



A-475-818

Administrative Review

POR: 7/1/2018 – 6/30/2019

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November 17, 2020

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Pasta from Italy; 2018-
2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain pasta (pasta) from Italy. The review covers 14 producers and/or exporters of the subject merchandise, of which Ghigi 1870 S.p.A. (Ghigi) and Pasta Zara S.p.A. (Pasta Zara) (collectively Ghigi/Zara)¹ and La Molisana SpA (La Molisana) were selected as the two mandatory respondents. The period of review (POR) is July 1, 2018 through June 30, 2019. We preliminarily determine that Ghigi/Zara and La Molisana sold subject merchandise at less than normal value (NV) during the POR. We further preliminarily determine that Pasta Berruto had no shipments during the POR.

II. BACKGROUND

Initiation

In response to Commerce's notice of opportunity to request an administrative review on pasta from Italy,² several producers and/or exporters timely requested an administrative review of the AD order on pasta from Italy with respect to their entries of subject merchandise to the United

¹ We have collapsed Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively Ghigi/Zara) since the 2015–2016 administrative review. 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 63627 (December 11, 2018).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 31295 (July 1, 2019).



States during the POR on July 30, 2019 and July 31, 2019.³ On July 31, 2019, Riviana Foods and Treehouse Foods LLC (collectively, the domestic producers) requested an administrative review with respect to 11 producers and/or exporters of pasta from Italy.⁴ Accordingly, on September 9, 2019, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of an administrative review of the AD order on pasta from Italy for the following companies: Aldino S.r.L. (Aldino), F. Divella S.p.A., Ghigi/Zara, Industria Alimentare Colavita S.p.A. (Indalco), La Molisana, Liguori Pastificio dal 1820 S.p.A., Newlat Food S.p.A., Pasta Berruto S.p.A. (Pasta Berruto), Pasta Lensi S.r.L. (Pasta Lensi), Pastificio Di Martino Gaetano e Flli S.p.A., Pastificio Fratelli DeLuca S.r.l., Pastificio Rey S.r.L., Rummo S.p.A., San Remo Macaroni Company, Tesa S.r.l., and Valdigrano di Flavio Pagani S.r.L.⁵

Selection of Mandatory Respondents and Firms Subject to Review

On September 9, 2019, we released the results of a U.S. Customs and Border Production (CBP) data query on entries of pasta from Italy and gave interested parties an opportunity to comment on the data.⁶ On September 13, 2019, Pasta Lensi timely withdraw its request for review.⁷ On October 9, 2019, we announced that Industria Alimentare Colavita S.p.A. (Indalco) and Ghigi/Zara had been selected as mandatory respondents⁸ and issued the AD questionnaire to Indalco and Ghigi/Zara. On October 29, 2019, Indalco timely withdrew its request for review.⁹ As a result, on November 1, 2019, Commerce selected La Molisana as a respondent¹⁰ and issued the AD questionnaire to La Molisana. On December 6, 2019, Aldino timely withdrew its request

³ See Pastificio Fratelli DeLuca S.r.l.'s Letter, "Certain Dry Pasta from Italy; A-475-818; Request for Administrative Review (Revised)," dated July 30, 2019; *see also* La Molisana's Letter, "Certain Dry Pasta from Italy; A-475-818; Request for Administrative Review (Revised)," dated July 30, 2019; Zara's Letter, "Certain Pasta from Italy—Request for Administrative Review – Pasta Zara, S.p.A.," dated July 30, 2019; Aldino S.r.l.'s Letter, "Pasta from Italy; Request for Administrative Review," dated July 31, 2019; Tesa S.r.l.'s Letter, "Pasta from Italy; Request for Administrative Review," dated July 31, 2019; Industria Alimentare Colavita, S.p.A.'s Letter, "Certain Pasta from Italy: Request for Administrative Review on Behalf of Industria Alimentare Colavita, S.p.A.," dated July 31, 2019; Pasta Lensi, S.r.l.'s Letter, "Certain Pasta from Italy: Request for Administrative Review," dated July 31, 2019; and Ghigi's Letter, "Pasta from Italy; Request for Administrative Review," dated July 31, 2019.

⁴ See Domestic Producers' Letter, "Request for 2018-2019 Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy," dated July 31, 2019. The domestic producers requested a review of the following companies: Ghigi/Zara; Pastificio Di Martino Gaetano e Flli S.p.A.; Pasta Berruto S.P.A.; Newlat Food S.p.A.; Pastificio Rey S.r.L.; Valdigrano di Flavio Pagani S.r.L.; Rummo S.p.A.; Liguori Pastificio dal 1820 S.p.A.; San Remo Macaroni Company; F. Divella S.p.A.; and La Molisana.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47248 (September 9, 2019).

