



A-475-818  
Administrative Review  
POR: 7/1/2018-6/30/2019  
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May 20, 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:** Certain Pasta from Italy: Issues and Decision Memorandum for  
the Final Results of Antidumping Duty Administrative Review;  
2018-2019

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## I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties<sup>1</sup> in the administrative review of the antidumping duty order on certain pasta (pasta) from Italy. The period of review (POR) is July 1, 2018, through June 30, 2019. For these final results, we made no changes to the weighted-average dumping margin assigned to the collapsed entity of Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively, Ghigi/Zara) in the *Preliminary Results*, and adjusted the weighted-average dumping margin calculated for La Molisana SpA (La Molisana).<sup>2</sup> We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties.

### *General Comment*

Comment 1: Protein Content

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<sup>1</sup> The domestic producers are Riviana Foods and Treehouse Foods LLC (the domestic producers, also referred to in some documents as “the petitioners”). The mandatory respondents in this review are Ghigi 1870 S.p.A. (Ghigi) and Pasta Zara S.p.A. (Zara) (collectively Ghigi/Zara) and La Molisana SpA (La Molisana).

<sup>2</sup> See *Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 74676 (November 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



### *Comments Concerning La Molisana*

Comment 2: La Molisana's Revised Cost Reporting  
Comment 3: La Molisana's Tri-Color Pasta  
Comment 4: Alternative Comparison Methodology  
Comment 5: Price of La Molisana's Private Label Pasta

### *Comments Concerning Ghigi/Zara*

Comment 6: Application of Total AFA to Ghigi/Zara  
Comment 7: Collapsing Ghigi/Zara

## **II. BACKGROUND**

On November 23, 2020, Commerce published the *Preliminary Results* in the *Federal Register*.<sup>3</sup> In accordance with 19 CFR 351.309(b), we invited interested parties to comment on our *Preliminary Results*. On January 26, 2021, we received case briefs on behalf of La Molisana, Valdigrano di Flavio Pagani S.r.L. (Valdigrano), and Ghigi/Zara.<sup>4</sup> On February 5, 2021, domestic producers of pasta<sup>5</sup> submitted rebuttal briefs for each of the case briefs submitted by the respondents.<sup>6</sup>

## **III. SCOPE OF THE ORDER<sup>7</sup>**

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.<sup>8</sup> Pursuant to Commerce's August 14,

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<sup>3</sup> See *Preliminary Results*, 85 FR 74676.

<sup>4</sup> See La Molisana Letter, "Certain Dry Pasta from Italy; A-475-818; Case Brief," (La Molisana's Case Brief); Valdigrano's Letter, "Pasta from Italy—AD review, 2018/19; Case Brief of Valdigrano," (Valdigrano's Case Brief); and Ghigi/Zara's Letter, "Certain Pasta from Italy—Zara and Ghigi Case Brief," (Ghigi/Zara's Case Brief), all dated January 26, 2021.

<sup>5</sup> The domestic producers, also referred in some filings as "the petitioners," are Riviana Foods and Treehouse Foods LLC.

<sup>6</sup> See the Domestic Producers' Letters, "Certain Pasta from Italy: Petitioners' Rebuttal Brief Concerning La Molisana," (Domestic Producers' La Molisana Rebuttal Brief); "Certain Pasta from Italy: Petitioners' Rebuttal Brief Concerning Ghigi/Zara," (Domestic Producers' Ghigi/Zara Rebuttal Brief); and "Certain Pasta from Italy: Petitioners' Rebuttal Brief Concerning Valdigrano," (Domestic Producers' Valdigrano Rebuttal Brief), all dated February 5, 2021.

<sup>7</sup> See *Certain Pasta from Italy: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 82 FR 4291 (January 13, 2017).

<sup>8</sup> See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the order.<sup>9</sup> Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the order.<sup>10</sup>

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 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.

#### **IV. CHANGES SINCE THE PRELIMINARY RESULTS**

To calculate La Molisana's costs of production, we have updated La Molisana's general and administrative (G&A) expenses, factory overhead (FOH), and financial expenses taking into account La Molisana's response to a post-preliminary supplemental questionnaire and comments by interested parties on how to address La Molisana's response.<sup>11</sup>

#### **V. DISCUSSION OF THE ISSUES**

##### ***General Comments***

##### **Comment 1: Protein Content**

##### ***Valdigrano Case Brief:***<sup>12</sup>

- Commerce must amend the instructions given to respondents for reporting the physical characteristic of protein content for this review and all subsequent reviews with at least one of the three following adjustments: (1) treat pasta sold to the United States with a label protein content of 12.5 percent as standard pasta rather than premium pasta; (2) define the code for protein content reported for U.S. sales as the label protein content divided by 1.096; (3) change the breakpoint between standard and premium pasta to 13.5 percent.
- Each of these three adjustments is supported by un rebutted record evidence and correct erroneous aspects of Commerce's protein-content coding requirements that leads to identical pasta in the United States and Italy being treated as dissimilar and vice versa.

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<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> See Memorandum, "Certain Pasta from Italy: Final Results La Molisana Analysis Memorandum for the Final Results of Antidumping Duty Administrative Review; 2018-2019," dated concurrently with this memorandum (La Molisana Final Analysis Memo).

<sup>12</sup> See Valdigrano's Case Brief at 2-19.

- In the 2010-11 administrative review of this order, the first to require a physical characteristic reporting the label protein content, Commerce explained that this reporting standard was meant to ensure that physically identical goods would have the same protein content. In *Pesquera Mares*, the Court of Appeals for the Federal Circuit (CAFC) held that merchandise with small physical differences should be considered identical if the differences are not commercially significant.<sup>13</sup> In *Fagerstra Stainless*, the Court of International Trade (CIT) upheld Commerce’s practice of not modifying model-match criteria (*i.e.*, the physical characteristics) in the absence of “compelling reasons.”<sup>14</sup> Such compelling reasons include “greater accuracy in comparing foreign like product to the single most similar U.S. model” and “the existing model-match criteria ‘are not reflective of the merchandise in question.’” Record evidence demonstrates that Commerce’s current reporting of protein content is sufficiently deficient to require modification.
- In previous administrative reviews, respondents identified that Commerce’s use of the same 12.5 percent breakpoint to distinguish between standard and premium pasta sold in the United States and Italian markets was problematic because protein content is measured differently in the two countries. For example, because the United States and Italy have different standards for measuring protein in pasta, using a 12.5 percent breakpoint results in U.S. pasta with a label protein of 12.5 percent having the same amount of protein as Italian pasta with label protein of 11.4 percent. Thus, following the current questionnaire instructions for coding the protein content leads to inaccurate matching, which, therefore, constitutes a compelling reason identified by *Fagerstra Stainless* for Commerce to update how this physical characteristic is reported.
- Additionally, the 12.5 percent breakpoint on Italian commodity exchanges between premium and standard semolina identified by Commerce has been superseded by a 13.5 percent breakpoint. According to *Fagerstra Stainless*, this change in industry-wide standards is a compelling reason to change the coding for a physical characteristic. Record evidence also shows that major supermarket chains in the United States sell pasta with a label protein of 12.5 percent as standard pasta, not premium pasta. In fact, 12.5 percent is the *minimum* protein content for pasta sold by these chains.
- When Commerce established its coding for protein content, it properly used protein content as a proxy for pasta quality. However, Commerce failed to undertake the necessary analysis to determine whether the distinction between premium and standard semolina on Italian commodity exchanges was the same as in the United States. The Market Report shows that premium pasta in the United States has a minimum 13 to 13.5 percent protein content, similar to the current 13.5 percent breakpoint on Italian commodity exchanges.<sup>15</sup>
- In the previous administrative review, Commerce’s rejected Ghigi/Zara’s protein-content coding arguments as untimely. In this review, the respondents have timely provided un rebutted record evidence. Commerce must address this issue on the merits.

<sup>13</sup> See *Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372 (Fed. Cir. 2001) (*Pesquera Mares*).

<sup>14</sup> See *Fagerstra Stainless AB v. United States*, 577 F. Supp 2d 1270 (CIT 2008) (*Fagerstra Stainless*).

<sup>15</sup> See Law Offices of David L. Simon, PLLC’s Letter, “Pasta Physical Characteristics; Protein,” dated December 8, 2019 (Market Report) included as Exhibit B-13 of Ghigi/Zara’s Letter “Section B Questionnaire Response of Ghigi 1870 S.P.A and Pasta Zara S.P.A,” dated December 13, 2019.

*La Molisana Case Brief:*<sup>16</sup>

- La Molisana endorses Valdigrano’s arguments on the flaws of the current coding of protein content. La Molisana also notes that using label protein content as the basis for this physical characteristic is flawed because of U.S. Food and Drug Administration (FDA) reporting standards for the Nutrition Facts Panel (NFP). The NFP for pasta requires that protein be reported to the nearest whole gram. This means that pasta with an actual protein content between 11.6 and 12.48 percent is described on the label as having 12.5 percent protein content and thus falls under type 1 of Commerce’s protein-content coding. Furthermore, the serving size on the NFP is rounded to a whole number value which also creates a distortion in the protein content reported on the label.
- Different measurement standards for protein content between the United States and Italy must be converted to accurately compare label protein for pasta sold in the U.S. and Italian markets. By ignoring this, Commerce is acting as though 32 degrees Celsius and 32 degrees Fahrenheit are identical.
- Commerce refused to allow La Molisana to submit alternate protein content data. In the previous review, Commerce rejected Ghigi/Zara’s protein content argument because that argument was raised late in the review. In this review, both La Molisana and Ghigi/Zara timely raised the issue. Refusing to allow interested parties to submit data renders it impossible for parties to challenge a specific issue. Commerce should reopen the record to allow La Molisana to submit its alternate protein content data.

*Domestic Producers Valdigrano Rebuttal Brief:*<sup>17</sup>

- Commerce’s requirement to report protein content based on the product label is an established practice grounded in transparency and consistency. Valdigrano has provided no compelling reasons to change this methodology or shown that changing the protein-content coding would lead to more accurate “product comparisons,” *i.e.*, determining a price-based normal value for U.S. sale prices of subject merchandise. Furthermore, there is no compelling reason to change the 12.5 percent breakpoint used by Commerce to distinguish between standard and premium pasta. Valdigrano has not established industry-wide acceptance of 13.5 percent as a new protein-content breakpoint.
- The CAFC has found that Commerce has considerable discretion in defining the “foreign like product.” In the 2007-08 administrative review, Commerce conducted a thorough analysis of how respondents should report wheat type and protein content product characteristics. As a result of that analysis, Commerce added the physical characteristic for protein content to serve as a proxy for pasta quality, with the 12.5 percent breakpoint between standard and premium pasta being based on the minimum criteria for superior semolina on three separate Italian commodity exchanges.
- Since the 2010-11 review, Commerce has required respondents to report the protein content based on the pasta product label. Commerce explained that using the information listed on the final packaging of the finished product satisfied the statutory requirement to have a transparent and consistent price comparison.
- In the most recent, 2017-18 administrative review, Commerce upheld its coding requirements for protein content against criticism from Ghigi/Zara. In addition to reiterating the importance

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<sup>16</sup> See La Molisana’s Case Brief at 3-12.

<sup>17</sup> See Domestic Producers’ Valdigrano Rebuttal Brief at 2-13.

of transparency and consistency, Commerce also noted that requiring that protein content be reported based on the product label hinders attempts by respondents to manipulate price comparisons through company-specific physical characteristics.

- The CIT has affirmed Commerce’s practice of not altering the reporting of physical characteristics in the absence of “compelling reasons.” Valdigrano’s arguments present no such reasons. Valdigrano claims that “the existing model-match criteria ‘are not reflective of the merchandise in question’” because reporting the protein content strictly by the label can lead to physically identical products being treated as different. However, this is undermined by Valdigrano’s own acknowledgement that Commerce considers merchandise with minor physical differences to be identical if those differences are not commercially significant.
- Valdigrano argues that the potential 1.1 percent difference in ‘real’ protein content between pasta sold in the U.S. and Italian markets caused by differing measurement standards is significant, given that Italian semolina only ranges from 10.5 to 14.5 percent protein content. However, the 1.1 percent difference is well within the range of both standard (10.5 to 12.49 percent) and premium (12.5 to 14.5 percent). Thus, the difference is not on its own commercially significant.
- Valdigrano also argues that when Commerce sets a 12.5 percent protein content breakpoint between standard and premium pasta, the difference in measuring the protein content between the United States and Italy becomes significant as it can lead to pasta shifting across the breakpoint. This issue occurs only due to Valdigrano’s insistence on converting its U.S. products to Italian measurement standards. When the Italian measurement standard is converted to the U.S. measurement standard, the Italian standard with a resulting 12.5 percent protein content is still premium in both markets. Valdigrano’s argument that protein content of products sold in the U.S. market should be reported under the Italian standard is merely a results-oriented attempt to wall-off higher priced home market sales from dumping comparisons.
- If companies report protein content based on the product label, Commerce can make product comparisons on a consistent and transparent basis using information available to consumers and others in the supply chain. Attempts to report based on different values than those listed on the product label are indefensible.

