



A-475-818

Changed Circumstances Review

Newlat Food S.p.A.

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May 4, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for Final Results of Changed
Circumstances Review: Certain Pasta from Italy

I. SUMMARY

On November 9, 2020, the Department of Commerce (Commerce) published the preliminary results of the changed circumstances review (CCR) of the antidumping duty order on certain pasta from Italy and preliminarily determined that Newlat Food S.p.A. (Newlat) is not the successor-in-interest to Delverde Industrie Alimentari S.p.A. (Delverde).¹ We received case briefs from interested parties. Based on our analysis of the comments raised in the case briefs, for the final results, Commerce continues to find 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 (collectively, Delverde/TIAC).² Commerce's determination in the pasta investigation was challenged before the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit, and as a result of the litigation,³ Commerce revised the estimated weighted-average dumping margin for Delverde/TIAC from 2.40 percent *ad valorem* to a *de minimis* estimated weighted-average

¹ See *Certain Pasta from Italy: Initiation and Preliminary Results of Changed Circumstances Review*, 85 FR 71315 (November 9, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² 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) (*Order*).

³ See *Borden, Inc., v. United States*, Nos. 99–1575, –1576 (Federal Circuit March 12, 2001); *Borden, Inc. v. United States*, Court No. 96–08–1970 (CIT May 21, 2001); and *Borden, Inc. v. United States*, Consol. Court No. 96–08–01970, Slip Op. 2001–128 (November 2, 2001).



dumping margin of 1.44 percent *ad valorem*.⁴ Accordingly, Delverde/TIAC was excluded from the *Order*.⁵

On August 10, 2014, Commerce initiated a CCR 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 for purposes of the antidumping law, 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

During 2019, and effective December 31, 2019, Newlat purchased the equity ownership of Delverde. 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

On September 4, 2020, Commerce issued a supplemental questionnaire to Newlat,¹⁰ in which Commerce requested Newlat to clarify, among other things, that as a result of its acquisition, whether 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.¹¹ The domestic industry filed no comments in response to Newlat's request for a CCR or in response to Newlat's questionnaire response.

On November 9, 2020, Commerce initiated the CCR and preliminarily determined that Newlat is not the successor-in-interest to Delverde.¹² On December 11, 2020, Newlat and Riviana Foods, Inc. and TreeHouse Foods, Inc., (domestic interested parties) submitted comments regarding the *Preliminary Results*.¹³ No party submitted rebuttal briefs. On January 13, 2021, Commerce held a video conference with counsel to Newlat in lieu of the hearing requested on December 9, 2020,

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's Letter, "Certain Pasta from Italy – Request for Changed Circumstances Review," dated July 30, 2020.

¹⁰ See Commerce's Letter, "Request for Changed Circumstance Review for Certain Pasta from Italy - Supplemental Questionnaire," dated September 3, 2020.

¹¹ See Newlat's Letter, "Certain Pasta from Italy – Changed Circumstances Review – Supplemental Questionnaire Response," dated September 21, 2020.

¹² See *Preliminary Results*, 85 FR at 71315, and accompanying PDM at 5-7.

¹³ See Newlat's Letter, "Certain Pasta from Italy – Changed Circumstances Review – Case Brief," dated December 11, 2020 (Newlat's Case Brief); see also Petitioners' Letter, "Certain Pasta from Italy – Case Brief," dated December 11, 2020 (Petitioners' Case Brief).

the request for which had been withdrawn on December 22, 2020.¹⁴ Commerce received no requests by the domestic interested parties for a hearing.

III. SCOPE OF THE *ORDER*

Imports covered by the *Order* are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the *Order* is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the *Order* are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the order.¹⁵ Pursuant to Commerce's August 14, 2009 CCR, effective July 1, 2008, gluten free pasta is also excluded from the scope of the *Order*.¹⁶ Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the *Order*.¹⁷

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 the *Order* is currently classifiable under subheadings 1901.90.9095 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.

¹⁴ See Commerce's Letter, "Changed Circumstances Review of Certain Pasta from Italy: Ex Parte Meeting with Counsel to Newlat," dated January 13, 2021; see also Newlat's Letter, "Certain Pasta from Italy – Changed Circumstances Review – Request for Public Hearing," dated December 9, 2020; and Newlat's Letter, "Certain Pasta from Italy– Withdrawal of Hearing Request," dated December 22, 2020.

¹⁵ See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

¹⁶ 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).

