A-475-818
Administrative Review
POR: 07/01/07 – 06/30/08
Public Document
Office III: CH, VC

DATE: February 2, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Certain Pasta from Italy (Period of Review: July 1, 2007, through June 30, 2008)

SUBJECT: Issues and Decisions for the Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy (2007-2008)

Summary

We have analyzed the case and rebuttal briefs submitted by domestic interested parties and respondents.[1] As a result of our analysis, we have made changes from the preliminary results in the margin calculations. We recommend that you approve the positions described in the Discussion of Interested Party Comments, section II infra. Outlined below is the complete list of the issues in this review for which we have received comments from the interested parties.

I. Background

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty order on certain pasta from Italy on August 26, 2008, for each of the aforementioned respondents. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 73 FR 50308 (August 26, 2008). On August 6, 2009, the Department published the preliminary results of this administrative review. See Certain Pasta from Italy: Notice of Preliminary Results of Twelfth Antidumping Duty Administrative Review, 74 FR 39285 (August 6, 2009) (Preliminary Results). The review covers ten manufacturers/exporters: Domenico Paone fu Erasmo S.p.A., Industria Alimentare Colavita, S.p.A., PAM, Pasta Lensi,

---

[1] Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondents: On November 20, 2009, New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (collectively, petitioners), and PAM S.p.A. (PAM), Pastificio Lucio Garofalo S.p.A. (Garofalo), Rummo S.p.A. Pastificio e Molino (Rummo) and Pastificio Riscossa F.lli Mastromauro SrL (Riscossa) (collectively, respondents), filed case briefs. On December 4, 2009, petitioners, PAM and Garofalo filed rebuttal briefs.

Pastificio Fratelli Pagani S.p.A., Pastificio Labor S.r.L., Garofalo, Riscossa, Rummo, and Rustichella d'Abruzzo S.p.A.[2]

II. List of Comments

General

Comment 1: Wheat Code Methodology

Comment 2: Application of Review-Specific All Other Rate

Garofalo

Comment 3: Garofalo's Submitted Wheat Code

Comment 4: Garofalo's Arms-Length Test

Comment 5: Cost Reporting Period

PAM

Comment 6: Collapsing of PAM's Wheat Code for Model Match

Comment 7: Inclusion of Transport Recovery in the U.S. Sales Calculation

Comment 8: Treatment of AGEA Performance Bond

Comment 9: General Expenses

Comment 10: Insurance Claim as an Offset to G&A Expense

Comment 11: Over-reported Costs

III. Discussion of Interested Party Comments

General Comments

Comment 1: Wheat Code Methodology

Petitioners and respondents made several arguments about the proposed change in wheat code methodology that we outlined in the preliminary results. These comments cover both the proposed methodology to apply in future reviews and company-specific reported wheat codes in this review. For purposes of discussion we separate the comments into those for the proposed

[2] See memorandum to Melissa Skinner, Director Office 3, from the Team entitled "Selection of Respondents for Individual Examination," dated September 25, 2008 (Respondent Selection Memo).

methodology to apply in future reviews and those for the company-specific wheat codes reported in this review. A reason for this separation is that although the arguments of the parties and the factual information presented sometimes overlap between these two methodologies, there are two separate and distinct methodologies being discussed.

In addition, regarding the proposed methodology for future reviews, all the arguments made by the parties in their briefs, were previously submitted to the Department. In developing our recommendation outlined in the preliminary results, we took these arguments into consideration; however, we did not specifically address and/or rebut these in the preliminary results. We do so below.

Petitioners Comments

Petitioners argue that the statute requires the Department to base its model matches on the physical characteristics of pasta, not semolina. For finished pasta, the only existing laws or regulations require that pasta have a minimum protein content of 10.5 percent; thus the Department's proposal to use 12.5 percent to distinguish superior grade pasta is not supported by law. Petitioners point out that the only other existing legal definition covering the protein content of finished pasta is U.S. standards for enriched Macaroni Products, which require a minimum of 20 percent protein. Moreover, petitioners argue that 12.5 percent is not a commercially significant figure.

Petitioners argue that the protein content of the semolina used to produce finished pasta does not translate directly into the protein content of finished pasta because milling conditions and drying time can cause the protein content to change. Thus, the Department cannot rely on information about the physical characteristics of semolina to determine the physical characteristics of finished pasta. Accordingly, petitioners argue that the Department should reject any wheat code subcategories beyond 100 percent semolina.

Petitioners also argue that the Department should not include wheat species in its proposed wheat code methodology. This is because pasta must be made from durum wheat. Subcategories of durum wheat, e.g., "Kronos" variety of durum wheat, are not valid distinctions.

Respondents Comments

PAM argues that the Department erred in not applying the proposed methodology in this review. If the Department were to apply this methodology in the review, it would accept PAM's reported wheat codes.

PAM argues that the record contains clear evidence that the protein content of semolina translates directly into the protein content of finished pasta. PAM also argues that differences in the protein content of finished pasta are commercially significant; PAM argues that record evidence shows that there is a two-tier market structure in Italy where premium pasta is clearly recognized.

Garofalo argues that pasta made from excellent quality semolina is materially different from pasta made from standard semolina. These differences are commercially significant. Garofalo argues that petitioners themselves have admitted to this difference.

Department Position

Regarding petitioners' argument that our model match criteria should be based on the physical characteristics of the finished pasta rather than the physical characteristics of semolina used to produce the pasta, we agree. As stated on our preliminary analysis, we plan to base our methodology on the protein content of finished pasta.

However, we disagree with petitioners that we cannot rely on input semolina laboratory test result information in our analysis. Our analysis of the production operations of the pasta producers in this review, which is consistent with our findings in previous reviews, is that pasta producers generally acquire different types of semolina as raw material inputs and use these different types of semolina to produce finished pasta with different physical characteristics.[3] The types of semolina are physically different in terms of ash, gluten and protein content and the characteristics of the semolina affect the physical characteristics which can be measured in the finished pasta.[4] The different types of semolina are generally kept in separate storage facilities. For each batch of pasta being produced, the companies select which type of semolina to use, which regularly included blending more than one type of semolina, based on the recipe for the finished pasta.[5] Generally, each batch is made to a specific recipe, to meet the requirements of the brand being produced. In some cases the brand is one that the company itself owns, in other cases, it is a brand owned by the customer purchasing the pasta.

As part of its normal production process, the companies routinely conduct laboratory tests on the ash, gluten and protein content of the semolina they purchase and use. In addition, although less frequently, they also conduct laboratory tests on the protein content and other physical characteristics of the finished pasta.[6] The companies routinely keep detailed records of these laboratory tests which can form a reliable basis for verifying the protein content of the finished pasta. The laboratory test results information shows that the protein content of the semolina input is consistent with the protein content noted on the packaging of the finished pasta. Based on this, we believe that pasta producers will be able to reliably report the protein content of finished pasta in future reviews of this order.

We acknowledge that the minimum 12.5 percent protein content for finished pasta is not required by Italian law. This standard is the Italian industry standard for semolina. Regarding petitioners argument that the 12.5 percent protein content is not commercially significant, we disagree. The record evidence reveals that companies produce, sell and market 'premium' pasta."

Our decision to use a minimum protein content of 12.5 percent for premium finished pasta is based on four factors. The first is that, as stated above, we believe some brands of pasta are

---

[3] Durum wheat, Semolina and pasta quality characteristics for an Italian food company, Attachment 1 in February 2, 2010, Final Wheat Code Memorandum (Final Memo).
[4] Influence of Gluten Proteins and Drying Temperature on the Cooking Quality of Durum Wheat Pasta, Attachment 2 in Final Memo, and Quality Requirements of Durum Wheat for Semolina Milling and Pasta Production, Attachment 3 in Final Memo.
[5] See Garofalo Cost Verification Report at pages 8 – 11, and Garofalo Sales Verification Report pp. 13 – 15.
[6] Because of the difference in the physical form of semolina as opposed to finished pasta, it is easier and more reliable to test the semolina rather than the finished pasta.

produced, marketed, and sold as premium products, distinct from standard products.[7] These premium pasta brands have distinct physical characteristics that are commercially significant. The second factor is that there is not a clearly defined method of identifying premium pasta other than the protein content marked on the packages. The third factor is that there is a clear relationship between the physical characteristics of the semolina used to produce the finished pasta and the finished pasta itself. The forth factor is that 12.5 percent minimum content is an industry standard developed in the Italian market place of pasta manufacturers and semolina sellers. Given these factors, we believe our approach is reasonable and will contribute to the accuracy of the dumping analysis.

Regarding petitioners argument that we should not take wheat species into consideration, we disagree. While it is true that the great majority of pasta produced and sold is made from durum wheat, only a very small amount of pasta is made from other species of wheat, e.g., emmer. In those instances where such products are covered by our analysis, we think it is important to take this into account. However, we agree with petitioners that varieties and subcategories of durum wheat, e.g., "Kronos" should not be taken into account.

Comment 2: Application of Review-Specific All Other Rate

Riscossa and Rummo argue that the Department erred in its decision not to conduct full reviews of all respondents for whom reviews were requested. Riscossa further maintains that the Department's decision to take only two mandatory respondents was too small a sample for the instant review, as the Department has selected more companies to review in this case in the past. Riscossa contends that section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), requires that the Department calculate a weighted-average dumping margin for the non-mandatory respondents. Riscossa reasons that the Department erred by selecting only two mandatory respondents, as each of the mandatory respondents, knowing its own export volume can calculate the exact export volume of the other respondent, which would result in an improper release of business proprietary information. Riscossa argues that in the last three reviews in which it has participated, it has not received a calculated rate over 2.03 percent, and that it is not credible that Riscossa has been dumping at the rate calculated for the review-specific all-others in this case. Finally, Riscossa claims that its U.S. market business model is different than the business model of the two companies selected for mandatory review.

Rummo argues that the Department is required to apply dumping margins as accurately as possible. Further, any margin must be based on the facts in the case, and the Department must articulate a rational connection between the facts found and the choice of methodology made, and that methodology must be reasonable. Rummo argues that the Department's methodology of calculating a review-specific all-other's rate was overly simplistic and did not reflect the actual marketplace behavior of the non-selected companies. Rummo argues that in the last review in which it participated, it received a margin of 1.41 percent. Rummo contends that the Department should consider the prior history of the non-selected companies in assigning the margins for the non-selected companies. Rummo further claims that the calculation of the review-specific all-others' rate potentially rewards companies that have had high dumping margins in previous reviews by assigning dumping margins that are lower than the previously calculated margins.

[7] This includes the fact the consumers are willing to pay for higher processing costs for premium pasta.

Rummo contends that assigning the review-specific all-others' rate goes against the court's decision that the Department may not apply a new all-others rate in a review to companies subject to the all-others rate established in the original less than fair value investigation, as established in Federal-Mogul Corp. v. U.S., 822 F. Supp 782 (CIT 1993). Rummo argues that in the instant case, the Department is assigning a new all-other rate to the non- selected companies. Rummo contends that the Department should treat non-selected companies as it does companies for which request for review was made. Rummo reasons that assigning a review-specific all-others' rate for non-reviewed companies is a disincentive for all companies to comply with the U.S. antidumping duty law.

Petitioners assert that the Department did not err in sampling companies for mandatory review in the instant case, as the Department did not sample companies for review. Rather, petitioners reason, that the Department selected the two largest exporters that covered the majority of the total quantity of imports covered by this review. Petitioners further assert that neither Riscossa nor Rummo challenged the Department's established practice to select mandatory respondents for review, or submitted a voluntary response. Petitioners claim that Rummo's only filing during this review was to ensure that Rummo's production volumes were not over-stated so that Rummo would not be selected as a mandatory respondent. Instead, petitioners reason that both Riscossa and Rummo elected to wait to see if the assigned margin would be low enough to satisfy the company. Petitioners claim that the statute at section 777A of the Act requires that the Department calculated weighted-average margins for the mandatory respondents, PAM and Garofalo, but is silent as to how the Department should calculate margins for non-reviewed companies. Petitioners assert that the Department has reasonably determined in previous reviews, that using a simple average of calculated margins of mandatory respondents is an appropriate method for determining the margin for non-reviewed respondents.

Petitioners assert that prior margins are no indication of margins assigned in future segments. Petitioners argue that the record of the instant review shows that semolina costs dramatically increased during the period of review (POR) causing pasta prices to increase as well. Further, petitioners maintain that Garofalo and PAM previously received low calculated margins, yet have been assigned a preliminary rate several times higher than previously calculated. Petitioners reason that the combination of changes in semolina prices and the changes in the calculated preliminary rates for Garofalo and PAM indicate that all Italian producers dumping rates increased significantly in the review period. Petitioners maintain that because neither Riscossa nor Rummo participated in any way during the instant review, the Department should reject Riscossa and Rummo's claim that their business models are different than Garofalo or PAM's business models.

Petitioners contend that it is each companies', including Rummo's, sole responsibility to determine whether, and at what price, it will sell pasta in the United States. Petitioners reason that if any company, including Rummo, continues to sell into the U.S. market, then its pricing practices will be subject to individual yearly review by the Department.

Department Position

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known exporters and producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection or (2) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

When the large number of exporters or producers makes it impracticable for the Department to examine all such companies, the Department has had a longstanding practice of exercising its discretion to limit the number of respondents individually examined.[8] In the instant review, there were a large number of requests for review. Specifically, 15 companies either requested a review of their rates, or had a review requested of them, rendering reviews of each company impracticable. AD/CVD Operations Office 3, the office to which this administrative review is assigned, did not have the resources to examine all such exporters/producers. This office has been conducting numerous concurrent antidumping proceedings,[9] which place a constraint on the number of analysts that could be assigned to this case. Not only do these other cases present a significant workload, but the deadlines for a number of the cases have coincided and/or overlapped with deadlines in this antidumping proceeding. In addition, because of the significant workload throughout Import Administration, we could not anticipate receiving any additional resources to devote to this antidumping proceeding. See Respondent Selection Memo. Thus, the Department selected the two largest exporter/producer of subject merchandise during the POR.

The Act and the Department's regulations do not address directly how the Department is to establish a rate to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when establishing the rate for respondents not examined individually in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are to exclude from the all-others rate any zero or de minimis margins or any margins based on total facts available. Thus, in cases involving limited selection based on exporters accounting for the largest volume of trade, the Department's uniform practice has been to average the margins for the selected companies, excluding zero and de minimis rates and rates based entirely on adverse facts available.[10]

In the instant review, we calculated margins for PAM and Garofalo. Using section 735(c)(5)(A) of the Act as guidance, because the margins for PAM and Garofalo are not zero, de minimis, or based entirely on facts available, we applied PAM and Garofalo's average margin to all non-selected companies in the Preliminary Results and continue to do so for the final results. We

---

8 See e.g., Floral Trade Council v. United States, 775 F. Supp. 1492 (CIT 1991).

9 Examples include, but are not limited to: Hot Rolled Carbon Steel Flat Products from India, Lightweight Thermal Paper from Germany, Certain Lined Paper Products from India, Stainless Steel Plate in Coils from Belgium, Lined Paper Products from India and China, Pasta from Italy, and Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago.

10 See Certain Pasta From Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review, 73 FR 75400 (December 11, 2008) (11th Review).

note that we applied a simple average of PAM and Garofalo's calculated margins in order to protect the confidential nature of the import volumes into the United States. Had we weight averaged the two margins by import volume, each company, knowing their own import volume, would have been able to calculate the import volume of the other. The methodology we have used in the instant case is in keeping with past determinations.[11]

Rummo's reliance on Federal-Mogul is misplaced. Rummo and Riscossa each have their own deposit rate, as calculated in previous reviews. Thus, the rate currently applied to Rummo and Riscossa is not the all-other's rate as calculated in the less than fair value investigation. The Department is not re-calculating the all-others rate; rather we are assigning a rate to companies subject to this review but not individually examined, i.e., a "non-examined" rate applied to all companies that have not had a request for review, but only those companies for which a review was requested in this administrative review, but that were not selected as mandatory respondents.

Concerning Riscossa and Rummo's arguments that it is inappropriate to base its assessment rate on the methodology for determining the all-others rate, we disagree. The Department's practice has been to average the margins for the selected companies, excluding zero and de minimis rates and rates based entirely on adverse facts available.[12] We do not find that there is a compelling basis to deviate from our normal practice in this instance. For example, although the non-selected rate assigned to Riscossa and Rummo is higher than rates previously calculated for Riscossa and Rummo, there is no evidence to suggest that the rate is higher than what they would have received if an individual rate was calculated for each company. We find that Garofalo exhibits the same pattern of antidumping duty rates, with low margins in the 2000 – 2001 and 2001 – 2002 reviews of pasta from Italy.[13] Neither Riscossa nor Rummo have demonstrated that the non-selected rate applied in this case is inaccurate, based on the record before the Department. Moreover, this is the only rate on the record of the current review which is based on actual reported and verified sales and cost information relevant to this POR, and neither based entirely on facts available nor on zero or *de minimis* margins. In conclusion, we find that it is reasonable and appropriate to follow our normal practice and assign the simple average of the rates calculated for PAM and Garofalo for this POR to Riscossa and Rummo as non-selected entities subject to this same POR.

Garofalo

Comment 3: Garofalo's Submitted Wheat Code

Petitioners argue that the Department should reject Garofalo's submitted wheat codes for model match in the final results. Petitioners state that Garofalo inappropriately reported separate codes for "excellent" quality durum wheat semolina and "standard" semolina, based on different gluten contents. Petitioners assert that the result was that the majority of the U.S. sales were being compared to a small fraction of the sales in the home market. Petitioners contend that using the semolina input as a model match criteria is inappropriate, as the statute references the physical

[11] See 11th Review.
[12] See 11th Review.
[13] See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy, 68 FR 6882 (February 11, 2003); see also (6th Review).

characteristics of the product in review, not the input materials. Petitioners further assert that Garofalo failed to demonstrate that it's use of different varieties of durum wheat result in physical differences in the pasta subject to review, nor were the various blends of durum wheat recognized in industry accepted, commercially significant distinctions in physical characteristics for the finished pasta. Petitioners assert that Garofalo's packaging does not refer to or identify the type of semolina used in production, whether it uses "standard" or "excellent" quality semolina, but only refers to semolina as 100 percent durum.

Petitioners claim that the wheat types reported by Garofalo have identical physical characteristics, including minimum protein content. Thus, petitioners contend that even if the Department accepts Garofalo's contention that differences in input semolina lead to differences in finished products, petitioners argue that there are no differences in the semolina inputs. Petitioners contend that Garofalo's different wheat codes consist of blends of the same durum wheat types. Petitioners claim that Garofalo's reported costs of "excellent" quality and "standard" quality semolina does not support the claim that there should be separate durum wheat codes and product control numbers for pasta produced from "excellent" and "standard" quality semolina.

Petitioners claim that protein content is required by law to be shown on the nutrition label. Petitioners assert that Garofalo is unable to support the segregation of its pasta into separate various subtypes of 100 percent durum semolina using the nutrition labels. Petitioners argue that milling techniques can alter protein levels of the wheat. Petitioners maintain that most pasta producers blend the wheat inputs to achieve a consistent protein profile in its products between years.

Petitioners claim that Garofalo reported that it cannot report gluten in finished pasta, as it is a measure that only applies to semolina.

Garofalo argues that the Department has previously recognized Garofalo's reported wheat codes. Garofalo argues that pasta made with "excellent" quality semolina is different than pasta made with "standard" semolina. Garofalo states that the Department regularly uses variables other than finished product characteristics in model match. Garofalo asserts that the most important difference between "standard" and "excellent" semolina is gluten content, and that durum semolina with protein content between 10.5 percent and 12.5 percent will result in pasta products that are inferior to pasta products made with durum semolina content above 12.5 percent.

Garofalo contends that petitioners recognize that superior protein and gluten result in superior pasta. Garofalo asserts that pasta made with excellent-quality semolina sells at a premium compared to pasta made with normal semolina. Garofalo maintains that petitioner's reliance on the ITC's report on Durum and Hard Red Spring Wheat from Canada is misleading with respect to gluten. Garofalo's argues that the ITC report references the minimum level of gluten, somewhere above 13 percent. Garofalo asserts that the ITC report does not contradict Garofalo's claim that the quality of pasta made with semolina with a protein content of over 12.5 percent is superior to pasta made with a protein content under 12.5 percent.

Garofalo further argues that ITC standards are not necessarily the Department's standards. Garofalo maintains that the Department has included variables such as pasta shape in the model match categories, which the ITC did not take into consideration in the report in the less than fair value segment of this proceeding.

Garofalo asserts that for contracts for "excellent" quality semolina and "normal" quality semolina signed at the same time, the "excellent" quality semolina is selling at a premium above the "normal" quality semolina. Garofalo claims that it was able to keep its costs for "excellent" quality semolina down relative to "normal" quality semolina by making timely purchases of large quantities of "excellent" quality semolina. Thus, Garofalo contends that petitioner's pricing claims are unsubstantiated.

Garofalo asserts that the Department has never required that a model match characteristic be confined to one that is stated on a product's packaging label. Garofalo further claims that packaging labels for pasta are standardized, and that the protein reporting requirements are also standardized. Garofalo argues that the protein amounts are rounded for packaging reported amounts. Thus, Garofalo reasons that pasta made with "excellent" quality semolina and "normal" quality semolina may be reported as having the same protein level, when they do not. Garofalo maintains that their production process does not alter the protein level between the semolina input and the finished pasta. Garofalo further argues that packaging labels do not include the specific variety of wheat used to produce pasta, as such information is not useful to consumers. Garofalo maintains that the packaging includes the information needed to convey when the pasta is made with "excellent" quality semolina.

Garofalo argues that petitioner's reference to the fact that most millers blend durum wheat is untimely new information. Further, Garofalo maintains that the Department has verified the steps Garofalo takes to ensure proper reporting of the protein content in the finished product.

Department Position

The Department agrees with Garofalo. Section 771(16) of the Act defines how the Department finds comparable merchandise in the foreign market. Section 771(16)(A) of the Act requires us to first search for identical merchandise, and section 771(16)(B) and (C) of the Act explains how the Department finds the most comparable merchandise if there is no identical merchandise. In the Preliminary Results, the Department allowed the separate wheat code for "excellent" as reported by Garofalo. In the less-than-fair-value (LTFV) phase and in previous reviews of this order, the Department has accepted and denied respondent-specific claims for modifications to model match criteria based on the given circumstances in each segment. In the original investigation, the Department laid out the following standard:[14]

> At the respective verifications, each of these respondents established that different wheat (i.e., semolina) qualities existed and that these were measured by ash and gluten content. It was primarily these characteristics which were used to select semolina for pasta production. We verified that physical differences exist and that the cost of the highest grade of semolina is materially more than that of the lowest grade. We found these

[14] See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30346 (June 14, 1996) (Pasta: Final Determination).

> quality differences reflected in semolina costs and pasta prices. We found that they are commercially significant and an appropriate criterion for product matching.

Based on this standard, the Department added an "other" wheat code category in the questionnaire that allows respondents to claim separate treatment for certain semolina inputs. As noted above, we have applied the above standard on a company-specific basis on several occasions.[15] In the Preliminary Results, the Department found that there were no differences between the 7th Review and the instant review with respect to Garofalo's model match.

In accordance with section 771(16)(C) of the Act, we have determined that substantial evidence supports finding that wheat codes reported by Garofalo result in reasonable comparisons. For purposes of this review, we have based our decision on the evidence placed on the record by Garofalo with respect to cost differences attributable to significant differences in physical characteristics (i.e., gluten (protein) content) for "excellent" quality semolina. In so doing, we considered the following factors: where there is "commercially significant protein content differences" we have allowed a separate wheat code; where "slight cost and protein content differences were presented, we find that these differences are not commercially significant" and we disallowed a separate wheat code.[16]

Garofalo's responses, and verification exhibits, show the following: 1) that "excellent" quality semolina has a higher protein (gluten) content than other types of semolina used to produce pasta; 2) when excellent and other types of semolina were contracted for at the time, "excellent" quality semolina is more expensive than other types of semolina used to produce pasta; and 3) pasta produced using "excellent" quality semolina is priced separately from, and higher than, pasta produced from other types of semolina.[17] Furthermore, as seen at verification, we agree with Garofalo that the packaging includes the information needed to convey the semolina quality of the pasta.[18] Based on record evidence provided by Garofalo, and in line with previous Departmental decisions regarding Garofalo's model match, for purposes of this review, we find the differences in "excellent" quality semolina and "standard" quality semolina a sufficient basis to allow reporting of a separate wheat code for each pasta quality.

Comment 4: Garofalo's Arms-Length Test

Garofalo comments that the Department erred in failing to run the Arms-Length Test of affiliated party sales in the Department's comparison market program. Garofalo urges the Department to correct this error for the final results.

The petitioner did not comment on this issue.

---

[15] See 6th Review, see also Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 70 FR 6832 (February 9, 2005) (7th Review).
[16] See 11th Review, at comment 9.
[17] See Garofalo's rebuttal brief at 3-6; see also Garofalo's February 23, 2009, submissions at 4-5.
[18] See Garofalo's October 16, 2009, sales verification report at Exhibit 8 and 9, sample packing.

Department Position

The Department agrees with Garofalo. The Department will change the programming language in the comparison market program based on the suggested computer language submitted by Garofalo to correct the error for the final results.

Comment 5: Cost Reporting Period

Garofalo claims that the Department did not articulate its rationale for using an alternative cost averaging period as opposed to the normal POR weighted-average for calculating costs and that the use of quarterly average costs in this case is neither supported by record evidence nor in accordance with law. Garofalo further states that the alternative cost reporting period should be a semi-annual cost period rather than a quarterly period because the most significant semolina cost changes occurred at the end of 2007 when a large number of semolina contracts expired. Garofalo also argues that the Department's decision to not use price-to-price comparisons outside of a quarter in its arm's length test and margin calculation program is inappropriate because it results in less accurate product matches.

Petitioner states that the Department should reject Garofalo's claim to use a semi-annual cost averaging period and continue to use a quarterly period because costs and prices changed continuously within each of the six month periods throughout the 12-month POR. Petitioner also states that it is not the Department's current practice to determine the specific day or month during the POR when costs changed the most. The petitioner argues that limiting price comparisons to sales within each quarter does not result in less identical product matches as claimed by Garofalo. According to the petitioner, record evidence supports that using quarterly price-to-price comparisons provides more product matches than by using a semi-annual methodology. The petitioner also states that limiting price comparisons within each quarter is consistent with the Department's authority and practice.

Department Position

For the reasons articulated below, we disagree with Garofalo. The use of quarterly average costs in this case is supported by record evidence, is in accordance with law, and the Department's reasoning to use the alternative cost averaging methodology has been articulated. Therefore for these final results we have continued to use the alternative cost-averaging methodology consistent with the reasoning outlined in the Memorandum to Neal M. Halper from Gary Urso: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Pastificio Lucio Garofalo S.p.A., dated July 31, 2009 (Prelim Cost Calc Memo - Garofalo).

A. Legal Framework and Case Precedent

The Department has a consistent and predictable methodology of calculating costs (i.e., cost of production (COP), constructed value (CV) and difference in merchandise (DIFMER)) on a POR-average basis. As such, the Department's standard questionnaire requests that respondents report their costs on a POR-average basis. See, e.g., Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (Dec. 13, 2000), and accompanying Issues and Decision Memorandum (Pasta from Italy) at Comment 18: Notice of Final Results of

Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (Jan. 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (where the Department explains its practice of computing a single weighted average cost for the entire period).

The calculation of costs is relevant in determining which sales of merchandise in the foreign market will be used to compare to sales in, or to, the U.S. market to determine dumping margins. Specifically, section 771(34) of the Act defines dumping as the sale or likely sale of goods at less than normal value (NV). Dumping occurs when imported merchandise is sold in, or for export to, the United States at less than the NV of the merchandise. Section 771(35)(A) of the Act defines the dumping margin as the amount by which the NV exceeds the export price (EP) or constructed export price (CEP) of the subject merchandise. In calculating NV, the Department will consider only those sales in the comparison market that are in the "ordinary course of trade." Generally, sales are in the "ordinary course of trade" if made under conditions and practices that, for a reasonable period of time prior to the date of sale of the subject merchandise, have been normal for sales of the foreign like product. See section 771(15) of the Act. Specifically, sales disregarded under section 773(b)(1) of the Act are defined by section 771(15)(A) of the Act as outside the ordinary course of trade. Section 773(b)(1) of the Act describes how sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as:

> an amount equal to the sum of –
>
> (A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;
>
> (B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and
>
> (C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

Section 773(b)(1) of the Act states that if no sales made in the "ordinary course of trade" remain, "the normal value shall be based on the constructed value of the merchandise." CV is defined in section 773(e) of the Act as the cost of materials, plus fabrication expenses, selling, general and administrative expenses, profit and packing expenses.

The Act does not dictate a specific method of calculating costs during the POR, nor does it provide a definition for the term "period" in calculating COP and CV. Thus, the Department adopted a consistent and predictable approach in using POI or POR-average costs - the result being a normalized, average production cost to be compared to sales prices covering the same extended period of time. See Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations); see also Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (September 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle). As the Department explained in those cases, the result of this approach smoothes out normal cost fluctuations that occur during an accounting period. Moreover, we prefer to calculate costs on a POI or POR weighted average basis in an antidumping context because, as costs are calculated over shorter periods, it directly limits the periods of time over which sale prices can reasonably be matched, thus limiting price-to-price comparisons contrary to Department preference. Accordingly, before moving away from the normal method of calculating a POI or POR average cost, the change in production costs during the POR needs to be significant. The Department has articulated in several past proceedings that the use of an alternative cost averaging period may be appropriate in situations where a reliance on our normal annual weighted average cost method would distort the dumping analysis due to significant cost changes. These situations include high inflation and raw material cost volatility. See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001); Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From Netherlands, 65 FR 742 (January 6, 2000) (Brass Sheet & Strip Netherlands).

Since the date of the initiation of this case, there have been several cases in which we considered whether to deviate from our normal annual average cost methodology due to significant changes in the cost of manufacture (COM) throughout the cost reporting period. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part, 73 FR 66218 (November 7, 2008) (Rebar from Turkey - 2), and accompanying Issues and Decisions Memorandum at Comment 2; Stainless Steel Plate in Coils From Belgium; Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4 (SSPC from Belgium); and Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Administrative Review, 74 FR 6365 (February 9, 2009), and accompanying Issues and Decision Memorandum at Comment 5 (SSSS from Mexico). Because this issue has continued to arise in more and more cases, we recognize the importance of having a consistent and predictable approach to analyzing the issue and determining when to deviate from our normal annual average cost methodology. Accordingly, the Department has made a concerted effort to develop a predictable methodology for determining when the use of shorter cost averaging periods is more appropriate than the established practice of using annual cost averages, due to the occurrence of significant cost changes throughout the period of investigation (POI)/POR. As part of this effort, on May 9, 2008, the Department published a Federal Register notice to solicit comment on this issue. The Department stated in the Federal Register notice that we continue to regard our practice of using annual cost averages in proceedings as generally the most appropriate methodology, and that we intend to deviate from this practice only under limited circumstances. See Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26366 (May 9, 2008) (Quarterly Request for Comment). We acknowledged that in certain cases, possible distortions may result when our normal annual average cost method is used during a period of significant cost changes. Conversely, relying on shorter cost reporting periods can result in an average cost that does not relate to the sales that occurred during the same shorter period. In light of these competing considerations, we asked outside parties for comments and suggestions on the factors to consider, tests to apply, and thresholds to apply when deciding whether to rely on cost averaging periods of less than one year. We received comments from nine parties on June 23, 2008.

The Department conducted a careful review of the comments received in response to the Quarterly Request for Comment. We also considered interested party comments on the same issue in Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001), Rebar from Turkey -2, SSSS from Mexico and SSPC from Belgium, and reaffirmed in the final results of these cases that the two most important factors in considering whether to deviate from our normal average annual cost methodology are 1) whether the cost changes throughout the POI or POR were significant, and 2) whether sales during the shorter cost averaging period could be linked with the cost during the same averaging period. We continue to believe these two factors are the most important in determining whether to deviate from our normal annual average cost methodology.

We disagree with Garofalo's arguments that the Department's decision to use a quarterly cost averaging period in this case is not in accordance with law. As explained further below we have applied the same standards to this case as in Rebar from Turkey - 2, SSSS from Mexico, and SSPC from Belgium. The only difference between our past practice and the approach taken in these recent decisions is that in these decisions we more clearly defined the significance and linkage thresholds. As a result, we affirm that our finding in this instance is supported by evidence on the record and is in accordance with law.

B. Significance of Cost Changes

We find that the administration of antidumping duty cases is better served through a reasonable numeric threshold for determining what constitutes a significant cost change. A numeric threshold for significant change avoids confusion because it is transparent, can be applied consistently, and parties are better served when a predictable and transparent practice is in place. By establishing a standard practice, we ensure a more equitable and consistent application of the alternative cost calculation methodology. In SSPC from Belgium, and Rebar from Turkey – 2, we established a threshold of a 25 percent change in cost for significance. In developing the 25 percent threshold for when the change in production costs is significant enough for us to consider deviating from our normal annual average cost methodology, we looked to our practice for high inflationary economies for guidance. In high inflation cases, the Department has established a threshold of 25 percent annual inflation, which is used to determine when the Department deviates from its normal methodology of calculating an annual weighted average cost. The Department's threshold in high inflation cases is based upon generally accepted accounting standards set forth by the International Financial Reporting Standards (IFRS). International Accounting Standard (IAS) 29 establishes when it is appropriate for an entity to depart from IFRS accounting standards and adopt an alternative method, because the existing method (i.e. historical costing) will result in distortions. Under IAS 29, an economy is considered inflationary if the cumulative inflation rate over three years approaches or exceeds 100 percent. We note that approaching or exceeding 100 percent inflation over a three year period equates to approximately a 25 percent annual inflation rate. If the annualized rate of inflation exceeds 25 percent, the Department will determine that the associated country experienced high inflation during the POI or POR and will resort to an alternative cost averaging methodology in order to avoid the distortive effect of inflation on our comparison of costs and prices.[19]

The distortion caused by high inflation on our normal annual weighted average cost calculation methodology is similar to that resulting from a significant change in costs. The primary difference is that in high inflationary economies, many COM cost components typically rise from month to month whereas in non-high inflationary economies, significant cost changes are usually driven by one or two main inputs. For high inflation situations, we expect production costs and prices for all products generally to increase significantly. Thus, we are able to look to a published index like the producer price index (PPI) or wholesale price index (WPI), specific to a country, in quantifying the degree of currency devaluation over a given period, and can make a threshold decision for the company as a whole. When the significant cost change is driven by one or two main inputs, the extent to which production costs change may vary widely from product to product because each product typically requires different quantities of a given input. As such, the cost change must be analyzed on a product specific basis. Furthermore, in high inflationary situations, the PPI or the WPI typically trend upward. Thus, calculating the percent increase in the index from the beginning to the end of the POI/POR provides a good measure of the magnitude of change during the period. In the situation where significant cost change is driven by one or two main inputs, the cost of the inputs driving the change may be increasing, decreasing, or trending in both directions throughout the period. Even though the change in costs from the beginning to the end of the POI/POR may not be significant, the change within the period may be significant.

Recognizing the similarities of the impact of high inflation and significant cost changes due to one or two main inputs on the cost-based AD computations, and taking into account the above noted differences between the two situations, in SSPC from Belgium and Rebar from Turkey - 2 we developed a method for measuring the cost change and a significance threshold. In determining whether the change in production costs is significant, we analyzed, on a product-specific basis, the extent to which the total COM changed during the POR. We did this by analyzing, on a CONNUM-specific basis, the percentage difference between the lowest quarterly average COM and the highest quarterly average COM, as a percentage of the low quarterly average COM. If the percentage difference exceeds 25 percent, we will normally consider the significant cost change threshold to be met. In performing this analysis, the use of quarterly average COMs is preferred over monthly average COMs because we want to ensure the change

[19] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73169-73171 (December 29, 1999); Silicomaganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum at Comment 4; Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 69 FR 47876, 47878 (August 6, 2004), unchanged in final results; Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review, 70 FR 6834 (February 9, 2005); Certain Steel Concrete Reinforcing Bar from Turkey; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 73 FR 66218 (November 7, 2008), and accompanying Issues and Decision Memorandum at Comment 2; and Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19390 (April 13, 2004), unchanged in final results, 69 FR 53675 (September 2, 2004).

in cost is sustained for a reasonable time rather than for only an isolated month or two. We believe that this significance threshold is high enough to ensure that we deviate from our annual average cost methodology only in circumstances where changing input costs are clearly affecting the appropriateness of our annual average cost calculation.

For the preliminary results in this case, we solicited quarterly cost information from Garofalo in order to determine the magnitude of cost changes during the POR and whether it would be appropriate to use shorter cost averaging periods for the final results.[20] Consistent with our approach in SSPC from Belgium, Rebar from Turkey – 2, and SSSS from Mexico, we analyzed the difference in COM for the five most frequently sold CONNUMs in each of the U.S. and home markets. Based on this analysis, we found that the difference between the low quarterly average COM and the high quarterly average COM exceeded the 25 percent threshold. See Prelim Cost Calc Memo at page 2. Garofalo asserts that the Department engaged in a flawed analysis to determine the magnitude of cost changes throughout the POR. Garofalo disagrees with a finding of significance based solely on whether a 25 percent increase occurred between any two quarters of the POR. However, it is the Department's view that using a comparison of quarterly average costs as the basis for a significance finding ensures, as noted above, that fluctuations in costs are sustained for a reasonable period of time. A change in costs that exceeds 25 percent, even if it was only between two quarters of the POR, is significant enough to create distortion when using a single annual average cost methodology. A single annual average cost methodology still results in costs being too high in the lowest cost quarter and too low in the highest cost quarter. The analysis the Department conducted in this case reflects the change in costs over the period and reflects trends during the POR because it measures how much costs have changed between the high and low cost quarter. This approach does not represent a departure from past practice. As noted previously, in SSPC from Belgium, SSSS from Mexico, and Rebar from Turkey - 2, the Department similarly based a finding of significance on the percentage change between the highest quarterly and lowest quarterly COM.

C. Linkage Between Costs and Sales Information

Consistent with past precedent, if the Department finds changes in costs to be significant in a given POI or POR review, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices during the shorter cost periods within the POI or POR. In two recent determinations, SSPC from Belgium and SSSS from Mexico, the Department explained that our definition of linkage does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices charged by a company. The Department acknowledges that being able to reasonably link sales prices and costs during a shorter cost period is important in deciding whether to depart from our normal annual average cost methodology. We believe that requiring too strict a standard for linkage, however, would unreasonably preclude this remedy for commodity-type products where there is no pricing mechanism in place and it may be very difficult to precisely link production costs to specific sales.

[20] The Department requested that Garofalo provide quarterly average direct material costs, while continuing to report conversion costs (i.e., labor and overhead) on an annual average basis.

A review of past precedent reveals that the Department has approached its consideration of linkage between sales and costs in various ways and to varying levels of precision. In Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911, 8925-8926 (February 23, 1998) (SRAMS), we did not require any linkage between price and costs but rather agreed with the parties that because both price and cost consistently trended downward due to expected technological advancements, we would use quarterly data. In another case[21], we examined the correlation between sales prices and cost during the shorter cost averaging periods and found that the information on the record revealed that the sales prices for the merchandise under consideration correspondingly and consistently declined during the POR. We found that the sales prices and costs were linked because the respondent purchased the input raw materials on the customer's behalf and then billed the customer for the cost of the metals, the terms of which were set forth on the finished products' sales invoice along with the associated processing costs as a separate item describing this factual situation as a pass-through. Thus, the Department has accepted varying degrees of correlation. In Brass Sheet and Strip, we found a direct link in that the price setting and materials acquisition process formed a pass-though mechanism. In SRAMS, we did not perform any direct analysis, but we found a consistent decline in both price and cost. In recent cases, such as SSSS from Mexico and SSPC from Belgium, we found reasonable linkage due to the fact that the companies operated using an alloy surcharge mechanism. That is, they made sales with a provision that allowed them to pass on any increase in the cost of their main inputs to their customers.

In this case, we evaluated whether the sales prices during the shorter cost averaging period were reasonably correlated with the COM during the same period. As noted, our definition of linkage does not require direct traceability between specific sales and their specific production costs. These correlative elements may be measured in a number of ways depending on the associated industry, the overall production process, inventory tracking systems, company-specific sales data, inventory turnover ratios, price and cost trend analysis, and pricing mechanisms used in the normal course of business (e.g., surcharges, raw material pass through devices).

To facilitate our analysis, we asked Garofalo to provide a comparison, by quarter, of the weighted average sales prices for the five most frequently sold CONNUMs in each of the home and U.S. markets and the TOTCOM for each CONNUM. We also computed Garofalo's average overall POR inventory turnover for raw material inputs and for finished goods which showed that its average inventory period was well within an annual quarter. This data showed there was linkage within each quarter between sales prices and changes in TOTCOM. See Attachment 1 of the Prelim Cost Calc Memo - Garofalo which shows that the quarterly COM and the quarterly average sales prices moved consistently together. See also Attachment 1 of the Memorandum to Neal M. Halper from Gary Urso: Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Pastificio Lucio Garofalo S.p.A., dated February 2, 2010, (Final Cost Calc Memo - Garofalo) which shows the average inventory period calculation. In summary, these correlative elements, taken together, are sufficient to establish a reasonable link between the changes in Garofalo's COM and the changes in sales prices.

[21] See Brass Sheet & Strip Netherlands.

We agree with the petitioner that quarterly cost averaging periods, rather than semi-annual periods, should be used in calculating Garofalo's cost rather than splitting the POR into two periods. For the Preliminary Results, the Department deviated from its normal practice of using a POR-average cost period and used its alternative cost averaging methodology. See Prelim Cost Calc Memo. The Department's normal practice is to calculate a respondent's cost of production on an annual average basis. However, in instances where raw material cost changes are significant and sales prices and costs are reasonably linked during the shorter cost periods, the Department will deviate from this norm and rely on quarterly average costs. Absent strong evidence showing that quarterly averaging periods are distortive, our practice is to use quarterly average cost periods when we determine it appropriate to deviate from our normal annual average methodology due to significantly changing costs. This quarterly cost averaging methodology has been upheld by the Court of International Trade. See, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, Slip Op. 09-55 (CIT June 15, 2009) (Habas II) and Nucor Corporation, Gerdau AmeriSteel Corporation and Commercial Metals Company v. United States and IÇDAS Celik Enerji Tersane Ve Ulasim Sanayi, A.S., Slip Op. 10-6 (CIT January 19, 2010)(Icdas). Moreover, record evidence shows that Garofalo's COM increased in each quarter of the POR for all wheat codes except for one wheat code in one quarter, and not just at the six month mark as Garofalo claims. See cost verification exhibit D-1 page 6. Accordingly, using the quarterly cost averaging methodology would capture cost changes more accurately in this case. Overall, the cost change was significant when measured using the Department's stated methodology. Therefore, our decision to use quarterly cost as opposed to semi-annual cost is justified and consistent with the Department's normal predictable methodology when applying the alternative cost averaging methodology.

We disagree with Garofalo that eliminating the window period sales for price-to-price comparisons causes distortion in the dumping analysis and is contrary to law. For administrative reviews, the Department generally bases NV for the POR on monthly weighted average prices and compares them to individual EPs or CEPs. Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the Department will attempt to find a weighted average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. See 19 CFR 351.414(e)(2)(ii). If unsuccessful, we will then look one month after and finally two months after the month of the U.S. sale. See 19 CFR 351.414(e)(2)(iii). This practice is commonly referred to as the "90/60" day contemporaneity guideline, and is identified in the Department's regulations at 19 CFR 351.414(e)(2). Where costs and prices are changing significantly due to high inflation or when applying the alternative cost averaging methodology due to significantly changing costs, the Department has in the past eliminated the "90/60" day window period and limited comparisons of U.S. price to home market sales made during the same month or quarter in which the U.S. sale occurred. That is, the sales "contemporaneity" period was modified to conform with the shortened cost averaging period. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 61 FR 69067 (December 31, 1996), where the Department reasoned that such a methodology minimized the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. See also Certain Porcelain-on-Steel Cookware From Mexico: Final Results of

Antidumping Duty Administrative Review, 62 FR 42946, 42505-42506 (Aug. 7, 1997). See also, Habas II and Icdas.

In this case, as noted above, we have determined that the changes in Garofalo's COM throughout the POR due to fluctuating raw material input costs are significant enough to depart from our normal annual average costing methodology. As in high inflationary economies, these significant changes in costs lead to distortions in the Department's sales-below-cost test, as well in the overall margin calculation. When significant cost changes have occurred during the POR, these same conditions are accompanied by changes in prices as the market reacts to changing economic conditions. In this situation, we find that price-to-price comparisons should be made over a shorter period of time to lessen the margin distortions caused by changes in sales price which result from significantly changing costs. As such, comparing lower priced home market sales from the pre-POR window period with U.S. sales during the first quarter of the POR when the unadjusted home market price does not reflect the contemporaneous price increases that have occurred through the date of the U.S. sale distorts the dumping analysis. Therefore, it is appropriate to compare U.S. sales with contemporaneous NVs which were made in the ordinary course of trade as established in the sales-below-cost test. We note that although 19 CFR 351.414(d)(3) is applicable to the average-to-average methodology, the principle pertaining to the use of a shorter period for averages is relevant to the average-to-transaction method for purposes of the averaging aspect of that methodology. Accordingly, it is appropriate in this case to match sales only within the same quarter. Further, we maintain here the average-to-transaction preference for matches within the "month during which the particular U.S. sale under consideration was made." See 19 CFR 351.414(e)(2)(i). Comparing U.S. sales to NVs outside the quarter would result in comparisons with NVs that do not reflect market conditions at the time of the U.S. sale in that the NVs would not reflect the increasing or decreasing prices due to the significant changes in costs. Therefore, we have not made comparisons outside of a quarter for the final results because of our above noted concerns with contemporaneity and that significant costs changes are typically accompanied by significant price changes. This is consistent with our practice in SSSS from Mexico and SSPC from Belgium, Habas II and Icdas where we made comparisons between U.S. and home market sales only if they were in the same quarter. See Final Cost Calc Memo - Garofalo.

With regard to the respondent's assertion that the inclusion of the window period would further the statutory preference for the use of identical product comparisons, we emphasize that our margin program that includes the alternative cost averaging methodology attempts first and foremost to match U.S. sales to home market sales of identical products, but does so within the quarter for which we have limited price-to-price comparisons. Accordingly, although this increases the number of similar matches relative to the number of identical matches, this result does not violate our preference for identical matches within the relevant period; while properly addressing the effects of significant cost changes.

PAM

Comment 6: Collapsing of PAM's Wheat Code for Model Match

PAM argues that the Department should not collapse PAM's WHEATH/U codes 1 and 2 for the final results. PAM asserts that the Department obtained a thorough and comprehensive record regarding wheat codes in the instant review. PAM states that, at the preliminary results, the Department agreed with PAM that semolina should be classified as standard or superior according to the protein content of the semolina, with the breakpoint at 12.5 percent, for future reviews.[22] PAM states that the Department collapsed WHEATH/U codes 1 and 2 because the Department found that the record in the 2002 – 2003 administrative review (7th Review) and the instant review were not different, and thus the WHEATH/U codes in the instant review should be the same as the 7th Review. PAM argues that the Department's claim that there is no difference between PAM's factual record in the 7th Review of pasta from Italy and PAM's factual record in the instant review is incorrect. Further, PAM argues that the Department correctly found that for the purposes of model match for future reviews, that there is a difference in semolina types based on a protein content of over 12.5 percent. PAM argues that the same standard should be applied to PAM's WHEATH/U codes in the instant review.

Petitioners argue that the Department should continue to collapse PAM's wheat codes. Petitioners argue that subdividing durum wheat pasta into "normal" and "superior" pasta, based on a protein content of 12.5 percent, is arbitrary. Petitioners state that the only breakpoint for superior protein-content pasta is at 20 percent, as identified in the U.S. Standards of Identity. Petitioners argue that PAM references the protein content in the input semolina, not the protein content of the finished pasta. Further, petitioners assert that the different semolina inputs are blended to produce pasta, and thus the final product will not have the same protein content of the individual semolina inputs. Petitioners claim that PAM is using internal data to support changes to the model match, but should use third party sources to demonstrate the materiality and significance of a specific physical characteristic.

Petitioners further argue that there is no evidence supporting the proposal that the difference in the protein content of normal and superior pasta is commercially significant. Petitioners contend that pasta is not sold or marketed as containing "superior" or "normal" semolina, or differences in protein content, but rather as having "100 percent durum semolina" or not. Petitioners argue that PAM claims approximate percentages of protein in the finished product, so the differences in the protein content of the finished products may be closer than reported. Petitioners state that the ITC concluded that the pasta industry uses semolina with uniformly high protein content, and that protein above 10.5 percent had no additional commercial value.

Department Position

Section 771(16) of the Act defines how the Department finds comparable merchandise in the foreign market. Section 771(16)(A) of the Act requires us to first search for identical merchandise, and section 771(16)(B) and (C) of the Act explains how the Department finds the most comparable merchandise if there is no identical merchandise. In the Preliminary Results, the Department disallowed the separate wheat code for "semolina superior" as reported by PAM. In the less-than-fair-value (LTFV) phase and in previous reviews of this order, the Department has accepted and denied respondent-specific claims for modifications to model match criteria

[22] See Preliminary Results, at 39286; see also "Preliminary Model Match Clarification on Pasta Wheat Code Classifications," dated July 31, 2009.

based on the given circumstances in each segment. In the original investigation, the Department laid out the following standard:[23]

> At the respective verifications, each of these respondents established that different wheat (i.e., semolina) qualities existed and that these were measured by ash and gluten content. It was primarily these characteristics which were used to select semolina for pasta production. We verified that physical differences exist and that the cost of the highest grade of semolina is materially more than that of the lowest grade. We found these quality differences reflected in semolina costs and pasta prices. We found that they are commercially significant and an appropriate criterion for product matching.

Based on this standard, the Department added an "other" wheat code category in the questionnaire that allows respondents to claim separate treatment for certain semolina inputs. As noted above, we have applied the above standard on a company-specific basis on several occasions.[24] In the Preliminary Results the Department found that there were no differences between the 7th Review and the instant review with respect to PAM's wheat code claims. However, the Department finds that there are significant differences in the protein differences between the two reviews.[25]

In accordance with section 771(16)(C) of the Act, we have determined that substantial evidence supports finding that wheat codes reported by PAM result in reasonable comparisons. For purposes of this review, we have based our decision on the evidence placed on the record by PAM with respect to cost differences attributable to significant differences in physical characteristics (i.e., ash and gluten (protein) content) for "semolina superior"and on the sales price differences in finished pasta that resulted from PAM's use of semolina superior. In so doing, we considered the following factors: where there is "commercially significant ash and protein content differences" we have allowed a separate wheat code; where "slight cost and ash and protein content differences were presented, we find that these differences are not commercially significant" and we disallowed a separate wheat code.[26] PAM's responses, and verification exhibits, show the following: 1) that "semolina superior" has a higher protein (gluten) content than other types of semolina used to produce pasta; 2) "semolina superior" is more expensive than other types of semolina used to produce pasta; and 3) pasta produced using "semolina superior" is priced separately from, and higher than, pasta produced from other types of semolina.[27] Based on record evidence provided by PAM, and in line with previous Departmental decisions regarding separate wheat codes, for purposes of this review, we find the differences in gluten content for Pam's "semolina superior" a sufficient basis upon which to allow reporting of a separate wheat code for such finished pasta.

---

[23] See Pasta: Final Determination.
[24] See 6th Review, see also 7th Review.
[25] See PAM's B-D Questionnaire Response, dated December 10. 2008 (PAM's B-D Response), at 77 and exhibit 5 page 166; PAM's Response to Section D and Sections A-C Second Supplemental Questionnaires (PAM's A-D Supplemental Response), dated May 4, 2009, at 10; and PAM's Request to Augment Record (PAM's August Submission), dated August 14, 2009, at exhibit 1.
[26] See 11th Review at comment 9.
[27] See PAM's B – D Response; PAM'S A – D Supplemental Response.

Comment 7: Inclusion of Transport Recovery in the U.S. Sales Calculation

PAM states that the Department erred by not adding the unit value of the freight component of the price on freight inclusive invoices, which is not included in the gross unit price (TRANSPRECU). PAM contends that the gross unit price minus discounts represents a net free on board (FOB) price, and that the reported gross unit price must be adjusted upward, by the TRANSPRECU amount, to come to a freight-inclusive price.

Petitioners maintain that the Department should continue to exclude transport recovery in the U.S. net price calculation. Petitioners assert that PAM stated that the TRANSPRECU was already included in the reported gross unit price. Petitioners contend that this is the first time PAM has claimed that the transportation recovery values were not included in the gross unit prices, and that it is improper for the Department to accept this claim at this point of the proceeding. Petitioners argue that the verification report is silent as to whether or not reported gross unit prices of U.S. delivered duty paid (DDP) sales included freight revenue. Petitioners further contend that while two of the four pre-selected U.S. sales contain worksheets that show transportation recovery revenue is not included in the gross unit prices for those sales, it does not demonstrate that the prices for all other DDP sales were reported in the same manner. Thus, petitioners reason the Department should not change its calculation of U.S. net prices to include TRANSPRECU.

Department's Position

The Department agrees with PAM that TRANSPRECU should be added to U.S. gross unit price. The Department acknowledges that PAM originally reported that TRANSPRECU was included in the gross unit price (GRSUPRU) field, when indeed it was not. However, the verification report does show that the reported GRSUPRU does not include the TRANSPRECU. See "Verification of the Sales Response of PAM S.p.A. in the Antidumping Review of Certain Pasta from Italy," dated October 16, 2009, at exhibit13 b pages 1 and 8, and exhibit 13 c pages 1 and 8. Although petitioners maintain that the verification report does not show that all DDP sales were reported in the same manner, they have not provided any evidence to the contrary.

Comment 8: Treatment of AGEA Performance Bond

PAM states that in the Preliminary Results, the Department incorrectly re-classified Luciano Chirico SrL's (Chirico) performance bond expense as an indirect selling expense. PAM argues that the AGEA sale was unique among Chirico's sales in that it was to a quasigovernment entity, of an extraordinary size, and as an exchange of finished goods for raw materials, and thus, outside the normal course of trade. PAM maintains that the Department verified that the AGEA bond expense was related entirely to the specific AGEA transaction. PAM reasons that it distorts the dumping analysis to attribute to non-AGEA customers the expenses that PAM claims are directly related to AGEA sales.

PAM further argues that the Department's regulations at 19 CFR 351.412(f) define indirect selling expenses as "selling expenses that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales." PAM argues that the performance bond expense would not have occurred had the AGEA sale not been made, and thus, was directly related to the AGEA sale.

Petitioners argue that the Department did not err in treating the AGEA performance bond expense as an indirect selling expense. Petitioners maintain that PAM made no claim that the AGEA sales were outside the normal course of trade in its questionnaire responses. Petitioners further argue that that the AGEA sales do not meet the circumstances under which sales are outside the ordinary course of trade, as defined in the Department's Antidumping Manual.

Petitioners argue that when Chirico declined to complete its performance under the terms of the contract and the bond, it knowingly incurred a liability of its own actions. Petitioners reason that, like bad debt, the liability is predictable and expected, and thus, should be considered an indirect selling expense.

Department Position

The Department agrees with PAM that the Chirico's AGEA performance bond expenses should be attributed to sales to AGEA. The Department agrees with petitioners that the sales to AGEA are not outside the ordinary course of trade. Regardless of whether Chirico's sales were inside the ordinary course of trade or not, 19 CFR 351.412(f) and 351.401(g)(2) illustrates the Department's preference for matching expenses with their associated sales on as specific basis as possible. In the instant case, AGEA required Chirico to post a performance bond as a condition of the contract. Had Chirico not entered into a contract with AGEA, a performance bond would not have been posted. Thus, is it appropriate to match any expenses stemming from the loss on the performance bond to those sales most closely related; in this case, sales to AGEA.

Comment 9: General Expenses

PAM argues that the Department should have excluded certain expenses from the calculation of its general and administrative (G&A) expense ratio, and that the Department failed to include the gains from the sale of a mill. PAM claims that the expense items were unrelated to the production or sale of pasta during the POR, and would not have been recognized if Chirico's bankruptcy had not been imminent when the books were closed for 2007. PAM argues that, regarding the sale of the mill, it is the Department's policy to include as part of G&A gains and losses from sales of assets as part of the COP and CV.

PAM argues that COP and CV in an antidumping case should include only costs that "reasonably reflect the costs associated with the production and sale of the merchandise." PAM argues that bankruptcy related costs are not associated with the production and sale of pasta, and thus are properly excludable. PAM argues Chirico's bankruptcy was unusual and unforeseeable, and thus the write-off of these expenses are also unusual and unforeseeable as well. PAM claims that one of the expenses it wrote-off was Chirico's research and development (R&D) expenses, and represents the full write-off of all R&D expenses that were capitalized in previous years. According to PAM, the write-off is recognition that these capitalized costs were not recoverable because of Chirico's bankruptcy at the end of 2007. Therefore PAM argues that this expense is directly related to the bankruptcy, and as such, it should not be included in the COP or CV.

Chirico recognized the cost relating to litigation with the Italian Government over certain subsidies. According to PAM, the item relates to the revocation of subsidies received in previous years. According to PAM, after initially granting them, the authorities subsequently decided that Chirico did not qualify for the tax subsidy, because it was not the owner of the facility in question. PAM had made certain improvements to the facility it leased. PAM argues that the subsidies were tax credits against corporate taxes, and hence the written off item relates to taxes in a previous year, and is unrelated to production of pasta in the POR.

PAM claims that the third, fourth and fifth assets written off relate to the recovery of certain contingent liabilities that it had believed it would eventually recover. They related to contingent liabilities associated with the takeover of the predecessor company of Chirico, a contingent liability related to another subsidy and a tax receivable contingent liability. PAM argues that the amounts in these accounts, and therefore the associated write-off, do not relate to or support the production, distribution or sale of pasta in the POR. According to PAM they would not have been recognized if Chirico's bankruptcy had not been imminent.

Finally, PAM argues that the Department should reduce Chirico's G&A expense by the amount of capital gain which Chirico realized from the sale of its milling facility during 2007, because they argue it is the Department's practice to include gains or losses from the sale of capital assets in calculating G&A expense. According to PAM the Department stated in 6th Review at comment 24 that: "we consider the disposition of fixed assets to be a normal part of a company's operations. As such, any gain or loss realized on the routine disposition of production assets relates to the general operations of the company as a whole and should be included in the G&A rate calculation." PAM originally excluded Chirico's gain from the sale of fixed assets. PAM now believes that the activity of milling is part of the operations involved in the production of pasta, and therefore, the sale of the milling facility is part of the routine disposition of assets related to the general operations of the company as a whole.

Petitioners argue that the Department's treatment of these bankruptcy-related costs was proper, because these bankruptcy-related costs are neither extraordinary nor unforeseeable, and case precedent supports their inclusion as part of G&A expense. According to petitioners, PAM is incorrect in claiming that these bankruptcy-related costs related to events prior to the POR. Petitioners argue that the expenses related to the bankruptcy and liquidation of Chirico, an event that occurred during the second half of the POR (i.e., the first half of 2008) directly relate to the POR.

Petitioners claim that Chirico's bankruptcy and liquidation was not an extraordinary or unforeseeable event. Petitioners note that this was not the first time that Chirico entered into bankruptcy. Petitioners claim that PAM purchased Chirico when it was already in bankruptcy, and incurred costs related to the acquisition of activities from the already-bankrupt "L. Chirico" (the company that existed before the acquisition by PAM). According to petitioners, Chirico's statutory auditors knew of the likelihood of bankruptcy and requested a write-off of all R&D expenses that were previously capitalized by the company. According to petitioners, Chirico was an active producer of the merchandise under consideration during the POR, and the liquidation expenses relate to both the sale and production of the merchandise under consideration.

Petitioners maintain that the Department has consistently recognized that bankruptcy and reorganization costs are not extraordinary expenses: Extraordinary expenses under U.S. generally accepted accounting principles (GAAP) are both unusual in nature and infrequent in occurrence. Neither bankruptcy nor reorganization costs can be considered either unusual or infrequent. Such costs are not un-typical and, therefore, should be included in general and administrative expenses along with other period costs. See Preliminary Results of Antidumping Administrative Review: Silicomanganese From Brazil, 62 FR 1320, 1322 (January 9, 1997).

According to petitioners, PAM claimed that the other write offs relate to expenses that Chirico had classified as extraordinary expenses. However, petitioners argue that Chirico's audited financial statement do not record the expenses as extraordinary. Petitioners claim that accounting principles require: the identification of extraordinary expenses separately, along with descriptive captions; the amounts for each individual extraordinary event or transaction; presentation on the face of the income statement, or at least disclosed in related notes. However, petitioners note that PAM cannot point to such declarations or explanations in Chirico's financial statements to support its claim that these three expense categories are extraordinary under Italian GAAP.

Petitioners also argue that the capital gain from the sale of the milling facility should not be included in the calculation of PAM's G&A expense. According to petitioners, it is the Department's policy to exclude gains on the sale of this type of asset from the G&A calculation. That is, Petitioners argue that the sale of an entire business operation is not a routine sale of fixed assets. Petitioners argue that the Department should not decrease G&A by the gain on the sale of the milling facility. According to petitioners, the Department evaluates whether to include an item in the G&A calculation by reviewing the nature of a G&A activity and the relationship between this activity and the general operations of the company. Where the activity is relatively small in relation to the company's primary activities, the Department has included the occasional miscellaneous gain or loss in G&A expenses. However, where the activity becomes significant enough to constitute a separate business activity, the Department treats it as separate business activity, and will not allow the gain to be offset in the G&A expense. Petitioners argue that the sale of an entire business operation is not a routine sale of fixed assets, and the Department should continue to disallow this gain.

Department Position

We disagree with PAM that we should exclude all of the losses from G&A expense and that the gain from the sale of the milling facility should be included as an offset to G&A expense. The losses that PAM recognized and that we included in G&A relate to the following: 1) liabilities incurred by Chirico as a result of acquiring the predecessor company; 2) the subsidies granted to Chirico when an earthquake destroyed the company's previous plant and which the Italian government subsequently denied; and, 3) a tax subsidy for which the Italian Government requested repayment. Chirico also wrote off its capitalized R&D expenses because its auditors determined that there was no future benefit associated with this asset.

None of the expenses in question is extraordinary, and all relate to the general operations of the company as a whole. That is, companies in the normal course of business incur these types of expenses. They are the types of general expenses that companies recognize as being incurred during a given accounting period. They do not relate to a specific line of business or production activity. Instead, they relate to the general operation of the company as a whole and accordingly it is appropriate to include them in the calculation of PAM's G&A expense ratio.

Our decision here is consistent with our decision in the eighth administrative review of pasta. See Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy and Determination to Revoke in Part, 70 FR 71464 (November 29, 2005), and the accompanying Issues and Decision Memorandum at Comment 11, where we stated that "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." Also, as stated in Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 33995 (July 14, 2009), and the accompanying Issues and Decision Memorandum at Comment 3: "subsidies and grants received are typically treated as allowable offsets to G&A." See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum at Comment 2, where we stated, "The Department normally includes the grants received from the government in the reported costs." See Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from South Africa, 60 FR 22550, 22556 (May 8, 1995) (Furfuryl Alcohol Final Determination) and Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30355 (July 14, 1996) (Pasta Final Determination), where we included in the G&A rate calculation the government grant received by the respondent which was recorded as grant revenue in the respondent's financial statements.

Since grants or subsidies are included as an offset when received, the repayment to the government of a grant or subsidy, which would require a respondent to record an expense in its financial statements, should also be included in the calculation of the respondent's G&A expense ratio. While these losses clearly relate to the underlying transaction that gave rise to the liability, PAM claims that the expenses relate to Chirico's impending bankruptcy. We note that even if it is true, it is the Department's normal practice to include bankruptcy and reorganization expenses in the calculation of a respondents G&A expense ratio. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea 65 FR 16880 (March 30, 2000), and the accompanying Issues and Decision Memorandum at comment 8 in which we stated "we included bankruptcy and reorganization costs stating that these costs were neither unusual or infrequent and are typically incurred by entities."

The Department's long-standing practice with regard to unforeseen events is to treat expense items as extraordinary only when they are both unusual in nature and infrequent in occurrence. In the Final Determination in the Investigation of Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, 54 FR 19092 (May 3, 1989), the Department rejected the treatment of restructuring costs as extraordinary and it allocated them over the cost of goods sold on the grounds that they were not unusual in nature and they were not infrequent in the industry. As outlined in Floral Trade Council of Davis, CA v. United States, 16 CIT (1014, 1016) (Dec. 1, 1992), in order for an event to be considered extraordinary it must be "unusual in nature and infrequent in occurrence." An event is "unusual in nature" if it is highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the entity, in light of the entity's environment. An event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future. See also Notice of Final Determination of Sales at Less than Fair Value: Static Access Memory Semiconductors From Taiwan, 63 FR 8909, 8933 (February 23, 1998) (where the Department rejected respondent's claim for an offset due to losses incurred because of a fire); Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods From Argentina, 60 FR 33539, 33549 (June 28, 1995) (where the Department rejected respondent's claim for an offset due to restructuring costs). In Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review, 62 FR 1320, 1322 (January 9, 1997) (Silicomanganese From Brazil) the Department stated that "although the Department does allow for the exclusion of extraordinary expenses, bankruptcy and reorganization costs do not fall into this category. Extraordinary expenses under U.S. generally accepted accounting principles (GAAP) are both unusual in nature and infrequent in occurrence. Neither bankruptcy nor reorganization costs can be considered either unusual or infrequent. Such costs are typically incurred by entities and, therefore, should be included in general and administrative expenses along with other period costs. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands, 58 FR 37199-37204 (July 9, 1993)."

We disagree with PAM that the gain realized by Chirico through the sale of its milling facility represents an item that we should include in the calculation of G&A. Income related to the sale of an entire division is by its nature non-recurring, and unrelated to the general operation of the company, i.e., manufacturing and selling merchandise. See Final Determination in the Antidumping Investigation of Chlorinated Isocyanurates from Spain, 70 FR 24506, (May 10, 2005), and the accompanying Issues and Decision Memorandum at Comment 11, where we stated, "Delsa is in the business of manufacturing and selling merchandise, not the selling of production facilities. Although routine sales of machinery and equipment are considered to be a part of normal ongoing operations for a manufacturing entity, the sale of a fully functioning production facility is not a part of a company's normal operations. As such, any significant, non-recurring income or expenses related to the sale of a fully functioning production facility are not considered to be related to the general operations of the company." See also Polyethylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 57417 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and 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 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 9.

We have therefore excluded the income relating to Chirico's sale of its milling facility from our calculation of PAM's G&A expense ratio. We have included the write-off of the R&D expenses. We have included the losses from the repayment of the grant and the liabilities incurred as part of the inception of Chirico.

Comment 10: Insurance Claim as an Offset to G&A Expense

According to PAM, during the POR, Chirico filed a claim against the supplier of its new short-cut production line because the line failed to operate properly. Chirico took the amount of this insurance claim as an offset to G&A. According to PAM, the bankruptcy tribunal had accepted the claim as valid and awarded to Chirico an amount greater than the amount which Chirico claimed as an offset to G&A. PAM claims that Chirico suffered the damages from the defective production line during the POR, and the principle of matching costs and revenues requires that the now-mature claim against the supplier of the production line be granted as an offset to G&A.

PAM claims that it properly offset Chirico's insurance claim against Chirico's G&A. According to PAM, the cost verification exhibits include an official document from the bankruptcy tribunal handling Chirico's bankruptcy, establishes a court decision to Chirico for the damages Chirico suffered during the POR relating to the supplier's failure to meet specifications in the equipment that it supplied. PAM argues that under the principle that revenues and expenses should be matched with the costs and sales activities that generate them, Chirico properly took as an offset to G&A expense in the POR the portion of the guarantee, which it considered a liquidated amount, when the response was under preparation. Pam claims that subsequent events, as determined at verification, establish that Chirico's claim was conservative. PAM therefore argues that the Department should increase its offset against G&A to reflect the full sum determined by the Court.

Petitioners argue that PAM's offset to G&A for an insurance claim was improper. Petitioners agree that the insurance claim was against a company which supplied Chirico with a defective machine in 2005. However, petitioners claim that the documents obtained by the Department at verification show an application to the bankruptcy court for Chirico indicating that it "may" receive a certain amount. Petitioners argue that Chirico never received any compensation from the supplier, and it had not received any money as of the date of verification. Furthermore, petitioners note that the amount was not recorded as an asset or an accounts receivable in Chirico's financial statements for the year ended December 31, 2007, nor was it mentioned in the notes to the financial statements. Therefore, the Department was correct in excluding this offset to Chirico's reported G&A expenses.

Department Position

We disagree with PAM that the insurance claim by Chirico against its supplier for the defective machinery should be used as an offset to G&A expense. The Department normally allows an offset for insurance reimbursements up to the amount of the related losses incurred during the same reporting period. See, e.g., Softwood Lumber 03/04, at Comment 40.C. However, in this case the insurance claim was never recorded as a receivable in Chirico's books and records, nor was it received by the company as of the cost verification. Therefore, we have disallowed Chirico's offset to G&A expense for the insurance claim against its supplier.

Comment 11: Over-reported Costs

PAM argues that the Department found that PAM over-reported its cost of manufacture (COM). Therefore, PAM argues that the Department should reduce PAM's COM to account for the difference between the reported COM and the financial statement COM. PAM claims that the Department has an obligation to use the correct figures in calculating dumping margins. According to PAM, when the Department finds that a respondent has underreported cost, the Department adjusts for the error by increasing COM proportionally. PAM, therefore, argues that the Department has an obligation to adjust for an over-reporting of cost and should reduce PAM's reported COM for purposes of the final margin calculation.

Petitioners argue that the Department should not reduce PAM's COM to account for the difference between reported COM and financial statement COM. Petitioners claim that while the Department found that each company's POR trial balances were the basis for reported costs, each company used its purchase records and consumption records to report CONNUM-specific semolina costs for the POR. As a result, the reported semolina and packing materials did not directly reconcile to the trial balances due to the fact that the trial balance reflected actual purchases, while the reported semolina costs reflected the consumption at the average purchase price from unaffiliated suppliers (this was necessary because of the extensive inter-company sales between the three companies). Petitioners note that in developing its cost database, PAM aggregated all unaffiliated purchase transactions of semolina (i.e., excluded transfers between PAM, Chirico and Liguori) during the POR in order to measure the semolina cost differentials by quarter for PAM as a whole. Because pasta contains multiple types of semolina as inputs, the company used standard consumption rates, by semolina type, for each wheat code reported for the merchandise under consideration. Using actual per-unit semolina purchase costs and semolina consumption rates, PAM, then developed direct material cost indices for the merchandise under consideration. According to petitioners, these indices were used to restate PAM's annual per-unit semolina costs to the respective quarter within the POR, while all other costs are expressed on an annual basis. Therefore, petitioners claim that it is understandable that the reported COM did not perfectly reconcile with the COMs from three separate financial statements. Petitioners argue that it would be inappropriate for the Department to adjustment the reported costs that were otherwise verified as complete and accurate.

Department Position

We disagree with PAM that the reported COM should be adjusted downward to account for the unreconciled difference in their reconciliation between the reported COM and the financial statement cost of goods sold. The Department requests, in the section D questionnaire, that the respondent prepares a reconciliation between the cost of goods sold on the financial statement that most closely matches the POR and the total cost of manufacturing expense listed in their cost file. This reconciliation attempts to tie the reported costs in an overall manner to what the company reports on its financial statements. The reconciliation accounts for: the timing differences between the fiscal year and the POR; the differences between cost of sales and cost of manufacturing; the differences associated with the merchandise not under consideration; and, differences in reporting methodologies.

When a respondent cannot account for some un-reconciled amount, our general practice is to include the amount when the difference indicates a possible under-reporting of costs. See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008), and accompanying Issues and Decisiton

Memorandum at Comment 8; Metal Calendar Slides from Japan: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 71 FR 36063 (June 23, 2006), and accompanying Issues and Decisiton Memorandum at Comment 9. However, we typically do not make an adjustment when the un-reconciled amount indicates a possible over-statement of costs. Our general practice is reasonable because it recognizes that the respondent is the sole party who has full knowledge of its reporting methodology, knowledge of its normal records and has access to the documents that are necessary to explain or clarify the un-reconciled difference. Through the course of an investigation or review a respondent is encouraged to identify and explain all of its costs. Therefore, if a respondent has not identified the nature of the under-reported costs, the unidentified additional costs could relate to the merchandise under consideration. Likewise, to automatically adjust costs downward would encourage or reward a respondent who fails to fully reconcile the reported costs of subject merchandise to its financial records. As a result, in instances where there are unexplained additional costs, we include them in the COP and CV. See id. On the other hand, if a respondent has not identified the nature of over-reported costs, we do not assume that the unidentified difference relates to the merchandise under consideration. See id. at 2. The respondent, a party in possession of all relevant documents related to its own costs, has the opportunity to reconcile the unidentified difference during the course of the proceeding. Additionally, if the respondent has not shown how the difference relates to the merchandise under consideration, we do not assume that the difference benefits the production of subject merchandise. Therefore, in those instances, we do not adjust COP/CV. See 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 (July 19, 1999), and accompanying Issues and Decision Memorandum at Comment 43 where the Department noted its normal practice is to include such items in the calculation of COP and CV unless respondent can identify and document why such amount does not relate to the merchandise under investigation; and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15498 (March 31, 1999), and accompanying Issues and Decision Memorandum at Comment 4 where the Department determined that the respondent should include the unreconciled difference between the accounting records and the reported costs.

We acknowledge that there have been instances where we have reduced COP/CV by reconciliation differences. However, in these instances, the differences that were under question related to items that we were able to track to the specific merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24351 (May 6, 1999) at Comment 20, and Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand, 69 FR 34122 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 10. That is not the case here.

The Act is silent on how the Department should treat unexplained reconciliation differences between a respondent's reported costs and the costs reflected in its cost accounting system. Where the Act is silent or ambiguous, the agency has considerable discretion in how it handles the discrepancy. See Micron Tech v. United States, 117 F 3rd 1386, 13941396 (Fed. Cir. 1997); see also Asociacion Colombiana de Exportadores v. United States, 6 F.Supp 2d 865, 900 (CIT 1998) ("as the Statute is silent, Commerce has broad discretion..."). The way we have consistently exercised our discretion in these situations has been to increase costs by the amount of un-reconciled differences that indicate understatement of reported costs unless the respondent identifies and documents why the amount does not relate to the merchandise under consideration.

Finally, we agree with the petitioners that the methodology followed by PAM in reporting its costs means that PAM deviated from its financial accounting records on several occasions. For example, as noted on page 12 of the cost verification report, "we found that each company's POR trial balances were the basis for its reported costs. However, each company used its purchase records and consumption records, to report CONNUM-specific semolina costs for the POR." As a result, the reported semolina and packing materials do not directly reconcile to the trial balances.

IV. 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 ___________

____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

____
(date)