



A-475-818
Administrative Review
POR: 07/01/16 – 06/30/17
Public Document
AD/CVD: OIII: JZ, GM

DATE: December 4, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the duties of the Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Pasta from Italy: Issues and Decision Memorandum for
the Final Results of Administrative Review; 2016-2017

I. Summary

The Department of Commerce (Commerce) published the preliminary results of the administrative review of certain pasta from Italy on August 10, 2018.¹ The period of review (POR) is July 1, 2016, through June 30, 2017. We analyzed the case and rebuttal briefs that interested parties submitted on the record. Based on our analysis of comments received, these final results do not differ from the *Preliminary Results*. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the topic of the sole issue for which we received comments from interested parties.

Comment: Whether to Recalculate Ghigi/Zara’s Material Cost as One Weighted-Average Cost

¹ See *Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 39685 (August 10, 2018) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).

II. Background

Commerce initiated this administrative review of the antidumping duty order on certain pasta from Italy on September 13, 2017.² This administrative review covers two mandatory respondents, Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively, Ghigi/Zara), Industria Alimentare Colavita S.p.A. (Indalco), and seven firms not selected for individual review.³ The petitioners⁴ submitted their case brief on September 11, 2018.⁵ Ghigi/Zara submitted its rebuttal brief on September 17, 2018.⁶ Indalco did not submit a case or rebuttal brief.

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 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 this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. 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.⁷ Pursuant to Commerce's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the order.⁸ Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the order.⁹

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.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974, 42976 (September 13, 2017) (*Initiation Notice*).

³ The seven firms not selected for individual review are: Agritalia S.r.L. (Agritalia), Alessio Panarese Soceieta Agricola (Alessio), Antico Pastificio Morelli 1860 S.r.l. (Antico), Colussi SpA (Colussi), Liguori Pastificio dal 1820 S.p.A. (Liguori), Pastificio Menucci SpA (Menucci), and Tesa SrL (Tesa).

⁴ The petitioners are New World Pasta Company and Dakota Growers Pasta Company (collectively, Petitioners).

⁵ See Letter from the Petitioners, "Petitioners' Case Brief for Ghigi/Zara," dated September 11, 2018 (Petitioners' Case Brief).

⁶ See Letter from Ghigi/Zara, "Rebuttal Brief of Ghigi/Zara," dated September 17, 2018 (Ghigi/Zara's Rebuttal Brief).

⁷ See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

⁸ 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).

⁹ 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).

The merchandise subject to this order 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. Discussion of the Issues

Comment: Whether to Recalculate Ghigi/Zara's Material Cost as One Weighted-Average Cost

The Petitioners' Arguments

- Commerce incorrectly weight averaged Ghigi's and Zara's semolina costs for product control numbers (CONNUMs) that are identical in all physical characteristics (*i.e.*, shape, wheat species, mill form, and protein content) except for additives and vitamin enrichment. This is a departure from Commerce's long-standing practice of weight averaging the cost of production (COP) of affiliated parties that are collapsed, and not the individual cost components that comprise COP.¹⁰
- The respondents concede that they have different, actual semolina costs because Zara is an integrated operation, has a more efficient cost structure than Ghigi, and toll-processes purchased wheat to obtain semolina, whereas Ghigi is smaller and purchases small volumes that cost more.
- Commerce's approach in the *Preliminary Results* eradicated these actual cost and production differences between the two firms and, in the process, created a new precedent simply based on its finding that it is unreasonable that Ghigi and Zara might have different semolina costs.
- However, it should be expected that two distinct firms with separate factories would have different raw material or semolina costs, especially when Ghigi obtains its semolina on the open market, while Zara manages semolina costs by purchasing wheat that it toll-processed into semolina. This fact is not cause for ignoring real differences in raw material costs based on the two firms' experiences.¹¹
- Commerce based its approach in the *Preliminary Results* on view that the respondents' differences in semolina costs between similar products are due to reasons not related to the product's physical characteristics.¹²
- It is pasta, not semolina, which is the product under review. Commerce has not created a hierarchy of physical characteristics for semolina because that is not the product under review. Under section 771(16) of the Tariff Act of 1930, as amended (the Act), the costs for pasta, and the pasta CONNUM-specific costs, must reflect physical differences in the pasta being compared, not semolina.

