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Administrative Review
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January 10, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
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 22nd
Administrative Review of the Antidumping Duty Order on Certain
Pasta from Italy; 2017-2018

I. SUMMARY

On September 12, 2019, the Department of Commerce (Commerce) published the preliminary results of the antidumping duty administrative review of certain pasta (pasta) from Italy. The period of review (POR) is July 1, 2017 through June 30, 2018. This review includes five companies, including two mandatory respondents: Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively, Ghigi/Zara); and Industria Alimentare Colavita S.p.A. (Indalco).

We analyzed the case and rebuttal briefs of interested parties in the above referenced administrative review of the antidumping duty (AD) order on certain pasta (pasta) from Italy. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

- Comment 1: Whether Ghigi/Zara Correctly Reported Protein Content
- Comment 2: Whether Ghigi/Zara Correctly Reported Shape Codes
- Comment 3: Whether Partial AFA is Warranted with Respect to Ghigi/Zara’s U.S. Payment Dates
- Comment 4: Whether to Recalculate Credit Expense for Zara
- Comment 5: Whether Zara Double-Counted Scrap Offset
- Comment 6: Whether Billing Adjustments Were Correctly Applied for Ghigi/Zara
- Comment 7: Whether to Make Certain Adjustments to the Comparison and Margin Programs for the Final Results with Respect to Ghigi/Zara
- Comment 8: Whether to Apply the Preliminary Result Rate to Agritalia/Tesa

- Comment 9: Whether to Apply AFA to Industria Alimentare Colavita S.p.A.'s (Indalco) U.S. Commission Expenses
- Comment 10: Whether to Deny All Reported Billing Adjustments to Indalco's U.S. Sales Value
- Comment 11: Whether to Adjust Indalco's Rebates Based on Verification Findings
- Comment 12: Whether to Reject Indalco's Home Market Quantity Adjustments
- Comment 13: Whether to Include U.S. Advertising Expenses in the Margin Program for Indalco

II. BACKGROUND

On July 24, 1996, the Department of Commerce (Commerce) published the *AD Order* on pasta from Italy.¹ On September 12, 2019, Commerce published the *Preliminary Results* of the 2017/18 administrative review of pasta from Italy.²

We invited parties to comment on the *Preliminary Results*. On October 23 and October 24, 2019, we received case briefs from the domestic producers,³ Ghigi/Zara, Agritalia S.r.L. and Tesa S.r.L.⁴ On October 31, 2019, we received rebuttal briefs from the domestic producers and Indalco.⁵ On December 3, 2019, Commerce held a public hearing at the joint request of Ghigi/Zara, Agritalia, and Tesa.⁶

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

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

² See *Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 48114 (September 12, 2019) (*Preliminary Results*).

³ The domestic producers are Dakota Growers Pasta Company, Riviana Foods, Inc., and TreeHouse Foods, Inc. (collectively, Domestic Producers).

⁴ See Domestic Producers' Letters, "Petitioners' Case Brief for Ghigi 1870 S.p.A/Pasta Zara S.p.A.," dated October 24, 2019 (Domestic Producers' Ghigi/Zara Case Brief), and "Petitioners' Case Brief for Industria Alimentare Colavita S.p.A.," dated October 24, 2019 (Domestic Producers' Indalco Case Brief); see also Ghigi/Zara's Letter, "Pasta from Italy; Ghigi/Zara case brief," dated October 23, 2019 (Ghigi/Zara Case Brief), Agritalia S.r.L.'s Letter, "Pasta from Italy; Agritalia case brief," dated October 23, 2019 (Agritalia Case Brief), and Tesa SrL's Letter, "Pasta from Italy; Tesa case brief," dated October 23, 2019 (Tesa Case Brief).

⁵ See Domestic Producers' Letters, "Petitioners' Rebuttal Brief for Ghigi 1870 S.p.A/Pasta Zara S.p.A.," dated October 31, 2019 (Domestic Producers' Rebuttal to Ghigi/Zara) and "Petitioners' Rebuttal Brief for Agritalia S.r.L.," dated October 31, 2019 (Domestic Producers' Rebuttal to Agritalia); see also Indalco's Letter, "Certain Pasta From Italy: Rebuttal Brief of Indalco S.p.A.," dated October 31, 2019 (Indalco Rebuttal Brief).

⁶ See Public Hearing Transcript, dated December 10, 2019.

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.

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 1: Whether Ghigi/Zara Correctly Reported Protein Content

Ghigi/Zara's Arguments

- Ghigi's original coding in its home market and U.S. sales data reported for the protein content field (PROTEINH/U) of its sales was correct. Commerce's instructions with respect to PROTEINH/U contain a latent ambiguity, as standards for protein measurement are different in Italy and the United States. Ghigi's original reporting of PROTEINU was based on a conversion of protein content to ensure that products with the same PROTEIN coding were physically identical.¹⁰
- Commerce's instructions to report PROTEINH/U based on the protein content listed on the pasta package label leads to different products being treated as identical. In Italy, regulatory standards dictate measuring protein by multiplying the observed nitrogen (N) in a product by 5.711, as opposed to 6.2510 in the United States. Thus, a protein label of 12.5 percent on U.S. pasta is equivalent to 11.4 percent on Italian pasta. The questionnaire is not ambiguous on its face, but once the ambiguity is clear, the standard of reporting based on the labeled protein content is no longer tenable.¹¹
- Ghigi chose to report protein content based on a bill of materials (BOM) for certain U.S.-market products with a protein content of 12 percent. During verification in Italy, Commerce

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).

¹⁰ See Ghigi/Zara's Case Brief at 1-2.

¹¹ *Id.* at 1-2 and 12-13.

found that Ghigi reported the PROTEIN field based on its internal BOMs, but not with the product labels, as instructed in the questionnaire.¹²

- Since the 2007-2008 administrative review, Commerce used a breakpoint of 12.5 percent based on Italian commodity exchanges, with no evidence to support the application of this standard for the U.S. market. In fact, Commerce has never considered the differences in protein measurement described above. In *Pasta 2010-2011 Review*, Commerce claimed that “the package label is a reliable source for the Department to use in identifying the physical characteristics, including protein content.”¹³ Given the differing standards for protein measurement, however, the package label does not provide an accurate comparison. Thus, Commerce should allow Ghigi’s approach to equalizing protein content based on differing measurement standards.¹⁴
- Additionally, Zara properly coded PROTEINU. The record contains no examples of packaging for Zara’s reported sales. Thus, Commerce cannot find that Zara’s reporting was inconsistent with the terms of the questionnaire. Commerce should revert to Zara’s original PROTEINU and control number (CONNUMU) structure.¹⁵
- A further issue with Commerce’s protein coding approach is that it generates distorted cost data. In *Pasta 2007-2008 Review*, Commerce stated that the protein content of finished pasta is the same as the semolina from which that pasta was produced.¹⁶ Ghigi and Zara agree with this. However, if U.S. pasta with a label protein content of 12.5 percent by the U.S. standard is made from semolina with a protein content below 12.5 percent by the Italian standard, there is a mismatch between the cost and sales data. The cost data differentiate protein according to Italian standards, but when the protein is changed in the U.S. sales data to 12.5 percent protein, it gains the cost of pasta made from premium semolina. Thus, the cost of U.S. pasta is inconsistent with the actual production cost.¹⁷
- This inconsistency can be seen in Zara’s cost of production. Using Commerce’s methodology leads to 315 metric tons of premium pasta being produced from 180 metric tons of premium semolina, an impossible gain, given that the production of semolina into pasta involves a yield loss.¹⁸
- The fundamental problem for cost-accounting is that the protein content of all semolina is measured using the Italian standard. Thus, pasta sold in both the U.S. and home market with 12.5 percent protein labels are made from standard and premium semolina, respectively. This leads to two products with the same PROTEIN code physical characteristic having different inputs, which creates unreconcilable differences in the consolidated production cost data. Commerce should resolve this by allowing for the cost calculation to be made according to the BOM.¹⁹

¹² *Id.* at 6-7.

¹³ See *Pasta from Italy: Notice of the Final Results of the 15th Antidumping Duty Administrative Review, Final No Shipment Determination and Revocation of Order, in Part; 2010-2011*, 78 FR 9364 (February 8, 2013) (*Pasta 2010-2011 Review*), and accompanying Issues and Decision Memo (IDM) at Comment 4.

¹⁴ See Ghigi/Zara’s Case Brief at 16-19 and 21-22.

¹⁵ *Id.* at 23.

¹⁶ See *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010) (*Pasta 2007-2008 Review*), and accompanying IDM at Comment 1.

¹⁷ See Ghigi/Zara’s Case Brief at 24.

¹⁸ *Id.* at 25.

¹⁹ *Id.* at 26-27.

Domestic Producers' Rebuttal Comments

- Commerce discovered that Ghigi had misreported the protein content during the onsite sales verification. Ghigi's failure to properly report the protein content of its pasta is a severe issue, rising to a level for which AFA has been applied in the past. Ghigi/Zara's argument that the inconsistency in measurement standards leads to a latent ambiguity is based on untimely new factual information provided by its subsequent verification and after the factual record has closed, which should have been stricken from the record.²⁰
- Ghigi/Zara's attempt to focus attention on a purported "latent ambiguity" is an attempt to cover up its initial misreporting. There was no ambiguity in Commerce's instructions, which specified that protein be reported "as stated on the label."²¹ Ghigi/Zara had raised no concerns with Commerce over protein reporting or noted an ambiguity in the instructions in the previous or the current review. In fact, Ghigi/Zara stated in its initial questionnaire response that "Ghigi/Zara reported the protein content in accordance with the instruction."²² The criticism of "a latent ambiguity" in Commerce's PROTEINH/U coding was made only after Commerce's verification demonstrated that Ghigi/Zara had not, as claimed, relied on labeled protein content. The attempt to instead use internal documents for semolina is a blatant evasion.
- Commerce's methodology of using the labeled protein content has been consistent and unambiguous across numerous reviews. Commerce stated in *Pasta 2010-2011 Review* that the protein content of the finished pasta listed on the package is more transparent and objective than internal documents or nitrogen to protein conversions, which allow individual respondents to manipulate product comparisons.²³
- Record evidence demonstrates that Ghigi/Zara miscoded protein content to classify U.S. sales as non-premium and home market sales as premium to lower its dumping margins. Ghigi/Zara submitted a revised U.S. sales database (US04) relying on the protein label, as requested by Commerce. While Ghigi/Zara's reporting of the PROTEINH/U field warrants the application of AFA, the domestic producers support Commerce's calculation of dumping margins based on Ghigi/Zara's US04 database.²⁴
- Ghigi/Zara's own home market sales database does not reflect a clear relationship between Ghigi/Zara's reported PROTEINH codes for sales of finished pasta and the corresponding input semolina used for production of finished pasta. As such, Ghigi/Zara's argument that Commerce's methodology for protein content leads to an inconsistency between the grade of semolina input and pasta output is specious.²⁵
- Furthermore, according to their own submissions, neither Ghigi nor Zara track direct material costs by the type of semolina used in the normal course of business. Zara's BOM does not refer to the type of semolina (high-protein/low-protein) used for producing different types of pasta. Discrepancies in Ghigi/Zara's purchasing quantity of premium semolina and sales

²⁰ See Domestic Producers' Rebuttal to Ghigi/Zara at 2, 6, and 11.

²¹ See Sections B and C of Commerce's initial antidumping questionnaire issued to Ghigi/Zara, dated October 12, 2018 (Initial Questionnaire).

²² See Ghigi/Zara's Letter, "Pasta from Italy Ghigi/Zara B, C, D response," dated December 10, 2018 (Ghigi/Zara's BQR, CQR and DQR) at B-10.

²³ See Domestic Producers' Rebuttal to Ghigi/Zara at 10 (citing *Pasta 2010-2011 Review* IDM at Comment 4).

²⁴ *Id.* at 12.

²⁵ *Id.* at 15-16.

quantity of premium finished pasta indicate that Ghigi/Zara used the same grade of semolina for the production of finished pasta of different protein contents. As such, the attempt by Ghigi/Zara to create a relationship between the different grades of semolina and pasta should be rejected.²⁶

- Packaging labels are an objective source of information that allow Commerce to maintain a stable methodology. Commerce has already rejected multiple arguments in past proceedings based on allegedly different types of wheat that, in fact, were intended to exclude high-priced home market sales.²⁷ Using the BOM, a company-specific internal document, would lead to fluctuations in product matches across respondents.²⁸
- Ghigi/Zara's claim that the differing protein measurement standards lead to major inconsistencies in cost reporting is insufficient grounds for its improper reporting. It is common for respondents to have different cost accounting systems than Commerce requires. Nonetheless, respondents are required to report costs based on the model matching criteria established by Commerce. Differing recordkeeping practices are not grounds for altering Commerce's requirements for reporting information.²⁹
- Commerce should continue to use Ghigi/Zara's revised U.S. sales database (US04) that incorporates the revised PROTEINU codes and reject Ghigi/Zara's attempt to avoid the consequences of data manipulation.³⁰

Commerce's Position: As background, we provide the following information. At Ghigi's home market sales verification, we found that Ghigi reported protein content based on its internal BOM, rather than the label of the respective product, as instructed by Commerce in its initial questionnaire.³¹ We noted that Ghigi reported protein content as code '2' for all of the products sold in the U.S. market due to an error in the original Section C questionnaire that was issued to the company, which incorrectly did not list two codes for protein content: "1" (12.5 percent or higher) and "2" (10-12.49 percent).³² Accordingly, before our verification in the United States of Ghigi's constructed export price (CEP) sales, we requested that Ghigi/Zara report the protein content as stated on the label of the respective product pursuant to the revised correct protein codes of "1" and "2" for all of its U.S. sales, due to the error in Commerce's original questionnaire.³³ Under protest, Ghigi/Zara changed its coding of protein content in the U.S. sales

²⁶ *Id.* at 16-18.

²⁷ See Domestic Producers' Rebuttal to Ghigi/Zara at 25 (citing *Final Results of the Sixth Antidumping Duty Administrative Review: Certain Pasta from Italy*, 69 FR 6255 (February 10, 2004) at Comment 26).

²⁸ *Id.* at 24-25.

²⁹ *Id.* at 25-26.

³⁰ *Id.* at 27.

³¹ See Initial Questionnaire at Section B.

Field Number 3.4:	Protein Content
FIELD NAME:	PROTEINH
1	= 12.5 percent or higher protein in finished pasta
2	= 10.00 - 12.49 percent protein in the finished pasta
NARRATIVE:	Identify the percentage of protein in the pasta sold, as stated on the label of the respective product.

³² See Memorandum, "Antidumping Duty Review of Certain Pasta from Italy: Verification of the Sales Responses of Ghigi," dated August 1, 2019 (Ghigi Sales Verification Report), at 1-2.

³³ See Commerce's Letter, "2017-2018 Administrative Review of Certain Pasta from Italy: Request for Revised U.S. Sales Database," dated June 26, 2019 (Revised Questionnaire). We disagree with the Domestic Producers that

database US04 based on the instructions in the Revised Questionnaire, but argued that Ghigi's original PROTEINU coding was correct because when converted to the Italian measurement, the U.S. protein content is only 11.4 percent.³⁴

We disagree with Ghigi/Zara that the instructions in the Initial questionnaire and Revised Questionnaire contain a latent ambiguity because the protein measurement protocol is different in Italy and the United States. There is no ambiguity in the instructions of the questionnaires, which instructed Ghigi/Zara to report "the percentage of protein content in the pasta sold, as stated on the label of the respective product."³⁵

Ghigi/Zara has participated as a mandatory respondent in prior pasta administrative reviews.³⁶ In the 2015-2016 and 2016-2017 reviews, Ghigi/Zara did not raise the issue of "latent ambiguity" in the protein measurement protocol or indicate the need to convert the U.S. protein content to the Italian measurement based on nitrogen content until Commerce's verifiers discovered that Ghigi miscoded the protein content for all U.S. sales selected for examination at verification. On the contrary, in its initial questionnaire response, Ghigi/Zara stated clearly that it reported the protein content for pasta based on the product label in all three reviews in which it has participated as a mandatory respondent.³⁷

In the 2007-2008 review, Commerce modified the pasta CONNUM by including the PROTEINH/U field.³⁸ In so doing, we explained our decision to use 12.5 percent protein content as a dividing line for premium pasta and standard pasta:

Our decision to use a minimum protein content of 12.5 percent for premium finished pasta is based on four factors. The first one is that, as stated above, we believe some brands of pasta are produced, marketed, and sold as premium products, distinct from standard products. These premium pasta brands have distinct physical characteristics that are commercially significant. The second factor is that there is not a clearly defined method of identifying premium pasta other than the protein content marked on the packages. The third factor is that there is a clear relationship between the physical characteristics of the semolina used to produce the finished pasta and the finished pasta itself. The forth {sic} factor is that 12.5 percent minimum content is an industry standard developed in the Italian market place of pasta manufacturers and semolina sellers. Given

Ghigi/Zara's argument with respect to protein content measurement standards is new factual information. Ghigi/Zara's argument is in its July 18, 2019 submission on the record and does not constitute new factual information under 19 CFR 351.302(d). See Memorandum "Acceptance of Ghigi 1870 S.p.A., Pasta Zara S.p.A., and Ghigi Food Industries, LLC Submission," dated August 1, 2019.

³⁴ See Ghigi/Zara's Letter, "Pasta from Italy: Ghigi/Zara response to request for revised US sales database," dated July 2, 2019 (July 2, 2019 Supplemental Questionnaire Response).

³⁵ See Initial Questionnaire at C-7; see also Revised Questionnaire at 1.

³⁶ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 57428 (December 5, 2017); see also *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 62627 (December 11, 2018).

³⁷ See Ghigi/Zara sections BCD questionnaire response at B-10 and C-9.

³⁸ See *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352, (February 9, 2010) (*Pasta 2007-2008 Review*) and accompanying IDM at Comment 1.

these factors, we believe our approach is reasonable and will contribute to the accuracy of the dumping analysis.³⁹

In the 2010-2011 review, Commerce further explained the importance of reliance upon the information listed on the packaging label for finished pasta:

Thus, the protein content of the finished pasta listed on the package is central to our analysis. As petitioner noted above, all of the physical characteristics that are basis for our model match criteria are printed on the labels of the finished pasta packages. Buyers and sellers examine this information, as listed on the packaging, in determining which products to purchase and/or sell and the appropriate price. In addition, because pasta is sold through retail chain to individual customers, there are often many different intermediaries involved in the distribution and sale of finished pasta; each of which need to know the relevant information.

Furthermore, our reliance upon the information listed on the packaging of the finished product (*i.e.*, the same information that is available to a consumer in the United States) conforms to our statutory obligation to base our price-to-price comparison on a transparent and consistent basis. Thus, relying on the information reported on the packages of finished pasta is appropriate.⁴⁰

As we indicate in the above decision, Commerce based its price-to-price comparisons (*i.e.*, defining the normal value for U.S. sale prices on the sale price(s) of the identical, or alternatively the most similar, product sold in the comparison market) on a transparent and consistent basis by properly selecting the protein content as listed on the packaging label for finished pasta. As we noted in the *Pasta 2007-2008 Review*, the market reality is that “there is not a clearly defined method of identifying premium pasta other than the protein content marked on the packages.”⁴¹ Thus, Commerce’s reliance on the packaging label is an objective method to achieve a product comparison on a “consistent and transparent” basis because all of the physical characteristics are listed on the product label. Indeed, Ghigi/Zara market and price their sales to U.S. customers based on the specification of the product denoted on the label.⁴² Thus, we find unconvincing Ghigi/Zara’s argument that we should base the PROTEINU coding upon the internal information in its BOMs or on a different measurement protocol for protein content. Furthermore, using Ghigi/Zara’s BOMs as the basis for a company-specific PROTEINU field coding would be contrary to Commerce’s long-standing practice of using consistent and uniform physical characteristics for all respondents in an antidumping duty proceeding, which helps prevent individual respondents from reporting company-specific physical characteristics that may be used to manipulate the matching of normal values with U.S. sale prices of subject merchandise.⁴³

³⁹ See *Pasta 2007-2008 Review* IDM at Comment 1.

⁴⁰ See *Pasta 2010-2011 Review* IDM at Comment 4.

⁴¹ See *Pasta 2007-2008 Review* IDM at Comment 1.

⁴² See Ghigi Sales Verification Report at 1 and 16.

⁴³ See *La Molisana S.p.A. v. United States*, 2019 Ct. Int’l Trade LEXIS 79, Slip. Op. 2018-76 (Court of International Trade (CIT) June 21, 2018), affirmed by *La Molisana S.p.A. v. United States*, 2019 U.S. App. LEXIS 33659, Op. No. 2018-2261 (Court of Appeals for the Federal Circuit (CAFC) Nov. 12, 2019) (Nonprecedential Rule 36 Judgment) (*La Molisana*).

In addition, we do not find that record evidence supports Ghigi/Zara’s argument that the U.S. pasta labeled as 12.5 percent was made from semolina with a protein content of less than 12.5 percent.⁴⁴ Ghigi/Zara’s internal product coding indicates that it does not track direct material costs by type (grade) of semolina in normal course of business.⁴⁵ The record evidence indicates a significant difference in purchase quantity of premium semolina and the sales quantity of premium finished pasta, and that the difference does not establish a clear relationship between Ghigi/Zara’s purchases of high-protein semolina and its sales of high-protein finished product during the period of review.⁴⁶ In addition, record evidence does not establish commercially significant differences in the cost for semolina and the price for finished pasta of different protein contents.⁴⁷

It is Commerce’s long-standing policy to uphold transparent and consistent definitions for physical characteristics.⁴⁸ It was incumbent upon Ghigi/Zara to raise the issue of a “latent ambiguity” in Commerce’s coding of physical characteristics regarding protein content at the questionnaire stage, not in protest later in the review in response to a verification request for accurate sales data. Accordingly, we continue to rely on the product label on the respective pasta product as the basis for coding the protein content because it provides a transparent, consistent, and objective measure of protein content.

Comment 2: Whether Ghigi/Zara Correctly Reported Shape Codes

Ghigi/Zara’s Arguments

- Ghigi/Zara disagree with Commerce’s revision of Ghigi/Zara’s reported shape codes (SHAPEH/U) for cavatappi and fusilli from short cuts of pasta (SHAPEH/U=5) to specialty short cuts (SHAPEH/U=6).⁴⁹
- Ghigi and Zara’s production speeds for cavatappi and fusilli are consistent with the production speeds of other short cuts. The throughput for Ghigi’s non-organic non-bronze die fusilli is 50 percent faster than the average throughput for Ghigi’s specialty short cuts. For Zara, the throughput rate for fusilli is substantially higher than those for specialty short cuts at the Riese plant.⁵⁰
- Ghigi and Zara’s home market prices indicate that fusilli is a normal short cut. Ghigi’s net unit price for fusilli is lower than Ghigi’s weighted-average selling price for specialty short cuts. For Zara, which only sells bronze-die fusilli to the United States, bronze-die fusilli is

⁴⁴ See Ghigi/Zara’s Case Brief at 22.

⁴⁵ See Commerce’s Letter, “Antidumping Duty Administrative Review of Certain Pasta from Italy: Verification of the Cost Response of Pasta Zara S.p.A.,” dated August 2, 2019 (Zara Cost Verification Report) at 6; *see also* Ghigi Sales Verification Report at 6.

⁴⁶ See Domestic Producers’ Rebuttal to Ghigi/Zara at 18-19.

⁴⁷ *Id.* at 20. See also Ghigi/Zara’s Letters, “Pasta from Italy Ghigi/Zara §D supplemental response,” dated March 28, 2019; “Pasta from Italy Ghigi/Zara response to request for revised U.S. sales database,” dated July 2, 2019, and Ghigi/Zara’s cost database submission, dated July 5, 2019.

⁴⁸ See, e.g., *La Molisana*.

⁴⁹ See Ghigi/Zara’s Case Brief at 3.

⁵⁰ *Id.* at 31 and 34.

significantly less expensive than both Zara's bronze-die short cuts and bronze-die specialty short cuts.⁵¹

- Each of the companies under review treat cavatappi as a normal shape. Indalco's catalog lists cavatappi among its "traditional line – short shapes."
- Given these facts, Commerce should restore the SHAPEH/U codes for fusilli and cavatappi to those originally reported by Ghigi and Zara.⁵²

Domestic Producers' Rebuttal Comments

- Commerce was correct to reclassify fusilli and cavatappi as specialty short cuts, in accordance with the antidumping questionnaire and longstanding practice. The questionnaire specifies the classification for over 250 pasta shapes in Appendix III and includes both fusilli and cavatappi. Commerce has rejected multiple attempts by respondents to reclassify shapes listed in the appendix based on other metrics, such as throughput rates. In *La Molisana*, the CIT upheld Commerce's refusal to consider company-specific throughput data, as considering such data could reduce methodological consistency.⁵³
- Ghigi/Zara were "margin shopping" by trying to match the more costly specialty cuts in the U.S. market with less costly regular cuts in the home market. Ghigi/Zara did so without disclosing its noncompliance with the questionnaire instructions, which Commerce discovered at verification. Commerce should indicate in the final results to future respondents that the consequences of such actions would be the use of AFA.⁵⁴

Commerce's Position: We disagree with Ghigi/Zara that they correctly coded the physical characteristic for pasta shape (SHAPEH/U) for the fusilli and cavatappi and pasta shapes.⁵⁵ The Initial Questionnaire instructs respondents to report fusilli and cavatappi as specialty short cuts:

You are required to classify the pasta types reported in field 3.9 into one of the shape categories specified in field 3.1 in accordance with the questionnaire examples and the attached "Classification of Pasta Shapes." If you sold pasta in shapes that do not appear on the attached list, please contact the official in charge.⁵⁶

However, we found at verification that Ghigi misreported fusilli and cavatappi as short cuts.⁵⁷ Commerce's longstanding practice is to require respondents to report pasta shape codes based on the pasta shape classification table if the shapes are already listed on that table. This practice has been approved by the Court.⁵⁸ Fusilli and cavatappi are both listed as specialty short cuts in the shape classification table.⁵⁹ Commerce has previously rejected respondent's attempts to reclassify pasta shapes based on company-specific throughput rates. In *Pasta 2013-2014*

⁵¹ *Id.* at 32-33.

⁵² *Id.* at 35.

⁵³ See Domestic Producers' Rebuttal to Ghigi/Zara at 27-29; see also *La Molisana*.

⁵⁴ See Domestic Producers' Rebuttal to Ghigi/Zara at 30-31.

⁵⁵ See Ghigi/Zara's Case Brief at 28-35.

⁵⁶ See Initial Questionnaire at Appendix III Pasta Shape Classification (Shape Classification Table).

⁵⁷ See Ghigi Sales Verification Report at 15-16.

⁵⁸ See *La Molisana*.

⁵⁹ See Commerce Shape Classification Table.

Review, Commerce determined to reject La Molisana’s similar attempt to replace the well-established shape classification in the model match methodology with a system based on company-specific line speeds.⁶⁰ Specifically, Commerce required La Molisana to report its pasta sales in accordance with the existing shape classification table because this methodology is reasonable and pursuant to the requirement of section 771(16)(A) of the Tariff Act of 1930, as amended (the Act) that classifications be based on a product’s “physical characteristics.”⁶¹ In that review, Commerce further explained that La Molisana’s contentions were meritless because: (1) line speed is not the defining factor in determining pasta shape under Commerce’s methodology; and (2) Commerce has no practice of permitting respondents to re-classify existing pasta shapes based upon company-specific line speeds.⁶² In *La Molisana*, the CIT sustained Commerce’s application of its model-matching methodology, which required La Molisana to report product shapes in conformity with the existing identities and categories of shapes on Commerce’s pasta shape list. The CIT also rejected La Molisana’s argument that company-specific line speeds are a sufficient reason to depart from the list for shapes that are already on the list.⁶³ The CAFC affirmed the CIT’s holding in *La Molisana*.⁶⁴

Accordingly, consistent with the *Preliminary Results*, we continue to re-classify fusilli and cavatappi as specialty short cuts, consistent with the instructions in the Initial Questionnaire and Commerce’s longstanding practice.⁶⁵

Comment 3: Whether Partial AFA is Warranted with Respect to Ghigi/Zara’s U.S. Payment Dates

Ghigi/Zara’s Arguments

- Commerce’s application of partial AFA to Ghigi’s U.S. payment dates is not based in fact.⁶⁶ Prior to verification of Ghigi’s U.S. affiliate Ghigi Foods Industries (GFI), it became clear that the payment dates listed in Ghigi’s US02 database were garbled due a downstream clerical or programming error. Commerce followed up with sales traces for five GFI sales and took date-of-payment documentation for an additional 12 sales. After verification, Ghigi submitted comments demonstrating that the weighted-average US01 payment dates were correct and that, while there were significant random differences between Ghigi’s US01 and US02 databases, the payment lag was consistent with commercial reality.⁶⁷ The 17 sales where verifiers examined payment dates are a robust sample to compare the first (US01) and the second US sales (US02) submissions with respect to the payment dates, which shows that the weighted-

⁶⁰ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 8043 (February 17, 2016) (*Pasta 2013-2014 Review*) and accompanying IDM at Comment 1, amended by *Certain Pasta from Italy: Amended Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 12690 (March 10, 2016) (*Amended Final Results*).

⁶¹ See *Pasta 2013-2014 Final Results* IDM at Comment 1.

⁶² *Id.*

⁶³ See *La Molisana*.

⁶⁴ *Id.*

⁶⁵ See Memorandum, “2017-2018 Antidumping Duty Administrative Review of Certain Pasta from Italy – Sales and Cost Analysis Memorandum for Ghigi/Zara,” dated September 6, 2019 (Ghigi/Zara Preliminary Results Analysis Memo) at 6.

⁶⁶ See Ghigi/Zara’s Case Brief at 3.

⁶⁷ *Id.* at 36-37.

average payment dates in the initial submission are consistent with verified payment days. The US01 weighted-average payment dates are an accurate measure of the credit terms for U.S. sales. Commerce's stated reason for using the rejected US01 database is that the verification was conducted on the US02 database, but this does not justify applying AFA. To apply AFA, accurate information must be absent, which in this case it is not. Commerce's overarching mandate is to calculate accurate margins and, as such, it should use the US01 database.⁶⁸

- Furthermore, Zara's U.S. payment date should not be subject to AFA. There is nothing in the record indicating that Zara's payment dates were affected in the same way Ghigi's were, yet Commerce applied AFA to Zara.⁶⁹

Domestic Producers' Rebuttal Comments

- Commerce correctly applied partial adverse facts available for U.S. payment dates. Ghigi/Zara's attempt to correct payment dates in the US02 sales database at the start of the CEP verification are not minor corrections. Rather, all 17 sales examined at verification by Commerce had an incorrect payment date.⁷⁰
- Ghigi/Zara is claiming that US01 weighted-average payment dates are correct and that the verified payment dates and US01 weighted-average payment dates are reasonably consistent. This is a clear attempt to have Commerce rely on information that it was unable to verify. Ghigi/Zara's claim that the US01's weighted-average payment dates were correct is misleading, as an accurate weighted average does not mean that individual values are accurate.⁷¹
- Contrary to Ghigi/Zara's claim, Commerce did not apply AFA. Commerce could have selected the longest time difference between Ghigi/Zara's reported payment date and the actual verified payment date. Nonetheless, the domestic producers support Commerce's use of the most recent payment date for the final results.⁷²

Commerce's Position: At the beginning of Ghigi's CEP verification, Ghigi presented its U.S. payment date as a correction item to its US02 database. Because the revision impacted the majority of U.S. payment dates for its U.S. sales, we did not accept its changes as a minor correction.⁷³ For all the transactions examined at verification, we found that Ghigi reported the U.S. payment date incorrectly.⁷⁴ In the *Preliminary Results*, we revised Ghigi's U.S. payment dates for the sales traces we examined based on the CEP verification and applied partial AFA using the longest period between payment date and shipment date for purposes of imputed

⁶⁸ *Id.* at 37-40.

⁶⁹ *Id.* at 40.

⁷⁰ See Domestic Producers' Rebuttal to Ghigi/Zara at 34-36.

⁷¹ *Id.* at 36-37.

⁷² *Id.* at 37.

⁷³ See Ghigi Sales Verification Report at 1 and 18. See also Letter, "Sales Verification Agenda for Ghigi 1870 S.p.A. and Pasta Zara S.p.A.," dated May 16, 2019 (Ghigi Sales Verification Agenda) at 2, (stating "[p]lease note that verification is not intended to be an opportunity for submission of new factual information. New information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record. In such instances, you must file the information at Commerce and serve it by hand on the petitioners within two business days after the information is presented at verification.").

⁷⁴ See Ghigi Sales Verification Report at 1 and 18.

credited expense.⁷⁵ We disagree with Ghigi's argument that Commerce's application of partial AFA is unwarranted because Ghigi's US01 database has accurate payment dates and thus, Commerce should use its information to calculate antidumping duty margins.

At the time of commencement of verification, Ghigi's US02 database was the most recent version of the U.S. sales database. Accordingly, the verifiers performed their verification procedures on the US02 database, and they did not conduct verification procedures on US01, which was the initial US sales submission.⁷⁶

As indicated in the *Preliminary Results*, Commerce's practice is to rely on the most recently submitted databases as the basis for verification because such data is responsive to Commerce's most recent supplemental questions.⁷⁷ Thus, we find it is not appropriate to use the payment date information from US01, which was the prior U.S. sales database. As for the US02 sales database, its payment dates do not match payment dates listed in the sales documentation for the U.S. transactions examined at verification.⁷⁸ 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 information on payment data was not verifiable. 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 Ghigi's U.S. payment date field.

With respect to Zara's U.S. payment dates, we agree with Ghigi/Zara that there is no record evidence indicating that Zara incorrectly reported its U.S. payment dates.⁷⁹ Thus, we find that application of partial AFA does not apply to Zara. For the final results, we will continue to use Ghigi's actual payment dates for sales examined at Ghigi's CEP verification and apply the longest period between payment date and shipment date for Ghigi's U.S. transactions that we were not able to verify for purposes of calculating imputed credit expenses for Ghigi's U.S. sales.

⁷⁵ See Ghigi/Zara Preliminary Results Analysis Memo at 9-10.

⁷⁶ See Ghigi Sales Verification Report at 18.

⁷⁷ See *Preliminary Results* and accompanying Preliminary Decision Memorandum (PDM) at 16-17; see also *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 91120 (December 16, 2016), and accompanying IDM at Comment 9.

⁷⁸ See Ghigi Sales Verification Report at 1 and 18.

⁷⁹ See Ghigi/Zara Case brief at 40.

Comment 4: Whether to Recalculate Credit Expense for Zara

Ghigi/Zara's Argument

- For home market credit, Commerce utilized a March 19, 2019, payment date for all home market sales missing a payment date. Commerce recalculated credit for Ghigi sales using the revised interest rate, but did not re-calculate credit for the Zara sales missing a payment date. This error should be corrected in the final results.⁸⁰

The domestic producers did not comment on this issue.

Commerce's Position: We agree with Ghigi/Zara and will recalculate credit expenses for all home market sales missing a payment date for the final results.

Comment 5: Whether Zara Double-Counted the Scrap Offset

Ghigi/Zara's Argument

- Zara disagrees with Commerce's assertion that Zara double-counted the overall scrap offset and likewise double-counted Zara-3's scrap offset. The total scrap offsets tie to Zara's inventory-movement tables. This scrap is not accounted for in any other place in the cost buildup. Commerce has not shown that these scrap offsets are reflected in any other field of the cost database and as such the scrap offset should be restored.⁸¹

The domestic producers did not comment on this issue.

Commerce's Position: In the *Preliminary Results*, we made certain adjustments to Zara's reported POR cost of manufacturing (COM) based on our finding that Zara incorrectly accounted for certain items in calculating the reported POR COM in the worksheet reconciling the reported POR COM to the financial statements (*i.e.*, the cost reconciliation).⁸² We adjusted Zara's POR COM of subject pasta in the cost reconciliation for financial expenses improperly excluded by Zara, the scrap offset amount double-counted by Zara, and the scrap offset amount related to the semolina Zara transferred to Zara-3 that was also double-counted.⁸³

As indicated in the "Zara Cost Reconciliation" summary table under section III of the Zara Cost Verification Report, to calculate the POR COM, Zara reduced the POR Costs by the "Other proceeds on Pasta COM and FIXGEN" and the "Scrap Offset" line items.⁸⁴ We note that the "Scrap Offset" line item includes the scrap offsets related to subject merchandise, non-subject merchandise and semolina transferred to Zara-3.⁸⁵ We also note that the amount of this reduction was correct because Zara offset its reported semolina costs by sales of pasta scrap

⁸⁰ See Ghigi/Zara's Case Brief at 41.

⁸¹ *Id.* at 41.

⁸² See Zara Cost Verification Report at 1; *see also* Ghigi/Zara Preliminary Results Analysis Memo at 2.

⁸³ See Ghigi/Zara Preliminary Results Analysis Memo at 2.

⁸⁴ See Zara Cost Verification Report at 11-12, 14 and Cost Verification Exhibit 6A at 1.

⁸⁵ See Ghigi/Zara's Case Brief at 41. *See also* Zara Cost Verification Report at 12 and Cost Verification Exhibit 6A at 1 and 55.

totaling the same amount.⁸⁶ However, the amount of the reduction under the “Other proceeds on Pasta COM and FIXGEN” line item included several items, two of which were “sales of pasta scraps” totaling the same amount as the “Scrap Offset” line item discussed above.⁸⁷ As such, in Zara’s Cost Reconciliation, Zara reduced the POR COM by the “sales of pasta scrap” twice, which resulted in double-counting the offset.

Further, as discussed in the cost verification report, during the POR, Zara-3 operated solely as a toll processor for Zara. Specifically, Zara paid for the semolina and transferred the semolina to Zara-3 to be used in the production of pasta.⁸⁸ As indicated in the “Zara Cost Reconciliation” summary table under section III of the Zara Cost Verification Report, to calculate the POR COM of subject pasta, Zara reduced the POR COM by the “Transfer of Semolina to Zara-3” and the “Transfer of Vitamins to Zara-3” line items.⁸⁹ However, Zara did not adjust the transferred semolina cost by the scrap offset already included in the cost reconciliation under the “Scrap Offset” line item discussed above.⁹⁰ In other words, Zara decreased its POR COM by the full cost of the semolina transferred to Zara-3 when it should have reduced its POR COM by the full cost of the semolina transferred to Zara-3 less the scrap offset, and Zara-3 should have increased its POR COM by the net cost of the semolina (*i.e.*, semolina cost adjusted by the scrap offset). As a result, the scrap offset was not appropriately accounted for.

Accordingly, for the final results, we have continued to adjust Zara’s POR COM of subject pasta in the cost reconciliation for financial expenses improperly excluded by Zara, the scrap offset amount double-counted by Zara, and the scrap offset amount related to the semolina Zara transferred to Zara-3 that was also double-counted.

Comment 6: Whether Ghigi/Zara’s Billing Adjustments Were Correctly Applied

Ghigi/Zara’s Arguments

- Commerce added billing adjustments BILLADJ1H and BILLADJ2H to the HM price in the preliminary margin program. However, Ghigi and Zara inadvertently failed to revise the mathematical sign in the supplemental response, which should include a negative sign to denote deductions from the home market prices. These billing adjustments should have been deducted from, not added to, the HM price.⁹¹
- Similarly, Commerce should subtract the U.S. billing adjustment date field BILLADJ1U from the U.S. price.

Domestic Producers’ Argument

- Commerce should deduct billing adjustment from Ghigi/Zara’s U.S. price.

⁸⁶ See Zara Cost Verification Report at 12 and Cost Verification Exhibit 6A at 1 and 55.

⁸⁷ See Zara Cost Verification Report at 11-12, 14 and Cost Verification Exhibit 6A at 1 and 51.

⁸⁸ See Zara Cost Verification Report at 13.

⁸⁹ See Zara Cost Verification Report at 13-14 and Cost Verification Exhibit 6A at 1.

⁹⁰ See Zara Cost Verification Report at 13-14 and Cost Verification Exhibit 6A at 1.

⁹¹ *Id.* at 42.

Commerce's Position: We agree with Ghigi/Zara and the domestic producers with respect to billing adjustments and will treat these two billing adjustment variables as reductions to the price for both Ghigi/Zara's home market and U.S. sales.

Comment 7: Whether to Make Certain Adjustments to the Comparison and Margin Programs for the Final Results with Respect to Ghigi/Zara

Domestic Producers' Arguments

- Commerce intended to reclassify Ghigi/Zara's sales of fusilli and cavatappi pasta, but failed to do so as a result of improperly coded SAS programs. It should adjust the comparison market (CM) and margin calculation programs to rectify these clerical errors.⁹²
- Commerce intended to increase Zara's reported costs for standard semolina and semolina blend, but because of an issue with the CM program, that adjustment was not fully carried out. Commerce should revise the CM program to correct this error.⁹³

Ghigi/Zara did not comment on this issue.

Commerce's Position: We have reviewed the record and we agree with the domestic producers' suggested changes to the SAS programs and have made such changes for these final results.

Comment 8: Whether to Apply the Preliminary Results Rate to Agritalia/Tesa

Agritalia's Arguments

- Applying the preliminary Ghigi/Zara rate to Agritalia would effectively apply AFA to an innocent bystander. The preliminary Ghigi/Zara rate is a clear outlier that is 20 times higher than the average non-AFA rate since the dumping order was imposed in 1996. Furthermore, during the entire proceeding, 81 percent of non-AFA rates have been below 9 percent. Applying this outlier to a non-mandatory respondent would "shock the conscience."⁹⁴
- The rate for Ghigi is inconsistent with any prior rate during this proceeding, including AFA rates. The average AFA rate in Italian pasta reviews has been 45.49 percent and an AFA rate has not been applied to a reviewed respondent since the 2000-2001 administrative review. Whatever the reasons for Ghigi/Zara's preliminary rate, they are clearly unique to Ghigi/Zara's current situation, as shown by Indalco having three consecutive rates of zero and Ghigi/Zara being under 6 percent in the two preceding reviews.⁹⁵
- Commerce's overarching mission is to calculate dumping margins on an accurate, fair, and equitable basis. Furthermore, the Statement of Administration Action (SAA) accompanying the Uruguay Round Agreements Act (URAA) states in the context of applying *de minimis* and AFA rates to non-mandatory respondents that Commerce should apply a rate "reasonably reflective of potential dumping margins for non-investigated exporters or producers."

⁹² See Domestic Producers' Ghigi/Zara Case Brief at 1-2.

⁹³ *Id.* at 4-5.

⁹⁴ See Agritalia's Case Brief at 1.

⁹⁵ *Id.* at 5.

Applying Ghigi/Zara's outlier rate would be inaccurate, inconsistent with reality, and punitive.⁹⁶

- In *Navneet Publications*, the CIT emphasized that Commerce's methodology in assigning margins to a non-respondent must reflect "economic reality" and bear "some relationship to the actual dumping margin."⁹⁷ In *Nat'l Knitwear*, the CIT emphasized that anti-dumping law is remedial not punitive, and that excessive margins contravene statutory intent.⁹⁸
- In *Yangzhou Bestpak*, the CAFC found that "{a}ssigning a non-mandatory, separate rate respondent a margin equal to over 120 percent of the only fully investigated respondent with no other information is unjustifiably high and may amount to being punitive, which is not permitted by the statute" and "rate determinations for nonmandatory ... respondents must also bear some relationship to their actual dumping margins."⁹⁹ The Ghigi/Zara rate bears no relationship to any previously calculated rate in this proceeding, so it cannot bear any relationship to Agritalia's margin.
- In *Albemarle Corp.*, the CIT stated "the statute assumes that, absent such evidence, reviewing only a limited number of exporters will enable Commerce to reasonably approximate the margins of all known exporters."¹⁰⁰ In this case, the statutory assumption of reasonable approximation has broken down, as shown by both the entire history of the proceeding and the steadiness of rates for respondents other than Ghigi/Zara.
- Commerce's overriding responsibility, as emphasized by multiple court rulings, is accurately calculating and assigning margins. In *Rhone Poulenc*, the CAFC found that "basic purpose of the statute" is to "determin[e] current margins as accurately as possible."¹⁰¹ In *SNR Roulements*, the CAFC demanded that the calculation of antidumping duties be "fair and equitable."¹⁰² In *Albemarle*, the CIT stated "as our cases have explained, accuracy and fairness must be Commerce's primary objectives in calculating a separate rate for cooperating exporters," and in *Nan Ya Plastics*, that accuracy is a "reliable guidepost for Commerce's determinations,"¹⁰³ while in *Saha Thai*, the CIT emphasized "it is this endeavor for accuracy... that lends respectability to U.S. trade statutes..."¹⁰⁴
- Given how severe of an outlier the Ghigi/Zara margin is, Commerce, as in *Albemarle Corp.*, should apply the most recent rate Agritalia received where it was a respondent, namely the 2015-2016 administrative review rate of 5.97 percent.¹⁰⁵
- Tesa supports the arguments stated in Agritalia's Case Brief.¹⁰⁶

Domestic Producers' Rebuttal Comments

- Commerce correctly applied an "all-others" rate in this case by using the rate calculated for Ghigi/Zara. The only possibility of using an alternative method comes when either all rates are

⁹⁶ *Id.* at 6-8.

⁹⁷ See *Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354 (CIT 2014) (*Navneet Publications*).

⁹⁸ See *Nat'l Knitwear & Sportswear Ass'n v. United States*, 779 F. Supp. 1364, 15 C.I.T. 548 (1991) (*Nat'l Knitwear*).

⁹⁹ See *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F. 3d 1370 (Fed. Cir. 2013) (*Yangzhou Bestpak*).

¹⁰⁰ See *Albemarle Corp. v. United States*, 821 F. 3d 1345 (Fed. Cir. 2016) (*Albemarle Corp.*).

¹⁰¹ See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185 (Fed. Cir. 1990) (*Rhone Poulenc*).

¹⁰² See *SNR Roulements v. United States*, 402 F. 3d 1358 (Fed. Cir. 2005) (*SNR Roulements*).

¹⁰³ See *Nan Ya Plastics Corp. v. United States*, 810 F. 3d 1333 (Fed. Cir. 2016) (*Nan Ya Plastics*).

¹⁰⁴ See *Saha Thai Steel Pipe Co., Ltd. v United States*, 828 F. Supp. 57 (CIT 1993) (*Saha Thai*).

¹⁰⁵ See Agritalia's Case Brief at 15.

¹⁰⁶ See Tesa's Case Brief at 1.

zero, *de minimis*, or based entirely on facts available. Ghigi/Zara's rate is high, but it is a *calculated* rate and not solely based on facts available. The statute explicitly states:

(B) Exception. If the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.

- Based on this text, it is evident that there are no grounds for Commerce to use an alternative calculation method for the all-others rate. In fact, Agritalia cites no statute, regulation, or case law to support its claim that Commerce has discretion to use an alternative calculation.¹⁰⁷
- Agritalia incorrectly claims that past dumping rates indicate current or future dumping levels. Courts have found that “each ‘administrative review is a separate exercise of Commerce’s authority that allows for different conclusions based on different facts in the record’”¹⁰⁸ and “if the facts remained the same from period to period there would be no need for administrative reviews.”¹⁰⁹ Commerce should continue to use information from this segment of the proceeding.
- Agritalia is incorrect to describe the rate preliminarily calculated as punitive. The domestic producers are unaware of any case where a non-AFA margin was found to be punitive. A calculated rate is non-punitive, because it is based on record facts using sales and cost data. The CIT found that a calculated rate higher than an AFA rate is not distortive in *Xiamen Int’l*.¹¹⁰
- Agritalia is also wrong to describe Ghigi/Zara’s rate as “essentially” AFA. Agritalia’s attempt to cite *Nat’l Knitwear* to support its case is misleading, as that case was based on BIA, not AFA.¹¹¹
- Agritalia cites *Gallant Ocean* to argue that an AFA rate must be a “reasonably accurate estimate” of what a respondent’s dumping margin would have been if the respondent had cooperated, but this is misleading in multiple ways.¹¹² First, Congress effectively overruled this aspect of *Gallant Ocean* when amending the statute in 2015 and, furthermore, Ghigi/Zara’s rate is not based on total AFA, so *Gallant Ocean* is not a relevant precedent.¹¹³
- Agritalia claims without evidence that Ghigi/Zara’s rate is not reflective of other producers. In *Senmao Bamboo*, the CIT found that Commerce “may ‘reasonably approximate the margins of all known exporters’, absent evidence that the examined exporters’ data is not representative.” The statute presumes that the largest importers by volume are representative of other producers.¹¹⁴

¹⁰⁷ See Domestic Producers’ Rebuttal to Agritalia at 6.

¹⁰⁸ *Id.* at 7.

¹⁰⁹ *Id.*

¹¹⁰ See *Xiamen Int’l Trade & Indus. Co. v. United States*, 2014 CIT LEXIS 108, Slip Op. 2014-100 (August 28, 2014).

¹¹¹ See Domestic Producers’ Rebuttal to Agritalia at 8-9.

¹¹² See *Gallant Ocean (Thailand) Co., v. United States*, 602 F. 3d, 1323 (Fed. Cir. 2010) (*Gallant Ocean*).

¹¹³ See Domestic Producers’ Rebuttal to Agritalia. at 9-10

¹¹⁴ *Id.* at 11 (citing *Jiangsu Senmao Bamboo & Wood Indus. Co. v. United States*, 322 F. 3d 1308, 1347 (CIT 2018))

- There is no evidence on the record that the all-others rate is not representative of Agritalia, as Agritalia has never had an individually-calculated margin and its only submission to the record of this segment is its case brief.¹¹⁵
- Agritalia cites various past cases to support its claims, but it misconstrues or fails to contextualize the findings of these cases.
- In *Albemarle Corp.*, the CAFC found that Commerce lacked support for its assumption that individually examined respondents were *not* representative of non-selected respondents. This is the opposite of what Agritalia is trying to claim. In fact, there are multiple similarities between *Albemarle Corp.* and this case. For example, there is no record evidence indicating different exporting behavior between Ghigi/Zara and the non-selected respondents.¹¹⁶
- In *Nan Ya Plastics*, the CAFC found that a determination by Commerce “is accurate if it is correct as a mathematical and factual matter, thus supported by substantial evidence; and reflects ‘commercial reality’ if it is consistent with the method provided in the statute, thus in accordance with law.” Agritalia does not claim that Commerce miscalculated Ghigi/Zara’s preliminary dumping margin and, as such, fails to refute that the margin is accurate mathematically and factually; nor does it claim that the margin is unsupported by evidence.¹¹⁷
- Agritalia’s use of *Yangzhou Bestpak* is misleading, as that case involves the exception to the rule where all margins were based either entirely on AFA or *de minimis*. Because this case involves a calculated margin, there is no issue with that margin not reflecting commercial reality. This also applies to *Navneet Publications*.¹¹⁸
- In *Rhone Poulenc* and *Saha Thai*, the courts considered best information available (BIA), not AFA. Furthermore, the CIT found in *Mid Continent* that *Yangzhou Bestpak* and *Navneet Publications*, which made use of the exception to the rule for calculating the all-others rate, are factually dissimilar from cases where the all-others rate is calculated using the rule.¹¹⁹
- In *SNR Roulements*, the plaintiffs pointed specifically to the fact that Commerce had not given them an opportunity to show that Commerce’s use of actual expenses failed to account for their U.S. credit and inventory carrying costs. In this case, Agritalia has only referenced prior margins and margins excluded from the all-others rate to argue that it should not be given the margin assigned to Ghigi/Zara, but in *Mid Continent*, the CIT disagreed that these prior margins can be used to show that an all-others rate is not reflective of commercial reality. Commerce should refrain from finding that prior margins are evidence that the all-others rate is not reflective of commercial reality.¹²⁰
- Commerce should uphold its preliminary findings and continue to use the method of determining the all-others rate described in the statute for the final results. Furthermore, Commerce should find that there is no evidence on the record suggesting that Ghigi/Zara’s preliminary rate is not reflective of other producers.¹²¹

(*Senmao Bamboo*)).

¹¹⁵ *Id.* at 12.

¹¹⁶ *Id.* at 12-13.

¹¹⁷ *Id.* at 14.

¹¹⁸ *Id.* at 15-16.

¹¹⁹ *Id.* at 15 (citing *Mid Continent Steel & Wire Inc. v. United States*, 321 F. Supp 3d 1313 CIT 2018) (*Mid Continent*)).

¹²⁰ *Id.* at 15.

¹²¹ *Id.* at 16.

Commerce’s Position: In determining the non-selected rate in an administrative review, Commerce generally looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others weighted-average dumping margin for companies that were not selected for individual examination in the less-than-fair-value investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” Accordingly, Commerce’s usual practice in determining the rate for a respondent not selected for individual examination has been to average the weighted-average dumping margins for the examined companies, excluding rates that are zero, *de minimis* or based entirely on facts available.¹²²

In the current review, based on entry data from U.S. Customs and Border Protection, Commerce selected Ghigi/Zara and Indalco as mandatory respondents because they accounted for the largest volume of subject merchandise that entered the United States during the POR.¹²³ In the *Preliminary Results*, Commerce found Indalco’s weighted-average dumping margin to be *de minimis*, and Ghigi/Zara’s weighted-average dumping margin to be 96.79 percent.¹²⁴ Commerce did not select Agritalia or Tesa as mandatory respondents in the current pasta review and, therefore, Commerce assigned both the non-selected rate.¹²⁵ Following the statutory guidance discussed above, in the *Preliminary Results*, we therefore set the non-selected rate equal to the 96.79 percent weighted-average dumping margin calculated for Ghigi/Zara.¹²⁶

As discussed in the accompanying notice of final results, we have revised our calculations such that both of the weighted-average dumping margins for Ghigi/Zara and Indalco are not zero or *de minimis* or based entirely on facts available. Accordingly, pursuant to the statutory guidance discussed above, in the final results, we have calculated the non-selected rate based on the weighted-average dumping margins calculated for Ghigi/Zara and Indalco. As a result, the non-selected rate is no longer solely based on the weighted-average dumping margin calculated for Ghigi/Zara. Notwithstanding these revisions to the calculation of the non-selected rate, we have addressed the comments submitted by Agritalia.

We disagree with Agritalia that a non-selected rate based solely on the weighted-average dumping margin of Ghigi/Zara (as was the case in the *Preliminary Results*) or based, in part, on the weighted-average dumping margin of Ghigi/Zara (as is the case in the final results) is punitive and is not representative of the non-selected respondents.¹²⁷ Ghigi/Zara’s weighted-average dumping margin is a calculated rate based on record facts using Ghigi/Zara’s reported

¹²² See *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2016-2017, 84 FR 38002-38005 (August 5, 2019), and accompanying IDM at Comment 3; see also *Stainless Steel Bar From India: Final Results of Administrative Review of the Antidumping Duty Order*; 2017-2018 84 FR 56179 (October 21, 2019), and accompanying IDM at Comment 1.

¹²³ See Commerce’s Memorandum, “2017-2018 Antidumping Duty Administrative Review of Certain Pasta from Italy: Respondent Selection,” dated October 12, 2018.

¹²⁴ See *Preliminary Results* PDM at 18.

¹²⁵ *Id.*

¹²⁶ See *Preliminary Results*, 84 FR at 48115.

¹²⁷ See Agritalia Case Brief at 1; see also Tesa Case Brief at 1.

sales and cost data and not based entirely on adverse facts available. The rate calculated for Ghigi/Zara in the *Preliminary Results* was, indeed, higher than either of the rates calculated for Ghigi/Zara in the two previous (2015-2016 and 2016-2017) reviews,¹²⁸ in which Ghigi/Zara was a mandatory respondent, because the margin calculation for Ghigi/Zara in the *Preliminary Results* incorporated numerous sales and cost adjustments that we found at the verifications of the reviewed companies.¹²⁹ Agritalia has provided no evidence that Commerce miscalculated the weighted-average dumping margin for Ghigi/Zara in the *Preliminary Results*, nor does Agritalia argue that the weighted-average dumping margin calculated for Ghigi/Zara is unsupported by substantial evidence. In other words, Agritalia does not refute that Ghigi/Zara's calculated weighted-average dumping margin is accurate as a mathematical and factual matter. Thus, absent evidence indicating that Commerce miscalculated Ghigi/Zara's weighted-average dumping margin, and consistent with *Nan Ya Plastics*, Ghigi/Zara's rate accurately reflects Ghigi/Zara's dumping pricing behavior and, as such, was appropriate for use as the sole basis of the weighted-average dumping margin for non-selected companies in the *Preliminary Results* and as a partial basis of the weighted-average dumping margin for non-selected companies for the final results.¹³⁰

Likewise, we find that Agritalia's argument that "Ghigi/Zara's preliminary weighted-average dumping margin has nothing to do with the commercial activity of any respondent other than Ghigi/Zara"¹³¹ to be unpersuasive. The record lacks evidence that the "non-selected" rate is not representative of Agritalia's business practices as Agritalia has never been selected as a mandatory respondent or been assigned an individually-calculated weighted-average dumping margin. Additionally, the CIT has previously rejected the argument that the weighted-average dumping margin calculated for only one individually-examined respondent is not logically connected to the commercial reality of non-selected respondents.¹³²

Moreover, we do not find that the cases that Agritalia cites support its claim that the weighted-average dumping margin in the *Preliminary Result* is unrepresentative of business activities of non-selected respondents. We also disagree with Agritalia's proposal to use as the non-selected weighted-average dumping margin the 5.97 percent rate from the 2016-2017 review. In *Albemarle Corp.*, the CAFC found that Commerce lacked support for its assumption that the individually examined respondents were not representative of non-selected companies.¹³³ The CAFC also held in *Albemarle Corp.* that an unexplained reversal of a determination that the same individually examined respondents are representative of all other producers or exporters is unlawful.¹³⁴ As in *Albemarle Corp.*, there is no information on the record that would indicate different exporting behavior between Ghigi/Zara (or Indalco for that matter) and the non-selected companies. Thus, if we were to accept Agritalia's argument and use the 5.97 percent rate used as

¹²⁸ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 57428 (December 5, 2017); see also *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 62627 (December 11, 2018).

¹²⁹ See Commerce Ghigi/Zara Preliminary Results Analysis Memo.

¹³⁰ See *Nan Ya Plastics*, 810 F. 3d at 1344.

¹³¹ See Agritalia Case Brief at 5.

¹³² See *Senmao Bamboo*, 322 F. 3d at 1347.

¹³³ See *Albemarle Corp.*, 821 F. 3d at 1355.

¹³⁴ *Id.*

the non-selected weighted-average dumping margin in the 2016-2017 review, it would be contrary to the statute and unsupported by substantial evidence.

We agree with the domestic producers that *Yangzhou Bestpark* does not apply, as that opinion involves the exception to the rule because, in that case, all margins were either based entirely on AFA or *de minimis*. Because these final results involve calculated weighted-average dumping margins, there is no evidence that the rates for Ghigi/Zara and Indalco do not reflect commercial reality.

Accordingly, for the final results, we assigned an average of the weighted-average dumping margins calculated for Ghigi/Zara and Indalco to the two non-selected companies in accordance with section 735(c)(5)(A) of the Act.

Comment 9: Whether to Apply AFA to Indalco's U.S. Commission Expenses

Domestic Producers' Arguments

- Commerce should apply AFA to Indalco's reported U.S. commission expense because Indalco failed to completely and accurately report its incurred U.S. commission expenses.¹³⁵
- Based on its sales verification findings, Commerce determined that Indalco improperly reported commission expenses incurred on sales made through a particular selling agent.
- Commerce made certain adjustments for this finding in the *Preliminary Results* but Indalco's failure to accurately report its U.S. commission expenses goes beyond the individual sales made through this particular selling agent.
- Indalco misreported its commission expenses for certain sales made through another selling agent during the POR.
- Indalco did not identify certain selling agent codes in its selling agent report chart. Therefore, it is impossible to accurately confirm whether Indalco fully and accurately reported commission expenses for the sales made through these agents.
- Because Indalco failed to provide complete and accurate U.S. commission expense reporting to Commerce over the course of the review within the established deadlines, despite requests for this information, Commerce should determine that the application of facts otherwise available is warranted.
- Commerce should find that an adverse inference is warranted because Indalco did not act to the best of its ability when it failed to submit accurate, verifiable information over the course of the review. Commerce should apply the highest per unit U.S. commission expense reported to all U.S. sales for the final results.

Indalco's Rebuttal Comments

- Commerce should not apply AFA to Indalco's reporting of Colavita USA's commission expenses, but should continue to use the reported commission data, as modified by corrections identified at the U.S. sales verification. One of the "errors" claimed by the domestic producers is not an error, and the other two are clerical mistakes that minimally impact the calculated dumping margin and were easily corrected by Commerce.

¹³⁵ See Domestic Producers' Indalco Case Brief at 1-2.

- First, the supposed “commissions” to two Colavita USA sales agents that the domestic producers allege Indalco failed to report are internal payments to Colavita employees. Colavita USA’s employee costs are already reported in the indirect sales expense calculation, and thus, reporting these payments as commissions would be double-counting.¹³⁶
- Second, the domestic producers improperly argue that two minor errors in Indalco’s reporting should be used to apply AFA to Indalco. These errors were easily corrected by Commerce and re-calculated using the correct data in the *Preliminary Results*.
- The sales highlighted by the domestic producers as missing commission payments account for only a small percentage of total sales value. The domestic producers’ attempt to apply company-wide AFA based on those sales is baseless.
- The domestic producers are also attempting to apply a groundless punitive AFA rate to Indalco’s commissions. If Commerce does apply facts available to commission expenses, it should not choose the domestic producers’ desired value, which comes from the sale of a very expensive product that, as it was manufactured by a third party, should not even have been included in the sales database. Rather, Commerce should use the highest commission rate, not the highest per-unit commission price.

Commerce’s Position: Commerce may use facts available pursuant to section 776(a) of the Act when necessary information is missing from the record of the proceeding. Pursuant to section 776(b) of the Act, Commerce may use facts otherwise available with an adverse inference when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. We find that Indalco’s reported commission expenses contained certain errors; however, we do not find that such errors impact the commission expenses in such a manner as to warrant the application of adverse facts available. First, the domestic producers allege that Indalco failed to report certain “commissions” associated with two Colavita USA sales agents, which Indalco identifies as internal payments to Colavita employees.¹³⁷ The Colavita USA’s employee costs at issue are already reported in Indalco’s indirect sales expense calculation;¹³⁸ therefore, we find that reporting these payments as commissions would double-count these costs.

With regard to the sales highlighted by the domestic producers as missing commission payments, we find that such amounts account for a small percentage of the total sales value.¹³⁹ Because such amounts are relatively insignificant, we disagree with the domestic producers’ assertion that applying the highest per-unit U.S. commission expense reported to all of Indalco’s U.S. sales is warranted.¹⁴⁰ Further, we disagree that the domestic producers’ suggested expense amount based on a particular sale of a particular product should be used as facts available because the sale of the suggested product is not representative of Indalco’s sales. Accordingly, as partial facts available, we have applied to the respective sales with a missing commission expense the average commission rate for the commission agent at issue, as reported by Indalco for the missing commission expenses.¹⁴¹

¹³⁶ See Indalco’s Rebuttal Brief at 2.

¹³⁷ See Indalco’s Section C response at 39 and Exhibits C.3 and C.14.

¹³⁸ *Id.*

¹³⁹ See Indalco’s U.S. sales database (indcep03).

¹⁴⁰ See Domestic Producers’ Indalco Case Brief at 5.

¹⁴¹ See Memorandum, “Sales and Cost Analysis Memorandum for the Final Results of the 2017-18 Administrative

Comment 10: Whether to Deny All Reported Billing Adjustments to Indalco's U.S. Sales Value

Domestic Producers' Arguments

- Commerce should deny all reported billing adjustments to Indalco's U.S. sales as Indalco failed to demonstrate that any billing adjustments are warranted.¹⁴²
- Commerce discovered at verification that rebates allegedly provided by Indalco to a customer were never applied to the sales price and denied billing adjustments to sales by Indalco to the customer as a result. Commerce should further reject all of Indalco's remaining billing adjustments.
- Most of the billing adjustments Indalco reported during the POR were rejected by Commerce. The remaining billing adjustments appear to be a deliberate attempt to manipulate Indalco's dumping margins.
- An invoice from Indalco to a customer provides no evidence that a billing adjustment was paid. As a respondent, it is responsible for providing such evidence. Given that Indalco has now reported multiple unsupported and erroneous billing adjustments, Commerce should reject all of Indalco's billing adjustments.

Indalco's Rebuttal

- Commerce has already disallowed most of the billing adjustments described by the domestic producers, and there is no reason to deny a different set of adjustments made under different circumstances.
- The first set of adjustments involve U.S. sales where one product was sold and a different product was delivered. This adjustment as intended, was neutral, as Indalco concurrently deducted back the adjustment as an indirect selling expense. Commerce denied this adjustment, but Indalco did not raise an issue, as the denial had no significant effect on the dumping margin calculation.
- The domestic producers are now seeking to use this issue to claim that a different billing adjustment prompted by a routine clerical error where a clerk mistakenly switched "net price" and "discount granted" on an invoice, should be denied. This claim is spurious and the domestic producers' description of circumstances surrounding the adjustment is unfair to Indalco.
- Rather than dispute the merits of the adjustment caused by the clerical error, the domestic producers claim that, because the error was found and corrected during preparation of the sales file for this review, the adjustment represents an attempt to manipulate the data. In fact, the potential change to Indalco's dumping margin from this adjustment is negligible and, more importantly, the nature of the mistake and the need for the correction are self-evident.

Commerce's Position: We disagree with the domestic producers that Commerce should disallow certain billing adjustments reported by Indalco. In the *Preliminary Results*, we

Review," dated concurrently with this memorandum (Indalco Final Results Analysis Memo); *see also* Indalco's U.S. sales database (indcep03).

¹⁴² *See* Domestic Producers' Indalco Case Brief at 1.

disallowed certain billing adjustments based on findings from the sales verification of Indalco.¹⁴³ We find that such billing adjustments are a disparate reporting issue from the remaining billing adjustments reported by Indalco and are unaffected by Commerce's decision in the *Preliminary Results* to disallow the relevant billing adjustments.

The discussion regarding the specific details of the U.S. billing adjustments which Commerce disallowed in the *Preliminary Results* is business proprietary information. These circumstances pertain to a novel sales situation involving U.S. sales where one product was sold and a different product was delivered.¹⁴⁴ This situation does not relate to, or provide evidence, that calls into question the accuracy of the remaining U.S. billing adjustments reported by Indalco that are based on a billing issue that is distinct from the billing adjustments Commerce previously rejected in the margin calculations.¹⁴⁵ Accordingly, we maintain that the only billing adjustments that should be disallowed are those which Commerce denied in the *Preliminary Results*.¹⁴⁶

Comment 11: Whether to Adjust Indalco's Rebates Based on Verification Findings

Domestic Producers' Arguments

- Commerce should adjust Indalco's reported home market rebates consistent with its verification findings, correcting Indalco's overreporting of a rebate broken into two parts for which it was not fully billed during the POR.¹⁴⁷

Indalco's Rebuttal

- Some of Indalco's rebates are broken into two parts, which means that one of the two installments may not have been billed by the time of Indalco's submissions in the proceeding. This has happened in every review of Indalco during this proceeding, and Indalco has always reported rebate expenses granted to its customers based on the sales agreement, even if billing for the final part of the rebate is delayed.
- The rebate expense cannot be reported only based on rebates received during the POR, because rebates received early in the POR would relate to sales before the POR and sales near the end of the POR will receive payments after the POR. As such, Commerce should not deny the rebate for any of Indalco's HM sales.

Commerce's Position: We disagree that Commerce should reject Indalco's home market rebates based on the sales verification of Indalco. Indalco's process to account for its home market rebates has been accepted by Commerce and verified in the instant review.¹⁴⁸ We find that Commerce's initial questionnaire issued to Indalco specifically contemplates the issue raised

¹⁴³ See Memorandum, "Sales and Cost Analysis Memorandum for the Preliminary Results of the 2017-18 Administrative Review," dated September 6, 2019 (Indalco Preliminary Results Analysis Memo); see also Memorandum, "Verification of the Sales Response of Industria Alimentare Colavita S.p.A. (Indalco)," dated August 1, 2019 (Indalco Sales Verification Report).

¹⁴⁴ See Indalco Sales Verification Report.

¹⁴⁵ See Indalco Preliminary Results Analysis Memo at 2-3.

¹⁴⁶ *Id.*; see also Indalco Final Results Analysis Memo.

¹⁴⁷ See Domestic Producers' Indalco Case Brief at 1.

¹⁴⁸ See Indalco Sales Verification Report at 10 and Exhibit SVE-8.

by the domestic producers as it states in the narrative request, “... For rebates that have not yet been paid, describe how you computed the amount to be rebated.”¹⁴⁹

Commerce has corrected the home market rebates which had specific errors identified during the sales verification. For the remaining home market rebates, Commerce continues to rely on Indalco’s rebates as reported because this methodology is consistent with Indalco’s sales process and has been verified in the 2014-15 administrative review,¹⁵⁰ and relied on by Commerce for the subsequent reviews of Indalco.

Comment 12: Whether to Reject Indalco’s Home Market Quantity Adjustments

Domestic Producers’ Arguments

- At verification, Commerce confirmed that Indalco is unable to reconcile the net sales value in its home market sales file to its financial accounting records when reported quantity adjustments are included in the reconciliation, which highlights the inconsistencies between the quantity adjustments reported in Indalco’s trial balance account and quantity adjustments reported in the home market sales file.
- Given Indalco’s failure to reconcile the discrepancies, and because the issue covers numerous transactions, Commerce will not be able to accurately adjust the margin calculation while at the same time accounting for the discrepancies in the reported quantity adjustments.
- Commerce should reject all quantity adjustments that were reported in Indalco’s home market database that could not be corroborated at verification and cannot be reconciled with Indalco’s accounting records.¹⁵¹

Indalco’s Rebuttal

- All of the records indicating a value in the QTYADJH field are reconciled with Indalco’s financial documents, with the exception of sales to a specific customer that acts both as a customer and distributor. Because this customer keeps its own inventory of Indalco’s product and also makes deliveries of its stock on Indalco’s behalf, many reconciling adjustments are required and a day-by-day accounting for adjustments is impossible.
- The customer sometimes uses its products in stock to make deliveries on Indalco’s behalf and then adjusts for the quantity of its own product that it delivered in Indalco’s name. The methodology for calculating this is involved, but it has been in place through many reviews and verifications by Commerce. Furthermore, the domestic producers did not object to this process in any previous review.
- The domestic producers claim to be unable to understand the reconciliation for HM quantity adjustments, but nothing in their comments should lead Commerce to abandon its existing practice. Commerce should accept Indalco’s HM quantity adjustments in the final results.

¹⁴⁹ See Sections B and C of Commerce’s initial antidumping questionnaire issued to Indalco, dated October 12, 2018 (Field Numbers: 20.1 and 21.1).

¹⁵⁰ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 91120 (December 16, 2016), and accompanying IDM.

¹⁵¹ See Domestic Producers’ Indalco Case Brief at 1.

Commerce's Position: We disagree that Commerce should reject certain home market quantity adjustments reported by Indalco. The methodology employed by Indalco in accounting for its home market sales made via a particular sales distributor and the associated quantity adjustments has been accepted by Commerce in recent reviews, including the 2014-15 review which was verified,¹⁵² and was applied in the same manner to report its home market sales and adjustments in the instant review.

The aforementioned distributor is also a customer of Indalco and occasionally uses its products that it maintains in its stock to make deliveries on Indalco's behalf and then adjusts for the quantity of its own product that it delivered in Indalco's name. The methodology for calculating the quantity adjustments involves computation based on the credit notes Indalco issues to the selling agent at issue for the products it delivers on Indalco's behalf using products that this agent previously purchased. The adjustments are accounted on a per-item basis, starting by the last day of the POR, and going back to the beginning of the POR.¹⁵³

Commerce has found this methodology to be reliable and verified this methodology as part of its sales verification in this review, as well as in the verification during the 2014-15 (19th) review. The domestic producers did not contest this same methodology applied in the 19th review or any of the subsequent reviews of Indalco since that time. Accordingly, because we find this methodology is reliable for reconciling the net sales value in its home market sales file, we maintain that Indalco's home market quantity adjustments should not be rejected in this review.

Comment 13: Whether to Include U.S. Advertising Expenses in the Margin Program

Domestic Producers' Arguments

- Commerce should include U.S. advertising expenses that were inadvertently excluded from Commerce's preliminary margin program for Indalco in Commerce's final determination.

Indalco did not comment on this issue.

Commerce's Position: We agree with the domestic producers that Commerce inadvertently excluded Indalco's U.S. advertising expenses from Commerce's preliminary margin program. Accordingly, for the final results of this review, we have revised the margin program to include Indalco's U.S. advertising expenses.

¹⁵² See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*, 2014-2015, 81 FR 91120 (December 16, 2016), and accompanying IDM.

¹⁵³ See Indalco's Section B-D Supplemental Questionnaire Response, dated March 26, 2019 at 3, and 7-8; *see also* Indalco's Section A-C Third Supplemental Questionnaire Response, dated May 29, 2019 at 2-4 and Exhibit B.32.

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

1/10/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance