A-475-818
Administrative Review
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DATE: February 10, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Certain Pasta from Italy

SUBJECT: Issues and Decision Memorandum for the Final Results of the 17th Antidumping Duty Administrative Review: Certain Pasta from Italy; 2012-2013

I. Summary

This review[1] initially covered two mandatory respondents and eight companies not selected for individual examination (hereinafter referred to as the non-selected companies).[2] We rescinded the review with respect to two non-selected companies in the *Preliminary Results*.[3] Based on our analyses of comments which we received in the case and rebuttal briefs submitted by Petitioners[4] and the two mandatory respondents, these final results differ from the *Preliminary Results*.

Specifically, we find that 18.48 percent of Rummo's U.S. sales passed the Cohen's *d* test, and therefore, the test does not confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. Accordingly, the Department has not considered an alternative comparison methodology and determined to

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* (*Initiation Notice*), 78 FR 53129 (August 28, 2013).
[2] The mandatory companies are Molino e Pastificio Tomasello S.p.A. (Tomasello), and Rummo S.p.A. Molino e Pastificio and its affiliates Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni (collectively, Rummo). The eight non-selected companies are Alica srl (Alica); Dalla Costa Alimentare srl; Delverde Industrie Alimentari S.p.A.; Ghigi Industria Agroalimentare in San Clemente srl; Pasta Lensi S.r.l (Lensi); Pasta Zara S.p.A.; Pastificio Toscano srl; and Valdigrano di Flavio Pagani S.r.L.
[3] In the Preliminary Results, we rescinded reviews for Alica and Lensi. *See Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission*; 2012-2013 (*Preliminary Results*), 79 FR 50614 (August 25, 2014) and accompanying Preliminary Decision Memorandum at 4.
[4] The Petitioners are New World Pasta Company and Dakota Growers Pasta Company.

use the average-to-average (A-to-A) method to calculate Rummo's weighted-average dumping margin for these final results.

With respect to Tomasello, we find that 34.88 percent of its U.S. sales passed the Cohen's *d* test, and therefore the test confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. Accordingly, the Department determines to use the average-to-transaction (A-to-T) method for the U.S. sales passing the Cohen's *d* test and the A-to-A method for the U.S. sales not passing the Cohen's *d* test to calculate Tomasello's weighted-average dumping margin for these final results.

II. Background

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty (AD) order on certain pasta from Italy on August 28, 2013, for each of the aforementioned respondents.[1] On August 25, 2014, the Department published the *Preliminary Results* of this administrative review and invited interested parties to comment.[2]

On September 24, 2014, Rummo and Tomasello submitted case briefs. On September 24, 2014, Rummo also requested a hearing. On October 3, 2014, Petitioners filed a rebuttal brief with respect to Rummo. On November 13, 2014, the Department held a public hearing.[3] On December 19, 2014, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from December 23, 2013 to February 21, 2014.[4]

The period of review (POR) is July 1, 2012, through June 30, 2013.

III. 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 all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union (EU)

[1] *See Initiation Notice*.
[2] *See Preliminary Results.*
[3] *See* the hearing transcript dated November 13, 2014, which is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at http://access.trade.gov and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.
[4] Because February 21, 2015, is a Saturday, the deadline for the final results will be Monday, February 23, 2015.

authorized body and accompanied by a National Organic Program import certificate for organic products. [5] Effective July 1, 2008, gluten free pasta is also excluded from this order.[6]

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union (EU) authorized body and accompanied by a National Organic Program import certificate for organic products. [7] Effective July 1, 2008, gluten free pasta is also excluded from this order.[8]

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 subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the AD order is dispositive.

IV. List of Comments

Company-Specific Issues

Comment 1: Consideration of an Alternative Comparison Method in Administrative Reviews
Comment 2: The Utilization of the Cohen's d Test in Differential Pricing Analysis
Comment 3: Application of the Average-to-Transaction Method to Non-dumped U.S. Sales
Comment 4: Definition of "Purchaser" in the Differential Pricing Analysis
Comment 5: Correction for Rummo's U.S. Direct Selling Expenses
Comment 6: The Commission Offset for Rummo's Constructed Export Price (CEP) Sales
Comment 7: Treatment of Tomasello's Billing Adjustments

V. Analysis of Comments

A. Rummo

Comment 1: Consideration of an Alternative Comparison Method in Administrative Reviews

Rummo:

- Rummo submitted several comments regarding the inappropriateness of the Department's alternative comparison method in general and its application in this case.[9]

[5] On October 10, 2012, the Department revised the "Scope of the Order" to recognize the EU-authorized Italian agents for purposes of the antidumping and countervailing duty orders on pasta from Italy. *See* Memorandum from Yasmin Nair to Susan Kuhbach, titled "Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy," dated October 10, 2012, which is on file in the Department's Central Records Unit.
[6] *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). (*Pasta CCR*)
[7] On October 10, 2012, the Department revised the "Scope of the Order" to recognize the EU-authorized Italian agents for purposes of the antidumping and countervailing duty orders on pasta from Italy. *See* Memorandum from Yasmin Nair to Susan Kuhbach, titled "Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy," dated October 10, 2012, which is on file in the Department's Central Records Unit.
[8] *See Pasta CCR.*
[9] *See* Rummo's case brief at 12-18.

Petitioners:

- Petitioner submitted comments in support of the Department's differential pricing analysis.[10]

Department's Position: For the final results of this review, the Department has used the standard A-to-A method to calculate Rummo's weighted-average dumping margin.[11] Therefore, the comments regarding the use of an alternative comparison method based on the A-to-T method are moot.

Comment 2: The Utilization of the Cohen's *d* Test in Differential Pricing Analysis

Rummo:

- Rummo submitted several comments regarding the inappropriateness of the Department's utilization of the Cohen's *d* test in the differential pricing analysis.[12]

Petitioners:

- Petitioners did not comment on this issue.

Department's Position: For the final results of this review, the Department has used the standard A-to-A method to calculate Rummo's weighted-average dumping margin.[13] Therefore, the comments regarding the Cohen's *d* test used in differential pricing analysis are moot.

Comment 3: Application of the A-toT Method to Non-dumped U.S. Sales

Rummo:

- Rummo submitted several comments regarding the application of the A-to-T method to non-dumped U.S. sales.[14]

Petitioners:

- Petitioners did not comment on this issue.

Department's Position: For the final results of this review, the Department has used the standard A-to-A method to calculate Rummo's weighted-average dumping margin.[15] Therefore, the comments regarding application of the A-to-T method to non-dumped U.S. sales are moot.

Comment 4: Definition of "Purchaser" in the Differential Pricing Analysis

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[10] *See* Petitioners' rebuttal brief at 4-7.

[11] *See* Memorandum to the File, Through Eric B. Greynolds, Program Manager, Office III, from Cindy Robinson, Case Analyst, Office III, titled "Certain Pasta from Italy: Calculation Memorandum – the Rummo Group," dated December 23, 2014 (Rummo's Final Calc. Memo), for details.

[12] *See* Rummo's case brief at 7-11.

[13] *See* Rummo's Final Calc. Memo for details.

[14] *See* Rummo's case brief at 11-12.

[15] *See* Rummo's Final Calc. Memo for details.

Rummo:

- In the *Preliminary Results,* the Department erred by using a consolidated customer code of a particular U.S. customer (hereinafter referred to as Company X) for related customers, which effectively treated these customers as one "purchaser" for purpose of conducting its DP analysis. The correction of such an error will result in the percentage of sales falling below 33 percent, and therefore the A-to-A method will be used for all of Rummo's U.S. sales. The DP analysis evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The implicit assumption for the use of the consolidated customer code is that the Department considers all related U.S. purchasing entities to effectively be "one" purchaser, which theoretically could be a "target" for any respondent's "differential pricing" practices during the review period.
- There is substantial evidence on the record demonstrating that Rummo negotiates prices and rebates independently with each separate legal entity of Company X, and that Rummo maintains price lists that are distinct for each separate legal entity of Company X.
- The empirical evidence Rummo provided also demonstrates that pricing to each unconsolidated customer is unique, and prices to the various unconsolidated customers vary significantly.
- Therefore, it is inappropriate for the Department to treat all of the related entities as one purchaser for DP analysis purposes.

Petitioners:

- The record supports the Department's preliminary decision to consolidate the operations of Company X with multiple locations.
- There is no basis -- legally or factually -- for Rummo to argue that the Purchasing operations of Company X constitute "separate entities," when the purchaser is in fact one single entity that reports consolidated financial results.
- The differences in list prices among-and within-various locations of a particular purchasing entity do not provide a basis for dividing a unique business entity into multiple "purchasers."
- Multiple levels of rebates provided to the same company do not create multiple purchasers.
- The Department should continue to use the consolidated customer code in the final results to define the purchaser for Company X.

Department's Position: We find that the record supports Rummo's arguments that the individual entities within Company X, reported as one "consolidated customer code" and as separate customer codes in Rummo's U.S. sales data, received different prices and rebates during the POR.[16] Rummo also stated in its section C questionnaire response that it negotiated its rebate policy independently with the entities within Company X, and, therefore, there are differing levels of rebates provided to each of them.[17]

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[16] *See* Exhibits A-12 and A-13 of Rummo's section A questionnaire response dated November 13, 2013.
[17] *See* page C-7 and Exhibits C-19 of Rummo's section C questionnaire response dated November 27, 2013.

Furthermore, in its response to the Department's first sections A-D supplemental questionnaire, Rummo stated that: "{R}ebates are negotiated with each specific entity, rather than for the group as a whole. As each particular entity has its own needs regarding price, the negotiated rebate percentages are simply a reflection of Rummo's ability to meet those customer needs."[18]

Accordingly, with respect to Company X, because Rummo demonstrated that it maintains price lists and rebates that are distinct for each customer code within Company X, we are using the individual customer code, instead of the consolidated customer code, in our DP analysis for these final results. We normally require respondents to consolidate customer codes for a customer with multiple delivery points or names for purposes of our DP analysis, but we find that Rummo has adequately shown that these separate entities represent distinct purchasers that should be taken into account in the DP analysis. However, with regard to Rummo's other U.S. customers with multiple customer codes for a given consolidated customer code, we continue to use the consolidated customer code to define the purchaser in the DP analysis in these final results, because Rummo made no claim that these other consolidated customer codes should be broken down into separate purchasers and provided no evidence that would support such treatment.[19]

As a result of this change, we find that 18.48 percent of Rummo's U.S. sales passed the Cohen's *d* test, and therefore, does not confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. Accordingly, the Department has not considered an alternative comparison methodology and determined to use the A-to-A method to calculate Rummo's weighted-average dumping margin for these final results. *See* Rummo's Final Calc. Memo.[20]

Comment 5: Correction for Rummo's U.S. Direct Selling Expenses

Rummo:

- The Department erred by including the two reported U.S. direct selling expenses, DIRSELlU and DIRSEL2U, as both a deduction to the net U.S. CEP, and as a circumstance of sale adjustment increase to the comparison market normal value (NV) used for comparisons with U.S. CEP sales. As a result, these two direct selling expenses are double counted.
- To correct this error, the Department should modify its SAS code in the Margin Program by removing DIRSEL1U and DIRSEL2U from the calculation of net U.S. price.

[18] *See* page 21 of Rummo's first supplemental sections A-D questionnaire response dated March 20, 2014.
[19] *See* SAS Margin Program at Part 2-B.
[20] *See* Rummo's Final Calc. Memo for details; *see also* Rummo SAS Margin Program log at Part 11 and the Macros Program US-13, and Rummo SAS Margin Output for details.

Petitioners:

- The Department should continue to deduct the U.S. direct selling expenses related to the CEP sales when establishing the net U.S. price expenses in accordance with its regulations.
- Expenses reported by Rummo in DIRSELIU and DIRSEL2U are directly related to its U.S. sales and therefore, must be removed from the calculation of U.S. net price. It is inappropriate for the Department to modify its final margin analysis as Rummo requests.
- If the Department agrees with Rummo on this point, then the Department should modify the programming language for the calculation of NV for comparison to CEP sales. The Department should also modify the language related the calculation for CEP profit to avoid double-counting the same direct selling expenses. Alternatively, if the Department does not wish to modify the macros program of the margin calculation program, it could redefine the variables (*i.e*., CEPOTHER and USDIRSELL) earlier in the program.

Department's Position: Upon reexamining our SAS margin programs, we find that in our *Preliminary Results,* we inadvertently double counted Rummo's U.S. direct selling expenses, DIRSELlU and DIRSEL2U.

Specifically, in our preliminary Margin Program, we first included both DIRSELlU and DIRSEL2U in the U.S. direct selling expense variable "USDIRSELL,"[21] which is subsequently added to the calculation of NV, as a circumstance of sale (COS) adjustment.[22] We also included them in the "other CEP expenses variable (CEPOTHER)," which is subsequently deducted from the calculation of Rummo's CEP U.S. net price, "USNETPRI."[23] Because the same amount of U.S. direct selling expenses included in the Margin Program to lower Rummo's calculated net U.S. CEP price, is also included in a Macros sub-program to increase Rummo's calculated NV, we inadvertently double counted Rummo's direct selling expenses in our *Preliminary Results.* Accordingly, we revised our SAS margin programs by setting USDIRSELL to zero to avoid double counting in these final results. *See* the final Margin Program at Part 4-A.

Comment 6: The Commission Offset for Rummo's Constructed Export Price (CEP) sales

Rummo:

- Due to a clerical error in the Department's standard margin programming language, the Department inadvertently failed to apply a commission offset on Rummo's U.S. CEP sales transactions.[24]

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[21] The COS adjustments variable, USDIRSELL, excludes imputed credit (USCREDIT) and any direct selling expenses incurred in the U.S. on CEP sales, and include all direct selling on export price (EP) sales and any direct selling on CEP sales NOT incurred in the U.S. *See* the final Margin Program at Part 4-A.

[22] *See* Macro Program US-15_B, which calculates NV and dumping margin.

[23] *See* Margin Program at Part 4.

[24] Rummo provides detailed references to the relevant programming codes regarding commissions in the margin and macro programs, as applied in the *Preliminary Results*. *See* the section titled "Description of the Department's Ministerial Programming Error in NV" in Rummo's case brief at 25-29.

- The Department's aggregate variable USCOMM, which is used to evaluate whether U.S. commissions were reported in the Department's commission offset programming logic, is always zero for CEP sales with U.S. commissions reported.
- The Department's commission offset logic is only evaluating these conditions for EP U.S. sales where U.S. commissions are reported and not for U.S. CEP sales where U.S. commissions are reported. As a consequence, no commission offsets are being correctly calculated or applied to U.S. CEP sales, because the U.S. commissions on CEP sales instead were moved to the aggregate margin variable in the margin program (CEPOTHER).
- The Department's program should be modified to create a new data variable in its margin program that would consider all U.S. commissions reported on U.S. sales and that this new variable would be used to evaluate and apply the commission offsets for both EP and CEP U.S. sales.
- If the Department makes these changes in its macros and margin programs, the commission offsets will be applied correctly to both EP and CEP sales.

Petitioners:

- Rummo incorrectly claims that the Department's current margin program does not apply a commission offset to its CEP sales. As acknowledged by Rummo, the Department overhauled the standard market economy margin calculation programs in the latter half of 2012 to properly calculate commission offsets for CEP sales.[25] The Department is using its standard macro programming and is following the guidelines available to it, by assigning CEP commissions to the correct variable stated in the Department's standard margin program.
- If the Department agrees that a change should be made in its assignment of the variable that evaluates commissions on CEP sales, there is an alternate method that does not require changing the macro programming code that is used across all market economy cases, as suggested by Rummo.[26] Specifically, instead of assigning the variable that evaluates commissions on CEP sales (CEPOTHER), the Department should assign the variable that evaluates commissions on CEP sales to the variable that accounts for indirect selling expenses reported for CEP sales (CEPISELL).
- This method of accounting for commissions on CEP sales was clearly contemplated by the Department, as clearly noted in the comment portion of the margin program used in the *Preliminary Results*.

Department's Position: We disagree with Rummo that the Department inadvertently failed to apply the commission offset on Rummo's U.S. CEP sales transactions. The Department's standard market-economy margin calculation program, as implemented in this review, properly calculates adjustments for commissions on CEP sales.[27]

There are two types of commissions that are possible for U.S. sales, commissions that are incurred in the United States and commissions that are not incurred in the United States. In Rummo's supplemental response, Rummo stated that "Rummo confirms that, with respect to

[25] *See* Petitioners' Case Brief, at 2 (citing to Rummo's Case Brief, at 5, footnote 1).
[26] *Id.*, at 2-3
[27] *See* the Margin Program at Part 4.

commissions reported in COMM1U and COMM2U for CEP sales, these commission expenses are incurred in the United States after importation.[28]

The sections of the SAS macro program and the three aforementioned conditions cited by Rummo, relate to commissions that are incurred outside the United States. We find that such language is not relevant for adjustments applied to Rummo's commissions on its U.S. CEP sales. Instead, Rummo's commissions, which are incurred in the United States, are deducted from the respective U.S. prices with profit, in accordance with the statute. Specifically, section 772(d)(1)(A) of the Act identifies the adjustments related to commissions for CEP sales, which states, in part:

> (d) Additional Adjustments to Constructed Export Price. For purposes of this section, the price used to establish constructed export price shall also be reduced by --
> (1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)
> (A) commissions for selling the subject merchandise in the United States;

Consistent with section 772(d)(1)(A) of the Act, the Department's standard market-economy margin calculation program used in the instant review makes the adjustment for commissions on sales of subject merchandise in the United States. *See* the net price calculations at Part 4 of the SAS Margin Program. Therefore, we find that no changes to the margin program regarding the accounting for commissions on Rummo's CEP sales are necessary for these final results.[29]

B. Tomasello

Comment 7: Treatment of Tomasello's Billing Adjustments

Tomasello:

- Tomasello made a clerical error in its description of billing adjustments when it stated that "billing adjustments that reduce the net price are reported with a minus sign, insofar as the Department's program adds the billing adjustment unit value to the gross unit price."[30]
- Inspection of the home market (HM) sales database demonstrates that all billing adjustments were reported as positive numbers, thus, the three billing adjustments should have been subtracted from the net price.
- All of the reported billing adjustments are from credit notes.[31]

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[28] *See* Rummo's Section A questionnaire response dated November 13, 2013, at page A-23 where Rummo stated that "{f}or Channel 1 and Channel 2 sales, Rummo USA uses independent commission agents to make sales in the United States. The commission expenses are reported in the fields COMMl U and COMM2U;" *see also* Rummo's Section C questionnaire response dated November 27, 2013, at 29-30 and Exhibit C-11.
[29] *See* Rummo's Margin Program Log.
[30] *See* Tomasello's Sections B - D questionnaire response dated December 6, 2013, at 22.
[31] *See id*., at Exhibit 3, 1 – 6.

- To ensure accuracy of the final results, the Department should amend the margin program by subtracting billing adjustments from the net price in the margin calculation.

Petitioners:

- Petitioners did not comment on this issue.

Department's Position: We agree with Tomasello that a review of the HM sales database indicates that the billing adjustments were reported as positive numbers. We also agree that Tomasello's questionnaire response indicates that all of the reported HM billing adjustments are from credit notes, which effectively reduces customers' prices.[32] Tomasello did not comment on its billing adjustments reported in the U.S. sales database. However, a review of the U.S. sales database also indicates that the billing adjustments were reported as positive numbers.[33] Therefore, in these final results to be consistent with regard to our treatment of Tomasello's HM and U.S. billing adjustments, we subtracted the billing adjustments in both markets from the gross unit price in the margin calculations.

As a result of this change from the *Preliminary Results* concerning the treatment of billing adjustments in the HM and U.S. markets, the Department considered an alternative comparison methodology to calculate Tomasello's weighted-average dumping margin for these final results.[34] The Department described the comparison methodology in the *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 5-7. As a result of the application of this methodology, we found that 34.88 percent of Tomasello's U.S. sales passed the Cohen's *d* test, and therefore confirms the existence of a pattern of prices 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 there is a greater than 25 percent relative change 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 determines to use the A-to-T method for the U.S. sales passing the Cohen's *d* test and the A-to-A method for the U.S. sales not passing the Cohen's *d* test to calculate Tomasello's weighted-average dumping margin for these *Final Results.*

[32] *See id*., at 22.
33 *See* Tomasello's U.S. sales market database submitted on March 17, 2014.
[34] *See* Sales Analysis Memorandum for the Final Results for Molino e Pastificio Tomasello S.p.A. (Tomasello).

VI. 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 of this review and the final weighted-average dumping margins in the *Federal Register*.

Agree: ✓ Disagree: ______

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

10 FEBRUARY 2015
Date