¹⁰ See the Petitioners' case brief at 1-2. Certain account-related information is considered "Business Proprietary Information" (BPI). For details, see Memorandum to the File titled, "2016-2017 Antidumping Duty Administrative Review of Certain Pasta from Italy – Final Results: Sales and Cost Analysis Memorandum for Ghigi/Zara," dated concurrently with this memorandum (Ghigi/Zara Final Calculation Memorandum).

¹¹ See Petitioners' Case Brief at 3.

¹² See Material Cost Memorandum at 2.

- Further, the respondents' reported semolina costs are actual costs. Commerce may depart from using a company's actual costs only if they do not reasonably reflect the cost for pasta or are not maintained in accord with GAAP. Commerce did not find that either of these conditions were met.
- Commerce's approach in the *Preliminary Results* contradicted its long-standing practice of calculating separate COPs for each producer and *then* weight averaging the COPs on a CONNUM-specific basis.
- In *Shrimp from Thailand*,¹³ Commerce refused to use the respondent's reported costs, noting that its normal practice is to weight average the company-specific COPs on a CONNUM-specific basis and to use Commerce's model matching hierarchy to choose the most similar product produced during the POR. This practice was upheld by the Court of International Trade (CIT) in *Koenig & Bauer-Albert*.¹⁴
- When calculating the dumping margin, regardless of whether that margin is applied to the entities of a collapsed company or to a single company comprised of several facilities, Commerce, as it noted in *Koenig & Bauer-Albert*, focuses on the actual costs of production.¹⁵
- Contrary to *Koenig & Bauer-Albert*, Commerce's approach in the *Preliminary Results* eliminated the efficiency differences that existed between Ghigi and Zara when it failed to use the companies' actual company-specific costs. Commerce's preliminary approach causes the manipulation of actual costs that reduces Ghigi's true semolina costs before weight averaging and creates a lower COP and an artificially lower dumping margin.
- In the *Preliminary Results*, Commerce cites *CTL Plate from Korea*¹⁶ and *Welded Pipe from Turkey*¹⁷ to justify its cost calculations. However, the two cases are not on point. Those cases do not stand for the proposition that actual costs may be unreasonable and subject to revision simply because one factory's costs are higher than another's or one affiliate's costs are higher than another.
- In *CTL Plate from Korea*, Commerce found that the differences in costs between CONNUMs for subject merchandise could not be explained by the differences in the physical characteristics and revised reported conversion costs. However, *CTL Plate from Korea* only involved one company with a single production site. In the instant case, the cost differences between Ghigi and Zara represent very different, actual cost structures and operating

¹³ See *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2015-2016*, 82 FR 30836 (July 3, 2017) (*Shrimp from Thailand*) and accompanying Issues and Decision Memorandum at Comment 3.

¹⁴ See *Koenig & Bauer-Albert AG v. United States*, 90 F. Supp. 2d 1284 (Ct. Intl Trade 2000) (*Koenig & Bauer-Albert*).

¹⁵ *Id.*, quoting Commerce's second remand redetermination: "Given that each factory's results are affected by the merchandise actually produced, it would be unreasonable to adjust the actual cost of producing CONNUMs at one plant for the labor and overhead rates incurred at another plant to produce other merchandise. It ignores the reality that had the MAN Plamag factory attempted to produce LNPPs sold to the United States during the POI, it may have operated less efficiently and/or required more-highly paid workers that are more technically qualified."

¹⁶ See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea, Final Results of Antidumping Duty Administrative Review; 2015-2016* 82 FR 42075, (September 6, 2017) (*CTL Plate from Korea*), and accompanying Issues and Decision Memorandum at Comment 3.

¹⁷ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) (*Welded Pipe from Turkey*) and accompanying Issues and Decision Memorandum at Comment 2.

efficiencies of two affiliated companies. Thus, the issue in the instant review does not relate to whether the reported costs reflect physical characteristics of the product.

- Similarly, *Welded Pipe from Turkey* contains no discussion of multiple production sites, affiliated parties, or the preferred methodology for weight averaging COPs of affiliated parties. Notably, in that case, Commerce disagreed with the respondent's attempt to average material costs for zinc across all CONNUMs.¹⁸
- In *Narrow Ribbons from Taiwan*, Commerce calculated separate COPs for collapsed companies, and then weight averaged the COPs on a CONNUM-specific basis.¹⁹
- Record evidence contradicts the conclusions in the Material Cost Memorandum.²⁰ For example, both Ghigi and Zara reported identical material costs between certain of their respective CONNUMs that are identical except for vitamin enrichment, which contradicts Commerce's preliminary finding that variations exist for direct material costs for CONNUMs that are same except for vitamin enrichment.²¹
- In the *Preliminary Results*, Commerce noted that the reported costs result in variations in the direct material costs between CONNUMs that were identical except for vitamin enrichment. However, the individual costs reported by Ghigi and Zara indicate that there is no variation between enriched and non-enriched products *within* a company. The material costs only differed when compared *across* companies. Any differences in COPs are due to the difference in efficiencies between Ghigi and Zara.
- At the heart of the matter is the respondents' concern that the semolina-related high COPs for one of the two companies cause certain products to drop out of the product concordance because the difference-in-merchandise (DIFMER) adjustment exceeds the 20 percent threshold. However, contrary to the respondents' argument, the variable cost of manufacturing (VCOM) exceeds 20 percent not because of inexplicable or distortive reasons but, rather, because of the differing cost structures that exist between Ghigi and Zara. To reject the respondents' reported costs and revise them as Commerce did in the *Preliminary Results* causes certain high-cost CONNUMs to be eliminated from Commerce's product concordance – a distortion that artificially lowers the dumping margin.

Ghigi/Zara Rebuttal

- Commerce correctly exercised its authority to calculate weighted-average costs in an accurate manner that correctly avoided potential distortions.
- Contrary to the petitioners' understanding of the record, Commerce did, in fact, weight average Ghigi's and Zara's cost databases to create a single cost database for the collapsed Ghigi/Zara entity, and it used this consolidated cost database when making its preliminary margin calculation.

¹⁸ See Petitioners' Case Brief at 11-12; *see also Welded Pipe from Turkey* and accompanying Issues and Decision Memorandum at Comment 2.

¹⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Narrow Woven Ribbons from Taiwan*) and accompanying Issues and Decision Memorandum at Comment 17.

²⁰ See Memorandum, "2016-2017 Antidumping Duty Administrative Review of Certain Pasta from Italy: Ghigi/Zara: Recalculation of Material Cost as One Weighted-Average Cost," dated August 3, 2018 (Material Cost Memorandum).

²¹ See Petitioners' Case Brief at 14, citing Material Cost Memorandum at 3.

- Commerce applied this approach after first weight averaging semolina costs for CONNUMs that are identical on all of the product physical characteristics (*i.e.*, shape, wheat species, mill form, and protein content) except for additives and vitamin enrichment.
- Thus, the petitioners' claim that Commerce did not weight average costs across the companies for subject merchandise produced by the two producers is factually wrong.
- It is irrelevant that Ghigi and Zara have different semolina costs for the same CONNUMs. When Commerce collapsed the two companies into the single Ghigi/Zara entity, the companies' reported product costs must continue to reflect meaning full cost differences attributable to the different CONNUM characteristics.
- As the petitioners have acknowledged, there is no variation between enriched and non-enriched products within a company. They are only different when costs are compared across companies.
- It is due to the existence of the significant cost differences that Commerce adopted its preliminary averaging methodology. Commerce correctly recognized that differences in the semolina costs between nearly identical CONNUMs were due to reasons not related to the products' physical characteristics.
- Commerce's weight-averaging methodology in this case is consistent with Commerce's precedent and follows its long-standing practice that significant cost variations should not exist between nearly identical CONNUMs that cannot be explained in any way by the physical characteristics of those CONNUMs.
- In *CTL Plate from Korea*, Commerce noted that, pursuant to sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to physical characteristics. In that case, Commerce found that its:

. . . review of the costs specific to control numbers indicates that, when the first four physical characteristics are held constant, there is considerable variation in costs that do not appear to be attributable to physical characteristics. Consistent with our adjustment to smooth costs reported . . . in the last new shipper review, we adjusted {the respondent's} submitted costs to smooth the cost difference unrelated to physical characteristics.”²²

- Commerce adopted the similar approach in *Welded Pipe from Korea*, in which it adjusted the respondent's reported raw material costs that had identical CONNUM characteristics, except for painting, to reflect the same hot-rolled coil cost, in order to smooth out “large fluctuations in costs between CONNUMs {that} cannot be explained by the physical characteristics of those CONUMMs.”²³
- In *Polyethylene Retail Carrier Bags from Taiwan*, Commerce adjusted the respondent's costs “to reflect a single average cost for each resin type consumed . . . {rather than} simply weight-averaging the CONNUM-specific reported costs” to eliminate cost differences

²² See *CTL Plate from Korea*, Issues and Decision Memorandum at Comment 3.

²³ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) (*Welded Pipe from Korea*) and accompanying Issues and Decision Memorandum at Comment 8.

“attributable to factors unrelated to the physical characteristics defined by the model-match methodology.”²⁴

- Contrary to the petitioners’ claims, Commerce has the authority to revise a company’s costs, not only when they do not reasonably reflect the respondent’s costs or are not compliant with generally accepted accounting principles (GAAP), but also when “cost differences among products do not represent differences in physical characteristics.”²⁵
- The petitioners draw the wrong conclusions regarding the fact that the two respondent firms that comprise the collapsed entity operate at different efficiencies and purchase semolina at different prices to produce certain products subject to review. These differences are precisely why Commerce collapsed Ghigi and Zara in the first place – *i.e.* to eliminate any potential for manipulation of prices or production.
- When Commerce collapsed the two firms, they essentially constituted a singular entity with consolidated costs. Thus, just as Commerce requires a single respondent in any other case to report raw material costs in a manner that ensures large cost differences do not exist between CONNUMs for reasons that have nothing to do with physical characteristics, so too does Commerce create a single consolidated cost database with a collapsed entity.
- The petitioners’ citation to *Shrimp from Thailand* is not on point. Commerce used the company-specific cost databases to calculate weighted-average costs for the collapsed entity in that case. However, Commerce did not find that company-specific cost data would lead to distortions.²⁶ In contrast, Ghigi/Zara identified that weight averaging the company-specific cost data would lead to distortions and presented evidence supporting such a conclusion. Thus, the instant case is distinct from *Shrimp from Thailand*.
- *Narrow Woven Ribbons from Taiwan*, cited by the petitioners, is also distinct from the instant review. In that case, only one of the three companies included in the collapsed entity was a producer of the merchandise under consideration. Thus, Commerce did not obtain a cost database from two of the three companies included in the collapsed entity, and the determination of whether and how to combine separate cost databases was not an issue.

Commerce’s Position: In the *Preliminary Results*, we adjusted Ghigi/Zara’s pasta costs to mitigate cost differences between products that are unrelated to the reported products’ physical characteristics.²⁷ When Commerce evaluates a respondent’s submitted costs, section 773(f)(1)(A) of the Act provides that “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.” Accordingly, Commerce will rely on a company’s normal books and records if two conditions are met: (1) the books are kept in accordance with home country GAAP; and (2) the books reasonably reflect the cost to produce and sell the merchandise. Here, Ghigi/Zara’s books meet the first criterion; thus,

²⁴ See *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010) (*Polyethylene Retail Carrier Bags from Taiwan*) and accompanying Issues and Decision Memorandum at Comment 4.

²⁵ See Material Cost Memorandum at 4.

²⁶ See *Shrimp from Thailand* Issues and Decision Memorandum at Comment 3.

²⁷ See Preliminary Decision Memorandum at 12; see also Material Cost Memorandum; and Memorandum, “2016-2017 Antidumping Duty Administrative Review of Certain Pasta from Italy – Preliminary Results,” dated August 3, 2018 (Preliminary Calculation Memorandum).

the question facing Commerce is whether the per-unit costs from Ghigi/Zara's normal books reasonably reflect the cost to produce and sell pasta.

During a less-than-fair value investigation, Commerce identifies the physical characteristics that are the most significant in differentiating between products. These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, different shape, wheat species, mill form, and protein content) reflects the importance that Commerce places on establishing normal values (NV) based on the comparison market sales of identical, or the most similar, foreign like product. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to these different physical characteristics identified by Commerce in its antidumping questionnaire.²⁸ The physical characteristics identified in this case are shape, wheat species, milling form, protein content, additives, and enrichment. This ensures that the product-specific costs we use for the sales-below-cost test, constructed value (CV), and the DIFMER adjustment accurately reflect the distinct physical characteristics of the products whose sales prices are used in Commerce's dumping calculations.

Based on an analysis of Ghigi/Zara's reported cost data, Commerce found in the *Preliminary Results* that the differences in costs between CONNUMs cannot be explained solely by the differences in the physical characteristics of the CONNUMs.²⁹ For the preliminary calculations, we found that Ghigi/Zara's reported material costs varied significantly among CONNUMs with the same shape, wheat species, and milling form, and that these differences are caused by reasons not related to the product characteristics, such as the source of the supply of the semolina (*i.e.*, by Ghigi or Zara) used to produce the pasta, which is not a physical characteristic defined by Commerce in this proceeding.³⁰ Therefore, in accordance with 19 CFR 351.411(b) and Commerce's established practice,³¹ in the *Preliminary Results*, we reallocated material costs among products with common physical characteristics to mitigate cost differences that are unrelated to differences in the physical characteristics of the products.³²

²⁸ See *Welded Pipe from Korea* and Issues and Decision Memorandum at Comment 8.

²⁹ See Material Cost Memorandum for further details; *see also* Preliminary Calculation Memorandum.

³⁰ See Sections B and C of Commerce's initial antidumping questionnaire sent to Ghigi/Zara, dated December 13, 2017.

³¹ See *e.g.*, *Final Determination of Sales at Not Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From Thailand*, 79 FR 25574 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 3; *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) (SSB from the UK), and accompanying Issues and Decision Memorandum at Comment 1; *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665 (November 8, 2005), and accompanying Issues and Decision Memorandum at Comment 1; and *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 46961 (October 10, 2017) and accompanying Issues and Decision Memorandum at Comment 2.

³² See Preliminary Decision Memorandum at 12; *see also* Preliminary Calculation Memorandum and Material Cost Memorandum.

For these final results, based on our analysis of Ghigi/Zara's reported cost data,³³ we continue to find that Ghigi and Zara incurred significantly different semolina costs, resulting in large direct material cost differences between pasta CONNUMs that are identical except for vitamin enrichment and additives, and that the differences in the semolina costs between the nearly identical CONNUMs were due to reasons not related to the products' physical characteristics.³⁴ Thus, we continue to find it appropriate to follow our normal practice and maintain the approach adopted in the *Preliminary Results* to ensure that the significant differences in costs between nearly identical control numbers that are due to reasons unrelated to the products' physical characteristics are mitigated to avoid distortions in the final calculations.³⁵

With regard to semolina costs, we find that these variations are due to the manner in which Ghigi/Zara source and produce their semolina and accumulate product-specific costs in their normal accounting records.³⁶ While one company incurred significantly lower costs for its semolina due to its sourcing patterns and integrated operations, the semolina consumed by both collapsed companies is identical, by wheat species, milling form and protein content, and is capable of being used to produce any of the products produced by either company. In addition, both companies are capable of producing the same pasta products. Assigning the significantly different semolina costs only to the specific products produced by each company results in cost variations by CONNUM that are not related to the physical differences of the products, leading to costs of the collapsed entity that do not reasonably reflect the cost of the subject merchandise. Furthermore, to allow a respondent to choose which merchandise to produce from the low semolina cost company and which merchandise to produce from the high semolina cost company, when each company is capable of producing all of the same merchandise, would be ripe for manipulation. Therefore, in accordance with 19 CFR 351.411(b), and in accordance with Commerce's established practice,³⁷ for these final results, Commerce finds that it is appropriate to adjust Ghigi/Zara's pasta costs so that they accurately represent the weighted-average cost for the collapsed entity. In making such adjustments, we have continued to weight average semolina costs for CONNUMs that are identical in all of Commerce's physical characteristics (*i.e.*, shape, wheat species, mill form, and protein content) except for additives and vitamin enrichment, to mitigate differences in material costs that are unrelated to differences in the physical characteristics of the products.³⁸

We agree with the petitioners that our practice is to weight average the production costs of individual producers to create one cost database for the collapsed company.³⁹ Accordingly, we

³³ See Letter from Ghigi/Zara, titled "Pasta from Italy; Ghigi 1870 S.p.A. and Pasta Zara S.p.A. 4th Supplemental Questionnaire Response," dated June 14, 2018 (6/14/2018 SQR).

³⁴ See Ghigi/Zara 6/14/2018 SQR at 9-11; *see also* Material Cost Memorandum.

³⁵ See the Sections B and C of Commerce's initial antidumping questionnaire sent to Ghigi/Zara, dated December 13, 2017.

³⁶ See Ghigi/Zara 6/14/2018 SQR.

³⁷ See *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 46961 (October 10, 2017), and accompanying Issues and Decision Memorandum at Comment 2; *see also* *CTL Plate from Korea*, Issues and Decision Memorandum at Comment 3, *Welded Pipe from Korea*, Issues and Decision Memorandum at Comment 8.

³⁸ See Preliminary Calculation Memorandum at 2-4; *see also* Ghigi/Zara Final Calculation Memorandum.

³⁹ See Petitioners' Case Brief at 5.

weight averaged Ghigi's and Zara's cost databases into a single cost database and used the consolidated cost database for the preliminary margin calculations.⁴⁰ Specifically, we first weight averaged semolina costs for CONNUMs that are identical in all of Commerce's physical characteristics (*i.e.*, shape, wheat species, mill form, and protein content) except for additives and vitamin enrichment.⁴¹ After we adjusted the semolina costs, we weight averaged Ghigi's and Zara's costs on a CONNUM-specific basis.⁴² Thus, the methodology employed in this case is consistent with *Shrimp from Thailand*, because, after making the adjustment to mitigate the cost differences unrelated to the physical characteristics, Commerce weight averaged the individual company COP's to create one COP for the collapsed entity.⁴³ We performed the semolina cost averaging adjustments because we found that Ghigi and Zara incurred significantly different semolina costs due to reasons not related to differences in the physical characteristics of the subject merchandise.

The petitioners argue this approach was inappropriate and deviated from Commerce's long-standing practice.⁴⁴ However, that is not the case. Our weight-averaging approach in this case is consistent with the statute and our practice to rely on a respondent's normal books and records, when appropriate. In accordance with section 773(f)(1)(a) of the Act, Commerce will rely on a respondent's normal books and records where such records reasonably reflect the costs associated with the production and sale of the subject merchandise. Commerce has relied on the actual pasta costs, because they were based on Ghigi/Zara's normal books and records prepared in accordance with Italian GAAP. However, we have adjusted the actual product-specific costs, because they do not reasonably reflect cost differences between all products produced by the Ghigi/Zara collapsed entity.

Therefore, in accordance with the statute, in cases where the costs reported according to a company's normal books are unreasonable (*e.g.*, if cost differences among products do not represent differences in physical characteristics), Commerce may revise such costs.⁴⁵ For example Commerce stated in *CTL Plate from Korea*:

{U}nder sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, constructed export price profit, constructed value, and the difference-in-merchandise adjustment, accurately reflect the distinct physical characteristics of the products whose sales prices are used in our dumping calculations. The physical characteristics identified in this case are whether or not the plate is painted, quality, specification and grade, heat treatments, standard thickness, and standard width.

⁴⁰ See Preliminary Calculation Memorandum at 2-4.

⁴¹ *Id.*

⁴² See *Preliminary Results*, see also Material Cost Memorandum; and see also Preliminary Calculation Memorandum; *prelim comparison and margin programs*.

⁴³ See *Shrimp from Thailand* and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁴ See Petitioners' case brief at 1-2.

⁴⁵ See, *e.g.*, *CTL Plate from Korea*, and accompanying Issues and Decision Memorandum at Comment 3; see also *Welded Pipe from Turkey* and accompanying Issues and Decision Memorandum at Comment 2.

Our review of the costs specific to control numbers indicates that, when the first four physical characteristics are held constant, there is considerable variation in costs that do not appear to be attributable to physical differences. Consistent with our adjustment to smooth the costs reported by Hyundai Steel in the last completed new shipper review, we adjusted DSM's submitted costs to smooth the cost difference unrelated to physical characteristics.⁴⁶

In this administrative review, Ghigi and Zara reported significantly different semolina costs, resulting in variations in the direct material costs between CONNUMs that were identical except for additives and vitamin enrichment.⁴⁷ We agree with the respondents that the differences in semolina costs between nearly identical control numbers are due to reasons not related to the products' physical characteristics.⁴⁸ Accordingly, we find that it is appropriate for us to adjust Ghigi's and Zara's submitted semolina costs to "smooth" the cost differences unrelated to physical characteristics of pasta. This approach is consistent with our practice, and applies equally to all respondents, regardless of whether the respondent is a collapsed entity.⁴⁹

The cases cited by the petitioners, such as *Shrimp from Thailand*, *Narrow Woven Ribbons from Taiwan*, and *Koenig & Bauer-Albert*, are not applicable to the facts of this case. In all these cases, we did not find evidence or address the issue that the costs of the subject merchandise were distorted by cost differences that were caused by reasons other than the physical characteristics of the products.⁵⁰ In addition, in *Koenig & Bauer-Albert*, we found that both plants were not capable of producing the same products. When we have collapsed individual companies into a single entity, the companies' reported product costs must continue to reflect meaningful cost differences attributable to the physical characteristics of the product. Thus, for purposes of the final results, we have continued to use the same weight-averaging methodology adopted in the *Preliminary Results* in calculating Ghigi/Zara's costs.

⁴⁶ See *CTL Plate in Korea*, Issues and Decision Memorandum at Comment 3.

⁴⁷ See Material Cost Memorandum and see also Preliminary Calculation Memorandum.

⁴⁸ See Ghigi/Zara's revised Cost of Production data, submitted in Letter from Ghigi/Zara, titled "Pasta from Italy; Ghigi 1870 S.p.A. and Pasta Zara S.p.A. 2nd Supplemental Section D Questionnaire Response," dated May 18, 2018.

⁴⁹ See *CTL Plate from Korea*, Issues and Decision Memorandum at Comment 3; *Welded Pipe from Korea* and Issues and Decision Memorandum at Comment 8; and *Polyethylene Retail Carrier Bags from Taiwan* and Issues and Decision Memorandum at Comment 4.

⁵⁰ See generally *Shrimp from Thailand*; *Narrow Woven Ribbons from Taiwan*; and *Koenig & Bauer-Albert*.

V. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

☒

Agree

☐

Disagree

12/4/2018

X



Signed by: GARY TAVERMAN

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