*Domestic Producers La Molisana Rebuttal Brief.*<sup>18</sup>

- Commerce considered and rejected La Molisana’s rounding argument in the 2010-11 administrative review. In that review, the respondent, Rummo S.p.A. Molino e Pastificio (Rummo), argued that food labeling requirements could lead to pasta that appears to have 12.5 percent protein content actually having slightly less or more protein, and that Commerce should rely on internal company records instead. However, Commerce explained that what mattered was “the protein content of the finished product, particularly the information made available to the customer, and not on the protein content of the input (semolina).”<sup>19</sup>

**Commerce’s Position:** We disagree with La Molisana and Valdigrano’s claim that the instructions for reporting the protein content are incorrect and must be revised. We have divided

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<sup>18</sup> See Domestic Producers’ La Molisana Rebuttal Brief at 4-12.

<sup>19</sup> See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004), and accompanying IDM at 25.

our explanation into two parts corresponding to the two overarching allegations: first, that Commerce’s instructions for reporting protein content lead to price-to-price comparisons between physically dissimilar pasta; and, second, that Commerce’s instructions for reporting protein content do not reflect market reality.

### ***Protein Measurement and Labeling Standards***

Valdigrano claims that Commerce must adjust the instructions for reporting the protein content because the United States and Italy use different standards for calculating protein content in pasta.<sup>20</sup> In the United States, the nitrogen content of the pasta is multiplied by 6.2510, while in Italy, the nitrogen content is multiplied by 5.711.<sup>21</sup> Thus, argues La Molisana, pasta labeled as 12.5 percent protein content in the United States would have a lower ‘real’ protein content than pasta labeled as 12.5 percent protein content in Italy. La Molisana argues that the requirement by the U.S. FDA to report grams of protein per pasta serving rounded to the nearest gram leads to situations where pasta, as measured by U.S. standards, has less than 12.5 percent protein content being reported on the label as having 12.5 percent protein content due to rounding up.<sup>22</sup> As discussed below, these two arguments have been raised in prior reviews and rejected.<sup>23</sup>

The protein content product characteristic was first introduced in the 2007-08 administrative review. The respondents are required to code pasta with protein content of 12.5 percent or above as “1” and protein content with less than 12.5 percent as “2.” In introducing the characteristic, Commerce outlined previous challenges in defining “superior” semolina and incorporating that criterion as a physical characteristic. A particular concern was that in prior reviews, model match decisions were based on company-specific information, leading to inconsistencies in the definition of the physical characteristics of the in-scope merchandise for different respondents. In relying on protein content, Commerce sought to reduce the subjectivity and potential for variation from respondent to respondent and from review to review.<sup>24</sup>

In the 2010-11 administrative review, potential inconsistencies arising from reliance on the product label were raised in detail by the respondent, Rummo. Rummo argued that Commerce should allow respondents to report protein content based on internal data, alleging that:

the Department altered its model match by basing its product definitions on the protein content as stated on the nutritional label of pasta, rather than on the actual protein content of the merchandise. In the Department’s reliance on the nutritional label from the respective pasta package, the Department departed from

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<sup>20</sup> See Valdigrano’s Case Brief at 4-7; see also *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2714 (January 16, 2020), and accompanying IDM at Comment 1.

<sup>21</sup> See Valdigrano’s Case Brief at 4-5 (citing Market Report at Exhibits A through E).

<sup>22</sup> See La Molisana’s Case Brief at 3-7.

<sup>23</sup> See *Pasta from Italy: Notice of the Final Results of the 15th Antidumping Duty Administrative Review, Final No Shipment Determination and Revocation of Order, in Part; 2010-2011*, 78 FR 9364 (February 8, 2013), and accompanying IDM at Comment 4; see also *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2714 (January 16, 2020) (*Pasta 2017-2018 Review Final*), and accompanying IDM at 6.

<sup>24</sup> See *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010) (*Pasta 2007-2008 Review Final*), and accompanying IDM at Comment 1.

the only reasonable, and only allowable, interpretation of its model match; that is, a model match based on the actual physical characteristics of the merchandise.<sup>25</sup>

In that review, Rummo also argued that the U.S. FDA rounding standards would lead to distorted price comparisons:

{A}ssuming that the actual protein content for a pasta product was 6.50 grams, the product label would still indicate 7 grams due to rounding, but the actual protein content, rather than being 12.5 percent, would instead be 6.5 grams/56 gram serving size = 11.61 percent. In this example, the Department's current instructions would result in a product made entirely of regular semolina (*i.e.*, and not the more expensive "special" or "super-special" semolina), and with an actual protein content significantly below 12.5 percent (in fact, almost an entire percentage point, where the lower range defined by the Department totals only 2.5 percent), reported instead as a high-protein product. Subsequently, it would now be much more likely to match to high-protein products sold in Italy that are made using the more expensive special and super-special semolina, and sell at a significant price premium. This was the exact situation the Department was trying to avoid by adopting the different protein codes in the 2008-2009 review.<sup>26</sup>

La Molisana's case brief for this current review makes the same point that pasta with "real" protein content below 12.5 percent will be compared with pasta with a protein content of 12.5 percent or greater due to rounding standards:

In the case of Pasta, the reference amount has been set at 2 ounces/28 grams and in the case of protein, the rule is that the number of grams per serving must be rounded to the nearest whole gram and that fractional grams cannot be reported. As explained below, this means that it is impossible to classify pasta as Type 2 if with a protein percentage from 11.6 to 2.48% as Type 2. All such pasta, solely due to rounding rules, is reported with a protein content which the Department has interpreted as 12.5% and as Type 1.<sup>27</sup>

La Molisana further notes that pasta sold in the United States with a non-U.S. label could be placed in either of the two protein content categories depending on which label is used and argues that the inconsistency caused by differing standards renders the label protein content an inappropriate basis for defining the physical characteristic, and, thereby, to use as the basis to identify identical or the most similar products sold in the Italian market.<sup>28</sup>

In the 2010-11 administrative review, Commerce disagreed with Rummo's arguments and emphasized the importance of reporting the label protein content:

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<sup>25</sup> See *Pasta 2010-2011 Review Final* IDM at Comment 4.

<sup>26</sup> *Id.* at 16.

<sup>27</sup> See La Molisana's Case Brief at 4-5.

<sup>28</sup> *Id.* at 6-7.



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

Furthermore, our reliance upon the information listed on the packaging of the finished product (*i.e.*, the same information that is available to a consumer in the United States) conforms to our statutory obligation to base our price-to-price comparison on a transparent and consistent basis. Thus, relying on the information reported on the packages of finished pasta is appropriate.<sup>29</sup>

Commerce did not dispute as a factual matter Rummo's claim that rounding standards differed between the U.S. and home markets in that in Italy, "companies print the actual percentage of protein in the finished pasta on the package ... by contrast in the U.S. market the companies print the grams of protein per standard serving size."<sup>30</sup> However, Commerce explained that it did not consider the differences caused by the different rounding standards to be commercially significant such that they would be a basis to alter the coding for the protein content physical characteristic.

... We acknowledge that there may be slight differences between the protein content reported on packages of Rummo's finished pasta and the protein content of semolina as determined by Rummo's internal testing, but we do not consider such differences to be commercially significant. First, "there is not a clearly defined method of identifying premium pasta other than the protein content marked on the packages" and, thus, the customer of premium pasta is likely to rely on the protein content reported on the packages of the finished pasta. Second, information provided by Rummo indicates that in certain instances the protein content of the semolina (input) determined by Rummo is slightly higher than that on the label of Rummo's finished pasta (*i.e.*, rounded down), while in the other instances it is slightly lower (*i.e.*, rounded up). These slight differences are not readily apparent to customers of the finished product and, therefore, are not commercially significant.<sup>31</sup>

In the 2017-18 review, after Ghigi was found at verification to have been reporting protein content based on internal bills of materials, rather than product labels, Ghigi/Zara requested that Commerce adjust the protein content physical characteristic to account for "real" protein content.<sup>32</sup> Ghigi/Zara claimed that its internal bills of materials were more accurate and also

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<sup>29</sup> *Id.* at 27.

<sup>30</sup> *Id.* at 26.

<sup>31</sup> *Id.* at 28.

<sup>32</sup> See *Pasta 2017-2018 Review Final IDM* at 6.

argued that, if Commerce did not want to rely on company-specific information, it should nonetheless still adjust for the differing nitrogen-to-protein conversion factors that are applied in the United States and Italy:

Commerce's instructions to report PROTEINH/U based on the protein content listed on the pasta package label leads to different products being treated as identical. In Italy, regulatory standards dictate measuring protein by multiplying the observed nitrogen (N) in a product by 5.711, as opposed to 6.2510 in the United States. Thus, a protein label of 12.5 percent on U.S. pasta is equivalent to 11.4 percent on Italian pasta. The questionnaire is not ambiguous on its face, but once the ambiguity is clear, the standard of reporting based on the labeled protein content is no longer tenable.<sup>33</sup>

However, Commerce again rejected another attempt to add an element separate from the product label to the reporting of protein content:

As we noted in the Pasta 2007-2008 Review, the market reality is that "there is not a clearly defined method of identifying premium pasta other than the protein content marked on the packages." Thus, Commerce's reliance on the packaging label is an objective method to achieve a product comparison on a "consistent and transparent" basis because all of the physical characteristics are listed on the product label. Indeed, Ghigi/Zara market and price their sales to U.S. customers based on the specification of the product denoted on the label. Thus, we find unconvincing Ghigi/Zara's argument that we should base the PROTEINU coding upon the internal information in its BOMs or on a different measurement protocol for protein content.<sup>34</sup>

Commerce has considered and rejected the claims regarding rounding and nitrogen conversion factors in prior reviews and in doing so has repeatedly emphasized the importance of transparency and consistency. We do the same here. Given that the protein content physical characteristic was created, in part, based on the finding that "there is not a clearly defined method of identifying premium pasta other than the protein content marked on the packages,"<sup>35</sup> we find that relying on values not shown on the packaging label for this physical characteristic would detract from the consistency and transparency of defining each product (*i.e.*, CONNUM),<sup>36</sup> which in turn implicates the accuracy of the product comparisons (*i.e.*, the identification of identical or similar merchandise sold in the Italian market based on whether the pasta sold in each market is premium or not). The importance of upholding transparency and consistency was sustained in a challenge to the physical characteristic which denotes pasta shape as used in reviews of this proceeding. In *La Molisana*, the CIT upheld Commerce's refusal to reclassify certain shape codes, even though record evidence seemed to show that some shapes were being "misclassified":

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<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.* at 8.

<sup>35</sup> See *Pasta 2007-2008 Review Final* IDM at Comment 1.

<sup>36</sup> The product control number (CONNUM) is the concatenation of the codes reported for the physical characteristics used to define the merchandise subject to the order.

Hence, insistence that certain shapes remain within the respective categories associated with slower “specialty” line speeds when record evidence supports actual production of those shapes at higher “standard” cut line speeds might seem to imply that the determination is unsupported by substantial evidence of record. Nonetheless, as indicated, La Molisana’s argument is contrary to Commerce’s stated policy, and the court must defer to Commerce’s concerns regarding the potential for manipulation.<sup>37</sup>

The specific issue in *La Molisana* was a respondent’s request to reclassify certain pasta shapes based on internal throughput data. Here, the respondents are arguing for an industry-wide change in protein content reporting. Despite this, the arguments in both situations attempt to overturn an established reporting requirement on the grounds that the requirement is inconsistent with the actual physical characteristics of subject merchandise. However, in *Pesquera Mares*, the CAFC affirmed that Commerce can treat merchandise as identical when making price-to-price comparisons based on products sold in the U.S. and comparison markets that are not physically identical if the differences between the products are not commercially significant.<sup>38</sup> Given that we have found “there is not a clearly defined method of identifying premium pasta other than the protein content marked on the packages,” we do not see a basis to find the discrepancy in protein measurement standards between the U.S. and Italian markets as commercially significant when the market perception of premium pasta or non-premium pasta relies on information readily available to consumers, namely the packaging label associated with the pasta in the marketplace.

### ***Breakpoint Between ‘Premium’ and ‘Standard’ Pasta***

Separate from its arguments on the differences in the national standards to define protein content, Valdigrano cites to the Market Report to claim that Commerce’s 12.5 percent breakpoint between standard and premium pasta is not reflective of either the U.S. or Italian pasta market.<sup>39</sup> Once Commerce has established its model-match methodology, it normally will change that methodology only if there are “compelling reasons” to do so.<sup>40</sup>

The U.S. section of the Market Report consists of labels and receipts for pasta purchased from Washington DC metro area supermarkets along with charts illustrating the relationship between protein content and price.<sup>41</sup> Valdigrano asserts that these data show 12.5 percent protein content is a floor for pasta sold in the U.S. market, and that the true breakpoint between standard and premium pasta is 13.5 percent protein content.<sup>42</sup> We do not find this evidence sufficient to change our existing coding for protein content. The Market Report data cited to in the case brief consist of pasta purchases from four supermarkets in a small geographic region of the United

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<sup>37</sup> See *La Molisana S.p.A. v. United States*, 2019, Ct. Int’l Trade, Slip. Op. 2018-76 (June 21, 2018) at 9-10, affirmed by *La Molisana S.p.A. v. United States*, 2019 U.S. App. LEXIS 33659, Op. No. 2018-2261, November 12, 2019.

<sup>38</sup> See *Pesquera Mares* at 1372 and 1379.

<sup>39</sup> See Valdigrano’s Case Brief at 7-13, relying on Market Report at 1-6 and Exhibits J through Q.

<sup>40</sup> See, e.g., *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*; *Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28366 (June 24, 1992).

<sup>41</sup> See Market Report at 4-5 and Exhibits M through Q.

<sup>42</sup> See Valdigrano’s Case Brief at 12-13.

States. No attempt is made in the Market Report to address the potential for manipulation in choice of purchases or to support a claim that these purchases are reflective of the entire U.S. market for pasta products. As such, we do not find these data to be a “compelling reason” to change the instructions for reporting protein content.

For Italy, Valdigrano cites to a screenshot in the Market Report of the Bologna Grain Exchange’s website defining “superior” semolina as having 13.5 percent or greater protein content to assert that the industry standard for defining premium and standard semolina has changed and, thus, that there is a “compelling reason,” per *Pesquera Mares*, for Commerce to change the breakpoint for reporting protein content.<sup>43</sup> However, in the Wheat Code Memo, Commerce relied on the breakpoints of *three* separate Italian commodity exchanges.<sup>44</sup> The plain meaning of “industry-wide” connotes an *entire* industry or, at the very least, predominance or prevalence within an industry. We find that the Market Report’s citation to a single exchange’s breakpoint is not sufficient evidence of an industry-wide change in standards from semolina and thus that it is not a compelling reason to change the instructions for reporting protein content.

## **Comment 2: Revisions to La Molisana’s Cost Reporting**

### *La Molisana Case Brief:*<sup>45</sup>

- Commerce should allocate FOH and G&A expenses per the updated reporting in La Molisana’s post-preliminary supplemental.
- La Molisana had gains from selling several assets for which the expenses were related to production. The gains from the sales of these assets should be used to offset FOH.
- Compensation La Molisana receives from a trigeneration plant should offset FOH, as the expenses La Molisana incurs from this plant are included in FOH.
- Commerce included the entire labor cost in the cost of sales; however, it should deduct the labor cost of G&A and indirect selling expenses to avoid double counting.

### *Domestic Producers Rebuttal Brief:*<sup>46</sup>

- La Molisana’s allocation of FOH and G&A expense is inconsistent with Commerce’s practice.
- Commerce should exclude compensation from the trigeneration plant from both FOH and G&A expense calculations, as that compensation falls under a separate line of business.
- Certain income reported by La Molisana as an offset to G&A was derived from a prior period and should thus be excluded.
- Additionally, Commerce should reject the cost database in La Molisana’s post-preliminary supplemental questionnaire response as unsolicited and use the facts otherwise available in determining La Molisana’s G&A due to inconsistencies in La Molisana’s allocation of labor cost to G&A expense.

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<sup>43</sup> See Valdigrano’s Case Brief at 6-7 (citing Market Report at Exhibit K).

<sup>44</sup> See Memorandum, “Preliminary Model Match Clarification on Pasta Wheat Code Classifications,” dated July 31, 2009 (Wheat Code Memo) at 6, added to the record of this review in Domestic Producers’ Letter, “2018-2019 Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy – Rebuttal to Ghigi/Zara’s Failure to Report “Protein Content” in the Form and Manner Required by Commerce,” dated December 20, 2019 at Exhibit 2.

<sup>45</sup> See La Molisana’s Case Brief at 12-13.

<sup>46</sup> See Domestic Producers’ La Molisana Rebuttal Brief at 12-17.

**Commerce’s Position:** We disagree with La Molisana’s claim that certain revenue from disposed assets should be offset against FOH, rather than G&A. As these assets are no longer in operation, we consider it appropriate to associate any gain or loss associated with them to overall company-wide general operations, not directly with products produced.<sup>47</sup>

We disagree with both La Molisana’s claim that certain compensation related to a trigeneration plant should be allocated to FOH, not G&A, and also with the domestic producers’ claim that this compensation should be excluded from both the calculation of FOH and G&A. We consider this a minor revenue item that does not fall under a “separate line of business,” but rather is related to the company’s overall operations and is appropriately part of G&A expense per Commerce’s practice outlined in *Stainless Bar from Brazil*.<sup>48</sup> As such, we have recalculated La Molisana’s reported G&A expense and FOH accordingly.<sup>49</sup>

Additionally, while the domestic producers claim that certain income should be excluded from G&A because this income is from a prior period, we find that this income should be excluded from G&A because it is related to selling activities.<sup>50</sup> Therefore, we have removed this income from the calculation of La Molisana’s G&A expense.<sup>51</sup>

We also disagree with the domestic producers’ request to apply partial facts available with an adverse inference for La Molisana’s allocation of labor costs to G&A expense. The domestic producers’ basis for this claim is that La Molisana “failed to explain” why it changed the labor cost allocated to G&A expense between its September 30, 2020, response and its post-preliminary supplemental response.<sup>52</sup> This is incorrect, as La Molisana’s post-preliminary supplemental response contains an updated allocation of La Molisana’s labor costs supported by a logical explanation of the allocation and detailed factual information.<sup>53</sup>

We also disagree with the domestic producers’ request that we reject La Molisana’s cost data submitted in its post-preliminary response and rely on La Molisana’s September 30, 2020 cost data. While La Molisana’s cost data in the post-preliminary responses were not directly requested in our questionnaire, the questionnaire entailed reviewing the accuracy of its allocation of different accounts to the variables that Commerce uses to analyze costs. We find that the

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<sup>47</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order*, 73 FR 18259 (April 3, 2008) (*PET Film from Korea*), and accompanying IDM at Comment 8.

<sup>48</sup> See *Stainless Steel Bar from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 33995 (July 14, 2009) (*Stainless Bar from Brazil*), and accompanying IDM at Comment 3.

<sup>49</sup> See La Molisana Final Analysis Memo at 1-2.

<sup>50</sup> La Molisana’s Letter, “Certain Dry Pasta from Italy; A-475-818; Response to Post-Preliminary Supplemental Questionnaire,” dated January 7, 2021 (La Molisana Post-Preliminary Response) at 2.

<sup>51</sup> See La Molisana’s Final Analysis Memo at 1-2.

<sup>52</sup> See Domestic Producers’ La Molisana Rebuttal Brief at 14 and 16 (citing La Molisana Post-Preliminary Response at Exhibit SSSS-5 and 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 at Exhibit SSS-18 (La Molisana Third Supplemental)).

<sup>53</sup> See La Molisana Post-Preliminary Response at pages 3-4 and Exhibits SSSS-3 and SSSS-4.

response does not make significant recharacterizations to La Molisana's prior cost data.<sup>54</sup> While, as noted above, we agree that certain allocations used to construct values reported in the post-preliminary cost data do not accord with Commerce's practice, we find that information exists on the record that allows us to recalculate those mistaken allocations.<sup>55</sup>

### **Comment 3: La Molisana's Tri-Color Pasta**

#### *La Molisana Case Brief:*<sup>56</sup>

- Commerce improperly compared the prices of tri-color pasta sold in the U.S. market with a normal value based on prices of certain home market tri-color pasta. There are numerous differences in the physical characteristics between the tri-color pasta sold in the United States and the tri-color pasta sold in Italy. Commerce should follow its model-matching hierarchy to identify the most similar product sold in the home market, which regards protein content as more important than additives, and identify the most similar product sold in the home market based on the protein level, not the additive level.

#### *Domestic Producers Rebuttal Brief:*<sup>57</sup>

- La Molisana's attempt to overturn Commerce's model-match hierarchy for a specific set of sales is untimely and unsupported by record evidence. The CIT has upheld Commerce's practice of requiring that comments on the model-match hierarchy be made early in the segment of a proceeding and allow all interested parties an opportunity build the evidentiary record for or against proposed physical characteristics or changes to the physical characteristics used to define in-scope merchandise. By making its request at that last possible moment, La Molisana is not providing other parties with an opportunity to develop the record in response.
- Additionally, Commerce does not normally consider attempts by respondents to craft their own product characteristics and model-matching hierarchy, given the inherent risk of manipulation and possibility of calculating dumping margins for different companies based on entirely different criteria.
- Even if Commerce were to analyze La Molisana's request on its substance, as opposed to rejecting it for violating the basic principles outlined above, the request itself lacks sufficient evidence and is based on the factually incorrect statement that there are no matches based on the reported protein content for U.S. and Italian tri-color pasta sales. In fact, the home market and U.S. data contains tri-color pasta sales with not only no matching protein content, but also no identical CONNUMs.

**Commerce's Position:** We disagree with La Molisana's request. In the *Preliminary Results*, Commerce stated that in making "product comparisons," *i.e.*, to identify the most similar product sold in the home market, that it would examine the physical characteristics of the sold product in the following order: shape, wheat species, milling form, protein content, additives and

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<sup>54</sup> See La Molisana Post-Preliminary Response at Exhibit SSSS-5 and La Molisana Third Supplemental at Exhibit LMCOP004.

<sup>55</sup> See La Molisana Final Analysis Memo at 1-2.

<sup>56</sup> See La Molisana's Case Brief at 13-14.

<sup>57</sup> See Domestic Producers' La Molisana Rebuttal Brief at 17-22.

enrichment.<sup>58</sup> Accordingly, “the priority of the {physical} characteristics must be taken into account”<sup>59</sup> as stated by La Molisana.

These “product comparisons” minimize the differences in the codes reported for each of the physical characteristics in the order identified in the PDM. For the tri-colored pasta identified by La Molisana in its case brief, “at least one of the {physical characteristics} do not match and the net result is that there is no perfect {i.e., identical} match for this product between the U.S. and home markets.” Nonetheless, we find that Commerce’s dumping analysis in the *Preliminary Results* properly ranked the differences in these physical characteristics, and La Molisana has identified no instance where the home market sales used as the basis for normal value were not for the most similar product sold in the home market. Further, where the normal value is based on the home market prices of a product not identical to the product sold in the U.S. market, Commerce has made an adjustment for the differences in the physical characteristics of the two products consistent with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.<sup>60</sup> Therefore, we disagree with La Molisana that a change is required for the final results with regard to the identification of the most similar products sold in the home market.

#### **Comment 4: Alternative Comparison Methodology**

##### *La Molisana Case Brief:*<sup>61</sup>

- Commerce should not use the alternative comparison method for calculating La Molisana’s weighted-average dumping margin as it did in the *Preliminary Results* based on its normal Cohen’s *d* analysis of La Molisana’s sales. The record evidence shows that the La Molisana’s sales were distributed in two overall price groupings that occurred for standard commercial reasons and not through any intent by La Molisana to mask dumping. For the final results of this review, Commerce must take into consideration “the actual reasons for the price differences.”<sup>62</sup>

##### *Domestic Producers Rebuttal Brief:*<sup>63</sup>

- La Molisana oversimplifies Commerce’s differential pricing analysis, in which, as explained in the *Preliminary Results*, the application of the Cohen’s *d* test is only the first of three steps that Commerce undertakes to select a price comparison methodology. The use of an alternative comparison methodology also requires examining the percentage of sales that pass the Cohen’s *d* test as a percentage of total sales and whether there is a meaningful difference between an alternative comparison methodology and the average-to-average method.
- In recent proceedings, Commerce has upheld its differential pricing methodology as a means to detect potential masked dumping.<sup>64</sup>

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<sup>58</sup> See *Preliminary Results* PDM at 15.

<sup>59</sup> See La Molisana’s Case Brief at 14.

<sup>60</sup> See *Preliminary Results* PDM at 19.

<sup>61</sup> See La Molisana’s Case Brief at 14-15.

<sup>62</sup> *Id.* at 15.

<sup>63</sup> See Domestic Producers’ La Molisana Rebuttal Brief at 22-27.

<sup>64</sup> *Id.* (citing *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2015-2016*, 82 FR 30836 (July 3, 2017) (*Shrimp from Thailand*)).

**Commerce’s Position:** We disagree with La Molisana’s insistence that Commerce must consider the “actual reasons” for the significant price differences observed between purchasers, regions or time periods in La Molisana’s reported U.S. sales. Section 777A(d)(1)(B)(i) of the Act requires that Commerce examine whether there existed a pattern of prices that differed significantly among purchasers, regions or time periods. This pattern of prices establish that conditions exist which may lead to masked, or “targeted,” dumping. The CAFC has found that Commerce is not required to consider or explain why such a pattern of prices has been found to have existed during the POR.<sup>65</sup> Therefore, we reject La Molisana’s argument as not supported by the statute.

#### **Comment 5: Price of La Molisana’s Private Label Pasta**

*La Molisana Case Brief:*<sup>66</sup>

- Commerce should apply a level of trade (LOT) or similar adjustment to La Molisana pasta sold in the United States as private label pasta. Pasta sold with the La Molisana label has a price premium due to La Molisana’s brand name and reputation. The sales data show that companies that purchase both La Molisana brand pasta and private label pasta purchase the private label product for lower prices. Commerce should adjust the U.S. price for the third-party label product by the average price difference between the La Molisana brand and the third-party brand.

*Domestic Producers Rebuttal Brief:*<sup>67</sup>

- La Molisana’s reporting on its distribution process between the U.S. and home markets is deficient and inconsistent, and as such, does not warrant granting an LOT adjustment.
- La Molisana’s claim that Commerce should adjust upward the price of its private label pasta sold in the United States would logically also apply to La Molisana’s private label sales in the home market. That La Molisana completely ignores this point is clear evidence that this claim is a transparent attempt to lower La Molisana’s dumping margin.

**Commerce’s Position:** We do not accept La Molisana’s request to apply either an LOT adjustment or an adjustment specifically based on the difference in price between La Molisana’s branded and private label pasta.

Regarding the LOT, we found in the *Preliminary Results* that:

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. La Molisana reported one channel of distribution, direct from factory sales, in both the U.S. market and the comparison market.

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<sup>65</sup> See *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014); *aff’d JBF RAK LLC v. United States*, 790 F.3d 1358, 1368 (Fed. Cir. 2015) (“we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent ‘would create a tremendous burden on Commerce that is not required or suggested by the statute’”), see also *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 608 Fed. Appx. 948 (Fed. Cir. 2015) (*Borusan*).

<sup>66</sup> See La Molisana’s Case Brief at 16-17.

<sup>67</sup> See Domestic Producers’ La Molisana Rebuttal Brief at 27-29.



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 process/marketing support, freight and delivery and warehousing. 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.<sup>68</sup>

La Molisana's case brief does not even indirectly address this finding, as it focuses solely on the different price premiums for private label pasta and La Molisana brand pasta. As such, we find no basis to reconsider our preliminary determination that there is no difference in the LOT of the U.S. sales that we are comparing to home market sales and that there is no basis to adjust our price-to-price comparison of normal values to U.S. prices.

We also find the request to make an adjustment based on the recorded disparity in price premium between La Molisana and private label pasta to be without merit. La Molisana provides no statutory authority for such an adjustment. The purpose of this review is to determine whether La Molisana sold pasta in the U.S. market at less than normal value. La Molisana's request that Commerce adjust the identified price disparity caused by La Molisana's discriminatory pricing behavior for the private label pasta, which, if at dumped prices, has been found to have caused injury to the domestic industry,<sup>69</sup> would negate the purpose of the order.<sup>70</sup>

#### **Comment 6: Application of Total AFA to Ghigi/Zara**

##### *Ghigi/Zara Case Brief:*<sup>71</sup>

- The correction of Ghigi's U.S. sales data was submitted months in advance of the *Preliminary Results*. Commerce's rejection of correct information submitted by Ghigi/Zara was an abuse of discretion and does not provide grounds for applying AFA. In *NTN Bearing*, *Timken*, and *Fischer*, the CAFC required Commerce to accept corrections of errors submitted by respondents; all these cases involved errors that were corrected *later* in their respective proceedings than Ghigi/Zara's submission of corrected U.S. sales data.<sup>72</sup>
- Commerce also failed to meet its statutory responsibility to allow Ghigi/Zara to correct deficient submissions. Meeting this responsibility is a condition for using facts otherwise available.

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<sup>68</sup> See *Preliminary Results* PDM at 17-18 (citations omitted).

<sup>69</sup> See *Certain Pasta from Italy and Turkey: Continuation of the Antidumping Duty and Countervailing Duty Orders*, 84 FR 16002 (April 17, 2019).

<sup>70</sup> See *Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value.").

<sup>71</sup> See Ghigi/Zara's Case Brief at 2-4 and 7.

<sup>72</sup> See Ghigi/Zara's Case Brief at 3-4 (citing *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1207 (Fed. Cir.) (December 11, 1995) (*NTN Bearing*); *Timken United States Corp. v. United States*, 434 F.3d 1345 (Fed. Cir.) (January 10, 2006) (*Timken*); and *Fischer S.A. Comercio, Industria & Agricultura v. United States*, 471 Fed. Appx 892 (Fed. Cir.) (March 23, 2012) (*Fischer*)).

*Domestic Producers Rebuttal.*<sup>73</sup>

- Ghigi/Zara’s interpretation of the relevant precedent on accepting corrections submitted by respondents is overly expansive and is also based on three cases that were decided prior to Commerce’s 2013 promulgation of regulations establishing time limits for submission of factual information.
- As a respondent in control of its own internal data, Ghigi/Zara is responsible for creating a record that allows Commerce to calculate an accurate dumping margin. However, Ghigi/Zara withheld correct U.S. sales data on six separate occasions during this review.

**Commerce’s Position:** In the *Preliminary Results*, we preliminarily determined that Ghigi/Zara failed to cooperate by not acting to the best of its ability in providing an accurate U.S. sales reconciliation to their U.S. sales data.<sup>74</sup> We disagree with Ghigi/Zara’s claims made in response to our *Preliminary Results* and continue to find that application of total AFA is justified.

Ghigi/Zara’s case brief summarizes three separate precedential CAFC rulings, *NTN Bearing*, *Timken*, and *Fischer*, for the concept that the CAFC has required Commerce accept corrections of errors from respondents. Ghigi/Zara emphasizes that Commerce has been required to accept corrections submitted *after* preliminary determinations, whereas in this proceeding Commerce refused to accept corrections submitted several months *before* the preliminary results of this review.<sup>75</sup> Ghigi/Zara asserts that: “As long as Commerce is notified prior to its final results, it must correct all errors.”<sup>76</sup> Accepting this argument together with the broad definition of “errors” put forth by Ghigi/Zara would render Commerce unable to compel timely questionnaire responses.

Beyond the negative consequences that it would have on the integrity of Commerce’s proceeding, Ghigi/Zara’s argument is misdirected in reducing the decision to use the facts otherwise available only to situations *when* information is added to the record. Rather, Commerce follows the statutory framework in section 776 of the Act, which sets out conditions under which Commerce is required to apply the facts otherwise available, assuming that it has allowed a respondent an opportunity to correct deficient submissions under section 782(d) of the Act. In the *Preliminary Results*, Commerce provided a detailed explanation of how Ghigi/Zara, a mandatory respondent in the three consecutive administrative reviews of this order prior to the current segment, failed to provide basic information, even after being given multiple opportunities by Commerce to provide that information.<sup>77</sup>

Ghigi/Zara attempts to address the statutory framework for applying the facts otherwise available by asserting that Commerce did not fulfill its obligation under section 782(d) of the Act to give Ghigi/Zara a chance to remedy deficient submissions.<sup>78</sup> According to section 782(d) of the Act:

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<sup>73</sup> See Domestic Producers’ Ghigi/Zara Rebuttal Brief at 2-11.

<sup>74</sup> See *Preliminary Results* PDM at 6-10.

<sup>75</sup> See Domestic Producers’ Ghigi/Zara Rebuttal Brief at 8.

<sup>76</sup> See Ghigi/Zara’s Case Brief at 4.