¹⁷ 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. DISCUSSION OF INTERESTED PARTIES COMMENTS

Comment 1: Whether Newlat Has Met Commerce's Successor-In-Interest Criteria

*Newlat's Case Brief*¹⁸

- The successor-in-interest criteria Commerce applies in CCR proceedings is not based on a statute and its interpretation of *Chevron* is not definitive for its determination.¹⁹
- When the old business of the acquired company is continued, there are no court opinions which disqualify a successor-in-interest finding simply due to the acquiring company continuing to own and conduct other businesses.
- The criteria Commerce used to assess whether Newlat was the successor-in-interest to Delverde is not consistent with its determination in *Shrimp from Thailand*.²⁰
- In *Shrimp from Thailand*, the Rubicon Group, which was comprised of nine shrimp producers, was excluded from the relevant antidumping duty order. Subsequent to its exclusion, the Rubicon Group acquired two additional producers. At issue in the analysis was whether the acquisition of two additional producers negated the Rubicon Group's exclusion from the *Shrimp from Thailand* order. In *Shrimp from Thailand*, Commerce found that the newly expanded Rubicon Group remained essentially the same (in terms of management, production, suppliers relationships, and customer base), as the pre-acquisition Rubicon Group and, thus, determined that the Rubicon Group, in its present form, including the two additional producers, was the successor-in-interest to the pre-acquisition Rubicon Group. Accordingly, Commerce continued to find the Rubicon Group to be excluded from the *Shrimp from Thailand* antidumping duty order.²¹
- Delverde's post-acquisition management and operations are identical to its pre-acquisition management and operations. Yet, in the *Preliminary Results*, Commerce arbitrarily considered the post-acquisition Newlat to be dissimilar and not a successor-in-interest to the pre-acquisition Delverde. Commerce reached this determination despite the fact that Newlat's acquisition of Delverde only added a single pasta facility whereas in *Shrimp from Thailand* the Rubicon Group added two additional producers.
- Commerce has also found that an affirmative successor-in-interest determination is possible even when less than the entire company is acquired. In *Brass Sheet and Strip from Canada*, Commerce found that Wolverine was the successor-in-interest, even though it purchased "some (not all) assets" of NMI, laid off 18 percent of production workers, and replaced top management.²² None of these issues occurred with respect to Newlat's acquisition of Delverde.

¹⁸ See Newlat's Case Brief at 8-13.

¹⁹ See Newlat's Case Brief at 8 (citing *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984)).

²⁰ See Newlat's Case Brief at 8 (citing *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of the Antidumping Duty Changed Circumstances Review and Notice of Intent to Revoke in Part*, 74 FR 39042, 39044 (August 5, 2009) (*Shrimp from Thailand Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part*, 74 FR 52452 (October 13, 2009) (*Shrimp from Thailand*)).

²¹ See Newlat's Case Brief at 8-10 (citing *Shrimp from Thailand*).

²² See Newlat's Case Brief at 9 (citing *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass Sheet and Strip from Canada*)).

- Further, in *Brass Sheet and Strip from Canada*, Commerce examined whether Wolverine was essentially “the same business operation, not legal entity” of the acquired company.²³ In *Brass Sheet and Strip from Canada*, Commerce applied these points to Wolverine in a much less rigorous fashion than to Newlat in the *Preliminary Results*.
- In *Valkia*, the Court upheld Commerce’s finding that Valkia was the successor-in-interest to Crownridge.²⁴ In that determination, Valkia only acquired certain assets of Crownridge, did not retain the senior management of Crownridge, and Valkia did not have access to Crownridge’s books and records. However, the Court found that Commerce properly determined that the “old activities of Crownridge” were being “continued by Valkia.”²⁵
- The facts of *Valkia* are less persuasive of successor-in-interest than those of Newlat. Newlat purchased the entirety of Delverde, and Newlat is continuing the “old” business of Delverde. However, Commerce did not include this important factor in its analysis.
- By finding in the *Preliminary Results* that Newlat is not the successor-in-interest to Delverde, Commerce is improperly declaring Newlat as a “new” company. This is contrary to the statute’s definition of a “new” company as stated in *Marine Harvest* where the court remanded Commerce’s decision that the post-merger Marine Harvest was not the successor-in-interest to the pre-merger Marine Harvest and Mares Australes.²⁶
- In *Marine Harvest*, the pre-merger companies competed with each other and had their own facilities, management, suppliers, and customers. The facts of *Marine Harvest* are identical to those of Newlat and Delverde.

Commerce’s Position: While not set forth in the statute, Commerce has a long and established practice in which it applies the successor-in-interest criteria within a CCR.²⁷ Despite its assertions, Newlat has provided no basis for Commerce to determine that its successor-in-interest practice is no longer appropriate or valid.

Newlat argues that Commerce erred in the *Preliminary Results* because it failed to focus its analysis exclusively on whether Delverde’s management and operations remained unchanged after its acquisition by Newlat. However, that is not the issue in this successor-in-interest determination. In making a successor-in-interest determination in an antidumping proceeding, Commerce considers 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 the predecessor.²⁸ Accordingly, the appropriate question here is whether the post-acquisition Newlat is the successor-in-interest to the pre-acquisition Delverde, which in turn, requires Commerce to

²³ See Newlat’s Case Brief at 9 (citing *Brass Sheet and Strip from Canada*, 57 FR at 20461).

²⁴ See Newlat’s Case Brief at 10 (citing *Valkia Ltd. v. United States*, 28 CIT 907, 2004 Ct. Intl. Trade LEXIS 66; Slip Op 2004-71 (*Valkia*)).

²⁵ *Id.*

²⁶ See Newlat Case Brief at 11-12 (citing *Marine Harvest (Chile) S.A. v. United States*, 244 F. Supp. 2d 1364 (CIT 2002) (*Marine Harvest*)).

²⁷ 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 at Comment 1.

²⁸ 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).

analyze whether Newlat, after its acquisition of Delverde, is significantly similar to Delverde prior to its acquisition by Newlat. For the reasons discussed in the *Preliminary Results*, we continue to find that Newlat, post-acquisition, is significantly dissimilar from Delverde, pre-acquisition,²⁹ and, thus, we determine that Newlat is not the successor-in-interest to Delverde. Consequently, the cash deposit requirements for the post-acquisition Newlat will not change to be the cash deposit requirements for the pre-acquisition Delverde, and will continue to be the same as the cash deposit requirements for the pre-acquisition Newlat. Because Newlat was not examined in the less-than-fair-value investigation and has not been part of an administrative or new-shipper review, Newlat's cash deposit rate, 15.45 percent, is based on the estimated weighted-average dumping margin for all other producers and exporters.³⁰

We find that Newlat's citation to *Shrimp from Thailand* is misplaced. In *Shrimp from Thailand*, Commerce found that the addition of Phatthana Frozen Food Co., Ltd. (PFF) and Sea Wealth to the Rubicon Group did not alter the Rubicon Group's production capacity or significantly change the Rubicon Group's production facilities.³¹ Newlat argues that Commerce's decision in *Shrimp from Thailand* gives the impression that "PFF and Sea Wealth had no production facilities, no suppliers, no management, and no customers" based on this determination when applied to Newlat.³² Newlat draws an incorrect comparison to the facts of this CCR.

In *Shrimp from Thailand*, Commerce's successor-in-interest analysis focused on whether the Rubicon Group, an entity that owned several firms that produced subject merchandise, should continue to be excluded from the order on Thai shrimp following the Rubicon Group's acquisition of two additional producers of subject merchandise, PFF and Sea Wealth.³³ In other words, the successor-in-interest analysis in *Shrimp from Thailand* focused on the cash deposit requirements applicable to a single entity, the Rubicon Group, after its acquisition of the two additional shrimp producing firms. In contrast, in this CCR, Commerce's successor-in-interest analysis involves two entities, specifically whether post-acquisition Newlat is the successor-in-interest to pre-acquisition Delverde, *i.e.*, the company that was acquired and which is analogous to PFF and Sea Wealth in *Shrimp from Thailand*. For this reason, we find Newlat's citations to *Shrimp from Thailand* to be unavailing.

The separate issue of whether the post-acquisition Newlat is the successor-in-interest to the pre-acquisition Newlat *does* track that the facts of *Shrimp from Thailand*. This issue was not raised in either the CCR Request or in Newlat's case brief. Nonetheless, because the pre-acquisition Newlat is subject to the cash deposit requirements for all other producers and exporters, whether the post-acquisition Newlat is the successor-in-interest to the pre-acquisition Newlat will have no practical effect since, either way, the post-acquisition Newlat will be subject to the cash deposit requirements for all other producers and exporters.

²⁹ See *Preliminary Results* PDM at 5-7.

³⁰ See *Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 86 FR 25261 (May 4, 2007).

³¹ See *Shrimp from Thailand Preliminary Results*, 74 FR 39042, 39044, unchanged in *Shrimp from Thailand*.

