




UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D.C. 20230

A-475-818  
Administrative Review  
POR: 07/01/14 – 06/30/15  
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**DATE:** December 12, 2016

**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 19<sup>th</sup>  
Administrative Review of the Antidumping Duty Order on Certain  
Pasta from Italy; 2014-2015

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I. Summary

We analyzed the case and rebuttal briefs submitted by the Petitioners<sup>1</sup> and mandatory respondents.<sup>2</sup> Based on our analysis of comments received, these final results differ from the *Preliminary Results*<sup>3</sup> for Indalco, Liguori and the 19 non-selected companies. We recommend that you approve the positions described in the *Discussion of Interested Party Comments*, section II *infra*.

II. Background

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty order on certain pasta from Italy on September 2, 2015.<sup>4</sup> On August 7, 2016, the Department published the *Preliminary Results* of this administrative review and invited

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<sup>1</sup> Petitioners are New World Pasta Company and Dakota Growers Pasta Company.

<sup>2</sup> Mandatory respondents are Industria Alimentare Colavita S.p.A. (Indalco) and Liguori Pastificio Dal 1820 (Liguori).

<sup>3</sup> See *Certain Pasta From Italy: Preliminary Results of Antidumping Duty Administrative Review*; 2014–2015, 81 FR 53404 (August 12, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 53106 (September 2, 2015) (*Initiation Notice*).



interested parties to comment.<sup>5</sup> On August 31, 2016, the Department revised the briefing schedule.<sup>6</sup> On September 7, 2016, Liguori submitted a request for a hearing, which was withdrawn on October 6, 2016.<sup>7</sup> On September 19, 2016, Petitioners, Indalco, and Liguori submitted their case briefs. On September 26, 2016, Petitioners, Indalco, and Liguori submitted their rebuttal briefs.

In the *Preliminary Results* and accompanying Preliminary Decision Memorandum, we stated that the Department would follow up with Customs and Border Protection (CBP) concerning Liguori's statement that PAM S.p.A. (PAM), a firm with whom Liguori was affiliated during the POR, did not make any sales of subject merchandise to the United States during the POR. On August 31, 2016, we placed on the record U. S. entry documents concerning PAM, and released to interested parties under administrative protective order, a memorandum requesting that comments be submitted in the case brief of the respective parties. No interested parties filed comments in their case briefs concerning the entry documents. Our analysis of the CBP data confirms that PAM did not make any sales of subject merchandise to the United States during the POR.<sup>8</sup>

The period of review (POR) is July 1, 2014, through June 30, 2015.

### 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) authorized body and accompanied by a National Organic Program import certificate for organic products. Effective July 1, 2008, gluten free pasta is also excluded from this order.<sup>9</sup>

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).

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<sup>5</sup> See *Preliminary Results*, 81 FR at 53406.

<sup>6</sup> See the Department's Memorandum to Interested Parties, "Postponement of Briefing Schedule," dated August 31, 2016.

<sup>7</sup> See Liguori's letter titled, "Certain Pasta from Italy: Withdrawal of Hearing Request of Liguori Pastificio dal 1820 S.p.A.," dated October 6, 2016.

<sup>8</sup> See Memorandum to the File, titled, "2014-2015 Antidumping Duty Administrative Review of Certain Pasta from Italy – Final Results: Sales and Cost Analysis Memorandum for Liguori," (Liguori's Final Calculation Memorandum) for further discussion of business proprietary information, which is dated concurrently with this memorandum.

<sup>9</sup> 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).

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

##### Indalco

- Comment 1: General and Administrative (G&A) Ratio
- Comment 2: Interest Expense Ratio
- Comment 3: Cost of Goods Sold for G&A and Interest Expense Ratios
- Comment 4: Adjustment to the Cost of Manufacturing
- Comment 5: Correct Assessment Rate
- Comment 6: Level of Trade

##### Liguori

- Comment 7: Depreciation of Idled Asset
- Comment 8: Semolina Costs
- Comment 9: Home Market Inland Freight
- Comment 10: Shape Classification

#### V. Analysis of Comments

##### *A. Indalco*

##### **Comment 1: General and Administrative (G&A) Expense Ratio**

##### *Petitioners' Arguments*

- In the *Preliminary Results*, the Department recalculated Indalco's G&A and interest expense rates by reclassifying foreign exchange gains and losses to the net interest expense calculation and by adding certain expense items for two particular accounts in the G&A expense calculations.<sup>10</sup>
- However, in performing its calculations, the Department incorrectly included the POR figures instead of fiscal year (FY) expenses in the G&A expense rate calculation.
- Specifically, the Department should revise the G&A expense rate calculation for Indalco to account for the correct FY 2014 amounts for the added G&A items "Fasi Contribution" and "Medical Examination" as reported in Indalco's 2014 FY trial balance.

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<sup>10</sup> Certain account related information is considered "Business Proprietary Information," (BPI). For details, see Memorandum to the File titled, "2014-2015 Antidumping Duty Administrative Review of Certain Pasta from Italy – Preliminary Results: Sales and Cost Analysis Memorandum for Indalco" dated August 5, 2016 (Indalco Preliminary Calculation Memorandum); *see also* Memorandum to the File titled, "2014-2015 Antidumping Duty Administrative Review of Certain Pasta from Italy – Final Results: Sales and Cost Analysis Memorandum for Indalco" dated concurrently with this memorandum (Indalco Final Calculation Memorandum).

### *Indalco's Rebuttal*

- Indalco does not dispute that the Department incorrectly used POR and not FY amounts for the two aforementioned accounts, but asserts that the figures suggested by Petitioners would overstate the G&A ratio. Specifically, Petitioners' proposed G&A expenses omit a certain account, which has a credit balance.<sup>11</sup>
- Petitioners were not correct to omit the aforementioned account because the credit in question relates to operations of the company as a whole. Furthermore, this account was verified by the Department.
- The account in question consists of four items, and each of these items should be evaluated separately. Indalco asserts that none of them represents interest income entirely. In contrast to Petitioners' proposed recalculation, only one of the four items includes a portion that could be considered a component of the total G&A expenses because this item does not constitute a loan receivable or any other kind of interest-generating assets to the company.
- The proposed G&A expense rate calculation in Petitioners' case brief is a partial function of the amount of "Extraordinary Expenses." However, the "Extraordinary Expenses" in Petitioners' G&A expense rate calculation is already included in the "G&A Expenses" amount, as indicated in the cost verification exhibit (CVE)-2.<sup>12</sup> Thus, the Department should not include the figure cited by Petitioners in the G&A summary of their brief because it would result in double-counting this particular expense.

**Department's Position:** We agree with the Petitioners and Indalco, in part. Specifically, consistent with the Department's practice, we agree that the Department should rely on the most recently completed FY G&A amounts rather than the POR amounts in recalculating Indalco's G&A ratio.<sup>13</sup> However, we disagree that the Department should include "Extraordinary Expenses" in the G&A calculations, as proposed by Petitioners, because the Department verified that the extraordinary expenses amount in question is already included in Indalco's reported G&A expenses.<sup>14</sup>

We agree with Indalco that the certain accounting offsets included in Indalco's financial statement should be included as an offset to G&A expenses, because such items pertain to the general operations of the company as a whole. The four items are reported in the verification report.<sup>15</sup>

### **Comment 2: Interest Expense Ratio**

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<sup>11</sup> The name of this account, which is identified in Indalco's Rebuttal Brief at page 2, is BPI.

<sup>12</sup> See "Verification of the Cost and Sales Response of Industria Alimentare Colavita S.p.A. (Indalco) in the Antidumping Administrative Review of Certain Pasta from Italy," dated July 22, 2016 (Indalco Verification Report).

<sup>13</sup> See e.g., the Department's 2015 Antidumping Duty Manual, Chapter 9: Cost of Production and Constructed Value, at page 7, which states, "G&A expenses are computed on an annual basis as a ratio of total company-wide G&A expenses divided by total company-wide cost of goods sold (COGS). In calculating the company's G&A expense ratio, the respondent uses the full-year G&A expense and COGS reported in the company's unconsolidated, audited fiscal year financial statements for the fiscal year that most closely corresponds to the POI or POR."

<sup>14</sup> See Indalco Verification Report at Exhibit CVE-2.

<sup>15</sup> *Id.*, at pages 19-20 and Exhibit CVE-2.

### *Petitioners' Arguments*

- In the *Preliminary Results*, the Department recalculated Indalco's net interest expense rate by reclassifying from the G&A expenses foreign exchange gains and losses. However, in the recalculation, the Department did not account for the full interest and other financial expenses as reported in Indalco's financial statements.
- The Department should revise the net interest expense rate calculation for Indalco to account for the full interest and other financial expenses as reported in Indalco's FY 2014 financial statements.

### *Indalco's Rebuttal*

- Indalco does not dispute the numerator of the interest expense ratio, as Indalco makes the same reclassifications from G&A to interest expenses as Petitioners and confirms the same figure stated by Petitioners.<sup>16</sup>

**Department's Position:** We agree with Petitioners that the Department should rely on Indalco's 2014 FY financial statements in its recalculation of Indalco's net interest expense rate, consistent with the Department's practice of including foreign exchange gains and losses in financial expenses.<sup>17</sup> Accordingly, and in the absence of objection by Indalco, we have revised the net interest expense rate calculation for Indalco to account for the full interest and other financial expenses as reported in Indalco's FY 2014 financial statements.

### **Comment 3: Cost of Goods Sold for the G&A and Interest Expense Ratios**

#### *Petitioners' Arguments*

- When calculating the G&A and financial expense rates, the denominator of these rates should be on an equivalent basis as the product control number (CONNUM)-specific total cost of manufacturing (TOTCOM) to which the rates will be applied.<sup>18</sup>
- By failing to reduce the COGS denominator by the correct amounts for certain cost and expense items, as outlined by Petitioners in their case brief,<sup>19</sup> Indalco overstated the COGS denominator, and as a result, understated both its reported G&A and interest expense rates.
- A significant portion of the reported G&A expenses are attributable to personnel expenses identified as "G&A from Labor Cost." The personnel costs in the "G&A from Labor Cost" category, as well as other G&A expense items, were reclassified from the

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<sup>16</sup> See Indalco's rebuttal brief at page 3, footnote 1; see also Petitioner's case brief at page 4.

<sup>17</sup> See *Magnesium Metal from the Russian Federation: Final Determination of Sales at Less-than-Fair Value*, 70 FR 9041 (February 24, 2005), and accompanying Issues and Decision Memorandum at Comment 12: "Our practice is to include in the financial expense ratio calculation the total net foreign exchange gain or loss reported in the financial statement of the same entity used to compute a respondent's net interest expense."

<sup>18</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada*, 64 FR 56739, 56753-54 (October 21, 1999); see also *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006) and accompanying Issues and Decision Memorandum at Comment 10 (*Turkey Rebar Final Results*).

<sup>19</sup> See Petitioners' case brief for Industria Alimentare Colavita S.p.A. (Indalco), dated September 19, 2016, at pages 6-9.

total production costs to the G&A expense category. As such, the total G&A expenses should be deducted from the total production costs in the calculation of the COGS denominator.

- Indalco improperly deducted the interest expenses from the total production cost in the calculation of the COGS denominator. The interest expenses are reported in a separate section, part “C. FINANCIAL INCOME and EXPENSES,” and are not included in part “B.TOTAL PRODUCTION COSTS” in Indalco’s FY 2014 financial statements. As such, these interest expenses should not be deducted from the total production costs in the calculation of the COGS denominator.
- Indalco did not properly account for certain direct and indirect selling expenses and movement charges that were reported in the sales files in the calculation of the COGS denominator.
- In the calculation of the COGS denominator, Indalco should have deducted from the total production costs certain purchases, movement expenses, and antidumping duties that were not reported in the sales and cost files.

#### *Indalco’s Rebuttal*

- Indalco asserts that Petitioners are generally incorrect, as the only valid point in the Petitioners’ allegation relates to the interest expenses, which the Department noted in its verification report were excluded from the COGS denominator calculation.
- Indalco states that the COGS denominator calculation should be based on the COGS figure specifically stated in verification exhibit (VE)-1<sup>20</sup> and the only adjustments required to derive the COGS denominator for the financial expense rate include the revised G&A expenses and interest expenses.<sup>21</sup>
- Indalco provides the calculations for a corrected COGS denominator of the G&A and interest expense ratio calculations to take into account the reclassifications between G&A and interest expenses.

**Department’s Position:** We agree with Indalco. The Department verified the accuracy of Indalco’s COGS, as noted in VE-1.<sup>22</sup> We confirmed that Indalco’s G&A expense ratio calculation did not include packing costs, selling expenses, movement costs and G&A expenses in the calculation of the G&A expense ratio denominator.<sup>23</sup> This issue was addressed prior to verification and Indalco revised its COGS denominator calculation to account for the aforementioned deductions referenced by Petitioners.<sup>24</sup> Therefore, the COGS denominator that we relied on appropriately reflects the manufacturing cost, which is reported in the TOTCOM field. The only adjustments to the COGS denominator that are required include the reclassifications between G&A and interest expenses, as identified in Comment 2 above.

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<sup>20</sup> See Indalco’s Rebuttal Brief at 5.

<sup>21</sup> See Indalco Verification Report at Exhibit VE-1.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, at 19.

<sup>24</sup> See Indalco’s second supplemental Section A-D questionnaire response dated May 3, 2016, at pages 22-23 and Exhibit D.18; see also Indalco’s Section B-D questionnaire response dated December 14, 2016, at Exhibit B.3 (GL Accounts and Expense Reporting).

Accordingly, in these final results, we have included the revised G&A expenses and interest expenses to derive the COGS denominator for the financial expense rate.<sup>25</sup>

#### **Comment 4: Adjustment to the Cost of Manufacturing**

##### *Petitioners' Arguments*

- The Department noted a certain percentage difference in Indalco's reported cost of manufacturing (COM) for the POR, as contained in Indalco's cost database and the financial statements.<sup>26</sup>
- For the final results, the Department should make an adjustment to the TOTCOM database field to account for the aforementioned percentage difference.

##### *Indalco's Rebuttal*

- Indalco did not comment on this issue, but generally stated that the only adjustments that should be made for the final results are those revisions outlined in Comments 1 and 2 above.

**Department's Position:** We agree with Petitioners. Given the difference identified by the Department and absent a specific argument by Indalco that explains why making this adjustment is not warranted, we will apply an adjustment in the final margin calculations. Specifically, in the reconciliation of the POR cost of manufacturing in the cost file to the POR cost of manufacturing in the financial statements, the Department noted a difference that represents a certain percentage of Indalco's total POR COM.<sup>27</sup> The Department has adjusted the margin calculations for Indalco by increasing the COM accordingly.<sup>28</sup>

#### **Comment 5: Correct Assessment Rate**

##### *Petitioners' Arguments*

- The Department erred in listing the assessment rate for Indalco in its draft Customs Instructions issued with the *Preliminary Results*.<sup>29</sup> For the final results, Petitioners urge the Department to revise the assessment rate for Indalco in the final Customs instructions to reflect the correct assessment rate calculated in the margin program output printout for Indalco.

##### *Indalco's Rebuttal*

- Indalco did not comment on this issue.

**Department's Position:** We agree with Petitioners and will issue assessment instructions that reflect the correct assessment rate calculated in the margin program output printout for Indalco.

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<sup>25</sup> See Indalco Final Sales and Cost Calculation Memorandum for details.

<sup>26</sup> See Indalco Verification Report at 13 and Exhibit CVE-1 at page 46.

<sup>27</sup> *Id.*

<sup>28</sup> See Indalco Final Sales and Cost Calculation Memorandum for additional details.

<sup>29</sup> See Antidumping Duty Administrative Review of Certain Pasta from Italy: Draft Customs Instructions: 2014-2015 Administrative Review at Attachment I.

## Comment 6: Level of Trade

### *Indalco's Arguments*

- In the *Preliminary Results*, the Department improperly combined Indalco's three distinct home market levels into a single combined level of trade (LOT), resulting in incorrect price comparisons and an exaggerated dumping margin. In the final results, the Department should recognize Indalco's home market levels of trade, as reported, and should match Indalco's U.S. sales to the home market sales that were made at the most similar level of trade.
- There is a single U.S. level of trade, and the U.S. level of trade is nearly identical to LOT 1 in Italy. Since the Italian level of trade LOT 1 is most similar to the U.S. level of trade, preference should be made for matches in LOT 1 where available, under Section 773(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).
- The Department's regulations make it clear that in identifying levels of trade for LOT matching, no single characteristic is definitive. Rather, the Department considers the entire circumstances of the exporter's sales patterns, activities, and prices, pursuant to 19 CFR 351.412(c).
- LOT 3 is even more distinct from LOTs 1 and 2, since Indalco's consumer sales at LOT 3 are not comparable to its distribution/wholesale business at LOT 1 and LOT 2.
- The Department did specifically mention collapsing LOT 3 with the other levels of trade in the *Preliminary Results*. Since these LOT 3 sales are made at the retail level, their inclusion in the matching process leads to anomalous and inappropriate matches, and artificially creates the appearance of a dumping margin where there is in fact no dumping.
- There is a pattern of price differences between Indalco's home market LOTs, and these price patterns fully support the existence of the three distinct levels of trade.
- The Department should recognize Indalco's three distinct levels of trade, and should match its U.S. sales to home market sales at LOT 1 wherever possible, to sales at LOT 2 only where no LOT 1 sale is available, and only as a last resort, should LOT 3 sales be included in the matching.

### *Petitioners' Rebuttal*

- The Department should continue to reject Indalco's separate LOTs for its home market sales and rely on a single home market LOT in the calculations of the final dumping margins for Indalco.
- For its "level of trade" classification, Indalco used the same definition as for its "channel of distribution," rather than relying on its customer categories.<sup>30</sup>
- Despite Indalco's claim that its three home market levels of trade are well established, there are significant discrepancies with the claims Indalco made in its case brief regarding the definition of LOT 1 and LOT 2 sales. For instance, in its questionnaire submissions, LOT 1 and 2 are defined as "direct made-to-order sales" and "sales from warehouse," respectively. In its case brief, Indalco changes focus, claiming that LOT 1 sales are "sales to large-volume to national distributors," and LOT 2 are "sales to numerous small and medium local and regional distributors."<sup>31</sup> These inconsistent and

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<sup>30</sup> See Indalco's Section A Questionnaire Response, dated November 10, 2015, at 12-13 and Exhibit A.4.

<sup>31</sup> See Indalco's Section B Questionnaire Response, dated December 14, 2015, at B-24 and B-25.



contrasting explanations regarding LOT 1 and 2 raise serious doubts about the reliability and accuracy of Indalco's channel of distribution and LOT classifications of its home market sales.

- Indalco's reported selling functions, which must form the basis of a proper level of trade claim, do not support Indalco's argument.
- Instead of relying on the selling functions requested by the Department's questionnaire, Indalco has selected vague and self-serving descriptions that focus on sales volumes and the number of transactions, rather than reporting meaningful selling activities.
- In order to determine if separate levels of trade exist, and therefore impact pricing comparisons, the Department examines only the selling functions and the level of selling expenses provided to the different customer categories to evaluate the level or levels of trade in a particular market. Indalco, in contrast, reported selling activities based in its channels of distribution rather than based on customer categories.
- Moreover, six of the "selling activities" provided by Indalco are repetitive and may be grouped into a single selling activity for "warehousing/inventory."
- Indalco claims that the high volume sales in LOT 1 incur minimal warehousing costs in comparison to LOT 2 sales. However, Indalco has provided no supporting documentation for this claim.
- Indalco also has reported selling activities as they pertain to the 1) size of the shipment quantity (*e.g.*, Sales in full truckload/container, Sales of small quantities), and; 2) to the number of transactions involved (*e.g.*, Frequent, low volume orders, Infrequent, low volume orders, and Infrequent, high volume Orders). The Department has determined in previous cases, including cases involving certain pasta from Italy, that order volume and transaction frequency are not selling functions and are not determinative of varying levels of trade.<sup>32</sup>
- Indalco's price comparability analysis according to pasta types for each reported LOT is fundamentally flawed and must be rejected because the Department will not rely on transaction volume as a surrogate for actual selling functions.
- Indalco provided a comparison of the average home market prices for its reported LOT 1, 2 and 3.<sup>33</sup> However, absent valid selling functions and a comparison of the intensity of those selling functions, Indalco's pricing analysis demonstrates only that the company has segregated and reported sales LOTs based on price, not based on selling functions representative of sales made at differing levels of trade. Moreover, Indalco's analysis of net home market prices in general, and on the basis of pasta type specifically, for each home market LOT falls outside of the scope of the Department's level of trade analysis.
- In order to determine level of trade, the Department examines only the selling functions and level of selling expenses provided to the different customer categories to evaluate the existence of separate levels of trade in a particular market.
- Petitioners provide an analysis of weighted-average net home market prices by CONNUM and LOT (reported by Indalco as LOT 1 and 2) to demonstrate that on a

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<sup>32</sup> See *Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy*, 67 FR 300 (January 3, 2002) (final results) (*Certain Pasta from Italy 1999-2000 Review*) and accompanying Issues and Decision Memorandum at Comment 6.

<sup>33</sup> See Indalco's Case Brief at page 7.

CONNUM-specific basis, there are no significant differences in the CONNUM weighted-average net home market prices between LOT 1 and 2, contrary to the claim by Indalco.<sup>34</sup>

**Department's Position:** We disagree with Indalco and continue to reject Indalco's separate LOTs for its home market sales. Consistent with the *Preliminary Results*, we have relied on a single home market LOT in the margin calculations for Indalco for these final results.

Pursuant to 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT than sales to the United States, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. Furthermore, the Department does not take into account the price comparability analysis or indirect selling expense analysis between LOTs in determining the level of trade.<sup>35</sup>

Section 773(a)(1)(B)(i) of the Act, states that, "to the extent practicable," the Department will calculate normal value (NV) based on sales "at the same level of trade as the export price or the constructed export price." Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>36</sup> In promulgating its regulation, the Department clarified that in order to consider sales to occur at a different LOT, each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function.<sup>37</sup>

Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. In order to determine whether the comparison sales were made at different stages in the marketing process than the U.S. sales, the Department reviews the distribution system in each market (*i.e.*, the chain of distribution), including 1) selling functions; 2) the class of customer (*i.e.*, customer category); and 3) the level (intensity) of selling expenses for each sale. Different levels of trade are typically characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively different selling activities. Different levels of trade necessarily involve differences in selling activities, although differences in selling activities alone are not sufficient to establish differences in levels of trade. Similarly, customer categories such as "distributor," "wholesaler," "retailer," and "end-user" are often useful in identifying levels of trade, although they, too, are insufficient in themselves to establish differences in levels of trade. Rather, the Department evaluates differences in levels of trade based on a seller's entire marketing process.<sup>38</sup>

In the *Preliminary Results*, the Department considered Indalco's selling activities and marketing scheme and found that Indalco's home market and U.S. sales "were made at the one LOT."<sup>39</sup> Specifically, the Department found that "Indalco's chart of selling functions indicates the selling

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<sup>34</sup> See Petitioners' Rebuttal Brief at pages 10-11 and Attachment 1.

<sup>35</sup> See *Certain Pasta from Italy, 1999-2000 Review*, and accompanying Issues and Decision Memorandum at Comment 6.

<sup>36</sup> See 19 CFR 351.412(c)(2).

<sup>37</sup> *Id.*

<sup>38</sup> See *Final Rule on Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997) ("*Final Rule ADD; CVD*").

<sup>39</sup> See Preliminary Decision Memorandum at 10-11.

functions performed for sales in both markets are similar, with no significant variation across the broader categories of sales process/marketing support, freight and delivery and warehousing.”<sup>40</sup> In order to determine if separate levels of trade exist, the Department examines only the selling functions and the level of selling expenses provided to the different customer categories to evaluate the level or levels of trade in a particular market. In reporting its LOT classification for the home market, Indalco relied on its channel of distribution codes to define its LOT codes, rather than reporting by customer categories for its LOT classification.<sup>41</sup> Indalco also reports the same customer categories across different channels of distribution, which it relied on for the reporting of its LOTs.<sup>42</sup> Instead of relying on actual selling functions, Indalco claims that its number of sales transactions and sales volumes should provide the basis for distinguishing any levels of trade.<sup>43</sup> However, volume of transactions and selling functions are distinct concepts that should not be conflated. Accordingly, the Department does not rely on transaction volume as a surrogate for actual selling functions and has determined in prior cases that order volume and transactions frequency are not selling functions and are not determinative of varying levels of trade.<sup>44</sup>

The Court has stated that the nature of the Department’s inquiry in determining differences between LOTs is primarily qualitative in nature.<sup>45</sup> However, to help discern whether there is a pattern of price differences between Indalco’s home market LOTs that may support the existence of the three distinct levels of trade, we have examined and considered the price comparability analyses submitted by Indalco and Petitioners in support of their respective LOT arguments. Indalco’s price comparability analysis of home market prices based on pasta types for each reported home market LOT is distortive because it does not compare the net home market prices for each reported LOT on a CONNUM-specific basis. Furthermore, it does not reference actual selling functions nor compare the intensity of such selling functions. In contrast, Petitioners provided a more detailed analysis on a CONNUM-specific basis, which demonstrates that there are no significant differences in the CONNUM weighted-average net home market prices between Indalco’s reported LOT 1 and 2.<sup>46</sup>

Indalco contends that its large volume U.S. sales, which were made through Colavita U.S.A. should not be matched to its smaller volume home market sales made to regional wholesalers, retailers, and final customers. Indalco reports that Colavita U.S.A. is a wholesaler/distributor,<sup>47</sup>

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<sup>40</sup> *Id.*, at page 10.

<sup>41</sup> See Indalco’s home market sales database, named “indhm03”, ACCESS barcode 3471787-06; see also Petitioners’ Rebuttal Brief at page 3.

<sup>42</sup> *Id.*

<sup>43</sup> See Indalco’s Case Brief at pages 6-7.

<sup>44</sup> See *Certain Pasta from Italy 1999-2000 Review*, and accompanying Issues and Decision Memorandum at Comment 6; see also *Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016) and accompanying Issues and Decision Memorandum at Comment 9; *Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Antidumping Duty Administrative Review*, 73 FR 77005 (December 18, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>45</sup> See *Prodotti Alimentari Meridionali, S.R.L. v. United States*, 26 CIT 749, 754 (2002); see also *Andaman Seafood Co. v. United States*, 768 F. Supp. 2d 1315, 1325 (Ct. Int’l Trade 2011).

<sup>46</sup> See Petitioners’ Rebuttal Brief at pages 10-11 and Attachment 1.

<sup>47</sup> See Indalco’s Section A Questionnaire Response, dated November 10, 2015, at pages 5 and 12.

and based on Indalco's reporting,<sup>48</sup> we disagree that these customer categories and the volume shipped should limit the Department's comparisons to only a certain subset of Indalco's home market sales based on its LOT designation. As stated above, we find that the order volume and frequency of transactions are not selling functions and are not determinative of varying levels of trade. Indalco has provided inconsistent reporting with certain customer codes for its home market sales, in which various channel of distribution and LOT codes were reported for the same customer code.<sup>49</sup> Furthermore, Indalco's own reporting identified a lack of differentiation among its selling activities based on the fact that it only reported two channels of distribution in the home market, which it characterizes as LOTs, in its initial questionnaire response.<sup>50</sup> Accordingly, these inconsistencies and undifferentiated selling activities among its customer categories diminish support for Indalco's claims that its sales grouped under three separate LOTs are not comparable, and that the Department's margin calculations should be limited to comparisons at the same LOT1 it reported for both its U.S. sales and home market.

As referenced above, based on our review of Indalco's selling functions, we find no significant variation across the broader categories of sales process/marketing support, freight and delivery and warehousing. The selling expenses in each home market channel of distribution are substantially similar in the context of Indalco's marketing scheme, such that there is no significant difference in the breadth and intensity of selling functions performed in each channel of distribution. We continue to find that differences in Indalco's selling activities among home market sales claimed to be made at different levels are not so substantial as to warrant a finding of separate LOTs. Although certain selling activities may have occurred at different levels of intensity for each home market LOT, the Department finds that these differences do not constitute "an additional layer of selling activities, amounting in the aggregate to a substantially different selling function."<sup>51</sup> Thus, after evaluating the selling functions at issue in this review, and after weighing the differences in each channel of distribution, we find that Indalco's home market sales do not warrant three distinct LOTs.

Indalco has not sufficiently demonstrated a basis for the Department to find that Indalco's home market sales warrant segregation into three distinct LOTs based on its selling activities and its entire marketing process. Further, Indalco did not provide any information to support its differentiation of selling activities based on its channels of distribution.<sup>52</sup> Therefore, the Department maintains its position from the *Preliminary Results* regarding Indalco's LOT, which is that Indalco had only one comparison market LOT and one U.S. LOT, and both the NV and export price (EP) sales were made at the same LOT.<sup>53</sup> Accordingly, based on our review of Indalco's marketing scheme, we continue to rely on a single home market LOT in our comparisons to Indalco's U.S. prices in the margin calculations for Indalco.

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<sup>48</sup> See Petitioners' Rebuttal Brief at page 3-4.

<sup>49</sup> *Id.*

<sup>50</sup> See Indalco's Section A Questionnaire Response, dated November 10, 2015, at page 11 and Exhibits A.4 and A.5.

<sup>51</sup> See 19 CFR 351.412(c)(2); *Antidumping Duties: Countervailing Duties, Part II*, 62 FR 27296, 27371 (May 19, 1997).

<sup>52</sup> See Indalco's First Supplemental Response, dated April 4, 2016 at page 25.

<sup>53</sup> See Indalco Preliminary Calculation Memorandum.

## ***B. Liguori***

### **Comment 7: Depreciation of Idle Assets**

#### *Petitioners' Arguments*

- In the *Preliminary Results*, the Department properly included in the G&A calculation a depreciation expense for an idle factory building in Teverola, Italy, that Liguori purchased from its liquidated affiliate, PAM, during the POR. The Department, however, selected a low depreciation rate that does not reasonably reflect the costs associated with the asset. The appraisal report on the record indicates that the building has outlived its useful life. If the building is dilapidated such that it is not usable, as Liguori maintains and the Department verified, then the Department should write down the total value of the asset and include the full amount of the original cost or investment in the calculation of G&A expense.
- If the Department continues to depreciate this building, it must revise the depreciation rate it used for factory building in the *Preliminary Results* to use a higher depreciate rate for specific plant and machinery because the Teverola building is a specific pasta plant, rather than a general factory building.

#### *Liguori's Arguments*

- The Department should not have adjusted Liguori's reported G&A ratio to include depreciation for the building in Teverola because it is contrary to the law. Section 773(f)(1) of the Act provides that the Department calculates costs only if the costs are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting/producing country, and that the costs reasonably reflect the costs associated with the production and sale of the merchandise. Italian Civil and Tax Law (Italian GAAP), allows expenses to be deducted from the revenues only if they are referred to assets or goods that generate revenues or other incomes which are part of the taxable amount of the company. The Department verified that Liguori did not claim any depreciation expense on the building because the building did not generate any revenues, and therefore Liguori is prohibited from claiming any depreciation expense on the building based on Italian GAAP.<sup>54</sup>
- The Department's citation in the *Preliminary Results* to *Mushrooms from India*<sup>55</sup> as justification for including the depreciation expense of the building at issue in the G&A calculation is inapposite, because in that case, the company provided no evidence that its depreciation practices were in accordance with the GAAP of the exporting/producing country. On the contrary, Liguori's accounting treatment of the building in Teverola is in accordance with Italian GAAP.
- Unlike *Mushrooms from India* and *Silicomanganese from India* cited in the Department's calculation memorandum for the *Preliminary Results*,<sup>56</sup> the building in Teverola is not an

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<sup>54</sup> See "Verification of the Cost and Sales Response of Liguori Pastificio dal 1820 S.p.A. (Liguori) in the Antidumping Administrative Review of Certain Pasta from Italy," (Liguori Verification Report) dated July 20, 2016.

<sup>55</sup> See *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 68 FR 41303 (July 11, 2003) (*Mushrooms from India*) and accompanying Issues and Decision Memorandum at Comment 10.

<sup>56</sup> *Id.*; see also *Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and*

“idled asset” of Liguori and has never generated any revenues for the company. Accordingly, it would never have been recognized in Liguori’s accounting record as an asset.

- In the *Preliminary Results*, the Department failed to demonstrate how Liguori’s accounting of the building in Teverola does not reasonably reflect the costs associated with the production and sale of the merchandise. The fact that the building is on Liguori’s books is insufficient justification in this regard.

#### *Petitioners’ Rebuttal*

- Liguori’s claim that its treatment of the Teverola building is in accordance with Italian GAAP is not supported on the record. Compliance with local tax laws does not necessarily translate into automatic compliance with local GAAP, or into sound cost accounting principles. While the Italian tax law may regulate respondent’s treatment of depreciation on certain assets, it does not require specific accounting treatment in an antidumping duty review. The U.S. governing statute requires that a respondent’s costs accurately capture the costs of producing subject merchandise regardless of local tax or Italian GAAP.
- There is no record evidence that the Department verified and concluded that Liguori’s treatment of the depreciation expense was in direct accordance with Italian Civil and Tax Law. At verification, the Department asked how PAM depreciated the building, and the Department verifiers “were told” PAM did not depreciate the building because Italian tax law did not permit it. This is not a verification finding or a conclusion.
- Liguori’s reliance on an excerpt from section 773(f)(1) of the Act ignores the more important requirement of the statute, which states that the reported costs “reasonably reflect the costs associated with the production and sale of the merchandise.” Liguori is a pasta manufacturer, and it purchased a pasta factory. The purchasing cost cannot be ignored simply because the building is “dilapidated.” The Department should not reward Liguori for buying a factory that it cannot immediately use by allowing it to exclude depreciation expenses on that asset.
- In *Stainless Steel Bar from Italy*, the respondent excluded depreciation on an idled asset because the asset was unrelated to the production of subject merchandise or to its operations. The Department disagreed, noting that its standard practice is to include depreciation on idled assets in the calculation of the G&A ratio.<sup>57</sup> The cost of holding idle assets is a period cost that relates to the company as a whole, and not to the manufacture of specific products. Such costs must be included in the G&A calculation.

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*Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002) (*Silicomanganese from India*) and accompanying Issues and Decision Memorandum at Comment 12; *see also* Memorandum from Joy Zhang to the File, “2014-2015 Antidumping Duty Administrative Review of Certain Pasta from Italy – Preliminary Results: Sales and Cost Analysis Memorandum for Liguori,” (Liguori Preliminary Results Sales Cost Analysis Memorandum), dated August 5, 2016 at pages 3-4.

<sup>57</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy*, 67 FR 3155 (January 23, 2002) (*Stainless Steel Bar From Italy*) and accompanying Issues and Decision Memorandum at Comment 47.

### *Liguori's Rebuttal*

- The Department should not include any amount for depreciation of the building in Teverola in Liguori's costs, because: 1) the Department verified that Liguori's treatment of the depreciation expense associated with building in Teverola was in direct accordance with Italian Civil and Tax Law; 2) the building in Teverola is not an "idled asset" of Liguori because the building has never generated any revenues for the company; and 3) the Department has not demonstrated how Liguori's accounting of the building does not reasonably reflect the costs associated with the production and sale of the merchandise.
- With regard to Petitioners' argument that the building be depreciated at a certain percentage rate for "specific plant and machinery," Petitioners have fundamentally misunderstood the types of tangible fixed assets that qualify as "specific plant and machinery." Liguori's 2014 financial statement defines plants as including "transport and installation charges, and testing procedures," *i.e.*, "plant" in this context refers to equipment structures and systems, and not to factory buildings. Using the rate suggested by Petitioners translates into an estimated useful life of seven years. It would be uneconomical to consider a factory building to be fully depreciated after only seven years.
- Petitioners fail to reconcile their assertion that the building had already outlived its useful life by the time of the appraisal report with the fact that the appraisal assessed the building value higher than the current book value of the building. Given the appraised value of the property in 2009, the book value of the building in 2014 is entirely reasonable.

**Department's Position:** We agree with Petitioners and have continued to include in the G&A ratio calculation depreciation expenses associated with the Teverola building. Record evidence indicates that Liguori holds the building as a fixed asset, which is reflected on its audited financial statements.<sup>58</sup> The building is an overhead burden like any such excess capacity, and although it may be idle, the depreciation associated with the building is part of the general expense burden of the company which is attributable to all sales of the company. Fixed assets lose value over time regardless of whether they are idle or in active service.<sup>59</sup> Recognizing no depreciation expense on idle assets results in per-unit costs that do not reasonably reflect the costs associated with the production and sale of the merchandise under review. Thus, by not recognizing any depreciation on the building, Liguori's methodology is distortive, as it does not result in a systematic and rational loss in the building's value over time.

Although we acknowledge that the building in Teverola is dilapidated, and that neither PAM nor Liguori used this asset to produce the subject merchandise during the POR, the building has significant value regardless of whether it is currently in use and, thus, the asset is recognized in Liguori's financial statements. However, we disagree with Petitioners' argument that we should write down the total book value of the asset and include the full amount in the calculation of G&A. Liguori has not written down or written off this asset. Instead, the company revised the value of the Teverola building, adjusting the book value upward to the market value in 2009.<sup>60</sup> The notes to the company's financial statement indicate that the building is listed in the Real

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<sup>58</sup> See Liguori's section D supplemental questionnaire response, dated March 8, 2016 at Exhibit SD-1 and SD-2.

<sup>59</sup> See *Mushrooms from India*, 68 FR 41303.

<sup>60</sup> See Liguori's May 13, 2016 response at Exhibit 5.

Estate Registry of the Municipality of Teverola, thus Liguori keeps this asset for future real estate development.<sup>61</sup> As recognized by Liguori in its financial statements, the building has significant value. Accordingly, both writing down the total book value of this asset (as Petitioners suggest) or failing to account for costs associated with this asset (as Liguori suggests) is distortive.

We consider the cost of holding idle assets a period cost that relates to the company as a whole, and not to the manufacture of specific products.<sup>62</sup> Our practice has been to include depreciation on idle assets as part of the calculation of the G&A expense ratio.<sup>63</sup>

Petitioners' claimed depreciation methodology for idle assets is not supported by evidence on the record, as the rate suggested by Petitioners is for depreciation of "specific plant and machinery." The idled building in Teverola is more appropriately classified as a "factory building," which has a different depreciation rate.<sup>64</sup>

Consistent with the *Preliminary Results*, the Department has continued to include in the G&A calculation a depreciation expense for the Teverola building for these final results. Moreover, we have continued to use the same depreciation rate used in the *Preliminary Results*.<sup>65</sup>

#### **Comment 8: Semolina Costs**

##### *Petitioners' Argument*

- The Department should use the transfer price from PAM to Liguori in the calculation of semolina costs by adding the excluded profit amount back into the raw material cost calculation in the final results.

##### *Liguori's Rebuttal*

- No such adjustment to semolina cost is necessary because Liguori already revised its reported cost database to rely on the transfer price from PAM to Liguori, rather than PAM's actual acquisition cost, in response to the Department's instructions.

**Department's Position:** We agree with Liguori. Liguori's revised semolina costs were based on PAM's transfer price, which includes a profit amount.<sup>66</sup> Therefore, no cost adjustment is necessary.

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<sup>61</sup> *Id.*

<sup>62</sup> See *Mushrooms from India*, 68 FR 41303, *Silicomanganese from India*, 67 FR 15531, and *Stainless Steel Bar from Italy*, 67 FR 3155.

<sup>63</sup> *Id.*

<sup>64</sup> See Liguori's Rebuttal Brief at 2-4, see also Liguori's Section D questionnaire response at Exhibit D-3.

<sup>65</sup> See Liguori Preliminary Results Sales Cost Analysis Memorandum at pages 3-4.

<sup>66</sup> See Letter from Liguori to the Department Re: Certain Pasta from Italy: Revised Sales and Cost Database Submissions of Liguori Pastificio dal 1820 S.p.A, dated July 13, 2016 at 1.



## Comment 9: Home Market Inland Freight

### *Petitioners' Argument*

- The Department found discrepancies in Liguori's reported home market inland freight and actual freight paid for several home market sales at verification. Given the problems with Liguori's reported inland freight in the latest database, which was itself based on a revised methodology, the Department should find such data unreliable and inaccurate. The Department should cap freight costs at a certain rate for the final results.<sup>67</sup>

### *Liguori's Rebuttal*

- Petitioners are correct that the verification revealed that Liguori's revised home market inland freight data yield inaccurate results. However, Petitioners offer no explanation why it would be better to apply their proposed freight rate cap, based on Liguori's initial home market data, to all home market sales rather than simply relying on the freight expenses Liguori's initially reported in its January 6, 2016 questionnaire response. Thus, the Department should rely on the inland freight data contained in Liguori's January 6, 2016 questionnaire response for the final results.

**Department's Position:** We do not agree that we should use the inland freight data contained in Liguori's January 6, 2016 questionnaire response for the final results because such data were not verified. During this proceeding, Liguori had numerous opportunities to reports its inland freight data accurately and completely and, in fact, submitted five versions of its home market sales database. Accordingly, at verification, the Department sought to confirm the accuracy of the most recent sales database submitted by Liguori (*e.g.*, version five, *liguori\_hm05*). Thus, we find it is not appropriate to rely upon the inland freight data contained in Liguori's initial home market database, which Liguori subsequently revised on four separate occasions.

Concerning the inland freight data contained in version five of Liguori's home market database, as indicated in the verification report, none of the 15 sales observations that we reviewed during verification for HM inland freight accurately traced to the firm's corresponding financial records.<sup>68</sup> Based on the results of our verification procedures, we find that the incorrect inland freight information that Liguori reported for the home market are not isolated occurrences but rather constitute evidence of systemic errors in this data field. Because during the spot-check at the verification, 15 out of 15 inland freight observations did not accurately trace to the financial records, we have no confidence in the accuracy of the remaining freight observations in Liguori's home market sales database.

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a

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<sup>67</sup> Due to the business proprietary nature of this discussion, *see* Petitioners' Case Brief for Liguori Pastificio Dal 1820 S.p.A., dated September 20, 2016 at pages 10-11.

<sup>68</sup> *See* Liguori Verification Report at page 9 for specifics regarding how the reported amounts differed from Liguori's financial records.

proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Pursuant to section 776(a)(2)(D) of the Act, we find that a determination based on the facts otherwise available is warranted because the inland freight information contained in the version five of Liguori's home market sales database, *i.e.*, the most recently submitted database, could not be verified. Furthermore, we determine that Liguori's inability to trace the pre-selected inland freight observations contained in version five of its home market sales database demonstrates that it has failed to act to the best of its ability. Accordingly, we find that the application of partial adverse inferences under section 776(b)(1)(A) of the Act is warranted as it applies to Liguori's home market inland freight field.

Specifically, pursuant to section 776(b)(2)(D) of the Act, we have allocated a home market inland freight expense based on the lowest, actual inland freight amount that we examined at verification and traced to Liguori's financial records and applied this home market inland freight expense to Liguori's home market sales<sup>69</sup> (with the exception of the 15 observations examined at verification). For the 15 observations examined at verification, we relied upon the actual amount of inland freight expense incurred, as listed in Liguori's financial records. Lastly, because our application of partial adverse facts available relies upon information contained in Liguori's financial records and not on secondary information, we find that the corroboration standard for secondary information addressed under section 776(c) of the Act does not apply.

## **Comment 10: Shape Classification**

### *Liguori's Argument*

- The Department erred in the *Preliminary Results* by changing the shape classification from the reported code of "6," corresponding to combinations of specialty short cut pasta to code "8," which corresponds to combinations of different shapes.
- The product code on the packaging label clearly indicates that the product is "mista corta" (mixed short cuts). Thus, code "8" should be used when there is a combination of shapes, not simply when there is a combination of cuts of the same shape classification.

*Petitioners did not comment on this issue.*

**Department's Position:** We agree with Liguori that it correctly reported a shape code of "6" for the product at issue, pasta mista, because this product consists of mixed short cuts. Accordingly, we find that we should not have reclassified the shape of the product at issue. For the final results, we have revised our calculations so that the product in question utilizes a shape classification of 6 rather than 8.

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<sup>69</sup> See Liguori Cost and Sales Verification report at 20 and Sales Verification Exhibit 11.

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*.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

12/12/2016

X 

Signed by: PAUL PIQUADO

Paul Piquado

Assistant Secretary

for Enforcement and Compliance