



A-475-818

Changed Circumstances Review

Newlat Food S.p.A.

Public Document

AD/CVD III: EBG

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MEMORANDUM TO: Erin Begnal
Director
AD/CVD Operations, Office III

FROM: Eric B. Greynolds *EBG*
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SUBJECT: Certain Pasta from Italy: Initiation and Preliminary Results of
Changed Circumstances Review – Newlat Food S.p.A.

I. Summary

On July 30, 2020, Newlat Food S.p.A. (Newlat), a foreign producer operating in multiple sectors in the food industry, requested that the Department of Commerce (Commerce) initiate and conduct a changed circumstances review (CCR) of the *Order*¹ to determine if Newlat is the successor-in-interest to Delverde Industrie Alimentari S.p.A. (Delverde) and, accordingly, to assign it the cash deposit rate established for Delverde.² Based on the record evidence, we recommend preliminarily finding that Newlat is not the successor-in-interest to Delverde.

II. Background

On July 14, 1996, Commerce published in the *Federal Register* an antidumping duty order on certain pasta from Italy, which included an amended final determination for Delverde S.r.l. and Tamma Industrie Alimentari di Capitanata S.r.l., as a single entity (Delverde/TIAC).³ Commerce's *Final Determination* was challenged before the Court of International Trade and the Court of Appeals for the Federal Circuit, and as a result of the litigation, Commerce found that

¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996) (*Final Determination*); see also *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996) (*Order*); and *Notice of Second Amendment to the Final Determination and Antidumping Duty Order: Certain Pasta From Italy*, 61 FR 42231 (August 14, 1996).

² See Newlat's Letter, "Certain Pasta from Italy – Request for Changed Circumstances Review," dated July 30, 2020 (Newlat CCR Request).

³ See *Order*, 61 FR 38544.



the estimated weighted-average dumping margin for Delverde/TIAC was *de minimis* (i.e., 1.44 percent).⁴ Accordingly, Delverde/TIAC was excluded from the *Order*.⁵

On August 10, 2014, Commerce initiated a changed circumstances review to determine whether Delverde was the successor-in-interest to Delverde/TIAC, and would thus be excluded from the *Order*.⁶ Delverde/TIAC had recently emerged from bankruptcy as Delverde. Commerce determined that Delverde was not the successor-in-interest to Delverde/TIAC, and, thus, Delverde was subject to the *Order*.⁷ Following the most recently completed administrative review in which Delverde was reviewed, Delverde was assigned a weighted-average dumping margin of 2.47 percent.⁸

On July 30, 2020, Newlat submitted a request that Commerce initiate and conduct a CCR of the *Order* to determine whether Newlat is the successor-in-interest to Delverde. Newlat also requested that Commerce issue the preliminary results of this CCR in conjunction with the notice of initiation, as permitted under 19 CFR 315.221(c)(3)(ii).⁹

In its CCR request, Newlat provided the following information: (1) Delverde's company registration; (2) Newlat's company registration; (3) Delverde's Minutes of Shareholder Meeting regarding, inter-alia, the purchase of Delverde by Newlat and Delverde's minutes of the new board of directors (comprised entirely of Newlat officials); (4) a list of Delverde's U.S. customers pre-merger and post-merger; (5) the deed of Merger of Delverde into Newlat; (6) the list of Owners of Delverde pre-merger; (7) the list of Sales Department personnel of Delverde pasta, pre- and postmerger with Newlat; (8) a list of raw-material suppliers to Delverde, pre- and post-merger; (9) documentation of Delverde's pasta production facilities and capacity before and after the merger; (10) a sample letter from Delverde to a U.S. customer regarding the merger; (11) Newlat Company Presentation stating that its production location in Fara San Martino, Italy, is Delverde's facility with the identical production equipment and capacity post-merger; (12) Newlat's purchase agreement regarding Delverde; (13) sample sale documents for Newlat sales of Delverde Brand pasta to Delverde's U.S. customers; and (14) Delverde's Product Brochure: used pre- and post-merger.¹⁰

On September 4, 2020, Commerce issued a supplemental questionnaire to Newlat,¹¹ in which Commerce instructed Newlat to clarify, among other things, that as a result of the merger,

⁴ See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy*, 66 FR 65889 (December 21, 2001).

⁵ *Id.*

⁶ See *Certain Pasta From Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review*, 77 FR 47816, (August 10, 2012).

⁷ See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 79 FR 56339 (September 19, 2014).

⁸ See *Certain Pasta From Italy: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 8402 (January 25, 2017).

⁹ See Newlat CCR Request.

¹⁰ *Id.* at Exhibits 1-14.

¹¹ See Commerce's Letter, "Request for Changed Circumstance Review for Certain Pasta from Italy — Supplemental Questionnaire," dated September 3, 2020.

Delverde had been subsumed as a division of Newlat's established pasta producing business in Italy. On September 21, 2020, Newlat timely filed its response to the questionnaire.¹²

The domestic industry has filed no comments in response to Newlat's request for a CCR.

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.¹³ Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the order.¹⁴ Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the order.¹⁵

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.

¹² See Newlat's Letter, "Certain Pasta from Italy – Changed Circumstances Review – Supplemental Questionnaire Response," dated September 21, 2020 (Newlat Supplemental Response).

¹³ See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

¹⁴ 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).

¹⁵ 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).

IV. Initiation and Expedited Preliminary Results

Pursuant to section 751(b)(1)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an order which shows changed circumstances sufficient to warrant a review of the order. The information provided by Newlat demonstrates changed circumstances sufficient to warrant a review to determine if Newlat is the successor-in-interest to Delverde, in accordance with 19 CFR 351.216(d). Therefore, in accordance with section 751(b)(1)(A) of and 19 CFR 351.216(d), Commerce is initiating a CCR to determine whether Newlat is the successor-in-interest to Delverde for purposes of the *Order*.

Section 351.221(c)(3)(ii) of Commerce's regulations also permits Commerce to combine the notice of initiation and the notice of preliminary results if Commerce concludes that expedited action is warranted. Commerce has combined the notice of initiation and the notice of preliminary results in successor-in-interest CCRs when sufficient documentation has already been provided on the record.¹⁶ In this instance, we have on the record the information necessary to make a preliminary finding as to whether Newlat is the successor-in-interest to Delverde. Thus, we find that expedited action is warranted with respect to Newlat's request, and we are combining the notice of initiation and the notice of preliminary results.

V. Preliminary Successor-in-Interest Determination

Legal Standard

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of a request from an interested party for a review of an AD order which shows changed circumstances to warrant a review of the order. In the past, Commerce has used a CCR to consider the applicability of a cash deposit rate after there have been changes in the name or structure of a respondent, such as a merger or spinoff (*i.e.*, the "successor-in-interest").

In a CCR, we generally consider a company to be the successor to another company for cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor.¹⁷ In making a successor-in-interest determination in an antidumping proceeding, Commerce examines a number of factors, including, but not limited to, changes in the following:

¹⁶ See *Initiation and Preliminary Results of Changed Circumstances Reviews: Antidumping Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China and Antidumping Duty Order on Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*, 82 FR 12558 (March 6, 2017) and accompanying Preliminary Decision Memorandum, unchanged in *Antidumping Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China and Antidumping Duty Orders on Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Changed Circumstances Reviews*, 82 FR 17797 (April 13, 2017).

¹⁷ See, *e.g.*, *Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 81 FR 76561 (November 3, 2016), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Review*, 81 FR 91909 (December 19, 2016).

(1) management, (2) production facilities, (3) supplier relationships, and (4) customer base.¹⁸ Although no single, or even several, of these factors will necessarily provide a dispositive indication of succession, generally, Commerce will consider a company to be a successor if its resulting operation is not materially dissimilar to that of its predecessor.¹⁹ Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates in the whole as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.²⁰

Analysis

Ownership and Management Structure

On April 9, 2019, Newlat purchased 100 percent of Delverde. The merger of Delverde occurred on September 23, 2019, while the implementation of the merger took place on December 31, 2019.²¹ According to Newlat, its business model is similar to a small-scale multinational business with individual business units operating in different markets or as different brands.²² Prior to the acquisition of Delverde, Newlat owned five different pasta brands which competed with Delverde (Buitoni, Corticella, Pezzullo, Guacci, and Birkel) and operated in multiple sectors in the food industry such as pasta, bakery products, dairy products, special products, baby food, and sauces.²³

Newlat operates as a Group that acquires and merges various companies while keeping pre-existent management, which they maintain was the case in the merger of Delverde. Newlat states that the sales management responsible for selling Delverde-brand pasta to the United States stayed the same; the only change for those respective employees was their location.²⁴ Prior to the merger, Delverde was wholly-owned by a company headquartered outside of Italy. Delverde's headquarters were located in Bologna, Italy, while production activities occurred in Fara San Martino (Chieti, Italy). Following the merger, all employees who worked at the office in Bologna, which primarily consisted of upper-level management, were transferred to Newlat's headquarters in Reggio Emilia, Italy.²⁵

Prior to the merger, Delverde was managed by its own staff.²⁶ While Delverde's staff remained employed at Delverde post-merger, record information indicates that Delverde's operational decisions, as part of Newlat, are subject to approval and control of Newlat.²⁷ Further, the post-

¹⁸ See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁹ See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999) (*Salmon from Norway*).

²⁰ See, e.g., *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstances Review*, 70 FR 17063, 17064 (April 4, 2005); and *Salmon from Norway*, 64 FR at 9980.

²¹ See Newlat's CCR Request, at 1 and Exhibit 1 and 2.

²² See Newlat Supplemental Response at 3.

²³ *Id.* at 3.

²⁴ *Id.* at 4.

²⁵ *Id.*

²⁶ See Newlat's CCR Request, at 3 and Exhibit 1

²⁷ See Newlat's Supplemental Response, at 4; see also Newlat's CCR Request, at Exhibit 5.

acquisition Newlat is directed by the management of Newlat, not the management of Delverde. Therefore, we find the management of the predecessor to be dissimilar to the successor.

Production Facilities

Pre-acquisition, Delverde had a single production facility in Fara San Martino, Italy. Delverde produced pasta which is sold under the Delverde brand name.

Post-merger, Newlat operates a total of five pasta facilities in Italy, which includes the Delverde production facility. Newlat also owns and operates four pasta factories in Italy, one in Germany, and two flour mills in Italy. Newlat states that Delverde's production facility still only produces pasta for the Delverde brand, and there were no changes to Delverde's pre-existing production facilities used to produce pasta.²⁸ Further, the post-acquisition Newlat continues to produce pasta under other brand names in addition to the Delverde brand.

While it is true that Delverde's production facility remained unchanged after the merger, Delverde's production was nonetheless merged with the multiple additional pasta facilities that the Newlat Group owns and operates in Italy.²⁹ The production capability of the merged entity also significantly exceeds the production of the pre-merger Delverde.³⁰ Therefore, we find the production facilities of the predecessor to be dissimilar from the successor.

Supplier Relationships

Prior to its acquisition, Delverde maintained seven suppliers of raw materials. Post-acquisition, Newlat states that Delverde continues to use the same suppliers for raw-materials and will continue to do so in the future.³¹

Newlat contends that its pre-merger supplier relationships are unchanged after the merger with Newlat.³² However, while it contends that the suppliers for Delverde's production facility remained unchanged post-merger, Delverde became part of a larger entity that operates several other pasta production facilities each with its supplier needs.³³ Thus, we find the suppliers of the post-merger Newlat are dissimilar from the firms who supplied the pre-merger Delverde.

Customer Base

Newlat provided a list of Delverde's U.S. customers pre-merger and post-merger demonstrating that Delverde continued to sell to the same list of customers.³⁴ Newlat also stated that "Delverde's and Newlat's customers are not alternatives, but on the contrary they can offer commercial development opportunities in new areas or with new customers."³⁵

²⁸ See Newlat's Supplemental Response at 3.

²⁹ *Id.*

³⁰ *Id.*

³¹ See Newlat's CCR Request, at 3 and Exhibit 8.

³² See Newlat's CCR Request, at 3 and Exhibit 8.

³³ See Newlat's Supplemental Response, at 3.

³⁴ *Id.* at 3 and Exhibit 4.

³⁵ See Newlat's Supplemental Response, at 2.

As noted above, Delverde merged with a group that operates several pasta production facilities which are sold under several brand names. As a consequence, this means that the customer base of pre-acquisition Delverde differs from the customer base of the post-acquisition Newlat, which includes the newly acquired customers of Delverde. Accordingly, we find the customer base of the post-merger Newlat dissimilar to those of pre-merger Delverde.

Conclusion

Based on the information supplied by Newlat, we find that the operations of the successor, Newlat, are materially dissimilar from those of the predecessor, Delverde. Therefore, our analysis supports a preliminary determination that there are fundamental differences in the management structure, production facilities, supplier relationships, and customer bases between the pre-acquisition Delverde and the post-acquisition Newlat.

VI. Recommendation

First, we recommend initiating a changed circumstances review to determine whether Newlat is the successor-in-interest to Delverde. We find that there is adequate information on the record that a review is warranted consistent with section 751(b)(1) of the Act and 19 CFR 351.216. Further, we recommend expedited action pursuant to 19 CFR 351.221(c)(3)(ii) to issue a notice of preliminary results concurrently with the notice of initiation of a changed circumstances review.

Second, we recommend finding that Newlat has not provided sufficient evidence, based on the record evidence under Commerce's successor-in-interest criteria, to demonstrate that its management, production facilities, supplier relationships, and customer base are materially similar to those of Delverde with respect to the production and sale of subject merchandise. Thus, we recommend that Commerce preliminarily find that Newlat is not the successor-in-interest to Delverde.



Agree



Disagree



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