³² See Newlat's Case Brief at 8.

³³ See *Shrimp from Thailand Preliminary Results*, 74 FR 39042, 39044.

Newlat argues that by determining Newlat not to be the successor-in-interest to Delverde, Commerce is defining Newlat as a “new” company, a finding that contradicts the Court’s interpretation of the statute in *Marine Harvest*.³⁴ We disagree with this interpretation, as discussed above, and Newlat has not requested that Commerce examine whether the post-acquisition Newlat is the successor-in-interest to the pre-acquisition Newlat. Further, Commerce is not changing Newlat’s cash deposit rate following its acquisition of Delverde or considering whether Newlat is a “new” company as a result of its acquisition of Delverde. As discussed above, we have determined that the post-acquisition Newlat is not the successor-in-interest to Delverde, a finding that is distinct from whether the post-acquisition Newlat is a “new” company. The post-acquisition Newlat is subject to the cash deposit requirements for all other producers and exporters just as the pre-acquisition Newlat was also subject to the cash deposit requirements for all other producers and exporters.

We disagree that Commerce’s findings in *Brass Sheet and Strip from Canada* and *Valkia* should compel Commerce to determine that Newlat is the successor-in-interest to Delverde.

In *Brass Sheet and Strip from Canada*, Commerce stated:

“Although ‘successorship’ is necessarily a case-by-case determination, generally in the case of an asset acquisition, {Commerce} will consider the acquiring company to be a successor to the company covered by the antidumping duty order, and thus subject to its duty deposit rate, if the resulting operation is essentially similar to that existing before the acquisition.”³⁵

In applying the aforementioned analytical standard in *Brass Sheet and Strip from Canada*, Commerce found that:

“...Wolverine is essentially the same business operation, not legal entity, as NMI, since production facilities, essential personnel, customers, and management were transferred from NMI to Wolverine without interruption. Wolverine did not produce brass sheet and strip before buying all of NMI’s brass production facilities. NMI no longer produces brass sheet and strip...”

Wolverine purchased the production facilities of NMI and continues to produce subject merchandise at these facilities. In addition, NMI no longer manufactures any brass sheet and strip, and thus no longer exists as a company subject to this order. For these reasons, we determined that Wolverine should receive the same antidumping duty deposit rate as NMI until such time as a review of its shipments is completed and it receives a rate based on its own shipments.³⁶

³⁴ See Newlat’s Case Brief at 11; see also *Marine Harvest*, 244 F. Supp. 2d 1364, 1372, 1379-1382 (CIT, 2002) (in which the CIT reversed Commerce’s finding that the respondent, Marine Harvest, was after its merger with Mares Australes, a “new” entity that was not the successor-in-interest to either of the pre-merger companies).

³⁵ See *Brass Sheet and Strip from Canada*, 57 FR at 20461.

³⁶ *Id.*

Thus, in *Brass Sheet and Strip from Canada*, Commerce found Wolverine's resulting operation of the acquired assets of NMI to be essentially similar to that existing before the acquisition because Wolverine was not a producer of brass sheet and strip prior to Wolverine's acquisition of NMI and, because upon acquisition of NMI, Wolverine left the production facilities, essential personnel, customers, and management of NMI unchanged.³⁷ The situation in *Brass Sheet and Strip from Canada* differs significantly from the instant CCR in which the pre-acquisition Newlat was a producer of pasta prior to its acquisition of Delverde, and Newlat's post-acquisition operations, on the whole, do not resemble the operations of the pre-acquisition Delverde. Accordingly, Commerce does not find Newlat's reliance on *Brass Sheet and Strip from Canada* to be instructive.

In *Valkia*, a non-producing investment creditor, Valkia, acquired Crownridge, a producer of subject merchandise that Commerce had selected as a mandatory respondent.³⁸ The "new" company, Valkia, continued the old business activities conducted by Crownridge.³⁹ In the underlying proceeding at issue in *Valkia*, Commerce determined that the management and operations of the acquiring company, Valkia, continued to operate in the same manner as Crownridge prior to its acquisition by Valkia. Therefore, Commerce found that Valkia was the successor-in-interest to Crownridge.⁴⁰ The Court in *Valkia* upheld Commerce's finding.⁴¹

Thus, the facts of *Brass Sheet and Strip from Canada* and *Valkia* are different from those of the instant CCR. Newlat produced pasta prior to its acquisition of Delverde, and unlike the circumstances presented in *Brass Sheet and Strip from Canada* and *Valkia*, Newlat did not become a producer of subject merchandise due to its acquisition of Delverde. Further, Newlat's acquisition of Delverde did not leave Newlat operating in the same manner as the pre-acquisition Delverde. Rather, as discussed in the *Preliminary Results*, Commerce's analysis demonstrates 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, of which Delverde's pasta facility now constitutes only a part of the pasta production facilities of the post-acquisition Newlat.⁴²

For these reasons, we continue to find that Newlat is not the successor-in-interest to Delverde, and, thus, may not retain the cash deposit requirements previously assigned to Delverde. Rather, we find that the post-acquisition Newlat shall continue to be subject to the cash deposit rate currently in effect for all-other producers and exporters. Further, because Delverde has, as of December 31, 2019, the date of the acquisition, ceased to operate as an independent company and instead become a production facility that is wholly-owned by Newlat, merchandise produced at Delverde's factory and exported to the United States may not retain the cash deposit requirements previously assigned to the independent company known as Delverde. Instead, entries of the merchandise produced at the Delverde factory and exported to the United States

³⁷ *Id.*

³⁸ See *Valkia*, 28 CIT 907 at 3-7.

³⁹ *Id.* at 6.

⁴⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from the United Kingdom*, 67 FR 3146 (January 23, 2002).

⁴¹ See *Valkia*, 28 CIT 907 at 24.

⁴² See *Preliminary Results* PDM at 5-7.

shall be treated as entries attributable to Newlat and, thus, shall be subject to the cash deposit requirements in effect for Newlat, which is based on the all-others rate.

Comment 2: Relationship Between Delverde and Newlat

*Newlat's Case Brief*⁴³

- Based on section 771(33)(F) of the Act, Commerce may “‘collapse’ two companies, *i.e.*, treat them as a single entity under Commerce’s regulations, if they meet certain requirements for ‘affiliation.’”⁴⁴
- Evidence on the record demonstrates that Delverde and Newlat are affiliated, and indeed now the same company and “it would be illegal to treat the post-merger Newlat as not the successor-in-interest.”
- The record “confirms that the post-merger Newlat is the successor-in-interest to both Delverde and the {pre-acquisition} Newlat.”⁴⁵
- Commerce’s preliminary finding that Newlat is not the successor-in-interest to Delverde is based on a Commerce policy, but it violates the statute.

Commerce’s Position: We disagree with Newlat that we violated the affiliation provision of the statute by finding that Newlat is not the successor-in-interest to Delverde. As an initial matter, section 771(33)(F) of the Act establishes that two or more persons directly or indirectly controlling, controlled by, or under common control with, any person, are considered affiliated. As the following facts make clear, Newlat’s acquisition of Delverde did not result in a situation to which section 771(33)(F) of the Act applies. Prior to the acquisition of Delverde, Newlat owned several different pasta brands and facilities that competed with Delverde (Buitoni, Corticella, Pezzullo, Guacci, and Birkel).⁴⁶ On April 9, 2019, Newlat purchased 100 percent of the equity of Delverde and incorporated Delverde’s production facilities into its corporate structure with its other pasta-producing facilities. On December 31, 2019, Newlat formally implemented the acquisition of Delverde, and as a result, Delverde ceased to operate as an independent company and became a facility wholly-owned and operated by Newlat.⁴⁷ Delverde is now the latest pasta brand and facility owned by Newlat.⁴⁸ These facilities operate as a single legal entity under the company name of Newlat. Therefore, post-acquisition, Delverde is a facility completely subsumed by Newlat, and thus, is not an entity that may be considered an affiliate of Newlat under section 771(33)(F) of the Act.

Moreover, we find Newlat conflates the issue of affiliation and Commerce’s practice of treating two affiliates as a single entity in a dumping proceeding (*e.g.*, collapsing) with Commerce’s successor-in-interest analysis. Commerce conducts a collapsing analysis in an investigation or a review to address significant potential for the manipulation of pricing or production, and consequently to determine whether Commerce should calculate a weighted-average dumping margin that applies to both firms. However, whether two firms are affiliated or collapsed at a

⁴³ See Newlat’s Case Brief at 13.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 3.

⁴⁷ See Newlat’s CCR Request at 1 and Exhibit 1 and 2.

⁴⁸ *Id.*

given point in time says nothing as to whether the firms were affiliated or operated as a single entity during a prior period. In other words, Commerce applies its affiliation and collapsing analyses to a single period of investigation or review, which differs from Commerce's successor-in-interest analysis, which examines whether a present-day entity is the success-or-interest to an entity during a prior time period. Therefore, we find Newlat's claims of affiliation to be meritless.

Comment 3: Evidence Supports Commerce's Successor-In-Interest Finding

*Petitioners' Case Brief*⁴⁹

- As indicated in Newlat's supplemental questionnaire, the owner, president, chief executive officer, and chief financial officer of Newlat are not the same as the owner, president, chief executive officer, and chief financial officer of pre-merger Delverde. As a result, Commerce correctly determined that the management of Delverde is dissimilar to post-acquisition Newlat.
- In *PSF from Korea 2019*, Commerce found Toray Advanced Materials Korea, Inc. (TAK) to be the successor-in-interest to Toray Chemical Korea, Inc. (TCK) as the plant used by TCK did not change under TAK, the production process remained the same, and the total production capacity remained the same.⁵⁰ In this case, Newlat expanded its production, marketing, and sales footprint by acquiring Delverde.
- In *PSF from Korea Huvis*, Commerce also found that the new entity, Huvis, was not the successor-in-interest as the management of each of the production facilities had changed although the production facilities remained the same.⁵¹
- When Commerce has found production facilities do not differ, such as *Solar Cells from China*, Commerce has still found no successorship when management and ownership of the post-merger company had experienced significant changes as is the case for Newlat.⁵²
- In *PSF from Korea 2019*, TAK provided a list of its suppliers as well as TCK's, and both lists were identical. In this situation, Newlat has not provided information to support its claim that Newlat's suppliers are similar to Delverde's, but only provides the list of Delverde's suppliers pre- and post-acquisition.⁵³
- Similar to the issue of suppliers, Newlat has not provided information to support its claim that the customer base of Delverde and Newlat are similar, but only provides Delverde's customers pre- and post-acquisition.
- In *PSF from Korea 2019*, TAK and TCK's customer base remained the same post-acquisition, which is not substantiated in the case of Newlat and Delverde.⁵⁴

⁴⁹ See Petitioners' Case Brief at 2-6.

⁵⁰ See Petitioners' Case Brief at 3 (citing *Certain Polyester Staple Fiber from the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 84 FR 33230 (July 12, 2019) (*PSF from Korea 2019*)).

⁵¹ See Petitioners' Case Brief at 4 (citing *Notice of Final Results of Changed Circumstances Duty Review: Certain Polyester Staple Fiber from the Republic of Korea*, 66 FR 1642 (June 6, 2001) (*PSF from Korea Huvis*)).

⁵² See Petitioners' Case Brief at 5 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of the Changed Circumstances Review*, 80 FR 63745 (October 21, 2015)).

⁵³ See Petitioners' Case Brief at 6 (citing *PSF from Korea 2019*, 84 FR at 33230).

⁵⁴ See Petitioners' Case Brief at 7 (citing *PSF from the Korea 2019*, 84 FR at 33230).

Commerce's Position: We agree with the petitioners. For the reasons set forth in the *Preliminary Results*,⁵⁵ we continue to find that the management, production, supplier relationships, and customer base of pre-acquisition Delverde are significantly dissimilar to post-acquisition Newlat. Therefore, we continue to find that Newlat is not the successor-in-interest to Delverde.

V. RECOMMENDATION

Based on our analysis of the comments received, we continue to find that Newlat, after its acquisition of Delverde, has not provided sufficient evidence to demonstrate that its management, production facilities, supplier relationships, and customer base are materially similar to those of Delverde, prior to Newlat's acquisition, with respect to the production and sale of subject merchandise. Thus, we continue to recommend finding that Newlat is not the successor-in-interest to Delverde.

We further recommend finding that Newlat may not receive the company-specific cash deposit requirements previously assigned to Delverde, but instead shall continue to be subject to the cash deposit requirements for all-other producers and exporters. Further, because Delverde has, as of December 31, 2019, the effective date of the acquisition, ceased to operate as an independent company and instead has become a factory that is wholly-owned by Newlat, we recommend finding that merchandised produced at Delverde's factory may not receive the dumping margin previously assigned to the independent company known as Delverde and that, as of the publication of the final results of this CCR in the *Federal Register*, entries of the merchandise produced at the Delverde factory shall be treated as entries attributable to Newlat that are subject to the cash deposit rate in effect for Newlat, which is the all-others rate.

☒

Agree

☐

Disagree

5/4/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

⁵⁵ See *Preliminary Results* PDM at 5-7.