



C-475-819
Administrative Review
POR: 1/1/2015 – 12/31/2015
Public Document
AD/CVD Office I

July 18, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Countervailing
Duty Administrative Review: Certain Pasta from Italy; 2015

I. Summary

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain pasta (pasta) from Italy. The period of review (POR) is January 1, 2015, through December 31, 2015. We preliminarily find that the sole mandatory respondent, Liguori Pastificio dal 1820 S.p.A. (Liguori) received countervailable subsidies during the POR.

II. Background

On July 24, 1996, the Department published the CVD *Order* on certain pasta from Italy.¹ On July 5, 2016, we published a notice of Opportunity to Request Administrative Review of the CVD *Order*.² We received review requests from the following eight producers/exporters of the subject merchandise: 1) GR.A.M.M. S.R.L. (GR.A.M.M.); 2) La Fabbrica Della Pasta Di

¹ See *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 38544 (July 24, 1996) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 43585 (July 5, 2016).



Gragnano S.A.S. di Antonio Moccia (La Fabbrica); 3) Liguori Pastificio dal 1820 S.p.A. (Liguori); 4) Pastificio Andalini S.p.A. (Andalini); 5) Pastificio Labor S.r.L.(Labor); 6) Pastificio Zaffiri S.r.l (Zaffiri); 7) Premiato Pastificio Afeltra S.r.l (Premiato); 8) Tesa SrL (Tesa).³ In accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating a review of those eight producers/exporters on September 12, 2016.⁴ On October 3, 2016, we released data obtained from Customs and Border Protection (CBP) regarding entries of the subject merchandise from Italy during the POR.⁵ On November 7, 2016, Tesa SrL withdrew its request for review.⁶ On October 27, 2016, we selected Liguori and Andalini as mandatory respondents in this review.⁷

On December 1, 2016, we issued the initial questionnaires to the Government of Italy (GOI), Liguori, and Andalini.⁸ On December 12, 2016, Andalini, GR.A.M.M., La Fabbrica, Labor, Premiato, and Zaffiri timely withdrew their requests for administrative review.⁹ Liguori submitted responses to our affiliation questions on December 16, 2016¹⁰ and its initial questionnaire responses on behalf of itself and its affiliates, PAM S.p.A. (PAM) and Chirico Molini e Pastifico Dal 1895 SpA (Chirico), on January 23, 2017.¹¹ The GOI timely

³ See Letter from Pastificio Zaffiri S.r.l. to the Department, “Certain Pasta from Italy, C-475-819; Request for Administrative Review by Pastificio Zaffiri S.r.l.” (July 29, 2016); Letter from Pastificio Andalini, S.p.A., “Certain Pasta from Italy, C-475-819; Request for Administrative Review by Pastificio Andalini, S.p.A.” (July 29, 2016); Letter from Premiato Pastificio Afeltra S.r.l., “Certain Pasta from Italy, C-475-819; Request for Administrative Review by Premiato Pastificio Afeltra S.r.l.” (July 29, 2016); Letter from La Fabbrica della Pasta di Gragnano S.A.S., “Certain Pasta from Italy, C-475-819; Request for Administrative Review by La Fabbrica della Pasta di Gragnano S.A.S.” (July 29, 2016); Letter from Labor S.R.L., “Certain Pasta from Italy, C-475-819; Request for Administrative Review by Labor S.R.L.” (July 29, 2016); Letter from GR.A.M.M. S.R.L., “Certain Pasta from Italy, C-475-819; Request for Administrative Review by GR.A.M.M. S.R.L.” (July 29, 2016); Letter from Liguori Pastificio dal 1820 S.p.A., “Certain Pasta from Italy: Countervailing Duty Administrative Review Request,” (August 1, 2016); letter from Tesa SrL, “Pasta from Italy; Request for Administrative Review,” (August 1, 2016).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016).

⁵ See Memorandum to the File, “Countervailing Duty Administrative Review: Certain Pasta from Italy; Release of Customs and Border Protection (CBP) Entry Data to Interested Parties for Comment,” dated October 3, 2016.

⁶ See Letter from Tesa SrL to the Department, “Pasta from Italy; Withdrawal of request for Administrative Review,” dated November 7, 2016.

⁷ See Letter to James Maeder, Senior Office Director, AD/CVD Operations, Office I, “Countervailing Duty Administrative Review of Certain Pasta from Italy: Respondent Selection,” dated October 27, 2016.

⁸ See Letter from the Department to the GOI, Liguori, and Andalini, “Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy: Initial Questionnaire” (December 1, 2016).

⁹ See Letter from Andalini to the Department, “Certain Pasta from Italy, C-475-819; Withdrawal of Request for Administrative Review by Pastificio Andalini, S.p.A.,” dated December 12, 2016; Letter from GR.A.M.M., “Certain Pasta from Italy, C-475-819; Withdrawal of Request for Administrative Review by GR.A.M.M. Srl,” (December 12, 2016); Letter from Premiato, “Certain Pasta from Italy, C-475-819; Withdrawal of Request for Administrative Review by Premiato Pastificio Afeltra S.r.l.” (December 12, 2016); Letter from Labor, “Certain Pasta from Italy, C-475-819; Withdrawal of Request for Administrative Review by Labor Srl” (December 12, 2016); Letter from La Fabbrica, “Certain Pasta from Italy, C-475-819; Withdrawal of Request for Administrative Review by La Fabbrica della Pasta di Gragnano S.A.S.” (December 12, 2016); Letter from Zaffiri, “Certain Pasta from Italy, C-475-819; Withdrawal of Request for Administrative Review by Pastificio Zaffiri S.r.l.” (December 12, 2016).

¹⁰ See Letter from Liguori, “Certain Pasta from Italy: Affiliated Parties Response of Liguori Pastificio dal 1820 S.p.A.,” dated December 15, 2016 (Affiliated Parties’ Response).

¹¹ Letter from Liguori, “Certain Pasta from Italy: CVD Producer Questionnaire Response of Liguori Pastificio dal 1820 S.p.A. and Cross-Owned Affiliates,” dated January 23, 2017 (LQR); PAM S.r.l. Producer Questionnaire Response dated January 23, 2017; and Chirico Molini E Pastificio dal 1895 S.p.A. Producer’s Questionnaire

responded to the initial questionnaire on January 23, 2017.¹²

On February 16, 2017, we issued supplemental questionnaires to the GOI and Liguori¹³ and received timely responses on March 2, 2017 and March 14, 2017, respectively.¹⁴ On March 29, 2017, we issued a second supplemental questionnaire to the GOI and Liguori¹⁵ and received responses.¹⁶

On March 30, 2017, we extended the deadline for the preliminary results of this administrative review by 120 days to no later than July 31, 2017.¹⁷

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

III. Scope of the Order

Imports covered by the *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 the scope of the *Order* 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 the *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. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the *Order*.¹⁸ Pursuant to the Department's May 12, 2011 changed circumstances review, effective January 1, 2009, gluten-free pasta is also excluded from the scope of the *Order*.¹⁹ Effective January 1, 2012,

Response, dated January 23, 2017.

¹² See Letter from the GOI dated January 23, 2017 (GQR).

¹³ See Letter to the GOI, "Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy: Supplemental Questionnaire," dated February 16, 2017; see also Letter to Liguori, "2015 Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy: Supplemental Questionnaire," dated February 16, 2017.

¹⁴ See Letter from GOI dated March 2, 2017 (G1SQR); see also Letter from Liguori, "Certain Pasta from Italy: CVD Supplemental Producer Questionnaire Response of Liguori Pastificio dal 1820 S.p.A. and Cross-Owned Affiliates," dated March 14, 2017 (L1SQR).

¹⁵ See Letter to the GOI, "Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy: Second Supplemental Questionnaire," dated March 29, 2017; see also Letter to Liguori, "2015 Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy: Second Supplemental Questionnaire," dated March 29, 2017.

¹⁶ See Letter from GOI dated April 10, 2017 (G2SQR); see also Letter from Liguori, "Certain Pasta from Italy: CVD Second Supplemental Producer Questionnaire Response of Liguori Pastificio dal 1820 S.p.A. and Cross-Owned Affiliates," dated April 12, 2017 (L2SQR).

¹⁷ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Pasta from Italy: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review," dated March 30, 2017.

¹⁸ See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

¹⁹ See *Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634 (May 12, 2011).

ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the *Order*.²⁰

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 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 *Order* is dispositive.

IV. Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw the request within 90 days of the date of publication of the notice initiating the review. As explained above, the administrative review requests for Andalini, GR.A.M.M., La Fabbrica, Labor, Premiato, Tesa, and Zaffiri were timely withdrawn. On January 4, 2017, the Department rescinded the review, in part, with respect to these companies.²¹

V. Subsidy Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(d)(2), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1997 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under examination and that the difference between the company-specific and/or country-wide AUL and the AUL from the IRS tables is significant. The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the IRS Tables at Table B-2: Table of Class Lives and Recovery Periods.²² No party in this proceeding has disputed this allocation period.

Attribution of Subsidies and Denominators

²⁰ See *Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation*, in Part 79 FR 58319, 58320 (September 29, 2014).

²¹ See *Certain Pasta from Italy: Partial Rescission of Countervailing Duty Administrative Review*; 2015, 82 FR 820 (January 4, 2017).

²² See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

In accordance with 19 CFR 351.525(a), we calculated *ad valorem* subsidy rates by dividing the amount of the benefit allocated to the POR by the appropriate sales value during the same period. We have determined sales values on a free-on-board basis. In accordance with 19 CFR 351.525(b)(3), we have attributed domestic subsidies to all products sold by the firm, including products that were exported.

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. According to the *Preamble*, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) ... Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.²³

Thus, the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁴

Liguori

Liguori is a domestically-owned enterprise that was incorporated in 1958 and has been producing pasta since that time.²⁵ Liguori reported that it is owned by two individuals,

²³ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

²⁴ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (Ct. Int'l Trade 2001).

²⁵ See LQR at 2-3.

Rachelina Arpaia and Maria Marano, each owning 50 percent of the share capital during the POR.²⁶

On November 7, 1994, Rachelina Arpaia and Maria Marano established PAM.²⁷ During the AUL, PAM purchased semolina and other inputs to be used in Liguori's pasta production and sold the finished product for Liguori.²⁸ On October 24, 2014, PAM ceased operations and sold its business to Liguori.²⁹ On November 25, 2015, Liguori sold its shares of PAM and no longer retains an ownership in PAM.³⁰

In 2001, Liguori and an individual, Ciro Paone, incorporated Chirico with Liguori owning 60 percent of the company and Ciro Paone, the remaining 40 percent.³¹ From the beginning of the AUL until May 2008, Chirico produced and sold subject merchandise.³² On January 3, 2006, Liguori increased its ownership share of Chirico to 87.22 percent, and, on December 18, 2006, Liguori purchased the remaining 12.78 percent, and thus became the sole owner of Chirico.³³ Subsequently, on December 19, 2006, Liguori sold 60 percent of its share capital of Chirico to Tecinvest, a foreign company located in Luxembourg, leaving Liguori with a 40 percent share.

Because Liguori, PAM, and Chirico were either wholly- or majority-owned by the same two individuals at the beginning of the AUL through December 18, 2006, the Department finds these companies to be cross-owned during this period within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership. Because Chirico was cross-owned with Liguori during this time and both produced subject merchandise, for purposes of conducting the 0.5 percent test provided in 19 CFR 351.524(b) for any non-recurring subsidies received by either Chirico or Liguori, we are using as the denominator the combined sales of the two companies, net of intercompany sales from Chirico to Liguori, in accordance with 19 CFR 351.525(b)(6)(ii). As noted above, on December 19, 2006, Liguori sold 60 percent of its share capital in Chirico to another company. As of this date, we find that Chirico was no longer cross owned with PAM and Liguori. Thus, after December 18, 2006, when Liguori held only a minority ownership of Chirico, we attributed subsidies received by Liguori to its sales only, in accordance with 19 CFR 351.525(b)(6)(i).

PAM and Liguori continued to be cross-owned until November 25, 2015, at which point Liguori sold its shares of PAM.³⁴ PAM stated that it did not produce pasta or inputs used in the manufacture of the subject merchandise and did not receive subsidies during the AUL. Therefore, we have not included sales from PAM in the denominator used to perform the 0.5 percent test.

Loan Benchmarks and Discount Rates

²⁶ See LQR at 3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Affiliated Parties' Response at 5.

³⁰ See Affiliated Parties' Response at 5.

³¹ See L1SQR at 8.

³² Affiliated Parties' Response at 7.

³³ See L1SQR at 8.

³⁴ See L1SQR at 4.

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark. If the firm did not have any comparable commercial loans during the period, 19 CFR 351.505(a)(3)(ii) provides that we “may use a national average interest rate for comparable commercial loans.”

Liguori stated that it did not receive comparable commercial loans in the years in which the GOI provided loans to Liguori under the loan programs covered in this administrative review.³⁵ Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we are using as our loan benchmark a national average interest rate for comparable commercial loans. For benefits from loans provided during 2004-2015, the AUL, we used the GOI’s “Government Bond Yield: Long Term” interest rates as published by International Financial Statistics.³⁶

For purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(A), we are using the long-term debt rate reported by Liguori as discount rates.

VI. Analysis of Programs

Based on our analysis and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined To Be Countervailable

1. Grant Programs

a. Law 488/92-Industrial Development Grants

Under Law 488/92, Italian companies in eligible regions in depressed areas in central and northern Italy, in addition to the southern Italian Mezzogiorno, and sectors (manufacturing, mining, and certain business services) may apply for industrial development grants.³⁷

Law 488/92 grants are provided only after a preliminary examination by a bank authorized by the Ministry of Industry.³⁸ On the basis of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount

³⁵ See Letter from Liguori “Certain Pasta from Italy: CVD Second Supplemental Producer Questionnaire Response of Liguori Pastificio dal 1820 S.p.A. and Cross-Owned Affiliates,” dated April 12, 2017 at Exhibit 3.

³⁶ See International Financial Statistics, Country Notes 2016 and Yearbook 2016, published by the International Monetary Fund.

³⁷ *Id.*

³⁸ See, e.g., *Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 18806 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386 (June 29, 2010) (*Pasta from Italy 2008AR*).

of capital the company will contribute from its own funds, the number of jobs created, regional priorities, *etc.* Grants are then made based on this ranking.³⁹

Liguori submitted an application for a grant which would be used toward enlarging and increasing the productivity of its factory. Liguori was approved for the grant under Law 488/92 in 2002. The approved grant amount was provided in multiple disbursements during the AUL period.⁴⁰ Liguori reported that it received no additional assistance under this program during the POR.⁴¹

In the *Second Administrative Review*, the Department found that these industrial development grants provided financial contributions within the meaning of section 771(5)(D)(i) of the Act, and conferred non-recurring benefits in the amount of the grant pursuant to 19 CFR 351.504(a).⁴² We also found that these grants are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they are limited to companies located within certain regions. No new information has been placed on the record of this review that would cause us to depart from this treatment in this review.

In accordance with 19 CFR 351.524(c), we are treating Liguori's grant as a non-recurring subsidy and performed the "0.5 percent test" pursuant to 19 CFR 351.524(b). We divided the total amount of the grant approved in 2002 by Liguori's and Chirico's combined sales in the year of approval because, as discussed above, we determine that Chirico and Liguori were cross-owned, and Chirico produced subject merchandise at that time. Because the approved grant amount is greater than 0.5 percent, we are allocating each grant disbursement over the AUL.⁴³ To determine Liguori's subsidy rate, we summed the benefit amounts allocated to the POR pursuant to 19 CFR 351.524(d), and we divided this amount by Liguori's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy rate of 0.08 percent *ad valorem* for Liguori under this program.⁴⁴

b. Ministerial Decrees of July 23, 2009 and August 6, 2010 (Berlusconi Grant)

The GOI stated that the Ministerial Decree of July 23, 2009, provided a regulatory framework for companies to obtain economic aid for productive investments located in the four "Convergence" regions of Campania, Calabria, Puglia, and Sicily.⁴⁵ According to the GOI, within this regulatory framework, the Ministry of Economic Development issued Ministerial Decree of August 6, 2010, which discussed specific areas for which financial assistance is available, including investments that pursue innovation, competitive improvement,

³⁹ *Id.*

⁴⁰ See LQR 17-19.

⁴¹ *Id.*

⁴² See *Certain Pasta from Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999) ("*Second Administrative Review*").

⁴³ See 19 CFR 351.524(b)(1) and (d).

⁴⁴ See Memorandum from Mary Kolberg to The File, re: "Preliminary Results Calculation Memorandum for Liguori Pastificio dal 1820 S.p.A.," dated concurrently with this memorandum (Liguori Preliminary Calculation Memorandum).

⁴⁵ See GQR at II-13.

environmental protection, and energy saving.⁴⁶ The GOI explained that the decree of August 6, 2010, is also known as the Berlusconi Grant because it was signed by the Acting Minister of Economic Development, Silvio Berlusconi.⁴⁷

Liguori indicated that eligibility for the grant was based on being located in one of the less-developed regions of Italy, including Campania, the region in which Liguori is located, and is designed to assist companies with production activities in the food, electrical equipment, and biotechnological industries.⁴⁸ Liguori reported that benefits were awarded to companies that implemented an investment plan aimed at product innovation, traceability programs, packaging innovation, or improvement of logistic facilities, *e.g.*, freight or warehousing.⁴⁹ Liguori reported receiving a grant under this program to increase the productivity of and enlarge its factory.⁵⁰

The GOI confirmed that Liguori received benefits under this program during the AUL and that the program was geographically limited to companies in the “Convergence” regions of Italy.⁵¹ Based on the foregoing, we preliminarily determine that the Ministerial Decree of July 23, 2009, followed by the Ministerial Decree of August 6, 2010, confers a countervailable subsidy within the meaning of section 771(5) of the Act, because it is a direct transfer of funds from the GOI under section 771(5)(D)(i) of the Act, and bestows a benefit in the amount of the grant under 19 CFR 351.504(a). Finally, the program is specific within the meaning of 771(5A)(D)(iv) of the Act because it is limited to enterprises located within designated geographic areas.⁵²

Liguori was approved for the grant in 2012 and received disbursements in 2014 and 2015.⁵³ In accordance with 19 CFR 351.524(c), we are treating this grant as a non-recurring subsidy, and we performed the “0.5 percent test” provided in 19 CFR 351.524(b). We divided the total amount of the grant approved by Liguori’s total sales in the year of approval. Because the resulting percentage is greater than 0.5 percent, we are allocating each grant disbursement over the AUL.⁵⁴ To determine Liguori’s subsidy rate, we summed the benefit amounts allocated to the POR pursuant to 19 CFR 351.524(d) and we divided this amount by Liguori’s total sales in the POR. On this basis, we preliminarily determine a countervailable subsidy rate of 1.05 percent *ad valorem* for Liguori under this program.

2. Tax Program

Regional Tax on Income of Productive Activities Deduction in Accordance with Article 11 of Legislative Decree n. 446/1997

⁴⁶ *Id.*

⁴⁷ See letter from the GOI, “2015 Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy (C-475-819) Supplemental Questionnaire for the Government of Italy (GOI),” dated March 2, 2017 (G1SQR) at 1.

⁴⁸ LQR at 22-23.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See GQR at II-13-20.

⁵² *Id.* at II-17.

⁵³ See LQR at 26-27.

⁵⁴ See 19 CFR 351.524(b)(1) and (d).

The GOI reported that, in 1997, the GOI established the Regional Tax on Income of Productive Activities (IRAP), a tax on profit applied to the company,⁵⁵ but indicated that Article 11 of Legislative Decree n. 466/1997 identifies the specific amount a company can deduct from its taxes for each employee with a permanent contract.⁵⁶ The GOI explains that the tax deduction program is available to companies throughout the country.⁵⁷ According to the GOI and Liguori, companies can reduce from the taxable amount of the IRAP, a specific amount for each employee with a permanent contract during the tax year.⁵⁸ Companies are entitled to reduce from the taxable amount of IRAP, € 7,500 per each male employee/worker with a permanent contract, and € 13,500 per each female employee or male employee under 35 years of age with a permanent contract. However, in the years 2014 and 2015, companies operating in the south of Italy were entitled to higher deductions, € 15,000 per male employee and € 21,000 per each female employee or male employee under 35 years of age.⁵⁹ The higher tax deductions for companies operating in the south of Italy are limited to the years 2014 and 2015.⁶⁰

Liguori explained that it benefitted from this program in 2015 (*i.e.*, during the POR) because it received tax deductions at the higher rate available to companies located in the south of Italy. The Department preliminarily determines that the tax deduction confers a countervailable subsidy within the meaning of section 771(5) of the Act. The IRAP deduction provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOI conferring a benefit in the amount of the tax savings received by Liguori. We find the tax deduction to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because the deduction available was greater for companies in the south of Italy.⁶¹ In accordance with 19 CFR 351.524(c), we treated IRAP tax deductions as recurring benefits. To calculate the countervailable subsidy, we calculated the difference in the tax deduction available to all companies and the tax deduction claimed by Liguori during the POR at the higher rate because of its location in the south of Italy. Then we multiplied this difference by the applicable tax rate to calculate the tax savings to Liguori; we divided this tax savings by Liguori's total sales during the POR.⁶² On this basis, we preliminarily determine a countervailable subsidy rate of 0.09 percent *ad valorem* for Liguori.⁶³

3. Loan Program

Loan under Ministerial Decrees of July 23, 2009 and August 6, 2010

As discussed above, the GOI stated that the Ministerial Decree of July 23, 2009 provided a regulatory framework for companies to obtain economic aid for productive investments located in the four "Convergence" regions of Campania, Calabria, Puglia, and Sicily.⁶⁴ Within this

⁵⁵ See G1SQR at Standard Questions Appendix-IRAP Deductions.

⁵⁶ See G2SQR.

⁵⁷ *Id.*

⁵⁸ See G1SQR at 5 and L2SQR at 5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See G1SQR at 5 and LQR at 39.

⁶² See Liguori Preliminary Calculation Memorandum.

⁶³ See Liguori Preliminary Calculation Memorandum.

⁶⁴ See GQR at II-13.

regulatory framework, the Ministry of Economic Development issued Ministerial Decree of August 6, 2010, which discussed specific areas for which financial assistance is available, including investments that pursue innovation, competitive improvement, environmental protection, and energy saving.⁶⁵

In addition to the grant discussed above, Liguori reported that it received a loan from the government through Invitalia S.p.A., which is owned by the Ministry of Economy and Finance. The loan was outstanding during the POR.⁶⁶ Liguori indicated that eligibility for the loan was based on being located in one of the less-developed regions of Italy, including Campania, the region in which Liguori is located, and is designed to assist companies with production activities in the food, electrical equipment, and biotechnological industries.⁶⁷ Liguori reported that benefits were awarded to companies that implemented an investment plan aimed at product innovation, traceability programs, packaging innovation, or improvement of logistic facilities, *e.g.*, freight or warehousing.⁶⁸

The Department preliminarily determines that the loan provided under the Ministerial Decree of July 23, 2009, followed by the Ministerial Decree of August 6, 2010, is a financial contribution under section 771(5)(D)(i) of the Act in the form of a direct transfer of funds, and is specific according to section 771(5A)(D)(iv) of the Act because it is limited to enterprises located within designated geographic areas. The loan also confers a benefit within the meaning of 19 CFR 351.505(a), because the amount of interest Liguori paid on the loan is less than it would pay under the applicable benchmark interest rate.

In accordance with 19 CFR 351.505(c)(2), we calculated the benefit Liguori received from the loan outstanding under this program in the POR by computing the difference between the interest payments Liguori made on the loan during the POR and the interest payments Liguori would have made at the benchmark interest rate. We divided the benefit received by Liguori by its total sales in the POR. On this basis, we determine the countervailable subsidy from the loan received under Ministerial Decree of July 23, 2009, followed by the Decree of August 6, 2010, to be 0.40 percent *ad valorem* for Liguori.⁶⁹

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit During the POR

Measure 6.3 of Regional Operational Programme for Campania Region 2000-2006 (POR 6.3)

Liguori stated that it was approved for a grant under this program in August 2007 and received two disbursements, one in 2008 and one in 2009.⁷⁰ In accordance with 19 CFR 351.524(c), we are treating this grant as a non-recurring subsidy and we performed the “0.5 percent test” provided in 19 CFR 351.524(b). We divided the total amount of the approved grant by Liguori’s

⁶⁵ *Id.*

⁶⁶ See LQR at 31-33.

⁶⁷ *Id.* at 28.

⁶⁸ *Id.* at 28-29.

⁶⁹ See Liguori Preliminary Calculation Memorandum.

⁷⁰ *Id.* at 33-36.

total sales in the year of approval. Because the resulting percentage is less than 0.5 percent, we expensed the benefit from each grant disbursement to the year in which it was received; both disbursements were received prior to the POR.

C. **Programs Preliminarily Determined To Be Not Used**

We also preliminarily determine the following programs to be not used by Liguori during the POR:

- Article 14 of Law 46/82 (*Fondo Innovazione Tecnologica*) – Loan and Grant
- Ministerial Decree 87/02
- Law 10/91 Grants to Fund Energy Conservation
- Export Credits Under Law 227/77
- Capital Grants Under Law 675/77
- Retraining Grants Under Law 675/77
- Interest Contributions on Bank Loans Under Law 675/77
- Preferential Financing for Export Promotion Under Law 394/81
- Urban Redevelopment Under Law 181
- Law 113/86 Training Grants
- European Agricultural Guidance and Guarantee Fund
- Interest Grants Financed by IRI Bonds
- Law 317/91 Benefits for Innovative Investments
- Brescia Chamber of Commerce Training Grants
- C.C. Article 44 of Law 448/01
- PO FESR Measure 4.1.1.1.
- Tremonti Ter
- Regional Law 35/96
- Training Grants from the Fondo Impresa
- Piano Operativo Nazionale (National Operating Plan) (PON Program)
- Bandi Monosettoriali Ob. 2.1.1.b
- Aid to Economic Development
- Arte Bianca Training Project Grant

VII. Recommendation

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

(Date)