⁶ See Memorandum, "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated September 9, 2019.

⁷ See Pasta Lensi's Letter, "Pasta from Italy: Withdrawal of Request for Administrative Review," dated September 13, 2019.

⁸ See Memorandum, "2018-2019 Antidumping Duty Administrative Review of Certain Pasta from Italy: Respondent Selection," dated October 9, 2019.

⁹ See Indalco's Letter, "Certain Pasta from Italy: Withdrawal of Request for Antidumping Administrative Review of Indalco S.p.A.," dated October 29, 2019.

¹⁰ See Memorandum, "Certain Pasta from Italy: Selection of Additional Respondent for Individual Review," dated November 1, 2019.

for review.¹¹ On September 23, 2019, Pasta Berruto S.p.A. (Pasta Berruto) reported that it had no exports or sales of subject merchandise into the United States during the POR.¹²

Ghigi/Zara's Questionnaire Response Submissions

Ghigi/Zara timely filed its response to Section A of Commerce's AD questionnaire on November 18, 2019.¹³ Ghigi/Zara submitted a timely response to Sections BCD of the AD questionnaire on December 12, 2019.¹⁴ We issued several section A-D supplemental questionnaires to Ghigi/Zara,¹⁵ to which it provided responses on February 24, 2020, April 20, 2020, June 3, 2020 and June 18, 2020.¹⁶ We also issued a supplemental A questionnaire, a supplemental B – D questionnaire, a supplemental C questionnaire, a section A – D supplemental, and an additional section C supplemental on December 19, 2019, January 23, 2020, March 10, 2020, March 27, 2020, and June 10, 2020, respectively.¹⁷

La Molisana's Questionnaire Response Submissions

La Molisana timely filed its response to Section A of Commerce's AD questionnaire on November 29, 2019.¹⁸ La Molisana submitted a timely response to sections B and C on January 3, 2020, and section D on January 6, 2020.¹⁹ On January 8, 2020, we issued a Section A supplemental questionnaire to La Molisana, to which La Molisana submitted timely responses on

¹¹ See Aldino's Letter, "Pasta from Italy; Withdrawal of Request for Administrative Review," dated December 6, 2019.

¹² See Pasta Berruto's Letter, "Pasta Berruto S.p.A.: "No Shipments" Letter for Certain Pasta from Italy (7/01/2018-6/30/2019)," dated September 13, 2019 (Pasta Berruto's No Shipments Letter).

¹³ See Ghigi/Zara's Letter, "Certain Pasta from Italy – Response to Section A Questionnaire," dated November 18, 2019 (Ghigi/Zara's AQR) and La Molisana's Letter, "Certain Dry Pasta from Italy; A-475-818; Response to Section A of Initial Questionnaire," dated November 29, 2019 (La Molisana's AQR).

¹⁴ See Ghigi/Zara's Letter, "Certain Pasta from Italy – Zara and Ghigi Response to Sections B, C, and D Questionnaire," dated December 12, 2019 (Ghigi/Zara's BCDQR).

¹⁵ See Commerce's Section A supplemental questionnaire, dated December 19, 2019 (Ghigi/Zara's ASQ); *see also* Sections BCD supplemental questionnaire, dated January 23, 2020 (Ghigi/Zara's BCDSQ).

¹⁶ See Ghigi/Zara's Letters, "Certain Pasta from Italy – Zara and Ghigi Response to First Supplemental Sections B, C, and D Questionnaire," dated February 24, 2020 (Ghigi/Zara's February 24, 2020 SQR); "Certain Pasta from Italy – Zara and Ghigi Response to Fourth Supplemental Questionnaire Dated March 27, 2020," dated April 20, 2020 (Ghigi/Zara's April 20, 2020 SQR); "Certain Pasta from Italy – Zara and Ghigi Response to March 10 Supplemental Questionnaire," dated June 3, 2020 (Ghigi/Zara's June 3, 2020 SQR); and "Certain Pasta from Italy – Zara and Ghigi Response to June 10, 2020, Supplemental Questionnaire," dated June 18, 2020 (Ghigi/Zara's June 18, 2020 SQR).

¹⁷ See Commerce's Letters, "2018-2019 Administrative Review of Certain Pasta from Italy: Sections BCD Supplemental Questionnaire for Ghigi and Zara," dated December 19, 2019; "2018-2019 Administrative Review of Certain Pasta from Italy: Request for GFI 2018 Financial Statement and U.S. Sales Reconciliation," dated January 23, 2020; "2018-2019 Administrative Review of Certain Pasta from Italy: Sections A-D Supplemental Questionnaire for Ghigi and Zara," dated March 10, 2020 (Ghigi/Zara's March 10, 2020 SQ); and "2018-2019 Administrative Review of Certain Pasta from Italy: Ghigi US Sales Reconciliation," dated March 27, 2020, and June 10, 2020, respectively (Ghigi/Zara's March 27, 2020 SQ, Ghigi/Zara's June 10, 2020 SQ).

¹⁸ See Ghigi/Zara's AQR and La Molisana's AQR.

¹⁹ See La Molisana's Letters, "Certain Dry Pasta from Italy; A-475-818; Response to Section B and C of Initial Questionnaire and Related Filings," dated January 3, 2020; and "Certain Dry Pasta from Italy; A-475-818; Response to Section D of Initial Questionnaire and Related Filings," dated January 6, 2020.

January 22, 2020 and January 29, 2020.²⁰ On January 16, 2020, we issued a Section B – D supplemental questionnaire to La Molisana, to which La Molisana submitted timely responses on January 27, 2020 and January 31, 2020.²¹ On March 30, 2020, we issued a second Section B – C supplemental questionnaire to La Molisana, to which La Molisana submitted timely responses on June 18, 2020.²² On September 11, 2020, we issued a Section B – D supplemental questionnaire to La Molisana, to which La Molisana submitted timely responses on September 30, 2020.²³

Interested Parties' Submissions

On July 21, 2020, the domestic producers filed their pre-preliminary-results comments.²⁴ On July 31, 2020, Ghigi/Zara filed its pre-preliminary-results comments and its rebuttal to the domestic producers' submission.²⁵ On August 6, 2020, we rejected Ghigi/Zara's July 31, 2020 submission for containing unsolicited new factual information.²⁶ On August 13, 2020, Ghigi/Zara filed a redacted version.²⁷

Review Schedule

On February 28, 2020, we extended the due date for the preliminary results of this review from April 1, 2020, to July 30, 2020.²⁸ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.²⁹ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.³⁰ The deadline for the preliminary results of this review is now November 17, 2020.

²⁰ See La Molisana's Letters, "Certain Dry Pasta from Italy; A-475-818; Response to Department's Supplemental Section A Questionnaire," dated January 22, 2020 (La Molisana's SAQR); and "Certain Dry Pasta from Italy; A-475-818; Response to Questions 9 and 15 of the Department's Supplemental Section A Questionnaire," dated January 29, 2020.

²¹ See La Molisana's Letters, "Certain Dry Pasta from Italy; A-475-818; Response to Section B and C Supplemental Questionnaire," dated January 27, 2020; and "Certain Dry Pasta from Italy; A-475-818; Response to Section B and C Supplemental Questionnaire; Revised COP Database," dated January 31, 2020.

²² See La Molisana's Letter, "Certain Dry Pasta from Italy; A-475-818; Response to Second Section B and C Supplemental Questionnaire," dated June 18, 2020.

²³ See La Molisana's Letter, "Certain Dry Pasta from Italy; A-475-818; Response to Section B and C Third Supplemental Questionnaire," dated September 30, 2020.

²⁴ See Domestic Producers' Letter, "Certain Pasta from Italy – The Domestic Producers' Comments on Ghigi/Zara's June 2, 2020 and June 17, 2020 Supplemental Responses and Pre-Preliminary Comments," dated July 21, 2020.

²⁵ See Ghigi/Zara's Letter, "Certain Pasta from Italy – Zara/Ghigi (1) Pre-Preliminary Results Comments and (2) Rebuttal to the Domestic Producers' Pre-Preliminary Results Comments," dated July 31, 2020.

²⁶ See Commerce's Letter, "2018-2019 Administrative Review of Certain Pasta from Italy – Rejection of Ghigi/Zara's Pre-Preliminary Results Comments and Rebuttal Comments," dated August 6, 2020.

²⁷ See Ghigi/Zara's Letter, "Certain Pasta from Italy– Zara and Ghigi Submission of Redacted Letter of July 31, 2020: Pre-Preliminary Results Comments," dated August 13, 2020 (Ghigi/Zara's Redacted Letter).

²⁸ Memorandum, "Certain Pasta: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2018/2019," dated March 2, 2020.

²⁹ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020. If the new deadline falls on a nonbusiness day, in accordance with Commerce's practice, the deadline will become the next business day.

³⁰ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

III. SCOPE OF THE ORDER³¹

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.³² 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.³³ Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the order.³⁴

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. PRELIMINARY DETERMINATION OF NO SHIPMENTS

On September 23, 2019, Pasta Berruto reported that it had no exports or sales of subject merchandise into the United States during the POR.³⁵ To confirm its no-shipment claim, Commerce issued a no-shipment inquiry to CBP requesting that CBP review Pasta Berruto's no-shipment claims.³⁶ CBP reported that it had no information to contradict Pasta Berruto's claims of no shipments during the POR.

³¹ See *Certain Pasta from Italy: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 82 FR 4291 (January 13, 2017).

³² See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

³³ 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).

³⁴ 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).

³⁵ See Pasta Berruto's No Shipments Letter.

³⁶ See Commerce's Letter, "No Shipments Inquiry for Certain Pasta from Italy Produced and/or Exported by Pasta Berruto S.p.A (A-475-818)," Message Number 9273310, dated September 30, 2019.

Given that Pasta Berruto reported that it made no shipments of subject merchandise to the United States during the POR, and there is no information calling its claim into question, we preliminarily determine that Pasta Berruto made no shipments of subject merchandise during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Pasta Berruto but, rather, will complete the review and issue instructions to CBP based on the final results.³⁷

V. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES

In accordance with sections 776(a) and (b) of the Act, we determine that the use of facts available with adverse inferences is appropriate for these preliminary results with respect to Ghigi/Zara.

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Finally, where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Ghigi/Zara did not provide the required sales quantity and value (Q&V) information and financial statements for Ghigi's U.S. affiliate, Ghigi USA (GFI), in its initial section A

³⁷ See e.g., *Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 50886 (October 10, 2018), unchanged in *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 23017 (May 21, 2019).

questionnaire response.³⁸ Ghigi/Zara also failed to provide GFI's U.S. sales reconciliation in its Section C questionnaire response.³⁹

Pursuant to section 782(d) of the Act, we notified the company of the deficiencies in its reporting in our section A supplemental questionnaire and sections B, C, and D supplemental questionnaire.⁴⁰ Ghigi/Zara continued not to provide GFI's financial statement and Ghigi's U.S. sales reconciliation in its supplemental questionnaire response.⁴¹ On March 10, 2020, we issued another supplemental questionnaire requesting GFI's financial statement and U.S. sales reconciliation.⁴²

Ghigi's response was due on April 24, 2020, which coincided with the date on which Commerce tolled administrative reviews by 50 days, which was also applicable to interested parties' deadlines.⁴³ Thus, on June 2, 2020, Ghigi/Zara finally submitted GFI's financial statement and its U.S. sales reconciliation.⁴⁴ Because we were unable to match the Q&V in Ghigi's U.S. sales reconciliation with the totals in Ghigi/Zara's U.S. sales data, we issued another supplemental questionnaire to Ghigi/Zara on June 10, 2020.⁴⁵ Ghigi/Zara filed a letter on June 17, 2020, arguing that Commerce's inability to match Ghigi/Zara's U.S. sales reconciliation with the Q&V totals reported in Ghigi/Zara's U.S. sales data was because Commerce's calculation failed to take into consideration unit conversions from pounds to kilograms.⁴⁶

On July 23, 2020, domestic producers filed comments on Ghigi/Zara's June 2, 2020, and June 17, 2020, submissions along with pre-preliminary-results comments.⁴⁷ In this submission, the domestic producers argued that Ghigi/Zara's reconciliation did not reconcile with the submitted U.S. sales data. The domestic producers argued that, given Ghigi/Zara's repeated failures to provide a correct U.S. Q&V response and the requested U.S. sales reconciliation, Commerce should not rely on Ghigi/Zara's reported U.S. sales data, and should resort to total adverse facts available (AFA) in its preliminary results for Ghigi/Zara.

In its July 31, 2020, rebuttal to the domestic producers' pre-preliminary-results comments, Ghigi/Zara acknowledged that the domestic producers correctly identified discrepancies between

³⁸ Ghigi/Zara states, "{w}hile the data for Zara is reported herein, Ghigi is stilling compiling this information and will submit it when available." See Ghigi/Zara's Section AQR at 2.

³⁹ See Commerce's Ghigi/Zara's BCDQR.

⁴⁰ See Commerce's Ghigi/Zara's ASQ; see also Ghigi/Zara's BCDSQ.

⁴¹ See Ghigi/Zara's February 24, 2020 SQR.

⁴² See Commerce's Ghigi/Zara's March 10, 2020 SQ.

⁴³ See Commerce's Letter, "Request for Extension of Time to Respond to Supplemental Questionnaire," dated April 24, 2020; see also Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁴⁴ See Ghigi/Zara's Letter, "Certain Pasta from Italy – Zara and Ghigi Response to March 10 Supplemental Questionnaire," dated June 2, 2020.

⁴⁵ See Commerce's Ghigi/Zara's June 10, 2020 SQ.

⁴⁶ See Ghigi/Zara's Letter, "Certain Pasta from Italy – Zara and Ghigi Response to June 10, 2020, Supplemental Questionnaire," dated June 17, 2020.

⁴⁷ See Domestic Producers' Letter, "Certain Pasta from Italy – The petitioners' Comments on Ghigi/Zara's June 2, 2020 and June 17, 2020 Supplemental Responses and Pre-Preliminary Comments," dated July 23, 2020.

its U.S. sales reconciliation and its most recent U.S. sales data.⁴⁸ Ghigi/Zara then provided an unsolicited revised U.S. sales reconciliation and revised U.S. sales data in its rebuttal comment submission, which Commerce rejected on August 6, 2020 for containing unsolicited new factual information.⁴⁹ Commerce rejected Ghigi/Zara's revised U.S. sales data, revised U.S. sales reconciliations and all exhibits in their entirety, and indicated that Ghigi/Zara could re-file its submission without the unsolicited information.⁵⁰

We find that the absence of a complete sales reconciliation demonstrate shows that Ghigi/Zara has withheld information requested by Commerce, failed to provide information in the form and manner requested by Commerce, and significantly impeded the proceeding. Thus, the grounds for making a determination on the basis of the facts available under sections 776(a)(2)(A), 776(a)(2)(B), and 776(a)(2)(C) of the Act are met. As noted above, Commerce has met its statutory responsibility in this proceeding by identifying deficiencies in Ghigi/Zara's submissions and providing Ghigi/Zara several opportunities, including supplemental questionnaires specifically requesting a complete sales reconciliation, to remedy or adequately explain the deficiencies. Commerce also granted Ghigi/Zara multiple deadline extensions for responding to these questionnaires.⁵¹

We also note that Ghigi/Zara's failure to provide consistent quantity and value data and accurate reconciliations for its U.S. sales renders its reported U.S. sales databases fundamentally unreliable. As an accurately reported U.S. sales database is needed for Commerce to calculate a margin, we also find that necessary information is not available on the record pursuant to section 776(a)(1) of the Act.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁵² Furthermore, affirmative evidence of bad faith on the part of a

⁴⁸ See Ghigi/Zara's Letter, "Certain Pasta from Italy—Zara/Ghigi (1) Pre-Preliminary Results Comments and (2) Rebuttal to the Domestic producers' Pre-Preliminary Results Comments," dated July 31, 2020.

⁴⁹ See Memorandum, "2018-2019 Administrative Review of Certain Pasta from Italy – Rejection of Ghigi/Zara's Pre-Preliminary Results Comments and Rebuttal Comments," dated August 6, 2020.

⁵⁰ *Id.*

⁵¹ See Commerce's Letter "Request for Extension of Time to Respond to Section A Supplemental Questionnaire," dated January 1, 2020 (January 1, 2020 Extension), *see also*; Commerce's Letters, all titled "Request for Extension of Time to Respond to Supplemental Questionnaire," "dated March 17, 2020 (March 17, 2020 Extension), March 24, 2020 (March 24, 2020 Extension), April 7, 2020 (April 7, 2020 Extension), April 9, 2020 (April 9, 2020 Extension), April 17, 2020 (April 17, 2020 Extension), and April 24, 2020 (April 24, 2020 Extension), respectively.

⁵² See Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1 (1994) (SAA) at 870; *see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

respondent is not required before Commerce may make an adverse inference.⁵³ It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁵⁴

We preliminarily find that Ghigi/Zara have failed to cooperate by not acting to the best of their ability. As discussed above, despite multiple requests by Commerce for Ghigi/Zara to provide an accurate U.S. sales reconciliation to their reported U.S. sales data, Ghigi/Zara have failed to provide a reliable reconciliation for their reported U.S. sales during the POR. Ghigi/Zara withheld Ghigi's financial statements and U.S. sales reconciliation until June 2, 2020, eight months after the information was requested in Commerce's initial questionnaire. Still, even this submission is incomplete and unusable, as Ghigi/Zara admitted in their rebuttal to the domestic producers' pre-preliminary comments that they underreported U.S. sales of subject pasta:

{Domestic producers} have correctly identified errors in Ghigi USA's sales reconciliation. We have analyzed this data and found two programming errors. First, we erroneously left out approximately 10 U.S. sales invoices, which contained at least one observation of subject merchandise. We discovered an error in disaggregating subject from non-subject pasta. Second, we found another error regarding the conversion of cases to pounds. Ghigi USA records its data by number of cases, not pounds. For certain observations, cases that actually contained 20 pounds of pasta, were reported as containing only 12 pounds, thereby underreporting the total quantity sold. This led to underreporting of subject pasta and overreporting non-subject pasta.⁵⁵

A complete U.S. sales reconciliation based on the respondent's sales records, *e.g.*, commercial invoices, is critically important to the accuracy of the quantity and value of sales of subject merchandise reported to Commerce in the U.S. sales database. Ghigi/Zara are familiar with Commerce's sales reconciliation process and requirement because they have participated in the pasta administrative reviews as a mandatory respondent for the 2016-17, 2017-18 and 2018-19 reviews.⁵⁶ We verified Ghigi and GFI in the 2017-18 review.⁵⁷ Ghigi/Zara knows that their reported sales quantity and values should tie to the companies' accounting ledger and subledgers, and then tie to the financial statement. Ghigi/Zara did not provide GFI's financial statement until

⁵³ See, *e.g.*, *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties (Preamble)*, 62 FR 27296, 27340 (May 19, 1997).

⁵⁴ See, *e.g.*, *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum (IDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁵⁵ See Ghigi/Zara's Redacted Letter at 4.

⁵⁶ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 62627 (December 11, 2018); see also *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 2714 (January 16, 2020).

⁵⁷ See Memorandum, "Antidumping Duty Review of Certain Pasta from Italy: Verification of the Sales Responses of Ghigi," dated August 1, 2019.

June 2, 2020, despite Commerce's repeated requests. Furthermore, the revised U.S. sales data submitted in Ghigi/Zara's June 2, 2020 submission does not reconcile with the company's accounting records because GFI underreported subject pasta sold in the United States during the POR.

In light of the deficiencies detailed in the section above, we find that the absence of a complete sales reconciliation demonstrates a failure by Ghigi/Zara to put forth maximum effort to provide full and complete responses to Commerce's inquiries and thus constitutes a failure to cooperate under section 776(b) of the Act. As noted above, Commerce has met its statutory responsibility in this proceeding by identifying deficiencies in Ghigi/Zara's submissions and providing Ghigi/Zara several opportunities, including supplemental questionnaires specifically requesting a complete sales reconciliation, to remedy or adequately explain the deficiencies. Commerce also granted Ghigi/Zara several deadline extensions for these questionnaires.⁵⁸

Accordingly, we find that Ghigi/Zara have failed to cooperate to the best of their ability by not providing complete and accurate U.S. sales data and sales reconciliation. Based on the above, in accordance with section 776(b) of the Act, we preliminarily determine to use an adverse inference when selecting from among the facts otherwise available.⁵⁹

C. Selection and Corroboration of the Adverse Facts Available Rate

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.⁶⁰ In selecting a rate based on adverse facts available (AFA), Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁶¹

When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary

⁵⁸ See January 1, 2020 Extension, March 17, 2020 Extension, March 24, 2020 Extension, April 7, 2020 Extension, April 9, 2020 Extension, April 17, 2020 Extension, April 24, 2020 Extension.

⁵⁹ See, e.g., *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 55559 (October 17, 2019), and accompanying Preliminary Decision Memorandum, unchanged in *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 21827 (April 20, 2020); see also *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁶⁰ See 19 CFR 351.308(c).

⁶¹ See SAA at 870.

information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁶² The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.⁶³ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.⁶⁴

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.⁶⁵ The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁶⁶

When assigning adverse rates in a review, Commerce’s practice is to select as AFA the higher of: (a) the highest corroborated rate from the petition; or (b) the highest calculated rate for any respondent from any segment of the proceeding⁶⁷ which, under section 776(c)(2) of the Act, Commerce is not required to corroborate.⁶⁸ As AFA, we are preliminarily assigning Ghigi/Zara a dumping margin of 91.76 percent, which is Ghigi/Zara’s calculated rate from the prior 2017-2018 administrative review, which is higher than the highest rate from the petition, and is the highest calculated rate for any respondent in any segment of this proceeding. Because this rate was a calculated rate, based on Ghigi/Zara’s data in a prior segment of the proceeding, it does not constitute secondary information and, therefore, there is no need to corroborate it under section 776(c)(2) of the Act.

⁶² *Id.*

⁶³ *Id.*; see also 19 CFR 351.308(d).

⁶⁴ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁶⁵ See section 776(d)(1)-(2) of the Act.

⁶⁶ See sections 776(d)(3)(A) and (B) of the Act.

⁶⁷ See *Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73420 (December 12, 2012), unchanged in *Diamond Sawblades and Parts Thereof from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 36524 (June 18, 2013); see also *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012); *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Determination of Sales at Less than Fair Value*, 65 FR 5554, 5567 (February 4, 2000); *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Determination of Sales at Less than Fair Value*, 64 FR 14865, 14866 (March 29, 1999); and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Determination of Sales at Less than Fair Value*, 64 FR 30664, 30687 (June 8, 1999).

⁶⁸ See section 776(c)(2) of the Act.

VI. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of pasta from Italy by La Molisana were made in the United States at less than NV, we compared the export price (EP) to the NV, as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In a less-than-fair-value (LTFV) investigation, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of an administrative review, Commerce finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in an LTFV investigation.⁶⁹

In recent investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1) in an LTFV investigation.⁷⁰ Commerce finds that the differential pricing analysis used in certain investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a weighted-average dumping margin for each respondent.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions and time

⁶⁹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014); and *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363–65 (Fed. Cir. 2015) (“the fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

⁷⁰ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by the respondent. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EPs (or CEPs) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to the particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. Results of the Differential Pricing Analysis

For La Molisana, based on the results of the differential pricing analysis, Commerce preliminarily finds that 87.58 percent of the value of U.S. sales pass the Cohen's *d* test,⁷¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for La Molisana.

⁷¹ See Memorandum, "Antidumping Duty Administrative Review of Certain Pasta from Italy: 2018-2019: Preliminary Results Analysis Memorandum for La Molisana," dated concurrently with this memorandum (La Molisana's Preliminary Results Calculation Memorandum) at 2.

B. Date of Sale

Under 19 CFR 351.401(i), in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the producer or exporter's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁷² Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁷³

For its home market and U.S. sales, La Molisana reported the date of shipping document issuance as the date of sale.⁷⁴

For purposes of the preliminary results, we used the earlier of La Molisana's invoice date or shipment date as the date of sale for both home market and U.S. sales.

C. Product Comparisons

For the purposes of determining appropriate product-specific normal values for comparison to the U.S. sale prices, in accordance with section 771(16) of the Act, we considered the prices of all products sold in the home market as described in the "Scope of the Order" section of this notice, above, that were in the ordinary course of trade. In making these comparisons, we matched foreign like products to the products sold in the United States based on the physical characteristics. In order of importance, these physical characteristics are shape, wheat species, milling form, protein content, additives, and enrichment.

Pursuant to 19 CFR 351.414(f), we compared U.S. sale prices of La Molisana to normal values based on home market sale prices within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the month of the U.S. sale. For this POR, all comparisons were based on sales of identical or similar merchandise in both markets.

D. Export Price

Section 772(a) of the Act defines EP as "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an

⁷² See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁷³ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

⁷⁴ See La Molisana's AQR at 21-22.

unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act.

For all sales made by La Molisana, we defined U.S. price based on the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation. We calculated EP based on the price to the first unaffiliated purchaser in the United States, taking into account reported billing adjustments. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, and U.S. brokerage and handling expenses.⁷⁵

E. Normal Value

1. Home Market Viability and Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Based on this comparison, we determine that, pursuant to 19 CFR 351.404(b), La Molisana had a viable home market during the POR because the volume of their home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sale prices.

2. Affiliated Party Transactions and the Arm’s-Length Test

Commerce may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm’s-length prices.⁷⁶ Under section 773(a)(5) of the Act, Commerce has considerable discretion in deciding whether to include affiliated party sales when calculating normal value.⁷⁷ Commerce excludes comparison market sales to affiliated customers that are not made at arm’s-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.⁷⁸ Consistent with 19 CFR 351.403(c) and (d) and in accordance with its practice, Commerce, “may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm’s length.”⁷⁹ To test if sales to affiliates were made at arm’s-length prices, we

⁷⁵ See La Molisana’s Preliminary Sales Analysis Memorandum for further discussion of export price used in the margin program.

⁷⁶ See 19 CFR 351.403(c).

⁷⁷ See section 773(a)(5) of the Act; *see also NTN Corp. v. United States*, 306 F. Supp. 2d 1319, 1332 (CIT 2004) (affirming Commerce’s discretion to apply the arm’s-length test to determine whether to exclude certain home market sales to affiliated parties in the normal value calculation.).

⁷⁸ See 19 CFR 351.403(c).

⁷⁹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003).

compare, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing. Where prices to the affiliated party are, on average, within a range of 98-to-102 percent of the price of identical or comparable merchandise to unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length.⁸⁰

We preliminarily find that La Molisana made sales to affiliated customers during the POR. Accordingly, we applied the arm's-length test for these preliminary results.⁸¹ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade⁸² and we have not used downstream sales of the affiliated party as a basis for normal value consistent with 19 CFR 351.403(d).

3. Level of Trade (LOT)

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales of the foreign like product at the same LOT as U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁸³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁸⁴ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we review the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, where NV is based on either home market or third country prices),⁸⁵ we consider the starting prices before any adjustments.

We obtained information from La Molisana regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by La Molisana for each channel of distribution.⁸⁶ La Molisana reported one channel of distribution, direct from factory sales, in both the U.S. market and the comparison market.⁸⁷

La Molisana's selling function chart indicates that the selling activities performed for sales in both markets are similar, with no significant variation across the broader categories of sales

⁸⁰ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

⁸¹ See La Molisana's Preliminary Results Calculation Memorandum.

⁸² See section 771(15) of the Act; and 19 CFR 351.102(b).

⁸³ See 19 CFR 351.412(c)(2).

⁸⁴ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

⁸⁵ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁸⁶ See La Molisana's AQR at 14-21 and Exhibits A-4 and A-5; and La Molisana's SAQR at Exhibit SA-5.

⁸⁷ *Id.* at 14.

process/marketing support, freight and delivery and warehousing.⁸⁸ Consequently, for La Molisana we preliminarily determine that there is one LOT that is the same for sales in both the home market and the U.S. market and, therefore, find no difference in the LOT in the comparison of U.S. prices with normal values.

F. Cost of Production (COP) Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from La Molisana. We examined La Molisana's cost data and determined that our quarterly cost methodology is not warranted; therefore, we are applying our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated La Molisana's COP based on the sum of its costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and financial expenses, as reported by La Molisana.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the weighted-average COP to the home market sale prices of the foreign like product, in order to determine whether the home market sale prices were below the COP. For the purposes of this comparison, we used COP exclusive of selling and packing expenses. The home market sale prices are inclusive of billing adjustments, where appropriate, and exclusive of applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

⁸⁸ See La Molisana's AQR at Exhibit A-5.

The results of the sales-below-cost test for La Molisana indicates that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time.⁸⁹ Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales and used the prices of the remaining home market sales to determine NV, as well as to calculate home market selling expenses and profit for constructed value (CV).

G. Calculation of NV Based on Comparison Market Prices

We based NV for La Molisana on its reported packed prices to unaffiliated customers in the home market. We adjusted, where appropriate, the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and inland insurance, under section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410, we made an adjustment for differences in the circumstances of sale for direct selling expenses (*i.e.*, imputed credit expenses).⁹⁰ We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Lastly, when comparing U.S. sale prices with a NV based on comparison market sale prices of similar, but not identical, merchandise, we made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, where warranted. We based this adjustment on the difference in the variable cost of manufacture for the foreign like product and the subject merchandise.

H. Calculation of NV Based on Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we will calculate constructed value based on the sum of La Molisana's material and fabrication costs, general and administrative, and financial expenses, as detailed above in the Calculation of COP section, selling expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we will base selling expenses and profit on the amounts incurred and realized by La Molisana in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market. We have made adjustments to constructed value for differences in circumstances of sale as described above.

I. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

⁸⁹ See La Molisana's Preliminary Comparison Market SAS Program.

⁹⁰ See La Molisana's Preliminary Sales Analysis Memorandum for further discussion of home market price adjustments and calculation of NV.

VII. RATE FOR NON-SELECTED COMPANIES

The statute and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an LTFV investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. 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 any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, because Ghigi/Zara has a margin determined entirely on the basis of facts available, we have determined the weighted-average dumping margin for the non-examined companies to be equal to the weighted-average dumping margin calculated for La Molisana.

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

11/17/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance