalco suggests that if the Department chooses to adjust the difference in merchandise for Fusco, the Department should use Indalco's cost of vitamin enrichment as a surrogate for Fusco.

Department's Position

In accordance with 19 CFR 351.411, in comparing U.S. sales and foreign market sales, the Department will make a reasonable allowance for the differences in variable costs associated with the physical differences. Furthermore, in Appendix 1 of the Department's questionnaire, we state that when NV is based on sales in the foreign market of a product which is similar, but not identical, to the product sold in the United States, the Department may adjust NV to account for differences in the variable costs of producing two products. Therefore, vitamin enrichment costs should be allocated to the production of pasta during the POR, and be applied to account for differences in the variable costs of producing vitamin-enriched pasta to unenriched pasta. In this respect, Indalco did not correctly report vitamin enrichment costs for Fusco's cost of production.

We find that partial adverse facts available are not appropriate here because Indalco acted to the best of its ability to comply with the Department's request for information. Instead, the Department will apply facts available. Section 776(a)(1) of the Act states, "[i]f necessary information is not available on the record . . . the administering authority and the Commission shall, subject to section 782(d) of this title, use the facts otherwise available in reaching the applicable determination under this title." See also 19 CFR 351.308. Although Indalco derived Fusco's costs from its actual accounts, Fusco's accounting records with respect to vitamin enrichment do not reasonably reflect the costs associated with production of this pasta. See Section 773(f)(1)(A) of the Act. The total production costs of enriched pasta should include the cost of enrichment, which was not reported by Indalco. The Department finds that necessary information is not available on the record because Indalco has not reported Fusco's vitamin enrichment costs as part of the cost of production. Therefore, we have used Indalco's vitamin cost as facts available to include in Fusco's other materials cost.

PAGANI

Comment 9: Interest/Exchange Revenue Claim

Pagani has claimed an upward adjustment to U.S. price for revenues it invoiced and received after the POR, arguing that it charged its principal U.S. customers interest fees on late payments of invoices and that it also charged them, by agreement, for the negative impact on volumes of the strengthening of the dollar. See Pagani's Case Brief at 1. Pagani argues that, in the Preliminary Results, the Department improperly disallowed this claim. Pagani argues that the amount Pagani reported under its interest/exchange revenue field (INTREVU) constitutes a price adjustment under 19 CFR 351.102(b), and, therefore, pursuant to 19 CFR 351.401(c), U.S. price should be adjusted upward accordingly.

Pagani offers several explanations and arguments in support of its claim. Pagani explained that, as the result of a change in ownership, "Pagani began a new program of working with its regular U.S. customers to make payments in a timely manner and to ensure that its regular customers would cover interest and exchange losses arising from their tardiness." See Pagani's December 10, 2005, Voluntary Response at 4. Pagani states that the ownership of Pagani changed hands on July 2, 2003, and in late 2003, Pagani analyzed customer delinquencies in the home market and export markets. Pagani asserts that its home market customers generally adhered to their payment terms and U.S. customers had substantial delinquencies. Pagani states that, in mid-2004, it informed some of its long-term U.S. customers that it was reassessing whether it could continue to export to the U.S. market. Finally, Pagani explained that it reached agreement with certain long-term U.S. customers that they would pay interest for their late payments and make additional payments to cover changes in foreign exchange rates.

Pagani argues that Italian law, namely Legislative Decree 231, obligates Pagani to collect interest on late payments. See Pagani's Case Brief at 3; and Pagani's March 28, 2005, Supplemental Response at 20-21 and Exhibit 19. Pagani argues that the portion of the reported amount pertaining to interest fees was calculated by applying nine percent (the Brescia Exporters's Union announced rate) to the total invoice amounts based on the number of days which the payment was delinquent. Pagani explained that it did not claim the adjustment in its initial questionnaire response because, "at the time Pagani's response was drafted, Pagani has not yet fully liquidated the amounts of interest revenue receivable for its US sales..." See Pagani's Pagani's Sales Verification Report at 3. Pagani asserts that the Department's sales verification report gives the impression that Pagani has no precedent for this type of business dealing. See Pagani's Case Brief at 6 (Pagani's Sales Verification Report at page 11). Pagani explained that, in September 2002, Pagani agreed to provide a U.K. customer "after-the-fact" payments to address problems the customer had experienced in the previous year.

By way of argument, Pagani disagrees with the Department's preliminary determination that Pagani has not adequately demonstrated that the amounts it claimed are "related either to interest revenue or to the sales during the POR to which they were allocated." See Preliminary Results 70

FR at 42305. Pagani asserts that the calculation worksheets show that the amounts Pagani collected were related to U.S. sales made during the POR and were precisely measured. Pagani argues that the Department officials verified the methodology by which the amounts were invoiced, as well as the payments made by the customers. Pagani contends that the verification report confirms that Pagani received the payments and that the payments were customer-specific. See Pagani's Case Brief at 5 (Sales Verification Report at 11 and Exhibit 10). Pagani argues that, at verification, Pagani provided and reviewed with Department officials, "the worksheet used to calculate the amounts to be paid" and that "the invoice numbers on the worksheet tie to the invoice numbers in the submitted U.S. sales database." See Pagani's Case Brief at 8. Pagani thus argues that "the worksheet showing the precise calculation of the amount billed to the respective customers on an invoice-by-invoice basis demonstrates absolutely that the amounts invoiced and received were directly related to the sales reported in the US sales database and were calculated directly on the delinquency period for each of the US sales." Id. at 9.

Pagani also contends that, by its nature, this adjustment could not be reflected in the sales contract. In support of this argument, Pagani cites Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 70 FR 3677 (January 26, 2005), and accompanying Decision Memorandum at Comment 1 (Stainless Steel Sheet and Strip), which states that, in accordance with section 351.401(c) of the Department's regulations, "post-sale price adjustments such as invoicing errors and price corrections . . . are distinct from rebates and that by their very nature these types of post-sale price adjustments do not require a pre-existing agreement in order for the Department to include them in its margin calculations."

Finally, Pagani argues that its "interest revenue program was adapted to the particular commercial considerations of Pagani's US trade, including the issuance of the Brescia Exporters' Union circular and the fact that US customers were subject to much more prolonged delinquencies than home market customers." Pagani's Case Brief at 12. Arguing that, although the program was started during the POR, "there were sound commercial reasons for its commencement." Id. at 12. Again, as support, Pagani cites Stainless Steel Sheet and Strip:

> business practices themselves may change and must certainly start at some point in time. We find that this business practice was adopted during the POR for legitimate commercial purposes and in accepting these adjustments, we will be using the most accurate price as paid by Mexinox's customers. Id. at 11 (quoting Stainless Steel Sheet and Strip at Comment 1).

Petitioners argue that the Department correctly denied Pagani's INTREVU claim. First, petitioners argue that the "sole purpose of Pagani's December 10, 2004 submission was to revise upwards the U.S. prices for some of Pagani's U.S. sales by adding an amount that Pagani characterized as an 'interest revenue' adjustment." Petitioners' Rebuttal Brief at 2. Petitioners then argue that "a comparison of the data in Pagani's November 1, 2004 response and the data in its December 10, 2004 response revealed that Pagani claimed interest revenue only on U.S. sales that resulted in above de minimis dumping margins; in other words, the purpose and effect of the "voluntary" data revisions was to completely eliminate the margins or dumping apparent in Pagani's November 1, 2004 response." Id. at 2.

Petitioners disagree with Pagani that the additional revenue Pagani billed and received after the POR related to interest revenue or to POR sales. First, they argue that the documents relating to one U.S. customer show that the amounts listed on Pagani's undated calculation worksheets do not reconcile to the amount requested from the customer or paid by the customer. Id. at 3. Second, they argue that Pagani's claim for an interest revenue adjustment is mainly based on calculations relating to currency exchange rates rather than interest for late payments, yet there is no basis or record evidence supporting the amounts of Pagani's foreign exchange claim. Id. at 5.

Third, petitioners argue that if the October 9, 2002, legislation issued by the Italian Parliament legally entitles and obligates companies to collect late payment interest, Pagani would also seek to collect interest on overdue payments from its delinquent Italian customers. Id at 5. Petitioners argue that, according to the sales verification report, Pagani officials claimed no interest on overdue payments in the intervening years since the 2001 passage of the EU directive. Petitioners argue Pagani should not allocate the revenues it received to POR sales because nothing in Pagani's letters to its U.S. customers references POR sales. Id. at 6.

Petitioners disagree with Pagani that Stainless Steel Sheet and Strip establishes a basis for allowing Pagani's interest revenue claim. Petitioners explain that in Stainless Steel Sheet and Strip, the respondent provided a post-sale rebate to its home market customers. Petitioners contend, however, that claims involving rebates are not the same as a "respondent asking for additional money from its customers that is unrelated to any specific sales." Id. at 7. Further, petitioners maintain that there is a critical fact in Stainless Steel Sheet and Strip that is absent with regard to Pagani's claim, that is, that the Department noted that the rebates were offered as a standard business practice. Id. at 7.

Finally, petitioners disagree with Pagani's statement that the nature of the interest revenue adjustment is such that it could not be included in the sales contract. Petitioners cite Pagani's March 28, 2005, supplemental questionnaire response at page 1, in which Pagani states that "Each sale is governed by the customer's purchase order for that sale, rather than by a written contract." Petitioners argue that, "if each sale is governed by the terms in purchase order and the prices remain in effect until the parties agree to change them, then there is no provision for post-sale, post payment revisions to these prices." Petitioners conclude that the "cases cited by Pagani do not provide a basis for allowing its claimed interest revenue adjustment, and Pagani's description of its pricing practice shows that post-sale price changes are not consistent with Pagani's standard business practices." Id. at 8.

Department's Position

We find that the record does not support Pagani's claim for an interest/exchange revenue adjustment to its U.S. price. We continue to find, as we did in the Preliminary Results, that

Pagani has not demonstrated that the amounts Pagani reported in the INTREVU field were related either to interest revenue or to POR sales. Additionally, a price adjustment based on post-sale, post-POR payments is not warranted, because Pagani has failed to demonstrate that these payments are part of Pagani's standard business practice. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 69 FR 6259 (Feb. 10, 2004), at Comment 1; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews, 61 FR 13815, 13822 (March 28, 1996). See also Bethlehem Steel Corp. v. United States, 24 CIT, 375, 381 (CIT 2000) (quoting Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991)). Finally, these payments were made subsequent to the period subject to this review. We, therefore, have not included the interest/exchange revenue claim in our calculations of the U.S. price. The Department's detailed analysis involves consideration of business proprietary information and is provided in the November 21, 2005, Memorandum to the File regarding Proprietary Comments on "Pagani's Interest/Exchange Revenue Claim."

Comment 10: Interest Expense - Interest-Free Loan from Parent Company

Petitioners argue that the Department should revise Pagani's interest expense ratio to include the amount of the loan principal plus calculated interest at a market-based interest rate on the interest-free loan from Pagani's holding company on which repayment of the loan was waived by the parent company. Petitioners assert that information on the record, including information and documentation obtained at verification, demonstrates that the loan was interest free and did not represent an increase in the percentage ownership of Pagani by the holding company. Petitioners further assert that Pagani did not follow the clear instructions in the Department's supplemental questionnaire with regard to this loan to provide a market-based interest rate and to report an imputed interest amount.

Petitioners state that the Department's practice is to consider loans from shareholders as loans rather than equity whenever they are identified as loans in the respondent's financial statements and accounting records, and to impute a market-based interest expense on these loans. Petitioners point out that in Shop Towels From Bangladesh, the Department determined that loans from the respondent's directors were loans rather than equity, consistent with the respondent's financial statement treatment. See Shop Towels From Bangladesh: Final Results of Antidumping Administrative Review, 60 FR 48966, 48967 (September 21, 1995)(Shop Towels From Bangladesh). Petitioners assert that in Extruded Rubber Thread From Indonesia, the Department stated that its practice is to include imputed interest expenses in the computation of constructed value (CV) and cost of production (COP) on loans received from affiliated parties, if the imputed interest expense is not already included in the interest expense calculation, and that the Department will normally impute an interest expense on transactions when the rate charged by a related lender does not reflect a fair market rate. See Notice of Final Determination of Sales at Less Than Fair Value: Extruded Ruber Thread From Indonesia, 64 FR 14690, 14694 (March

26, 1999) (Extruded Rubber Thread From Indonesia). See also Notice of Final Determination of Antidumping Investigation of Silicomanganese From Venezuela, 67 FR 15533 (April 2, 2002), and the accompanying Decision Memorandum at Comment 3.

Petitioners argue that the Department should revise Pagani's reported interest expenses to include the principal amount of the loan on which repayment was waived, and the Department should also calculate imputed interest on this loan during the 98-day loan period. Petitioners assert that for a market interest rate the Department should use the 2003 average lending rate in Italy of 5.03 percent, as published in the 2004 yearbook of International Financial Statistics of the International Monetary Fund.

Pagani contends that its interest expense ratio is correct as reported, and that the loan from the shareholders was immediately converted into capital and should not be burdened with imputed interest expense. Pagani argues that forgiveness of the loan constitutes a de facto capital increase to Pagani and not a loan, in that funds from the company's principal shareholder flowed into Pagani and the shareholder expressly waived any entitlement to repayment.

Pagani argues that in each of the cases cited by petitioners, the shareholder loans were neither repaid nor waived during the POR. The loans in those cases, according to Pagani, appear to be long-term legal obligations of the company. Pagani distinguishes the loan in the present case from the loans in the cases cited by petitioners by stating that the loan in the present case was canceled in the same fiscal year that it was made. According to Pagani, this means the loan was converted into equity before any interest could be due. Pagani argues that since the parties' clear intention was that the loan be considered a capital increase in the year in which it was made, the loan should not be burdened with imputed interest.

Pagani asserts that if the Department decides to impute interest, it should reject petitioners' proposal that the principal of the loan be added to the interest expense numerator. At most, according to Pagani, the amount of imputed interest asserted by petitioners should be added to Pagani's interest expense, exclusive of any principal. Pagani asserts that since this amount is so small, the Department may ignore the adjustment pursuant to 19 CFR 351.413, which states that insignificant adjustments may be disregarded. Pagani notes that petitioners have cited to no authority for the proposition that the principal amount of the forgiven loan constitutes an interest expense to Pagani. Pagani notes that when it borrows money from the bank and pays interest on the loan, the amount of interest is part of Pagani's financial expense, but the amount of principal is not. Pagani asserts that the cases cited by petitioners are explicit that only the amount of imputed interest is considered part of the respondent's interest expense, and not the amount of principal. Pagani argues that if the Department intended to include the principal of the loan as an imputed interest in those cases, it would have clearly stated so.

Department's Position:

We find that the transaction at issue is a loan. Both Pagani's and its parent company's financial statements, as well as the waiver letter from Pagani's parent, refer to the amount paid to Pagani as a loan. The record does not show that the value of the loan resulted in an increase in percentage ownership of Pagani by the holding company. Accordingly, from the time when the loan was given to Pagani until repayment was waived by Pagani's parent company (in the waiver letter), we are treating the amount paid to Pagani as a loan from an affiliated party.

Because Pagani did not incur actual interest expenses on this loan from its parent company, we find that it is appropriate to calculate an imputed interest expense. Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if they do not fairly reflect the amount usually reflected in the market under consideration. The zero interest on the loan from Pagani's parent does not reflect the amount usually incurred for interest expenses on borrowings in the market under consideration. See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review, 66 FR 45507 (August 13, 2001), and the accompanying Decision Memorandum at Comment 11. Therefore, we have imputed an interest expense to the affiliated party loan for the time period that the loan was outstanding, using the 2003 average lending rate for Italy from the 2004 yearbook of International Financial Statistics.

Pagani's argument that there is a distinction between its loan and the loans in the cases cited by petitioners, based on the length of time the loan was outstanding, is unpersuasive. The amount given to Pagani by its parent company was considered a loan by both companies, as reflected in their financial statements, at least until repayment was waived. See Pagani's July 15, 2005, Cost Verification Report at pages 10 - 11, 15; cost verification exhibit (CVE-2); CVE-15 at page 11; and Pagani's November 1, 2004, questionnaire response at Exhibit 10, page 12. Therefore, the record reflects that the amount paid to Pagani is properly treated as a loan for the period it was outstanding, and we have imputed interest expense on the amount of the principal.

We note that in the Preliminary Results, we included the parent company's net financial expenses and bank charges in Pagani's G&A expenses, in lieu of the imputed interest expense. At verification Pagani stated that its parent company was a holding company whose only function was to hold Pagani's assets. Id. at 3. Accordingly, we used the parent's actual borrowing expenses as a surrogate for the imputed interest expense. In addition, Pagani's financial statements are not consolidated with its parent company's financial statements. It is the Department's practice to impute an interest expense on affiliated party loans not granted at market interest rates. See Extruded Rubber Thread From Indonesia at Comment 6. It is also the Department's practice to use interest expenses from the company at the highest level of consolidation. See Stainless Steel Bar From India: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 69 FR 55409 (September 14, 2004), and the accompanying Decision Memorandum at Comment 4 (Stainless Steel Bar From India). See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152

(Dec. 29, 1999). However, if in the normal course of business, the parent company does not consolidate its financial statements with those of its subsidiaries, we will base interest expenses on the individual company/respondent level. See Stainless Steel Bar From India at Comment 4. As noted above, Pagani's parent company does not consolidate its financial statements with those of Pagani. Therefore, while we have imputed interest expense for the affiliated loan, as discussed above, and added the imputed interest expense to Pagani's other interest expenses, we have removed Pagani's parent company's interest expenses and bank charges from Pagani's G&A expense calculation. See also Comment 11 (G&A Expenses - Adjustments) below.

We find that the principal of the loan should not be considered interest expense. A liability by its very nature cannot be considered an expense. Interest expense is charged on principal, and the principal cannot itself be considered interest expense. Petitioners have not cited any precedent that suggests otherwise.

Comment 11: G&A Expenses - Adjustments

Pagani argues that the Department should reverse certain adjustments that the Department made to the G&A expense calculation in the Preliminary Results. Pagani asserts that these adjustments are unwarranted. First, Pagani states that the legal expenses added by the Department were for legal services provided with respect to Pagani's sale of an investment. In addition, Pagani points out that the sale occurred two years before the beginning of the current POR. Pagani concludes that legal fees for such a transaction should be excluded from the company's G&A expenses since it has nothing to do with current POR activities.

Second, Pagani asserts that certain restructuring costs are properly excluded from G&A expenses because they are extraordinary expenses. Pagani explains that these restructuring expenses consisted primarily of incentives paid to top managers to leave the company. Pagani points out that the Department's longstanding practice, pursuant to section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records where those records are prepared in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs of producing the merchandise. See Stainless Steel Bar From France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005), and the accompanying Decision Memorandum at Comment 3 (Stainless Steel Bar From France). Pagani explains that because its restructuring expenses were booked in one of the extraordinary expense group of accounts and because there is no evidentiary basis to support the reclassification, the reclassification of these expenses to G&A expenses violates the longstanding practice noted above.

Pagani explains that ordinarily when employees leave the company, they are entitled to receive severance pay. Pagani asserts that the restructuring costs in question were not severance payments, but rather expenses incurred by the new owners to eliminate certain management positions prior to the end of the relevant contract terms. Pagani argues that payment of money in this circumstance, unlike the ordinary severance payments, is not an ordinary and foreseeable part of running a business, and as such, the expenses are extraordinary expenses. Pagani notes extraordinary expenses are expenses arising from events that are distinguished by their unusual nature and infrequent occurrence. Pagani concludes that while it is normal and foreseeable for employees to retire and otherwise leave the company, and the company accrues money for such cases, the one-time termination of executives with a settlement payment to avoid litigation is extraordinary and infrequent, and the company treated it as extraordinary in its books and records.

Pagani notes that the Department stated its practice with regard to extraordinary expenses in Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not to Revoke in Part, 69 FR 64731 (November 8, 2004), and the accompanying Decision Memorandum at Comment 13 (Rebar From Turkey). Pagani explains that in that case, the Department stated that: "it is the Department's practice to exclude extraordinary items from the calculation of G&A expenses. However, many countries' GAAP have a loose test of classifying extraordinary items. Therefore, we test these classifications in accordance with U.S. GAAP, which prescribes that only events that are unusual and infrequent in nature are classified as extraordinary." Pagani asserts that unless there is substantial evidence that the respondent's classification is wrong (i.e., substantial evidence that events are usual and frequent), the Department may not force reclassification. Pagani argues that the Department may not impose impossible burdens of proof on respondents, and it cannot, simply by saying so, establish that expenses classified as extraordinary by the respondent country's GAAP, are, instead, ordinary. Pagani asserts that if the Department wishes to consider a reclassification, it must pursue the issue through the process of supplemental questionnaires and development of relevant facts.

Pagani argues that if the Department insists on reclassifying the restructuring expenses to G&A expenses, they should be amortized over the period of restructuring. Pagani explains that in Stainless Steel Bar From France, the Department found that it would be unreasonable to relate the French respondent's entire restructuring costs to the current period, but they should be related to the periods in which restructuring took place. Pagani asserts that in its case, the elimination of the managers' positions will also be felt over a period of years rather than in the current period, and therefore, these costs should be amortized. Pagani argues that since the restructuring period is not fixed, the amortization should be over the useful life of the productive assets of the company. Pagani contends that its situation differs from Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004), and the accompanying Decision Memorandum at Comment 16 (Shrimp From India), where the Department included severance pay in COP. Pagani explains that in Shrimp From India, the Department included compensation for voluntary separation of employees in G&A expenses, noting that the costs for voluntary separation are a normal part of operating a business and they do not represent an unusual or infrequent event. Pagani notes that also in that case, the Department found that the separation expenses were not non-recurring and that in the normal course of business, employees are terminated for various reasons and severance payments are made to compensate these employees for labor services previously performed, not future services, and therefore, the costs do not benefit future production. Pagani asserts that its case is different because, as required by law, Pagani normally pays severance pay when employees leave the company, whether at the request of the company or voluntarily, and the accrual of this severance liability is already part of G&A expenses. However, Pagani further argues that its termination of executives was not the usual sort of termination, and the payment made to them, unlike in Shrimp from India, was not for services previously performed but rather to avoid future lawsuits. Finally, Pagani notes that its comments also apply to a provision account also included in G&A expenses, which was for the settlement of liability for termination of an employee. Pagani explains that the employee took legal action upon termination, and that it is extraordinary for the company to agree to a settlement on top of its ordinary severance pay liability.

Third, Pagani contends that the write-off of research and development (R&D) costs related to training on machinery usage should not have been reclassified as G&A expenses. Pagani notes that the expenses were incurred and capitalized in 2002 and argues that because the expenses are entirely related to a previous year, there is no evidence that they benefitted production in 2003. Therefore, according to Pagani, the write-off of R&D expenses should not have been included in G&A expenses. Pagani asserts that in the Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Brazil, 70 FR 7243 (February 11, 2005), and the accompanying Decision Memorandum at Comment 8 (Pipe From Brazil), the Department declined to adjust the respondent's G&A expenses for depreciation that had been reclassified by the company's auditors as a prior period expense (correction of an expense that had first been recognized in a prior period) and hence excludable from COP. Pagani asserts that, similarly, the write-off in the instant case is related to R&D expenses that were incurred in a prior period. Pagani explains that based on footnotes in Pagani's financial statements, Pagani's books reflect a decision, in accordance with Italian GAAP, that R&D costs sustained a long-term loss of value and should be written off, and reflect that the write-off constituted part of the reorganization of the company. Pagani argues that the Department does not explain why this expense was reclassified as part of G&A expenses for 2003. Pagani asserts that the write-off was consistent with GAAP and the underlying expense had nothing to do with production in 2003. Pagani concludes that if the Department insists on recognizing this capitalized R&D as a POR expense, the expense should be maintained as a capitalized expense, and not attributed wholly to 2003, but capitalized over the five-year period that is applicable to intangible assets.

Fourth, Pagani argues that the Department wrongly reclassified contingent liabilities as G&A expenses. Pagani asserts that these liabilities were entirely unrelated to the company's activities in 2003 and that the account in which they are recorded is classified as extraordinary in Pagani's financial statements. Pagani argues that there is no evidentiary support for the Department's conclusion that these expenses benefitted production in 2003. Pagani notes that this account consists of dozens of small line items that the cost verification report characterized as supplier invoices, external year-end bonuses, credit notes from suppliers, supplemental water well tax, VAT bank guarantees, accident insurance, customer discounts, etc. Pagani asserts that what the cost verification report does not say, but what is obvious from Pagani's accounts is that each of these items relates to an event outside of the 2003 calendar year. Pagani contends that any expenses, such as supplier invoices or the like, that are related to activity within 2003 are included in expenses for 2003 in the appropriate accounts, such as raw material costs. Pagani insists that it is inappropriate for the Department to reclassify these extraordinary items into G&A expenses without a line-by-line analysis of entries in the account, or at least a sampling of the entries in the account. Pagani argues the lack of any such documentation in the verification exhibits demonstrates the Department's decision in this regard is without support in the record and lacks the evidentiary foundation necessary to support a change from Pagani's books maintained in accordance with GAAP.

Fifth, Pagani argues that parent company G&A expenses added to Pagani's G&A expenses contain a clerical error. Pagani asserts that the amount added is the parent's 2003 net profit and not its G&A expenses, which should not exceed the service expenses incurred by the parent company. In addition, Pagani argues that if this amount is added to G&A expenses, then the G&A expense denominator should also be increased by the parent company's production costs, as it is asymmetrical to consolidate the numerator without also consolidating the denominator.

Finally, in rebuttal to petitioner's argument summarized below, Pagani also argues that the Department correctly excluded Pagani's payments to a French agent to settle a legal claim. Pagani points out that the French agent is a French company that was a selling agent for Pagani in France and that payments to agents and settlements of claims to agents are part of selling expenses and not G&A expenses. Given this, Pagani asserts that the payments to the French agent in this case were part of third country selling expenses, which are not part of the antidumping calculation.

Petitioners argue that the Department's revisions to Pagani's reported G&A expenses were proper. Petitioners assert that Pagani has several misconceptions about G&A expenses and the operation of administrative reviews. Specifically, petitioners assert that G&A expenses relate to the overall operation of the company, and therefore, the Department is not required to demonstrate that each item of expense is directly related the production of the specific merchandise under investigation in order to include the expenses in G&A expenses, noting that if that was the case, the expenses would be direct selling expenses rather than G&A expenses. Also, petitioners argue that in accordance with 19 CFR 351.401(b)(1), the burden of proof is on Pagani not on the Department. Petitioners contend that if Pagani wants to exclude costs from its reported COP data, the burden is on Pagani to demonstrate that each of the cost items should be excluded from its reported costs. Petitioners conclude that there is no basis for Pagani's claim that the Department must provide evidentiary support when the Department reclassifies a respondent's costs.

In addition, petitioners assert that, based on an examination of costs excluded from Pagani's questionnaire responses, Pagani has engaged in a systematic and deliberate effort to understate its actual COP by failing to report expenses that clearly should have been included in COP and by mis-classifying ordinary expenses as extraordinary. Petitioners assert that the Department's reclassification is appropriate because each of the items should have been reported as G&A expenses by Pagani. Specifically, petitioners point out that Pagani attempts to muddy the issue of legal expenses by citing a case that involved the gain or loss on the sale of a line of business. Petitioners assert that the Department did not include the gain or loss on the sale of a business unit in G&A expenses but rather included legal expenses recorded in Pagani's 2003 general ledger in G&A expenses. Similarly, according to petitioners, Pagani had no basis to exclude its restructuring expenses from G&A expenses. Petitioners point out that it is not unusual for a company to pay severance or other financial incentives when it terminates employees and these types of expenses do not qualify as extraordinary expenses that are unrelated to the firm's operations.

Petitioners disagree with Pagani's claim that R&D costs should be excluded. Petitioners assert that employee training is a normal part of business operations and this training did provide a benefit to Pagani during the POR. Petitioners point out that Pagani recognized these costs during the POR, thus the Department's decision to include these costs in Pagani's COP was proper.

Petitioners assert that the Department's reclassification of contingent liabilities was also proper. Petitioners argue that expenses such as taxes, insurance, and year-end bonuses are not extraordinary expenses, and there is no basis for Pagani to exclude them as such. Petitioners reiterate that these expenses, as with all of the expenses reclassified by the Department, were recognized in Pagani's general ledger in 2003.

Petitioners argue that there is no basis for the Department to increase Pagani's G&A expense denominator to include the operations of Pagani's holding company because the Department discovered that the only function of this holding company is to own Pagani.

Finally, petitioners argue that the Department should increase Pagani's G&A expenses to include payments made to a French agent to settle lawsuits. Petitioners note that the Department revised Pagani's reported G&A expenses to include the other expense and income items that Pagani had not included, but the Department failed to include the costs of these settlements in its revised G&A expense calculation. Petitioners assert that the out-of-court settlement payments should be included in Pagani's G&A expenses because they relate to the overall operations of the firm. Further, petitioners point out that the Department included in Pagani's revised G&A expenses a similar expense accrual for a settlement with an employee.

Department's Position:

We find that the restructuring costs, write-off of R&D costs, and contingent liabilities referenced by Pagani should be included in the G&A expense calculation. We also find that the legal expenses and the payments to French agents should be excluded from G&A expenses. Finally, we find that Pagani's G&A expense denominator does not need to be adjusted. We note that the clerical error alleged by Pagani in adding its parent's G&A expenses to Pagani's was caused by the addition of the parent company's interest expenses and bank charges, as discussed in Comment 10 (Interest Expenses - Interest-Free Loan From Parent Company) above. We have now deducted these parent interest expenses from the numerator of Pagani's G&A expense calculation, thereby rendering any change in the denominator unnecessary. We discuss each item individually below.

First, the legal expenses should not be included in the G&A expense calculation. These legal services directly relate to an investment activity and not the general production operations of the company. We therefore adjusted our Preliminary Results calculations accordingly.

Second, we find that Pagani's restructuring expenses are not the kind of extraordinary expenses that we normally exclude from G&A expenses. An event is considered extraordinary only if it is "unusual in nature and infrequent in occurrence." See Floral Trade Council of Davis, CA v. United States, 16 CIT 1014, 1016 (CIT 1992). An event is "unusual in nature" if it is highly abnormal, and unrelated or incidently related to the ordinary and typical activities of the entity, in light of the entity's environment. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber from Canada, 67 FR 15539 (April 2, 2002), and the accompanying Decision Memorandum at Comment 33 (Lumber From Canada). An event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future. See Lumber From Canada at Comment 33. As explained above, the Department's longstanding practice, pursuant to section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records, where those records are prepared in accordance with home country GAAP and reasonably reflect the cost of producing the merchandise. See Stainless Steel Bar From France at Comment 1. However, many countries' GAAP have a loose test of classifying extraordinary items. See Rebar From Turkey at Comment 13. Therefore, we test these classifications in accordance with U.S. GAAP, which, as noted above, prescribes that only events that are unusual and infrequent in nature are classified as extraordinary. Restructuring costs are commonly incurred by companies in the production and manufacturing sector, as they are trying to reduce operating costs. As such, restructuring costs, including severance payments, cannot be considered unusual or infrequent. The Department has thus routinely included them in G&A costs along with other period costs. See Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review, 62 FR 1320, 1322 (January 9, 1997) (Silicomanganese From Brazil). Also, as noted in Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329, 24356 (May 6, 1999), it is the Department's normal practice to include severance costs in a company's G&A expenses.

We do not find persuasive Pagani's argument that its payments to certain managers are distinct from other severance payments in that the former were made to avoid employment-related litigation rather than the severance payments that the company normally incurs. Reorganization or restructuring costs related to workers can take on many forms, such as severance payments, settlements with workers unions, and settlements to avoid lawsuits. Settlements to avoid lawsuits are not unusual. The Department has routinely considered severance payments and settlements with workers unions related to restructuring, accruals for lawsuit contingencies, and settlements of lawsuits with workers to be general period costs, included in G&A, and not extraordinary costs. See Silicomanganese From Brazil at 1322, Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18443 (April 15, 1997), Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 32492 (June 10, 2004), and the accompanying Decision Memorandum at Comment 9, and Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756, 38792 (July 19, 1999).

It is the respondent's burden to establish its entitlement to an adjustment. 19 CFR 351.401(b)(1) states that "the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." The respondent has a responsibility of justifying the exclusion of any expenses from its COP calculations. See Honey from Argentina: Final Results of Antidumping Duty Administrative Review, 69 FR 30283 (May 27, 2004), and the accompanying Decision Memorandum at Comment 9. In our supplemental Section D questionnaire, we asked Pagani to describe each of the items classified as "other income and expense" or "not allocable," in the POR and 2003 cost build-ups, and to explain why they should not be included in reported costs. In its April 20, 2005, response, Pagani did not address all requested items. Regarding the two accounts in which the restructuring costs were contained, Pagani stated that one account was for a general provision for legal disputes. Pagani explained that as the disputes are not yet defined, they cannot be considered operational and in any case would be contingent liabilities and therefore extraordinary. The other account (which also included the contingent liabilities discussed below) was described by Pagani as an account where non-existing liabilities and other costs related to previous fiscal years are entered. Pagani offered no other details or explanations. Given the Department's practice in past cases related to severance costs, settlements with workers and workers unions, and restructuring costs, Pagani has not provided sufficient evidence, in its response or at verification, that its severance costs and settlements should be treated any differently than the way we have treated the same types of costs in other cases.

We find that Pagani's severance costs should not be amortized. The record shows that most employee terminations occurred during the second half of 2003 (i.e., during the POR and the G&A expense calculation period). See Verification Report on the Cost of Production and Constructed Value Data Submitted by Pastificio Fratelli Pagani S.p.A., Memorandum from Nancy M. Decker to Neal M. Halper (Pagani Cost Verification Report) (July 15, 2005) on pages 5 and 17 of cost verification exhibit 12 (describing staffing levels throughout the POR and some employee termination dates). This case is distinguishable from Stainless Steel Bar From France, cited by Pagani. In that case, the Department found that the restructuring costs related mostly to labor costs associated with eliminating employee positions over future periods, and therefore, we amortized the restructuring costs. In the instant case, Pagani did not offer sufficient evidence to prove that the severance costs in question related to employee terminations that occurred outside of the POR. Therefore, it is appropriate to include all the severance restructuring costs in the 2003 G&A expense calculation.

Third, we find that Pagani's write-off of R&D costs are not prior period costs and should be included in G&A expenses in the POR. Pagani's R&D costs were related to training on machinery usage that the company had capitalized in 2002, but the record does not show that the costs entirely relate to 2002. Pagani uses an accrual basis of accounting, and if the costs entirely related to 2002, the year in which the costs were incurred, Pagani would have expensed all the costs in that year rather than capitalizing them. Instead in 2002, Pagani capitalized these costs, deferring them to future periods, even though they were paid for in 2002. Companies often defer expenses when they consider such costs to relate to future periods, and the accrual basis of accounting operates on such principles. In 2003, Pagani recognized that the R&D costs had sustained a long-term loss of value and should be written off. In Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil, 70 FR 58683 (October 7, 2005), and the accompanying Decision Memorandum at Comment 2, the Department included in G&A expenses the write-off (during the cost reporting period) of feasibility study costs, which had originally been paid for in a prior year. Further, Pipe From Brazil is inapposite to Pagani's situation. In Pipe From Brazil, the depreciation expense the Department excluded as a prior period expense was a correction of an error from a prior period. In Pagani's case, the amount relates to the write-off of an asset that the company decided would no longer benefit future production, and was not the correction of an error. We do not consider Pagani's accounting treatment of R&D expenses to be unreasonable and because these expenses were included in Pagani's 2003 financial statements, we have included them in G&A expenses for the same period.

We also find that the write-off of R&D costs should not be capitalized. Once assets are obsolete, sold, or otherwise disposed of, the gain or loss on disposal or sale is recognized in that year. Once the asset is written off, it will no longer benefit future periods, so there is no basis for amortizing it over future periods. This would be inconsistent with the Department's practice, as discussed above. The write-off of these capitalized R&D costs is akin to an impairment loss, which is an ordinary loss recognized upon determination of management that the recorded historical value of an asset is unrecoverable through future use of the asset. Section 773(f)(1)(B) of the Act requires the Department to adjust a respondent's COP for nonrecurring costs that benefit current or future production, or both. However, an allocation of the impairment loss to future periods would be inappropriate and would create a distortion because the costs do not benefit future production. Costs associated with the purchase of assets are capitalized because the asset is presumed to generate revenue over a number of years. By writing off the R&D costs, Pagani has recognized that these assets will not generate enough revenue to justify the historical amounts recorded for them in Pagani's books. It would be distortive, and contrary to accounting principles, to continue to allocate the written off R&D costs to future periods, particularly because there is no reasonable likelihood of future economic benefit. See Stainless Steel Bar From France at Comment 1. In its April 20, 2005, response, Pagani did explain that write-off was of expenses deemed unlikely to generate income in the future. This was the only explanation offered in our request for an explanation of why this expense and other expenses items should not be included in reported costs.

Fourth, we find that contingent liabilities are not extraordinary, and therefore they should be included in G&A expenses. As Pagani noted, these expenses include such items as supplier invoices, external year-end bonuses, credit notes from suppliers, supplemental water well tax, VAT bank guarantees, accident insurance, and customer discounts. Regardless of how these expenses were classified on Pagani's financial statements, none of these types of expenses are extraordinary in nature; they are neither unusual or infrequent. In addition, they are all normal costs of operating a business. We also disagree with Pagani that these costs are unrelated to the current period. For example, there may be expenses that were established in a prior year (perhaps through a payable or receivable), but discrepancies from the original amounts may not be known or quantifiable until the current year. In accounting, such discrepancies are typically recorded as current year costs and considered to be related to the general operations of the company in the current year. See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004), and the accompanying Decision Memorandum at Comment 24. Although Pagani asserts each of the items that was recorded in the contingent liability account relates to an event outside of the 2003 calendar year, the record does not support this claim. The Department is not required to do a line-by-line analysis of this account in order to reclassify such expenses. As explained above, it is the respondent's burden to establish its entitlement to an exclusion of any expenses from its COP calculations. Pagani has not supported its case for exclusion of these expenses with sufficient record evidence; therefore, we have included them in G&A expenses.

Fifth, we find that the discrepancy in parent company G&A expenses alleged by Pagani was caused by the addition of Pagani's parent's net interest expenses and bank charges in our Preliminary Results, as explained in Comment 10 (Interest Expenses - Interest-Free Loan From Parent Company) above. For these final results, we are removing the parent's net interest expenses and bank charges from Pagani's G&A expense calculation. At verification Pagani stated that its parent company was a holding company whose only function was to own Pagani. See Pagani's July 15, 2005, Cost Verification Report at 3. Therefore, we find that Pagani's parent does not have any production costs to add to the G&A expense denominator.

Finally, we find that Pagani's payment to French agents should be excluded from G&A expenses. We consider payments to agents to be selling expenses. Because the payments are to French agents, the expenses in question would be third country selling expenses, which are not normally part of the antidumping calculations.

PALLANTE

Comment 12: Treatment of Free Pasta

Pallante argues that the Department should include the free pasta observations in the margin calculation as we did in previous reviews. Pallante states that the value of the discounts for free pasta is allocated over the free pasta and the paid pasta, in order to reconcile the invoice amount to the accounting system.

Petitioners did not comment on this issue.

Department's Position

We have included the free pasta observations in our margin calculation in order to account for the value of all sales.

Comment 13: Correction to Cost Calculations

Pallante contends that the throughput rate for a particular product code included in the COP spreadsheet was incorrect and should be revised. In addition, Pallante contends that the cost allocations of the affected control number (CONNUM) should be recalculated for the final results. Pallante cites Cost Verification Exhibit 13 at page 7 in support of its claim that the Department verified the accuracy of the corrected rate.

In addition, Pallante argues that certain income items the Department examined during the cost verification that were erroneously omitted from the COP should be allowed to offset costs. The first item relates to payments by the Italian government to Pallante for leased equipment. Pallante cites Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, 23689-90 (May 6, 1994), in support of its claim that the Department has long held that it is appropriate to offset cost with revenue of this nature from a state-supported program that assisted the company in obtaining equipment. The second item relates to reimbursements Pallante received by equipment and maintenance suppliers for faulty operation of equipment. Pallante claims that the amount and nature of the income was verified and the amount should be allowed to offset fixed overhead costs. The last item involves year-end rebates received from suppliers of packing materials. Pallante claims it is common practice for vendors to provide year-end rebates to their customers and that Pallante received such rebates from three suppliers in the POR. Pallante cites Cost Verification Exhibit 15 pages 30-32 where copies of the credit notes issued by the suppliers were provided.

Petitioners did not comment on this issue.

Department's Position

We find that the throughput rate for the product code in question was incorrect in the COP spreadsheet and should be changed. Consequently, direct labor and overhead costs should be reallocated based on the corrected throughput rate. We discovered the error at verification and noted it in our report. See Pallante's July 15, 2005, Cost Verification Report at 2. We have used the correct throughput rate and have reallocated direct labor and overhead for this CONNUM in the final results.

The payments by the Italian government should be allowed to offset the COP. The Department normally allows grants received from the government to offset production costs. See Notice of Final Determination of Sales at Less Than Fair Value of Live Swine from Canada, 70 FR 12181 (March 11, 2005), and accompanying Decision Memorandum at Comment 2; and Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30355 (June 14, 1996), and accompanying Decision Memorandum at Comment 11.

The reimbursements from equipment and maintenance suppliers as well as the rebates from packing materials suppliers are also appropriate offsets to the COP. These income items related directly to the goods and services that were purchased, were recorded in the company's normal books and records during the POR, and reflect the actual amount the company received. As the final cost of these purchases is not known until the offsets have been applied, the final actual cost incurred for these purchases should include the related offsets.

Recommendation

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

Agree __________ Disagree ___________

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date