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International Trade Administration
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Administrative Review
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AD/CVD: Office 8: SM/GM

August 2, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

RE: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta from Italy; 2011-2012

Summary

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Italy for the period of review (POR) of July 1, 2011, through June 30, 2012. The Department has preliminarily determined that Pastificio Gallo Natale & F.lli S.r.L (Gallo) and Rummo S.p.A. Molino e Pastificio and its affiliates Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni (collectively, Rummo) made sales of subject merchandise at less than normal value (NV) during the POR.

Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). Once we issue the final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Background

On July 24, 1996, the Department published in the *Federal Register* the *AD Order*[1] on pasta from Italy. On July 2, 2012, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pasta from Italy.[2] Pursuant to requests from interested parties, the Department published in the *Federal Register* the *Initiation Notice*.

On August 30, 2012, the Department initiated this administrative review covering the following 11 companies: Alberto Poiatti S.p.A (Poiatti); Delverde Industrie Alimentari S.p.A (Delverde); Industria Alimentare Colavita, S.p.A (Indalco); Pasta Lensi S.r.L (Lensi); Pastificio Attilio Mastromauro-Pasta Granoro S.r.L (Granoro); Gallo; Fiamma Vesuviana S.r.L (Fiamma); Pastificio Zaffiri S.r.L (Zaffiri); Rummo; Tandoi Filippo e Adalberto Fratelli S.p.A (Tandoi); and Valdigrano di Flavio Pagani S.r.L (Valdigrano). On August 31, 2012, the Department announced its intention to select mandatory respondents based on CBP data.[3] On September 24, 2012, the Department selected Indalco and Rummo as mandatory respondents, and issued initial questionnaires to both companies on this same date.[4]

As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding were extended by two days.[5]

On November 30, 2012, Indalco and Lensi timely withdrew their respective request for a review. Thus, on December 11, 2012, the Department selected Gallo and Granoro as mandatory respondents, and issued an initial questionnaire covering sections A through D to both Granoro and Gallo.[6] On December 14, 2012, Granoro requested an extension of the deadline to submit its response to the Department's Sections A - D of the initial questionnaire, until 30 days after the announcement/release of the final results of the 2010-2011 administrative review of the *AD Order*, which the Department granted.

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996) (*AD Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 77 FR 39216 (July 2, 2012).

[3] *See* Memorandum from George McMahon through James Terpstra to Melissa Skinner titled, "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated August 31, 2012.

[4] *See* Memorandum from George McMahon through James Terpstra to Melissa Skinner titled, "Selection of Respondents for Individual Review," dated September 24, 2012 (Respondent Selection Memo).

[5] *See* Memorandum from Paul Piquado, Assistant Secretary for Import Administration regarding "Tolling of Administrative Deadline as Result of the Government Closure during Hurricane Sandy," dated October 31, 2012.

[6] *See* Memorandum to Melissa Skinner, Office Director, AD/CVD Operations, Office 8 through Eric Greynolds, Program Manager, AD/CVD Operations, Office 8 from George McMahon, Case Analyst, AD/CVD Operations, Office 8, titled, "Selection of Mandatory Respondents," dated December 11, 2012.

On February 4, 2013, the Department received a request from Valdigrano to determine whether its pasta product is within the scope of the *AD Order*. The Department is conducting a separate scope segment proceeding in response to this request.[7]

On February 8, 2013, the Department published the *Final Results of the 15th AR*,[8] and revoked the *AD Order* with respect to Granoro effective July 1, 2011. The Department also noted its intent to rescind the 2011-2012 Administrative Review (AR16) of Granoro.[9] On February 26, 2013, the Department withdrew its initial questionnaire that was issued to Granoro.[10]

On February 13, 2013, petitioners requested that the Department conduct verifications of the questionnaires responses submitted by Gallo and Rummo.[11]

On March 18, 2013, the Department issued a memorandum extending the time period for issuing the preliminary results of the instant administrative review from April 4, 2013, to August 2, 2013.[12] On April 3, 2013, the Department rescinded the current review with respect to Indalco and Lensi due to their timely requests for withdrawal, and the fact that no other party requested a review of these two companies.[13] Further, the Department rescinded the current review for Granoro because it had revoked Granoro from the *AD Order*.

The review continues to cover the following two mandatory respondents: Gallo and Rummo and six non-mandatory respondents: Poiatti, Delverde, Fiamma, Zaffiri, Tandoi, and Valdigrano.

<u>Gallo</u>

On December 11, 2012, the Department selected Gallo as a mandatory respondent, and issued an initial questionnaire covering sections A through D to Gallo. On February 18, 2013, Gallo submitted its initial questionnaire response for sections A through C.[14] On February 28, 2013, petitioners[15] alleged that Gallo's home market sales of pasta were made at prices below its cost of production (COP). On March 5, 2013, the Department issued a supplemental questionnaire to

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[7] The Department preliminarily found that Valdigrano's product is within the scope of the *AD Order* and companion countervailing duty order. *See* the Department's Memorandum titled, "Certain Pasta from Italy: Preliminary Ruling on the Scope Inquiry Request Regarding Egg White Pasta from Valdigrano di Flavio Pagani S.r.L.," dated March 25, 2013.

[8] *See Certain Pasta From Italy: Notice of Final Results of 15th Antidumping Duty Administrative Review, Final No Shipment Determination and Revocation of Order, in Part; 2010-2011*, 78 FR 9364 (February 8, 2013) (*Final Results of the 15th AR*).

[9] *Id.*

[10] *See* Memorandum to the File Through Eric Greynolds From Stephanie Moore, titled "Withdrawal of Questionnaire Issued to Granoro," dated February 26, 2013.

[11] Petitioners are American Italian Pasta Company and Dakota Growers Pasta Company.

[12] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Through Melissa Skinner, Director, AD/CVD Operations Office 8, from George McMahon, Case Analyst, AD/CVD Operations Office 8, titled "Certain Pasta from Italy: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" (March 18, 2013).

[13] *See Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 78 FR 20091 (April 3, 2013).

[14] Gallo's Initial Questionnaire Response, Sections A – C, dated February 18, 2013 (Gallo's IQR).

[15] *See* Petitioners' letter to the Department titled "Cost Allegation for Gallo Natale & F.lli S.r.L.," dated February 28, 2013.

petitioners regarding its COP allegation with respect to Gallo. On March 8, 2013, petitioners responded to the Department's questionnaire, and the Department initiated a cost investigation with respect to Gallo. The Department instructed Gallo to respond to section D of the initial questionnaire that was issued to Gallo on December 12, 2012.[16]

On March 11, 2013, May 9, 2013, May 24, 2013 and June 6, 2013, petitioners submitted comments regarding Gallo's questionnaire responses. Between March 18, 2013 and July 1, 2013, the Department issued supplemental questionnaires to Gallo. Gallo submitted supplemental timely questionnaire responses between April 1, 2013 and July 10, 2013. On May 15, 2013, and May 28, 2013, Gallo filed comments regarding petitioners' comments on Gallo's questionnaire responses.

Rummo

On September 24, 2012, the Department selected Rummo S.p.A. Molino e Pastificio as a mandatory respondent, and issued Rummo S.p.A. Molino e Pastificio and its affiliates Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni an initial questionnaire covering sections A through D. On November 14, 2012, Rummo S.p.A. Molino e Pastificio, Rummo S.p.A., and Lenta Lavorazione (collectively, Rummo-1) and Pasta Castiglione (PC) submitted initial questionnaire responses for section A. On November 30, 2012, Rummo-1 submitted its initial questionnaire response for sections B through C. On November 30, 2012, PC submitted its initial questionnaire response for section B.[17] On November 28, 2012, Rummo-1 and PC submitted their initial questionnaire responses for section D. Between February 21, 2013 and June 21, 2013, the Department issued supplemental questionnaires to Rummo-1. Rummo-1 submitted supplemental questionnaire responses between March 14, 2013 and July 2, 2013.

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by

[16] *See* Memo from The Team to Melissa Skinner, Director, Office 8, AD/CVD Operations titled "Petitioner's Allegation of Sales Below the Cost of Production for Pastificio Gallo Natale & F.lli S.r.L. (Gallo)," dated March 18, 2013.

[17] PC reported that it made no U.S. sales during the POR. *See* PC's Section A Questionnaire Response dated November 14, 2012, at page 2.

Instituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order.[18]

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* references are provided for convenience and CBP purposes, the written description of the merchandise subject to the *AD Order* is dispositive.

DISCUSSION OF METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), we compared constructed export price (CEP) or exported price (EP) to NV, as described in the "Constructed Export Price," "Export Price," and "Normal Value" sections of this decision memorandum, to determine whether sales of subject merchandise to the United States were made at less than NV.

As stated at 19 CFR 351.401(i), the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer established the essential terms of sale. Gallo reported the date of shipment as the date of sale for its direct sales in the home market because the quantity of a given sale is fixed when the pasta in shipped.[19] Rummo reported the invoice date as the date of sale for the home market because the date of invoice reflects the date on which the material terms of sale were finalized.[20]

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent that are covered by the description contained in the "Scope of the Order" section above and were sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product on which to base NVs for comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product on the basis of the hierarchy of reported physical characteristics: (1) product shape, (2) wheat species, (3) milling form, (4) protein content, (5) additives, and (6) enrichment.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average CEPs or EPs (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular

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[18] *See Certain Pasta From Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 74 FR 41120 (August 14, 2009).
[19] *See* Gallo's IQR, at 15.
[20] *See* Memorandum from George McMahon to the File titled "Sales Analysis Memorandum for the Preliminary Results – the Rummo Group" (Rummo Preliminary Results Sales Analysis Memorandum), dated concurrently with this memorandum.

situation. In antidumping duty investigations, the Department examines whether to use the average-to-transaction (A-to-T) method as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.[21] In recent investigations, the Department applied a "differential pricing" (DP) analysis for determining whether application of A-to-T comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[22] The Department finds the DP analysis used in these and other recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.[23] The Department intends to continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods.[24] If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For Rummo, purchasers are based on the reported consolidated customer codes, and for Gallo, the purchasers are based on the unconsolidated customer codes as reported. Regions are defined

[21] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

[22] *See* Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, entitled "Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum," "Less than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd, (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd) and Shandong Fufeng Fermentation Co., Ltd, " and "Less than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd," all dated March 4, 2013.

[23] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011-2012*, 78 FR 40692 (July 8, 2013); *Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013); *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*Steel Threaded Rod*); *Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) (*Polyester Staple Fiber*).

[24] As noted above, the DP analysis has been utilized in recent investigations to determine the appropriate comparison methodology. It has also been used in several recent antidumping duty administrative reviews. *See, e.g., Steel Threaded Rod; Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 21105 (April 9, 2013); *Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*; 2010-2012, 78 FR 20890 (April 8, 2013); and *Polyester Staple Fiber*.

using the reported destination zip codes for Rummo, and the city and state for Gallo, which are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the DP analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that passes the Cohen's d test accounts for 66 percent or more of the value of total sales, then the identified pattern of CEPs that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-to-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs or CEPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments in relation to the above-described DP approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the DP Analysis

For Gallo, the Department finds that 43.03 percent of the value of Gallo's export sales pass the Cohen's *d* test, and confirms the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the A-to-A method and an alternative method based on the A-to-T method applied to the U.S. sales which pass the Cohen's *d* test. Accordingly, the Department has determined to use the A-to-T method for U.S. sales passing the Cohen's *d* test and the A-to-A method for U.S. sales not passing the Cohen's *d* test to calculate the weighted-average dumping margin for Gallo.

For Rummo, the Department finds that 38.28 percent of Rummo's export sales pass the Cohen's *d* test, and confirms the existence of a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on the A-to-T method applied to the U.S. sales which pass the Cohen's *d* test. Accordingly, the Department has determined to use the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for Rummo.

Companies Not Selected for Individual Examination

The following six companies were not selected by the Department for individual review (non-selected companies): Alberto Poiatti S.p.A; Delverde Industrie Alimentari S.p.A; Fiamma Vesuviana S.r.L; Pastificio Zaffiri S.r.L; Tandoi Filippo e Adalberto Fratelli S.p.A; and Valdigrano di Flavio Pagani S.r.L.[25] The rate calculated for the non-selected companies is a weighted-average percentage margin which is calculated based on the publicly ranged U.S. volumes of the two reviewed companies with an affirmative antidumping duty margin.[26]

[25] *See* Respondent Selection Memo.

[26] *See* Memorandum to the File, titled, "Certain Pasta from Italy: Margin for Respondents Not Selected for Individual Examination," from George McMahon and Stephanie Moore, Case Analysts, through Eric B. Greynolds, Program Manager, dated concurrently with this memorandum.

Export Price

For the price to the United States, we used EP, as defined in section 772(a) of the Act. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the producer or exporter of subject merchandise outside of the United States before the date of importation to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. We calculated EP for Gallo's U.S. sales, as well as for a certain number of Rummo's U.S. sales, because they were made to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States and CEP was not otherwise warranted based on the facts on the record.

Gallo's U.S. sales are all *ex-works* and are shipped directly from the factory to the customer. Therefore, no movement expenses were reported. With respect to Gallo's U.S. sales, for one U.S. invoice, Gallo reported that the product was defective and that Gallo cancelled the line item and credited the customer. Gallo claims that it reported warranty expense solely to this one transaction because, not only is the credit note invoice-specific but it was also product-specific.[27] We reallocated the warranty expense amount based on the product code, and not solely to one transaction. In accordance with section 772(c)(1)(C) of the Act, we increased EP by an amount equal to the countervailing duty (CVD) rate attributed to export subsidies, as reported in Gallo's U.S. sales market database. Gallo reported the date of shipment as the date of sale for its direct sales in the U.S. market because the quantity of a given sale is fixed when the pasta in shipped.[28]

Rummo made direct sales on an EP basis. When appropriate, we adjusted prices to reflect billing adjustments, rebates and early payment discounts, quantity discounts, expenses recovered from customers and commissions. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including movement expenses incurred at the production facility, U.S. warehouse expense, inland freight, inland insurance, brokerage & handling, international freight, marine insurance, freight rebate revenue, and U.S. customs duties. In addition, when appropriate, we increased EP by an amount equal to the CVD rate attributed to export subsidies in the most recently completed CVD administrative review, in accordance with section 772(c)(1)(C) of the Act.

Rummo has reported the invoice date as the date of sale for its sales in all channels. In instances where shipment date preceded invoice date, Rummo has reported date of shipment date as the date of sale, in accordance with the Department's practice.[29]

Constructed Export Price

Rummo also made CEP sales through its U.S. affiliate, Rummo USA, through three channels of distribution (Rummo USA warehouse sales, Rummo USA direct sales and Rummo S.p.A. direct sales) to unaffiliated customers in two customer categories, retailers and distributors.

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[27] *See* Gallo's Section A-C first supplemental questionnaire response, dated April 1, 2013, at page 22.
[28] *See* Gallo's IQR, at 15.
[29] For additional detail, *see* Rummo Preliminary Results Sales Analysis Memorandum; *see, e.g., Solid Urea From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 35405 (June 17, 2011).

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, Rummo classified certain export sales of pasta to the United States as CEP sales. During the POR, Rummo made sales in the United States through its U.S. affiliate, Rummo USA, which sold the merchandise to unaffiliated customers in the United States. The Department calculated CEP based on packed prices to customers in the United States. We made deductions from the starting price, net of discounts, for movement expenses (foreign and U.S. movement, U.S. customs duty and brokerage, and warehousing) in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e). In addition, because Rummo reported CEP sales, in accordance with section 772(d)(1) of the Act, we deducted from the starting price, credit expenses, warranty expenses and indirect selling expenses, including inventory carrying costs, incurred in the United States and Italy and associated with economic activities in the United States.

Normal Value

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Gallo or Rummo's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because Gallo and Rummo's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[30] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[31] In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (*i.e.*, customer category), and the level of selling expenses for each type of sale.

[30] *See* 19 CFR 351.412(c)(2).

[31] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.[32] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible.

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[33]

In this administrative review, we obtained information from the respondents, Gallo and Rummo, regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.

Gallo reported one LOT in the home market and two channels of distribution, direct and reinvoicing. Gallo also reported five customer categories: (1) large distribution organizations (GDO) (2) distributors (3) wholesalers (4) importers, and (5) restaurants, small retailers and other small customers. In the U.S. market, Gallo reported one LOT and one channel of distribution.[34] Gallo claims that all of its sales are at a single LOT, and that it does not have sufficiently different selling activities with respect to different customer categories to warrant a difference in LOTs.[35]

For Gallo, we compared the EP LOT to the home market LOT and preliminarily find that the selling functions performed for sales in both markets are similar, with no significant variation across the broader categories of sales process/marketing support, inventory maintenance, and quality assurance/warranty services. Consequently, for Gallo, we are matching the EP sales to sales at the same LOT in the home market.

Rummo reported that there was a single level of trade for its sales in the home market and claimed two levels of trade in the U.S. market. Rummo provided information regarding channels of distribution and selling activities performed for different categories of customers.[36] The charts

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[32] *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001).
[33] *See Plate from South Africa*, 62 FR at 61732-33.
[34] *See* Gallo's IQR, at pages 8-14 and Exhibit 4.
[35] *Id.*, at 52.
[36] *See* Rummo's November 14, 2012, Section A responses, at Exhibits A-7, A-8, and A-9; *see also* Pasta Castiglione's November 14, 2012, Section A responses, at Exhibits A-3 and A-4.

of specific selling functions submitted by Rummo and its affiliate Pasta Castiglione indicate the selling functions performed for sales in both markets, and demonstrate that there are greater sales activities performed in the home market as compared to Rummo's U.S. CEP sales.[37] We have preliminarily determined that these differences support a finding that the home market sales are made at a different and more advanced stage of marketing than the level of trade of Rummo's CEP sales. Further, we are unable to quantify a LOT adjustment between the different LOTs existing in the U.S. and home markets. Accordingly, we have made a CEP offset to NV pursuant to section 773(a)(7)(B) of the Act.[38]

With respect to Rummo's EP sales through channel 3 (Rummo Group S.p.A. Direct Sales), Rummo reported that such sales were made at LOT 1. Based on our analysis of Rummo's selling activities, we preliminarily find that its home market sales were made at LOT 1, *i.e.*, at an equivalent level of trade as US LOT 1.

C. Gallo's Reinvoiced Sales

With respect to Gallo's reinvoiced sales, Gallo sells and ships pasta to the distributors. Subsequently, the distributors sell and ship the pasta to their customers with a delivery note, but without issuing an invoice. Instead, the distributors accumulate documents pertaining to the shipments and inform Gallo of such outbound shipments. Gallo then issues credit notes to the distributors in the quantity and value of such outbound shipments. Gallo also issues an invoice to the ultimate customer, who is then obligated to pay for the pasta. Gallo reported that, for some of the reinvoiced transactions, it does not know and, thus, does not keep records of, all the product codes of the pasta that the distributors sold to the ultimate customer. Therefore, in such instances, Gallo records these as sales of normal pasta. Gallo contends that this is acceptable because only normal pasta is subject to reinvoicing and all normal pasta has the same unit price at any given time.[39]

Gallo explained that it created a KGCREDH field, which represents the quantity of pasta credited to the given distributor attributable to the particular line item. For credit notes with product codes, the attribution to KGCREDH is made on the product code level. For credit notes without product codes, Gallo assume that the product mix in the credit notes is in the same proportion as the CONNUMS of normal pasta in the cost-of-production database, and Gallo assign the quantities of KGCREDH by CONNUM according to that ratio.[40] We have preliminarily determined that Gallo's allocation methodology appears to be reasonable and non-distortive and we have accepted it for purposes of these preliminary results. Therefore, we have included all reinvoiced sales in our margin analysis.[41]

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[37] *See* Rummo's March 26, 2013, Section A-C supplemental response, at Exhibits SS1-6 and SS1-7, and A-9; *see also* Rummo's July 2, 2013, Section A-C supplemental response, at Exhibit SS2-1, and Pasta Castiglione's November 14, 2012, Section A response, at Exhibit A-4.

[38] For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the analysis contained in the Memorandum from Stephanie Moore to the File titled "Sales Analysis Memorandum for the Preliminary Results – Gallo" (Gallo Preliminary Results Sales Analysis Memorandum); *see also* Rummo Preliminary Results Sales Analysis Memorandum.

[39] *See* Gallo's IQR, at 9 -10.

[40] *Id.*, at 11.

[41] For further discussion, *see* Gallo's Preliminary Sales Analysis Memorandum.

D. Gallo's Warranty Expenses

Gallo explained that on occasion, packages of pasta may be broken during the course of delivery to customers. The broken pasta, which is included in reported production quantities, is returned to Gallo and Gallo issues a credit note to the customer. Gallo resells the broken pasta as animal feed. Gallo reported that the revenue from the subsequent sales of the broken pasta in the home market was used to calculate its reported scrap offset.

As discussed below, we preliminarily determine that because the broken pasta was not generated during the production process and is included in the reported production quantities, it is not appropriate for Gallo to claim a scrap offset against the cost of direct materials for the revenues received from the sale of broken and returned pasta. Accordingly, we have disallowed the scrap offset and recalculated Gallo's reported per-unit total cost of manufacturing (TOTCOM) amounts. In addition, we have deducted the revenue from the sale of the broken pasta from Gallo's claimed warranty expenses.

E. Cost of Production

For Rummo, the Department disregarded certain home market sales priced below the COP in the last administrative review of the order completed prior to the initiation of this review.[42] Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Rummo made sales of the subject merchandise in its home market at prices below the COP in the current review period. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Rummo.

For Gallo, based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that Gallo's sales of pasta in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Gallo's sales were made at prices below its COP.[43]

We examined the cost data for Gallo and Rummo and determined that the quarterly cost methodology is not warranted in this review. Accordingly, we have applied our standard methodology of using annual costs based on Gallo's and Rummo's reported data.

F. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expense, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Gallo and Rummo in their questionnaire responses for the COP calculation except the following adjustments.

[42] *See Final Results of the 15th AR.*
[43] *See* Memorandum to the File titled "The Petitioner's Allegation of Sales Below the Cost of Production for Gallo Natale & F.lli S.r.l," dated March 18, 2013.

With respect to Gallo, we preliminarily determine that it is not appropriate for Gallo to claim a scrap offset against the cost of direct materials for the revenues it received from the sale of broken pasta which had been returned by the customer because it was broken. Therefore, we recalculated Gallo's reported per-unit total cost of manufacturing (TOTCOM) and the per-unit general and administrative expenses and financial expenses using a TOTCOM figure that excludes the scrap offset.[44]

With respect to Rummo, we revised the calculation of the average POR semolina purchase costs to include all semolina purchases in the calculation and to reflect the actual purchase cost rather than the transfer price of semolina transferred between the collapsed affiliates. We then revised the application of the yield loss to the average POR semolina purchase costs to calculate the per-unit costs of semolina consumed in pasta production. Further, we revised Rummo's SG&A rate to reclassify interest expense from SG&A to financial expense.[45]

G. Test of Home Market Prices

As required under 773(b)(2) of the Act, we compared the weighted-average of the COP for the POR to the per-unit price of the home market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net home market prices for the below cost test by subtracting from the gross unit price all applicable movement charges, direct and indirect selling expenses, and packing expenses.

H. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard the below-cost sales of that product because we determine that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a model are at prices less than the COP, we disregard the below cost sales because (1) they are made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and (2) based on our comparison of prices to the weighted average of their COP, they are at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

Our cost test indicated that Gallo and Rummo had certain home market sales that were sold at prices below the COP within an extended period of time in substantial quantities and were at prices which would not permit the recovery of all costs within a reasonable period of time.[46]

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[44] *See* Memorandum from Kristin Case to Neal M. Halper, Director of Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Pastificio Gallo Natale & F.lli S.r.L (Gallo)" (Gallo Cost Calculation Memo), dated concurrently with this notice.
[45] *See* Memorandum from Heidi Schriefer to Neal M. Halper, Director of Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – the Rummo Group" (Rummo Cost Calculation Memo), dated concurrently with this notice at 2.
[46] *See* Gallo and Rummo's Preliminary Results Sales Analysis Memorandum.

Thus, we have disregarded certain below-cost sales and used the remaining sales as the basis for NV, in accordance with section 773(b)(1) of the Act.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.[47]

Recommendation

We recommend applying the above methodology for these preliminary results.

Agree ✓ Disagree ______

Paul Piquado
Assistant Secretary
for Import Administration

30 July 2013
(date)

[47] *Id.*