<sup>77</sup> See *Preliminary Results* PDM at 6-10.

<sup>78</sup> See Ghigi/Zara’s Case Brief at 7.

If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e), disregard all or part of the original and subsequent responses

However, as explained in the *Preliminary Results* and noted above, Commerce gave Ghigi/Zara multiple opportunities to correct deficiencies.<sup>79</sup> Furthermore, section 782(e) of the Act, which requires Commerce to not decline to consider submitted information if five separate conditions listed below are met, clearly is not applicable:

(1) the information is submitted by the deadline established for its submission,

(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 in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

(5) the information can be used without undue difficulties.

Of these conditions, “{t}he information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination;” and “the information can be used without undue difficulties” have not been met, because an accurate U.S. sales reconciliation is key to an accurate determination. Moreover, Ghigi/Zara has not “demonstrated that it acted to the best of its ability,” as Ghigi/Zara did not provide basic information on Ghigi’s U.S. sales and financial records that are a required component of an AD questionnaire response until months after it

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<sup>79</sup> See *Preliminary Results* PDM at 6-10.

submitted its initial questionnaire response.<sup>80</sup> Furthermore, Ghigi/Zara's eventual submission of a purportedly correct U.S. sales database and reconciliation was not submitted by the deadline established for its submission, but rather added to the record as unsolicited new factual information.<sup>81</sup>

Ghigi/Zara also suggests that, had Commerce not abused its discretion in rejecting a correction submitted with significant time still remaining in the review, the conditions for applying facts available with an adverse inference would not be met.<sup>82</sup> However, as discussed above, Ghigi/Zara's complete failure to provide usable U.S. sales information and financial statements for Ghigi in response to multiple questionnaires satisfies the conditions of section 776(a) of the Act for applying the facts available. Furthermore, Commerce acted in accordance with its regulations for the submission of factual information in rejecting untimely new factual information that, even under a generous definition, was far more expansive than a "correction."

### **Comment 7: Collapsing of Ghigi/Zara**

#### *Ghigi/Zara Case Brief:*<sup>83</sup>

- Unlike in previous administrative reviews, Ghigi/Zara should not be considered affiliated under the statute. Even if they are affiliated, Commerce should not have collapsed the companies.
- Even if collapsing is appropriate between Ghigi and Zara's normal value calculations, it is not appropriate for their U.S. affiliates. Ghigi had no commercial interactions with Zara's U.S. affiliate, and Zara had no commercial interactions with Ghigi's U.S. affiliate. The two U.S. affiliates have no common owners, officers, customers, suppliers, or financial transactions. Commerce thus should have issued separate dumping margins for each. Further, Zara and its U.S. affiliate fully cooperated with Commerce throughout this proceeding and assigning them the same rate as Ghigi is unfair.

#### *Domestic Producers Rebuttal Brief:*<sup>84</sup>

- Contrary to Ghigi/Zara's 11th hour claim, the two companies were affiliated during this review. Ghigi/Zara admits this much when it notes that the "sole indicator of affiliation was Zara's ownership of a minority interest in Ghigi." The Act requires only one of several subsections, one which is equity ownership, be met to find affiliation. As Ghigi/Zara has pasta production facilities that would not require substantial retooling to restructure manufacturing priorities, Commerce properly collapsed the two companies.
- Commerce has a well-established practice of calculating a single dumping margin or assigning a single AFA rate to collapsed entities. It must continue to uphold this practice for the final results.

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> See Ghigi/Zara's Case Brief at 7.

<sup>83</sup> See Ghigi/Zara's Case Brief at 4-6.

<sup>84</sup> See Domestic Producers' Ghigi/Zara Rebuttal Brief at 8.

**Commerce's Position:** Prior to respondent selection, Zara requested to be treated as a single entity together with Ghigi for purposes of respondent selection,<sup>85</sup> and the two companies submitted a single questionnaire response as a collapsed entity.<sup>86</sup> That certain companies within the collapsed entity cooperated more or less than others does not change the fact that information necessary to analyze the collapsed entity's weighted-average dumping margin was not provided. As discussed above in Comment 6, we are continuing to apply total facts available with an adverse inference for these final results and are not taking into consideration arguments based on Ghigi/Zara's submitted questionnaire responses directly responsive to questions solicited by Commerce.

Further, Ghigi/Zara's argument that the activities of Ghigi's U.S. affiliate are not relevant to Commerce's dumping analysis of Ghigi/Zara because there are no interactions between it and Zara's U.S. affiliate misrepresents the framework of Commerce's dumping analysis. Commerce previously collapsed Ghigi 1870 S, p, A, and Pasta Zara S.p.A. because they are affiliated companies that "have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and that the level of common ownership, interlocking board and managers, and intertwined operations between the companies present a significant potential for manipulation of price or production of subject merchandise."<sup>87</sup> This decision included only these two Italian producers and exporters of subject merchandise and resulted in the single entity, Ghigi/Zara.

As noted above, we have determined not to rely on the questionnaire responses submitted by Ghigi/Zara and, thus, we determine that there is no evidence on this record which causes Commerce to reconsider its prior decision to collapse these two Italian producers and exporters. Further, the prior decision to collapse the companies relied on the affiliation and significant potential for manipulation of price or production between Ghigi and Zara, and not on the affiliation or interactions between Ghigi's U.S. affiliate and Zara's U.S. affiliate. It is this single entity, Ghigi/Zara, which makes sales in the U.S. market, and pursuant to section 772(b) of the Act, the U.S. affiliates of Ghigi/Zara must report their U.S. sales to unaffiliated customers, regardless of whether the U.S. affiliates interact or are complete strangers. Therefore, Ghigi/Zara's argument that the relationship between Ghigi and Zara's U.S. affiliates are relevant to this review is meritless.

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<sup>85</sup> See Zara's Letter, "Certain Pasta from Italy—Comments on BPI Import Data – Pasta Zara, S.p.A.," dated September 27, 2019 ("we believe that Commerce should again this year consolidate the data of Zara and Ghigi 1870 S.p.A., as it did in the 2017-2018 administrative review for purposes of selecting mandatory respondents.").

<sup>86</sup> See Ghigi/Zara's Letter, "Certain Pasta from Italy – Response to Section A Questionnaire," dated November 18, 2019 at 1 ("On behalf of Pasta Zara, S.p.A., ("Zara"), and Ghigi 1870 S.p.A. ("Ghigi") Italian producers and exporters of the products subject to the antidumping duty order, we hereby submit their response to the Department's Section A questionnaire).

<sup>87</sup> See *Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 36126, August 3, 2017 and accompanying PDM at 5; unchanged in *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 5742, December 5, 2017.

## VI. RECOMMENDATION

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



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

5/20/2021

X



Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance