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7th Administrative Review
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MEMORANDUM

TO:	James J. Jochum Assistant Secretary for Import Administration
FROM:	Barbara E. Tillman Acting Deputy Assistant Secretary for Import Administration
SUBJECT:	Issues and Decision Memorandum for the Final Results of the 2002 Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy

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Background

On July 30, 2004, the U.S. Department of Commerce ("the Department") published the preliminary results in the 2002 administrative review of the countervailing duty order on certain pasta from Italy. See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review, 69 FR 45676 ("Preliminary Results"). The "Analysis of Programs" and "Subsidies Valuation Information" sections, below, describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

Comment 1: Pastificio Corticella S.p.A. ("Corticella")/Pastificio Combattenti S.p.A. ("Combattenti") (collectively, "Corticella/Combattenti") and *Sgravi* Benefits
Comment 2: Benefit for Pasta Zara S.p.A. ("Pasta Zara")/Pasta Zara 2 S.p.A.'s ("Pasta Zara 2") (collectively "Pasta Zara/Pasta Zara 2") First Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) ("FRIE") Loan
Comment 3: Benefit for Pasta Zara 2's Second Law 908/55 FRIE Loan

Changes in Ownership

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003) ("Modification Notice").[1] The Department's new methodology is based on a rebuttable "baseline" presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life ("AUL") of the recipient's assets). However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value.

In considering whether the evidence presented demonstrates that the transaction was conducted at arm's length, we will be guided by the definition of an arm's-length transaction included in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103-316, vol. 1 (1994), which defines an arm's-length transaction as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties. Id. at 928.

In analyzing whether the transaction was for fair market value, the basic question is whether the full amount that the company or its assets (including the value of any subsidy benefits) was actually worth under the prevailing market conditions was paid, and paid through monetary or equivalent compensation. In making this determination, the Department will normally examine whether the seller acted in a manner consistent with the normal sales practices of private, commercial sellers in that country. Where an arm's-length sale occurs between purely private parties, we would normally expect the private seller to act in a manner consistent with the normal sales practices of private, commercial sellers in that country. With regard to a government-to-private transaction, however, where we cannot make that same assumption, a primary consideration in this regard normally will be whether the government failed to maximize its return on what it sold, indicating that the purchaser paid less for the

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[1] The Modification Notice explicitly addresses full privatizations, but notes that the Department would not make a decision at that time as to whether the new methodology would also be applied to other types of ownership changes and factual scenarios, such as partial privatizations or private-to-private sales. See 68 FR at 37136. We have now determined to apply the new methodology to full, private-to-private sales of a company (or its assets) as well. Among other reasons, we note that our prior "same person" methodology used for analyzing changes in ownership such as private-to-private sales has been found not in accordance with law in Allegheny Ludlum Corp. v. United States, 367 F.3d 1339 (Fed. Cir. 2004).

company or assets than it

otherwise would have had the government acted in a manner consistent with the normal sales practices of private, commercial sellers in that country.

If we determine that the evidence presented does not demonstrate that the change in ownership was at arm's length for fair market value, the baseline presumption will not be rebutted and we will find that the unamortized amount of any pre-sale subsidy benefit continues to be countervailable. Otherwise, if it is demonstrated that the change in ownership was at arm's length for fair market value, any pre-sale subsidies will be presumed to be extinguished in their entirety and, therefore, non-countervailable.

A party can, however, obviate this presumption of extinguishment by demonstrating that, at the time of the change in ownership, the broader market conditions necessary for the transaction price to reflect fairly and accurately the subsidy benefit were not present, or were severely distorted by government action (or, where appropriate, inaction). In other words, even if we find that the sales price was at "market value," parties can demonstrate that the broader market conditions were severely distorted by the government and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action.

Where a party demonstrates that these broader market conditions were severely distorted by government action and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action, the baseline presumption will not be rebutted and the unamortized amount of any non-recurring pre-sale subsidy benefit will continue to be countervailable. Where a party does not make such a demonstration with regard to an arm's-length sale for fair market value, we will find all non-recurring pre-sale subsidies to be extinguished by the sale and, therefore, non-countervailable.

In the instant proceeding, Pastificio Carmine Russo S.p.A. ("Russo")/Pastificio Di Nola S.p.A. ("Di Nola") (collectively, "Russo/Di Nola"), Corticella/Combattenti, and Pasta Zara/Pasta Zara 2 underwent changes in ownership during the applicable period. Neither Corticella/Combattenti nor Pasta Zara/Pasta Zara 2 challenged the Department's baseline presumption that non-recurring subsidies continue to benefit the recipient over the allocation period. Thus, we find for these respondents that any unallocated benefits from non-recurring subsidies received prior to their changes in ownership continue to be countervailable.

Regarding Russo/Di Nola, Di Nola was a family-owned and operated company until 1998, when it was purchased by another company (whose name is proprietary). In December 2001, Carmine Russo S.p.A. di Cicciano ("Cicciano"), which also had been a family-owned and operated business, was purchased by Di Nola. At the time of the sale, Cicciano ceased to exist and the newly acquired company was legally reconstituted as Russo. In 2003, after the period of review ("POR") in this proceeding (which covers calendar year 2002), the shares of Di Nola were fully absorbed into Russo and the two companies became a single corporate entity.

With regard to the Di Nola change in ownership in 1998, according to Russo/Di Nola's response, Di Nola did not receive any non-recurring subsidies prior to its purchase in 1998. Thus, we find that we need not perform a change-in-ownership analysis for this transaction because Di Nola did not receive any subsidies prior to this change in ownership.

As for the Cicciano change in ownership, Russo/Di Nola reports that benefits under three programs were received by Cicciano prior to the change in ownership in 2001: Industrial Development Grants Under Law 488/92, Industrial Development Grants Under Law 64/86, and European Regional Development Fund ("ERDF") Grants. According to Russo/Di Nola, the subsidies received by Cicciano were extinguished by the openly negotiated, arm's-length sale of most of Cicciano's shares and all of its assets and, thus, none of these benefits are countervailable with respect to Russo/Di Nola under the Department's new change-in-ownership methodology.

As noted above, the first step in our new change-in-ownership methodology is to determine whether the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets. Based on record information, almost all of the outstanding shares of Cicciano were sold to Di Nola, and most of the former shareholders divested themselves of all ownership and operational control of the company (the exact numbers are proprietary). As noted above, Cicciano's name was formally changed to Russo and the company was legally registered with the appropriate authorities as a new entity. Thus, based on the information on the record, we find that the former owner sold all or substantially all of Cicciano and its assets, retaining no control of the company or its assets.

Thus, we next examined whether the sale was an arm's-length transaction for fair market value. According to record information, the transaction was negotiated between unrelated, privately owned parties. There is no record evidence of any pre-existing relationship or affiliation between Cicciano and Di Nola or any company in Di Nola's corporate group of companies. According to the share purchase agreement, the shares were valued by external independent auditors. An internal feasibility analysis and market study, as well as an external independent asset valuation study and a due diligence analysis, were also conducted of Cicciano by the purchasing entity to determine the company's financial status, brand strength, marketability, and asset value. After negotiations, the parties agreed to an all-cash share purchase in which almost all of the shares of Cicciano were purchased by Di Nola.

Based on the above information, we find that the sale of Cicciano was an arm's-length transaction negotiated between unrelated parties, each acting in its own interest. As noted above, where an arm's-length sale occurs between purely private parties, we would normally expect the private seller to act in a manner consistent with the normal sales practices of private, commercial sellers in that country. Because this transaction occurred between purely private parties, we also find that this transaction was conducted for fair market value. No party in this proceeding claimed or demonstrated that, at the time of the change in ownership, broader market conditions were severely distorted by government action and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action. Consequently, we determine that any subsidies received by Cicciano prior to its change in ownership are presumed to be extinguished in their entirety and, therefore, non-countervailable.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("IRS Tables"). For pasta, the IRS Tables prescribe an AUL of 12 years. None of the responding companies or interested parties objected to this allocation period or commented on this issue. Therefore, we have used the 12-year allocation period for all respondents.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6) direct that the Department will attribute subsidies received by certain affiliated companies to the combined sales of those companies. Based on our review of the responses, we find that "cross-ownership" exists with respect to certain companies, as described below, and we have attributed subsidies accordingly. No interested party has objected to our attribution methodology or commented on any of the company-specific analyses below.

Pasta Lensi S.r.l. ("Lensi"): Lensi has no affiliated companies located in Italy and has, therefore, responded only on its own behalf.

Russo/Di Nola: Russo has responded on behalf of itself and Di Nola, both of which manufacture the subject merchandise in the same group of companies. We find that cross-ownership exists between Russo and Di Nola in accordance with 19 CFR 351.525(b)(6)(i) and (ii) and are, thus, attributing any subsidies received by Russo and Di Nola to the combined sales of both companies.

Corticella/Combattenti: Corticella and Combattenti are both producers of subject merchandise and are owned by the same holding company, Euricom S.p.A. ("Euricom"), and companies in the Euricom group. Euricom group companies own 100 percent of Combattenti and 70 percent of Corticella. Other Euricom group companies are also involved in the production and distribution of subject merchandise. Specifically, one group company (whose name is proprietary), receives a commission on some of Corticella's home market sales. Also, Euricom group company Molini Certosa S.p.A.

("Certosa") mills durum and non-durum wheat, some of which is an input for subject merchandise produced by Corticella and Combattenti. Additionally, Cooperative Lomellina Cerealicoltori ("CLC") provides conversion services for both Combattenti and Corticella. CLC is not part of the Euricom group and Euricom is not a member of CLC, but a relative of Euricom's majority shareholder is a CLC cooperative member.

With regard to Corticella and Combattenti, we find that they each meet the criteria stipulated in 19 CFR 351.525(b)(6)(ii). We determine that cross-ownership does not exist with regard to CLC consistent with 19 CFR 351.525(b)(6)(vi). Therefore, we are not including subsidies received by CLC or CLC's sales in our subsidy calculations. With regard to the Euricom group company that receives a commission on some of Corticella's home market sales, although cross-ownership may exist, the company does not meet any of the criteria stipulated in 19 CFR 351.525(b)(6)(ii) through (iv). Moreover, because Corticella/Combattenti has reported that this company acts as a selling agent only on Corticella's home market sales and not on its exports, 19 CFR 351.525(c) does not apply. Thus, we are also not including subsidies received by this company or this company's sales in our subsidy calculations.

As for Certosa, Corticella/Combattenti has argued that it does not have to report on behalf of Certosa because Certosa does not meet any of the criteria listed in 19 CFR 351.525(b)(6), including 19 CFR 351.525(b)(6)(iv). Specifically, Corticella/Combattenti argues that 19 CFR 351.525(b)(6)(iv) does not apply because Certosa's production is not "dedicated almost exclusively" to semolina (the input product for pasta), citing to the fact that the mill produces both semolina and soft wheat in significant proportions. Corticella/Combattenti cites to the Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, 67 FR 34905 (May 16, 2002) and the accompanying Issues and Decision Memorandum at Comment 15 ("PET Film from India") (which stated that the affiliated input producer in question produced only one product that was primarily dedicated to the respondent's subject merchandise production) to support its argument. (Pastificio Fratelli Pagani S.p.A. ("Pagani") makes an identical argument with regard to its affiliated durum and soft wheat milling operation, Molino di Rovato S.p.A. ("Rovato").)

We disagree with Corticella/Combattenti and Pagani's interpretation of PET Film from India (e.g., that 19 CFR 351.525(b)(6)(iv) relates to the different types of products the input supplier produces and in what overall proportions) and find that 19 CFR 351.525(b)(6)(iv) is applicable to both Corticella/Combattenti and Pagani in regard to their affiliated milling operations. According to 19 CFR 351.525(b)(6)(iv), if there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Department will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations). The issue in question in 19 CFR 351.525(b)(6)(iv) is not the different types of products the input supplier produces and in what overall proportions (as Corticella/Combattenti and Pagani attempt to claim), but whether the input supplier is producing a product that is primarily dedicated to the production of the subject merchandise. So, for example, in this instance, the issue at hand is whether the input

(semolina) is being produced primarily for pasta (the subject merchandise), and not whether the supplier mill's production is divided between different products (durum and soft wheat).

For all the reasons above, we are treating Corticella, Combattenti, Euricom, and Certosa as a single respondent. However, Combattenti/Corticella has reported that Euricom and Certosa did not receive any POR subsidies. Thus, we are attributing any subsidies received to the combined sales of Corticella and Combattenti.

Pagani: Pagani is a producer of the subject merchandise. Rovato is an affiliated durum and soft wheat milling operation that sells some of the semolina that it mills from durum wheat to Pagani for use in its production of the subject merchandise. Both companies are owned by Alimco Srl. ("Alimco"), which is a holding company. During the POR, all three companies shared a common president and board members. Also, Riccardi Srl. ("Riccardi") is an affiliated agent through whom Pagani sold pasta for sales to certain pasta customers.

With regard to Riccardi, Riccardi does not meet any of the criteria stipulated in 19 CFR 351.525(b)(6). Moreover, Pagani has reported that Riccardi did not receive any subsidies; thus, 19 CFR 351.525(c) is not applicable. Therefore, we are not including subsidies received by Riccardi or Riccardi's sales in our subsidy calculations.

As for Alimco and Rovato, based on record information and on 19 CFR 351.525(b)(6)(iii) and (iv), respectively (see also above discussion under "Attribution of Subsidies" for Corticella/Combattenti), we are treating Alimco, Rovato, and Pagani as a single respondent. Pagani has reported that neither Alimco nor Rovato received any subsidy benefits during the POR. Thus, we are attributing any subsidies received to Pagani's sales only.

Pasta Zara/Pasta Zara 2: Pasta Zara and its affiliate Pasta Zara 2 are both producers of the subject merchandise. As discussed in the July 22, 2004 memorandum to Susan Kuhbach entitled "Pasta Zara S.p.A. - Attribution Issues" (which is on file in the Department's Central Records Unit in Room B-099 of the main Department building), we have determined that cross-ownership exits with regard to Pasta Zara and Pasta Zara 2 in accordance with 19 CFR 351.525(b)(6)(vi). Therefore, we are treating Pasta Zara, Pasta Zara 2, and Pasta Zara's parent company (whose name is proprietary) as a single entity in accordance with 19 CFR 351.525(b)(6)(ii) and (iii). Pasta Zara/Pasta Zara 2 has reported that Pasta Zara's parent company had no POR sales and received no POR subsidies. Thus, we are attributing any subsidies received to the combined sales of Pasta Zara and Pasta Zara 2.

Discount Rates and Benchmarks for Loans

Pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average cost of long-term, fixed-rate loans as discount rates for allocating non-recurring benefits over time because none of the companies for which we need such discount rates took out any loans in the years in which the government agreed to provide the subsidies in question.

For benchmark rates, in accordance with 19 CFR 351.505(a), we used the actual cost of comparable borrowing by a company as a loan benchmark, when available. (See also Comment 2, below.) According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the loan being examined, has similarities in the structure of the loan (e.g., fixed interest rate v. variable interest rate), the maturity of the loan (e.g., short-term v. long-term), and the currency in which the loan is denominated.

Where we relied on national average interest rates, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, consistent with past practice in this proceeding. For benefits received in 1995 and later, we used the Italian Bankers' Association ("ABI") interest rate, increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.

Analysis of Programs

I. Programs Determined to Confer Subsidies During the POR

A. Export Marketing Grants Under Law 304/90

Under Law 304/90, the Government of Italy ("GOI") provided grants to promote the sale of Italian food and agricultural products in foreign markets. The grants were given for pilot projects aimed at developing links and integrating marketing efforts between Italian food producers and foreign distributors. The emphasis was on assisting small and medium-sized enterprises ("SMEs").

Corticella received a grant under this program in 1993 to assist it in establishing a sales office and network in the United States. No other respondent covered by this review received benefits under this program during the POR.

In the Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy, 61 FR 30288 (June 14, 1996) ("Pasta Investigation"), the Department determined that these export marketing grants confer a countervailable subsidy within the meaning of section 771(5) of the Tariff Act of 1930, as amended by the URAA effective January 1, 1995 ("the Act"). They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A)(B) of the Act because their receipt was contingent upon exportation. In this review, no new information, evidence of changed circumstances, or comments from interested parties were received on this program that would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

Also in the Pasta Investigation, the Department treated export marketing grants as non-recurring. No new information, evidence of changed circumstances, or comments from interested parties were received that would cause us to depart from this treatment.

Because the amount of the grant that was approved by the GOI exceeded 0.5 percent of Corticella's exports to the United States in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit over time. We divided the benefit attributable to the POR by the value of the companies' total exports to the United States in the POR.

On this basis, we determine the countervailable subsidy from the Law 304/90 export marketing grants to be 0.09 percent *ad valorem* for Corticella/Combattenti.

B. Industrial Development Grants Under Law 488/92

In 1986, the European Union ("EU") initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the *Mezzogiorno* (southern Italy). After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU.[2] The new policy was given legislative form in Law 488/92, under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants. (Loans are not provided under Law 488/92.)

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

Russo/Di Nola is the only respondent in this proceeding that reported receiving grants under Law 488/92 which could potentially confer a benefit during the POR. Specifically, Russo's predecessor company, Cicciano, received three separate grants through this program. For the two grants approved in 1996, Cicciano received all of the payments under these grants prior to the change in ownership.

[2]Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; and Objective 5 pertains to agricultural areas.

For the one grant approved in 1997, most of the payments to Cicciano were made prior to Cicciano's purchase by Di Nola; however, part of the payment was made subsequent to the change in ownership in December 2001.

In past reviews in this proceeding, we found grants made through this program to be countervailable. See, e.g., Certain Pasta from Italy: Final Results of the Second Countervailing Duty Administrative Review, 64 FR 44489, 44490-91 (August 16, 1999) ("Pasta Second Review"). Pursuant to section 771(5) of the Act, the grants are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, no new information, evidence of changed circumstances, or comments from interested parties were received on this program that would warrant reconsideration of our determination that these grants are countervailable subsidies.

With regard to the benefits under this program received prior to Cicciano's change in ownership, as discussed above in the "Changes In Ownership" section, we find that any pre-sale subsidies received by Cicciano are non-countervailable during the POR.

As for the benefits provided subsequent to the change in ownership, in the Pasta Second Review, the Department treated industrial development grants under Law 488/92 as non-recurring. No new information, evidence of changed circumstances, or comments from interested parties were received that would cause us to depart from this treatment.

Because the amount of the grant that was approved by the GOI exceeded 0.5 percent of the reported total sales in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the post-change-in-ownership benefit over time. We divided the benefit attributable to the POR by the value of Russo/Di Nola's total sales in the POR.

On this basis, we determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.04 percent *ad valorem* for Russo/Di Nola.

C. Industrial Development Loans Under Law 64/86

In addition to the Law 64/86 industrial development grants discussed below, Law 64/86 also provided reduced-rate industrial development loans with interest contributions paid by the GOI on loans taken by companies constructing new plants or expanding or modernizing existing plants in the *Mezzogiorno*. As discussed below in the "Industrial Development Grants Under Law 64/86" section, pasta companies were eligible for interest contributions to expand existing plants, but not to establish new plants. The fixed-interest rates on these long-term loans were set at the reference rate with the GOI's interest contributions serving to reduce this rate. Although Law 64/86 was abrogated in 1992 (effective 1993), projects approved prior to 1993 were authorized to receive interest subsidies after 1993.

Russo's predecessor, Cicciano, had a Law 64/86 industrial development loan outstanding during the POR. No other respondent in this proceeding had Law 64/86 loans outstanding during the POR.

In the Pasta Investigation, the Department determined that Law 64/86 loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, these loans were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, no new information, evidence of changed circumstances, or comments from interested parties were received on this program that would warrant reconsideration of our determination that these loans confer a countervailable subsidy.

In accordance with 19 CFR 351.505(c)(2), we calculated the benefit for the POR by computing the difference between the payments Russo made on its Law 64/86 loan during the POR and the payments Russo would have made on the benchmark loan. We divided the benefit received by Russo by Russo/Di Nola's total sales in the POR.

On this basis, we determine the countervailable subsidy from the Law 64/86 industrial development loans to be 0.03 percent *ad valorem* for Russo/Di Nola.

D. European Regional Development Fund Grants

The ERDF is one of the EU's Structural Funds. It was created pursuant to the authority in Article 130 of the Treaty of Rome to reduce regional disparities in socio-economic performance within the EU. The ERDF program provides grants to companies located within regions which meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) under the Structural Funds.

Russo/Cicciano is the only respondent in this proceeding that reported receiving grants under the ERDF which could potentially confer a benefit during the POR. Specifically, Russo's predecessor company, Cicciano, was approved for an ERDF grant in 1999. Most of the payments to Cicciano as part of this grant were made prior to Cicciano's purchase by Di Nola; however, some payments were received subsequent to the change in ownership in December 2001.

In the Pasta Investigation, the Department determined that ERDF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, no new information, evidence of changed circumstances, or comments from interested parties were received on this program that would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

With regard to the benefits under this program received prior to Cicciano's change in ownership, as discussed above in the "Changes In Ownership" section, we find that any pre-sale subsidies received by Cicciano are non-countervailable during the POR.

As for the benefits provided subsequent to the change in ownership, in the Pasta Investigation, the Department treated ERDF grants as non-recurring. No new information, evidence of changed circumstances, or comments from interested parties were received that would cause us to depart from this treatment.

Because the amount of the grant that was approved exceeded 0.5 percent of the reported total sales in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the post-change-in-ownership benefit over time. We divided the benefit attributable to the POR by the value of Russo/Di Nola's total sales in the POR.

On this basis, we determine the countervailable subsidy from the ERDF grant to be 0.01 percent *ad valorem* for Russo/Di Nola.

E. Law 236/93 Training Grants

Under Law 236/93, which is administered by the regional governments but funded by the GOI, grants are provided to Italian companies for worker training.

Pagani received a grant under this program during the POR. Its grant application was approved in 1999, and tranches of the grant were disbursed in 2000, 2001, and 2002.

In Certain Pasta from Italy: Final Results of the Third Countervailing Duty Administrative Review, 66 FR 11269 (February 23, 2001) ("Pasta Third Review"), the Department determined that Law 236/93 training grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, because the GOI and the Regional Government of Abruzzo did not provide adequate information about the distribution of grants under this program, we determined that Law 236/93 training grants were specific within the meaning of section 771(5A) of the Act. In this review, no new information, evidence of changed circumstances, or comments from interested parties were received on this program that would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

Consistent with 19 CFR 351.524(c)(1) and our treatment of this grant in the Pasta Third Review, the Department is treating this worker training subsidy as a recurring benefit. Therefore, to calculate the countervailable subsidy, we divided the amount received by Pagani in the POR by Pagani's total sales in the POR.

On this basis, we determine the countervailable subsidy for this program to be 0.06 percent *ad valorem* for Pagani.

F. Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)

The Sabatini Law was enacted in 1965 to encourage the purchase of machine tools and production machinery. It provides, inter alia, for one-time, lump-sum interest contributions from the Mediocredito Centrale toward interest owed on loans taken out to purchase these types of equipment.

Pasta Zara, Pagani, and Russo/Di Nola reported they received interest contributions under the Sabatini Law.

With respect to Pasta Zara and Pagani, in the Pasta Investigation, the Department concluded that the benefits provided in northern Italy under this program were not specific and, therefore, not countervailable. No party in this proceeding has challenged this past finding. Thus, we find that any benefits provided to Pagani and Pasta Zara are not countervailable because these companies are located in northern Italy.

As for Russo/Di Nola, because the concessionary rate for companies in southern Italy was lower than the interest rate available to users of the program in northern Italy, the Department in the Pasta Investigation determined that the Sabatini Law interest contributions to companies in southern Italy were countervailable subsidies within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies. In addition, they were regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, no new information, evidence of changed circumstances, or comments from interested parties were received on this program that would warrant reconsideration of our determination that benefits provided under this program in southern Italy confer a countervailable subsidy.

The Department also determined in the Pasta Investigation and in subsequent reviews of this order that companies were able to anticipate the interest contributions at the time the loans were taken out. Consequently, in accordance with 19 CFR 351.508(c)(2) and 19 CFR 351.505(c)(2), any benefit would be countervailed in the year of receipt. See also Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 66 FR 40987, 40995 (August 6, 2001) (unchanged in Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review, 66 FR 64214 (December 12, 2001) and Certain Pasta from Italy: Amended Final Results of the Fourth Countervailing Duty Administrative Review, 67 FR 59 (January 2, 2002)).

No new information, evidence of changed circumstances, or comments from interested parties were received that would cause us to depart from this practice.

In the instant proceeding, Russo/Di Nola reported that Di Nola received interest contributions under this program during the POR. To calculate the countervailable subsidy for these interest contributions that were received during the POR, we divided the amount received by Russo/Di Nola in the POR by Russo/Di Nola's total sales in the POR.

On this basis, we determine the countervailable subsidy for this program to be 0.08 percent *ad valorem* for Russo/Di Nola.

G. Development Grants Under Law 30 of 1984

Law 30 of 1984 was enacted by the Regional Government of Friuli-Venezia Giulia to provide one-time development grants to companies for investments in industrial projects, including the construction of new plants and modernization or expansion of existing plants. Eligible companies can receive a grant amounting to 20 percent of the cost of the investment, with the grant not to exceed 1,000,000,000 lire. Only companies located in certain parts of the Friuli-Venezia Giulia region are eligible to receive benefits under this program in accordance with article 87, paragraph 3, letter c of the EC Treaty.

Pasta Zara 2 received a grant under this program during the POR for consultancy costs for company start-up and preparation of contracts relative to the purchase of plant equipment. No other respondent in this proceeding reported receiving POR benefits under this program.

In the Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy, 64 FR 73244, 73255 (December 29, 1999) ("Italy CTL Plate"), the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. Specifically, they are a financial contribution as defined in section 771(5)(D)(i) of the Act in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A)(D)(iv) of the Act because eligibility for the grants was limited to certain geographical areas within the Friuli-Venezia Giulia region. In this review, no new information, evidence of changed circumstances, or comments from interested parties were received on this program that would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

Also in Italy CTL Plate, the Department treated grants under this program as non-recurring. No new information, evidence of changed circumstances, or comments from interested parties were received that would cause us to depart from this treatment.

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits provided under a particular subsidy program to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Because the amount of the development grant approved by the GOI for Pasta Zara 2 under this program was less than 0.5 percent of Pasta Zara 2's sales in the year in which the grant was approved, we allocated the entire amount of the grant to the POR

(the year in which the grant was received) in accordance with 19 CFR 351.524(b)(2). We divided the full amount of the grant by the value of the companies' total sales in the POR.

On this basis, we determine the countervailable subsidy from the Law 30/84 development grants to be 0.02 percent *ad valorem* for Pasta Zara/Pasta Zara 2.

H. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans

The GOI created the FRIE through Law 908 of October 18, 1955 in order to promote economic initiatives within the territory of Trieste and the province of Gorizia in the Friuli-Venezia Giulia region. The fund provides reduced-interest loans for the construction, re-activation, transformation, modernization, and extension of industrial production sites and artisan companies; boat construction; tourist-hotel activities; construction of council dwellings; and other initiatives necessary for industrial development in the above-noted areas. Companies that receive long-term, variable-rate loans under this program receive an interest rate equal to 50 percent of the 6-month Euro Interbank Offered Rate.

Pasta Zara 2 was the only respondent in this proceeding that reported having outstanding Law 908/55 loans during the POR. Specifically, Pasta Zara 2 had two long-term, variable-rate FRIE loans outstanding during the POR that were used to finance the construction and start-up of its new pasta plant in Trieste.

We find that these loans are a direct transfer of funds from the GOI within the meaning of section 771(5)(D)(i) of the Act. Also, the loans are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they are only available to companies located within the territory of Trieste and the province of Gorizia in the Friuli-Venezia Giulia region.

Finally, we determine that FRIE loans provide a benefit pursuant to section 771(5)(E)(ii) of the Act. According to 19 CFR 351.505(a)(5), in order to determine whether long-term variable interest rate loans confer a benefit, the Department first compares the benchmark interest rate to the rate on the government-provided loan for the year in which the government loan terms were established. According to 19 CFR 351.505(a)(5)(i), if the comparison shows that the origination-year interest rate on the government-provided loan was lower than the origination-year interest rate on the benchmark loan, the Department will examine that loan in the POR to measure the POR benefit.

In the instant proceeding, Pasta Zara/Pasta Zara 2 provided as a benchmark comparable commercial loans that originated in the same year as its second FRIE loan. Thus, we were able to make the origination-year benchmark comparison called for in 19 CFR 351.505(a)(5) for the second FRIE loan. Based on this comparison, we found that the government loan rate was lower than the benchmark rate. Thus, we find that a benefit was conferred through the second FRIE loan within the meaning of section 771(5)(E)(ii) of the Act as described in 19 CFR 351.505(a)(5). We calculated the POR benefit amount for this second FRIE loan in accordance with 19 CFR 351.505(c)(4) (as further discussed below). See also Comment 3 in the "Analysis of Comments" section, below.

As for the first FRIE loan, Pasta Zara/Pasta Zara 2 did not report that it had any comparable commercial loans the terms of which were established during or immediately before the year in which the terms of the first government-provided loan were established in accordance with 19 CFR 351.505(a)(2)(iii). Therefore, we were unable to make the comparison described in 19 CFR 351.505(a)(5)(i), noted above, for the first FRIE loan. Instead, we determined whether a benefit existed for the first FRIE loan, as well as the amount of the benefit, by calculating the difference between the payments Pasta Zara 2 made on the first FRIE loan during the POR and the payments Pasta Zara 2 would have made on the benchmark loan, consistent with 19 CFR 351.505(a)(5)(ii) and 19 CFR 351.505(c)(4). See also Comment 2 in the "Analysis of Comments" section, below. Based on this comparison, we determine that Pasta Zara/Pasta Zara 2 also received a benefit on its first FRIE loan.

To calculate the POR subsidy amount, we divided the total POR benefit from both FRIE loans by the companies' total sales in the POR. On this basis, we determine the countervailable subsidy from the Law 908/55 FRIE loans to be 0.28 percent *ad valorem* for Pasta Zara/Pasta Zara 2.

II. Program Determined to Be Not Countervailable

European Economic Commission ("EEC") Decision 94/217

Under EEC Decision 94/217, SMEs could receive one-time interest contributions on European Investment Bank ("EIB") loans for investments that led to the creation of new jobs. The program was intended to provide assistance to SMEs in the EU by lowering the interest rates on EIB loans for these companies. The loans under this program were limited to ECU 30,000 times the number of jobs created, and interest contribution payments were in total limited to ten percent of the size of the loan (equal to two percent per year on the five-year loans that were required under this program). In order to receive the interest contributions, companies were required to submit a certification relating to the creation of jobs, and the financial institutions acting as intermediaries were required to certify that the loans had been made and were in repayment. Once these certifications were received, the EIB agent institution would forward the EIB interest contribution to the beneficiary via its financial intermediary. The application deadline for benefits under this program was December 15, 1995, and all payments under this program were finalized by the end of 1997.

Pasta Zara is the only respondent in this proceeding that reported receiving interest contributions under EEC Decision 94/217.

According to record information, any SME in the EU was eligible to apply for loans under these programs and to receive the associated interest contributions. The interest contributions were not export subsidies or import substitution subsidies according to sections 771(5A)(A) and (B) of the Act. Nor were the interest contributions specific according to the criteria stipulated in sections 771(5A)(D)(i), (ii), or (iv) of the Act. Finally, according to record information, thousands of SMEs within the EU received benefits under this program in many different industries. According to data on the sectoral distribution of benefits under this program, the metal-working and mechanical engineering industries (20.6 percent) and the private and public sector services industries (11.3 percent) received the most benefits under this program, with the foodstuffs industry (which would include the pasta industry) ranked third with 8.9 percent of the benefits and the rubber and plastic processing industry ranked fourth with 6.6 percent of the benefits. Based on this information, we find that the pasta industry was not a predominant user of this program and did not receive a disproportionately large amount of the benefits under this program. Thus, the program is not *de facto* specific according to section 771(5A)(D)(iii) of the Act. Based on the above analysis, we find that this program is not specific as defined in section 771(5A) of the Act, and thus, not countervailable.

III. Programs Determined to Not Confer Subsidies During the POR

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote development in the *Mezzogiorno*. Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution, chosen by the applicant, made a positive assessment of the project. (As noted above, loans were also provided under Law 64/86.) In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (see above). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993.

Russo/Di Nola is the only respondent in this proceeding that reported receiving grants under Law 64/86 which could potentially confer a benefit during the POR. Specifically, Cicciano received a grant under this program in 1998 for the general modernization and technical reorganization of the Cicciano plant used in the production of cookies, pasta, and flour.

In past reviews in this proceeding, we found grants made through this program to be countervailable. See, e.g., Pasta Investigation. However, the grant under this program was received by Cicciano prior to its purchase by Di Nola in December 2001. Thus, as discussed above in the "Changes In

Ownership" section, we find that any pre-sale subsidies received by Cicciano as part of this program are extinguished in their entirety and, therefore, provide no countervailable benefit to Russo/Di Nola during the POR.

B. Brescia Chamber of Commerce Training Grants

The Chamber of Commerce of Brescia provided training grants during 2002 and 2003 to companies in the province of Brescia for the professional training of entrepreneurs, directors, and employees. The goal of these grants was to improve economic, social, and productive development in the province.

Lensi was the only respondent in this proceeding that reported receiving grants under this program during the POR.

In situations where any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability, it may not be necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable. (See, e.g., Live Cattle From Canada; Final Negative Countervailing Duty Determination, 64 FR 57040, 57055 (October 22, 1999) ("Cattle from Canada").) In this instance, any benefit to the subject merchandise resulting from this grant would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability. Thus, consistent with our past practice, we do not consider it necessary to determine whether benefits conferred thereunder to the subject merchandise are countervailable.

C. Law 317/91 Benefits for Innovative Investments

Law 317/91 allows for a capital contribution or a tax credit up to a maximum amount of Euro 232,405.60 to small and medium-sized industrial, commercial, and service companies for innovative investments. Pasta Zara has stated that it received tax benefits under this law in 1994 but that no benefits were received in the POR. No other respondent reporting receiving POR benefits from this program.

Pursuant to 19 CFR 351.524(c)(1), the Department normally considers tax programs to provide recurring benefits. Because neither Pasta Zara nor its affiliates received tax benefits under Law 317/91 during the POR, we determine that this program did not confer a countervailable subsidy in the POR.

D. Tremonti Law 489/94 (Formerly Law Decree 357/94)

Tremonti Law 489/94 allowed for a deduction from taxable income of 50 percent of the difference between investments in new plant and equipment compared to the average investment rate for the preceding five years. Pasta Zara has stated that one of its affiliates received tax benefits under this law in 1995 but that no benefits were received in the POR. No other respondent reporting receiving POR benefits from this program.

Pursuant to 19 CFR 351.524(c)(1), the Department normally considers tax programs to provide recurring benefits. Because neither Pasta Zara nor its affiliates received tax benefits under Law 489/94 during the POR, we determine that this program did not confer a countervailable subsidy in the POR.

E. Ministerial Decree 87/02

Ministerial Decree Number 87 (February 25, 2002), in accordance with Law 193 of June 22, 2000, allows companies that hire or have training programs for prisoners to benefit from a monthly tax credit amounting to Euro 516.46 for every prisoner recruited. Pasta Zara was the only respondent in this proceeding that reported receiving tax credits under this program during the POR.

In situations where any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability, it may not be necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable. (See, e.g., Cattle from Canada.) In this instance, any benefit to the subject merchandise resulting from this grant would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability. Thus, consistent with our past practice, we do not consider it necessary to determine whether benefits conferred thereunder to the subject merchandise are countervailable.

F. Law 10/91 Grants to Fund Energy Conservation

Under Law 10/91, the GOI provides funds for the development of energy-conserving technology. Law 10/91 authorized grants based on applications submitted in 1991 and 1992. Pasta Zara was the only respondent that reported receiving benefits under this program. Specifically, Pasta Zara reported that it received a grant through this program in 1993 in order to purchase new boilers for its facility.

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits provided under a particular subsidy program to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Because the amount of the energy savings grant approved by the GOI for Pasta Zara under this program was less than 0.5 percent of Pasta Zara's sales in the year in which the grant was approved, this grant would be expensed prior to the POR in accordance with 19 CFR 351.524(b)(2). Thus, no countervailable benefit was provided to Pasta Zara/Pasta Zara 2 during the POR under this program.

G. Social Security Reductions and Exemptions - *Sgravi*

Italian law allows companies, particularly those located in the *Mezzogiorno*, to use a variety of exemptions and reductions (*sgravi*) of the payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The *sgravi* benefits are regulated by a complex set of laws and regulations, and are sometimes linked to conditions such as creating more jobs. We have found in past segments of this proceeding that the benefits under some of these laws (e.g., Laws 183/76 and 449/97) are available only to companies located in the *Mezzogiorno* and other disadvantaged regions. Other laws (e.g., Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country.

The various laws identified as having provided *sgravi* benefits during the POR are the following: Law 407/90 (Pagani, Lensi, and Corticella), Law 223/91 (Combattenti, Pagani, Lensi, and Pasta Zara/Pasta Zara 2), Law 337/90 (Corticella), Law 56/87 (Pasta Zara), and Law 25/55 (Pasta Zara).

In the instant review, no party in this proceeding challenged our past determinations in the Pasta Investigation and subsequent reviews that *sgravi* benefits were not countervailable for companies located outside of the *Mezzogiorno*. Additionally, no new information, evidence of changed circumstances, or comments from interested parties were received that would warrant reconsideration of these past determinations. Therefore, because Pagani, Lensi, Pasta Zara/Pasta Zara 2, and Corticella/Combattenti (see Comment 1 in the "Analysis of Comments" section, below) are not located in the *Mezzogiorno,* we find that none of these companies received countervailable subsidies under this program during the POR.

IV. Programs Determined Not To Have Been Used During the POR

We examined the following programs and determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

A. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)

B. Regional Tax Exemptions Under IRAP

C. Corporate Income Tax (IRPEG) Exemptions

D. Export Restitution Payments

E. VAT Reductions Under Laws 64/86 and 675/55

F. <u>Export Credits Under Law 227/77</u>

G. <u>Capital Grants Under Law 675/77</u>

H. <u>Retraining Grants Under Law 675/77</u>

I. <u>Interest Contributions on Bank Loans Under Law 675/77</u>

J. <u>Interest Grants Financed by IRI Bonds</u>

K. <u>Preferential Financing for Export Promotion Under Law 394/81</u>

L. <u>Urban Redevelopment Under Law 181</u>

M. <u>Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)</u>

N. <u>Industrial Development Grants under Law 183/76</u>

O. <u>Interest Subsidies Under Law 598/94</u>

P. <u>Duty-Free Import Rights</u>

Q. <u>Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77</u>

R. <u>European Social Fund Grants</u>

S. <u>Law 113/86 Training Grants</u>

T. <u>European Agricultural Guidance and Guarantee Fund</u>

Analysis of Comments

Comment 1: Corticella/Combattenti and Sgravi Benefits

<u>Respondent's Argument</u>: Corticella/Combattenti argues that the Department incorrectly countervailed the *sgravi* benefits it received during the POR. According to Corticella/Combattenti, it is located in northern Italy, not southern Italy as the Department stated in the <u>Preliminary Results</u>. Because the Department found in the <u>Preliminary Results</u> and in past segments of this proceeding that *sgravi* benefits were not countervailable for companies located outside of the *Mezzogiorno*, and

Corticella/Combattenti is not located in the *Mezzogiorno*, Corticella/Combattenti argues that its POR *sgravi* benefits should not be countervailed.

Department's Position: We agree with Corticella/Combattenti. As we noted above, in the instant review, no party in this proceeding challenged our past determinations in the Pasta Investigation and subsequent reviews that *sgravi* benefits were not countervailable for companies located outside of the *Mezzogiorno*. Additionally, no new information, evidence of changed circumstances, or comments from interested parties were received that would warrant reconsideration of these past determinations. Therefore, because Corticella/Combattenti is not located in the *Mezzogiorno*, we find that Corticella/Combattenti did not receive countervailable subsidies under this program during the POR.

Comment 2: Benefit for Pasta Zara 2's First Law 908/55 FRIE Loan

Respondent's Argument: Pasta Zara/Pasta Zara 2 first claims that the Department "applied the wrong regulation to calculate the benchmark benefit" for the company's first FRIE loan. Pasta Zara/Pasta Zara 2 contends that, because Pasta Zara/Pasta Zara 2's first FRIE loan was a long-term, variable-rate loan, 19 CFR 351.505(a)(5) "requires the Department to base its benchmark on a long-term, variable-rate loan." Pasta Zara/Pasta Zara 2 claims that, in the Preliminary Results, the Department erroneously followed 19 CFR 351.505(a)(2)(iii), which Pasta Zara/Pasta Zara 2 claims is "the regulatory section dealing with fixed-rate loans." Pasta Zara/Pasta Zara 2 further claims that this led the Department to mistakenly calculate a benchmark for Pasta Zara 2's first FRIE loan using what Zara/Pasta Zara 2 claims was a fixed-rate, short-term loan (see further argument below).

Pasta Zara/Pasta Zara 2 contends that the Department should not follow 19 CFR 351.505(a)(2)(iii) in selecting a loan that is comparable, but should instead utilize 19 CFR 351.505(a)(5), which is, according to Pasta Zara/Pasta Zara 2, "the Department's specific regulatory provision addressing variable-rate loans." According to Pasta Zara/Pasta Zara 2, 19 CFR 351.505(a)(5) specifically addresses how comparisons should be made to determine the benefit from a government-provided variable-rate loan. According to Pasta Zara/Pasta Zara 2, the Department is required under 19 CFR 351.505(a)(5) to base its benchmark on a long-term, variable-rate loan with an interest rate originating in the same year as the government-provided loan. However, according to Pasta Zara/Pasta Zara 2, if the Department is unable to make such a comparison, then the exception applies (referring to 19 CFR 351.505(a)(5)(ii)) and the Department must use some other method in selecting a benchmark. According to Pasta Zara/Pasta Zara 2, because Pasta Zara/Pasta Zara 2 does not have a long-term, variable-rate benchmark from the origination year of the first FRIE loan, the Department must apply the exception clause in selecting its benchmark.

According to Pasta Zara/Pasta Zara 2, when faced with the situation of needing to identify an appropriate long-term, variable-rate benchmark but having no commercial variable-rate benchmarks originating in the same year as the government-provided loan, the Department's standard practice is to use commercial variable-rate loan information for loans outstanding in the POR as a benchmark. To support their argument, Pasta Zara/Pasta Zara 2 cites to the Issues and Decision Memorandum accompanying the Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 67 FR 1964 (January 15, 2002) at Comment 3 ("Korean Sheet and Strip"), where the Department used a "weight-average of all benchmark loans outstanding during the POR as the benchmark rate for the years in which there is no company-specific information, consistent with {19 CFR 351.505(a)(5)(ii)}." Pasta Zara/Pasta Zara 2 also cites to the Issues and Decision Memorandum accompanying the Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62128 (October 3, 2002) at the "Analysis of Programs: Financing for the Acquisition or Lease of Machinery and Equipment through the Special Agency for Industrial Financing" section ("Brazil Cold-Rolled"), where the Department stated that "in instances where no comparable commercial loans were available for the years in which (the loans) were approved, we used the commercial loans reported for the POI as our benchmark." Finally, Pasta Zara/Pasta Zara 2 also cites to the Issues and Decision Memorandum accompanying the Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55805 (August 30, 2002) at the "Long-Term Benchmarks" section ("Brazil Wire Rod"), where the Department stated the following: "Therefore, we were unable to make the comparison described in 19 CFR 351.505(a)(5)(i), noted above. Instead, we determined whether a benefit existed, as well as the amount of the benefit, by calculating the difference between the amount actually paid on the outstanding loans during the POI and the amount the firms would have paid on a comparable commercial loan during the POI, consistent with 19 CFR 351.505(a)(5)(ii) and 19 CFR 351.505(c)(4)." Based on the above, Pasta Zara/Pasta Zara 2 claims that the Department has "always relied on outstanding loans during the POR/{period of investigation ("POI")} as the benchmark when applying the exception clause" and that the Department has "never applied the exception clause in any other manner, when such company-specific data is available."

Pasta Zara/Pasta Zara 2 further argues that the benchmark used for Zara/Pasta Zara 2's first FRIE loan in the Preliminary Results was a fixed-rate, short-term loan. Pasta Zara/Pasta Zara 2 contends that it is an "indisputable fact" that the ABI interest rate used by the Department as a benchmark rate for Pasta Zara/Pasta Zara 2's first FRIE loan is a fixed-rate benchmark. Pasta Zara/Pasta Zara 2 cites as evidence to the fact that the Department used the same ABI rate to calculate the discount rate in the instant proceeding. Pasta Zara/Pasta Zara 2 also cites as further evidence past reviews of this order where the Department stated that it used the ABI rate as a benchmark for long-term, fixed-rate loans. Moreover, Pasta Zara/Pasta Zara 2 claims that the ABI rate is a short-term rate. Pasta Zara/Pasta Zara 2 supports its argument by citing to Italy CTL Plate, 64 FR at 73247, where the Department stated that "the ABI rate does not represent a long-term interest rate, but is rather an average of the short-term interest rates commercial banks charge to their most favored customers." Pasta Zara/Pasta Zara 2 argues that, while the Department ultimately used the ABI rate for fixed-rate long-term loans, that was done only because the Department was unable to gather information on long-term interest rates. Pasta Zara/Pasta Zara 2 states that there is no indication on the record of the instant review that the Department made any attempt to locate such long-term information and instead simply reverted to the interest rate that it had used in several past reviews of this order.

Finally, Pasta Zara/Pasta Zara 2 argues that the Department erred in calculating the outstanding principal during the POR by assuming that Pasta Zara/Pasta Zara 2 had received the entire amount of the loan by January 1, 2002, as opposed to basing the benchmark benefit calculation on the actual dates on which Pasta Zara/Pasta Zara 2 received the loans throughout the year.

Department's Position: We disagree with Pasta Zara/Pasta Zara 2, although, as further explained below, we have revised the benefit calculation for the first FRIE loan.

Pasta Zara/Pasta Zara 2 is inaccurate in stating that the Department misapplied its regulations in selecting a benchmark for the Pasta Zara/Pasta Zara 2 first FRIE loan. As discussed in the Preamble to the Department's regulations,[3] 19 CFR 351.505(a) discusses the general standard set forth in section 771(5)(E)(ii) of the Act in measuring the benefit attributable to a government-provided loan. According to 19 CFR 351.505(a)(1) and pursuant to section 771(5)(E)(ii) of the Act, the Department uses a comparable commercial loan as a benchmark in determining whether a government-provided loan confers a benefit. The Department's regulations at 19 CFR 351.505(a)(2) and 19 CFR 351.505(a)(3) elaborate on the criteria for selecting the benchmark.

As described in the Preliminary Results, a comparable commercial loan is defined in 19 CFR 351.505(a)(2)(i) as one that, when compared to the loan being examined, has similarities in the structure of the loan (e.g., fixed interest rate v. variable interest rate), the maturity of the loan (e.g., short-term v. long-term), and the currency in which the loan is denominated. As noted in the Preamble (63 FR at 65364), 19 CFR 351.505(a)(2)(iii) and (iv) specify the time period from which the Department will select comparable financing, with 19 CFR 351.505(a)(2)(iii) discussing long-term loans in general (not just long-term fixed-rate loans) and 19 CFR 351.505(a)(2)(iv) discussing short-term loans in general. As noted in Pasta Zara/Pasta Zara 2's Preliminary Results calculation memorandum, 19 CFR 351.505(a)(2)(iii) states that, for long-term loans, the Department will normally select a loan the terms of which were established during or immediately before the year in which the terms of the government-provided loan were established. Thus, 19 CFR 351.505(a)(2) and (3) simply set the parameters that the Department normally uses in selecting benchmarks and apply equally to all types of loans, including long-term, variable-rate loans such as Pasta Zara/Pasta Zara 2's first FRIE loan (which the Department clearly identified as being "long-term, variable rate FRIE loans" in the Preliminary Results).

With regard to 19 CFR 351.505(a)(5), the Preamble makes it clear that this section of the regulations relates to whether a long-term, variable-rate loan potentially confers a benefit. (See 63 FR at 65368.) The Preamble in this regard states the following:

[3]See Countervailing Duties; Final Rule, 63 FR 65348, 65362 (November 25, 1998) ("Preamble").

> Under {19 CFR 351.505(a)(5)(i)}. . .the year in which the terms of the government-provided loan are set establishes the reference point for comparing the government-provided variable-rate loan with the comparable commercial variable-rate loan. If the interest rate on the government-provided loan is lower than the interest rate on the comparable commercial loan, a benefit exists. If the interest rate on the government-provided loan is the same or higher, no benefit exists.

As explained in the Preliminary Results, under 19 CFR 351.505(a)(5)(i), the Department performs a two-part test to determine if there is a benefit on a long-term, variable-rate loan. The Department first looks at whether there would be a benefit in the origination year of the loan. If there is no benefit in the origination year of the loan based on a comparison of the origination- year terms of the comparable commercial loan and the government-provided loan, there is no benefit on that loan, even if there would otherwise be a benefit in the POR or POI. If there is a benefit in the origination year, then the Department calculates the amount of the POR or POI benefit following the normal calculation for long-term, variable-rate loans from 19 CFR 351.505(c)(4).

If it is not possible to complete the first part of the two-pronged benefit test (i.e., the origination year benefit test cannot be performed), 19 CFR 351.505(a)(5)(ii) provides an exception to this two-pronged benefit test for long-term, variable-rate loans and allows the Department to modify this two-part test at its discretion. An example of where the Department applied this exception can be found in Brazil Wire Rod, in which case the Department could not, in some instances, perform the first part of its two-pronged benefit test for the long-term, variable-rate loans because it did not have origination-year interest rate information for certain loans. Thus, the Department in that case proceeded directly to the second prong of the test and determined whether and how much of a benefit existed based on a comparison of interest rates in the POI.

It is correct that 19 CFR 351.505(a)(5)(i) refers to the Department's preference to perform its benefit test for long-term, variable-rate loans using a comparable commercial loan with a variable interest rate. This, however, is entirely consistent with 19 CFR 351.505(a)(2). According to the criteria set forth in 19 CFR 351.505(a)(2), if the government-provided loan was a long-term, variable-rate, lira-denominated loan, an ideal comparable commercial loan would also be a long-term, variable-rate, lira-denominated loan in accordance with 19 CFR 351.505(a)(2).

Therefore, contrary to Pasta Zara/Pasta Zara 2's claims, the Department is not misapplying its regulations in this instance, 19 CFR 351.505(a)(2)(iii) does not relate only to long-term, fixed-rate loans, and 19 CFR 351.505(a)(5) refers to the preferred benchmark for long-term, variable-rate loans within the context of the two-pronged benefit calculation for long-term variable-rate loans.

Putting aside Pasta Zara/Pasta Zara 2's arguments relating to the Department's regulations, the underlying concern of Pasta Zara/Pasta Zara 2 appears to be the benchmark used by the Department to perform the special two-pronged benefit calculation for Pasta Zara/Pasta Zara 2's first FRIE loan.

As noted above, the Department uses a comparable commercial loan as a benchmark in determining whether a government-provided loan confers a benefit in accordance with section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1). A comparable commercial loan is defined in 19 CFR 351.505(a)(2)(i) as one that, when compared to the loan being examined, has similarities in the structure of the loan (e.g., fixed interest rate v. variable interest rate), the maturity of the loan (e.g., short-term v. long-term), and the currency in which the loan is denominated. According to 19 CFR 351.505(a)(2)(ii), in selecting a commercial loan, the Department normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. As noted above, 19 CFR 351.505(a)(2)(iii) states that, for long-term loans, the Department will normally select as a comparable commercial loan a loan the terms of which were established during or immediately before the year in which the terms of the government-provided loan were established. According to 19 CFR 351.505(a)(3)(ii), if the firm in question did not take out any comparable commercial loans during the period referred to in 19 CFR 351.505(a)(2)(iii) (in this instance), the Department may use a national average interest rate for comparable commercial loans.

Based on the above, the ideal comparable commercial loan for use in this situation would be a long-term, variable-rate loan denominated in the same currency as the first FRIE loan whose terms were established during or immediately before the terms of the first FRIE loan were established. As the Department noted in Pasta Zara/Pasta Zara 2's Preliminary Results calculation memorandum, Pasta Zara 2 did not report that it had any comparable commercial loans the terms of which were established during or immediately before the year in which the terms of the government-provided loan were established in accordance with 19 CFR 351.505(a)(2)(iii).[4] Thus, the Department used in the Preliminary Results as a benchmark for the first FRIE loan a national average interest rate (discussed below) in accordance with 19 CFR 351.505(a)(3)(ii).

Contrary to Pasta Zara/Pasta Zara 2's claim, the Department's methodology in the Preliminary Results was consistent with Brazil Wire Rod in instances where there were no company-specific commercial loans from particular years. In Brazil Wire Rod, one of the companies (Gerdau S.A.) had no comparable commercial loans that originated in one of the years for which the company had program loans (1990). Thus, as we noted in the calculation memoranda for that company, we resorted to the use of a national average benchmark for loans from that year and did not, as Pasta Zara/Pasta Zara 2 appears to claim, use commercial variable-rate loan information for loans outstanding in the POR as a benchmark. This example indicates that it is not, as Pasta Zara/Pasta Zara 2 claims, necessarily the Department's standard practice to use commercial variable-rate loan information for loans outstanding in the POR as a benchmark and the Department does not "always" use the same methodology as Pasta Zara/Pasta Zara 2 claims. Rather, the decision of what benchmark to use in circumstances like these is

[4]Pasta Zara/Pasta Zara 2 concedes this fact in its case brief. See Pasta Zara/Pasta Zara 2's August 30, 2004 case brief at page 7 where Pasta Zara/Pasta Zara 2 states that ". . .the Department does not have variable benchmark loan information for the year of origination of the {first} FRIE loan. . ."

made on a case-by-case basis based on the facts pertaining to each particular case.

With respect to Pasta Zara/Pasta Zara 2's arguments relating to the adjusted ABI rate used by the Department as a benchmark for the first FRIE loan in the Preliminary Results, the Department has consistently and repeatedly used the adjusted ABI rate as both a long-term benchmark and a discount rate in past Italian countervailing duty proceedings. See, e.g., the Issues and Decision Memorandum accompanying Certain Pasta from Italy: Final Results of the Sixth Countervailing Duty Administrative Review, 68 FR 48599 (August 14, 2003) at the "Benchmarks for Long-term Loans and Discount Rates" section ("Pasta Sixth Review"); the Issues and Decision Memorandum accompanying Stainless Steel Wire Rod from Italy: Notice of Final Results of Countervailing Duty Administrative Review, 67 FR 63619 (October 15, 2002) at the "Benchmarks for Loans and Discount Rates" section ("Wire Rod Review"); the Issues and Decision Memorandum accompanying the Final Affirmative Countervailing Duty Determination: Stainless Steel Bar from Italy, 67 FR 3163 (January 23, 2002) at the "Benchmarks for Loans and Discount Rates" section ("SSB"); Italy CTL Plate, 64 FR at 73247-73248; and the Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR at 40476-40477 (July 29, 1998) ("Wire Rod Investigation").

In the Wire Rod Investigation, the Department found at verification that "the ABI rate is the most suitable benchmark for long-term financing for Italian companies." In Italy CTL Plate, the Department did not find any new information relating to the existence of commercial long-term interest rates that could be used as long term benchmark or discount rates and, thus, continued to use the ABI rates to construct the discount rates in that case, citing to the fact that the Department learned at verification in the Wire Rod Investigation that "the ABI rate is the most suitable benchmark for long-term financing for Italian companies." The Department continued this practice in subsequent Italian countervailing duty reviews and investigations (see, e.g., Italy CTL Plate, SSB, Wire Rod Review, Pasta Sixth Review, etc.).

It is the Department's practice not to revisit past findings unless new factual information or evidence of changed circumstances has been placed on the record of the proceeding that would cause the Department to deviate from past practice. In the instant proceeding, no party has provided any evidence that would cause us to change our past practice of using ABI interest rates to construct national average discount and long-term benchmark rates for use when company-specific information is otherwise not available. Pasta Zara/Pasta Zara 2's arguments relating to the ABI rates was not even addressed by Pasta Zara/Pasta Zara 2 until its case brief, long after the time period in which the Department was collecting new information in this proceeding. Pasta Zara/Pasta Zara 2 had ample time to place information or arguments on the record if it had new factual information or evidence of changed circumstances with regard to this past Department practice. Instead, as an argument, Pasta Zara/Pasta Zara 2 cited only to portions of past cases (ignoring other relevant past cases and Department practice) as "indisputable evidence" that its argument was correct and that the Department's long-standing, established practice in this matter should be changed.

Regardless, it is clear from the above discussion that the Department has some flexibility in selecting a benchmark rate based on its regulations.[5] It is also clear that the Department has utilized different methods, reflecting the different facts in each case, for selecting long-term, variable-rate benchmarks in past proceedings when no comparable commercial loan as defined in 19 CFR 351.505(a)(2)(i) is available (see, e.g., Korean Sheet and Strip, Brazil Cold-Rolled, and Brazil Wire Rod). Although the Department has the option of utilizing national average benchmark rates in the absence of a comparable long-term, variable commercial rate as defined and discussed above, we have noted in past proceedings that the Department's regulations show a clear preference for the use, where appropriate and available, of comparable commercial loans obtained by a company rather than a national average interest rate. See the Issues and Decision Memorandum accompanying Brazil Wire Rod at Comment 3.

According to record evidence in the instant proceeding, Pasta Zara/Pasta Zara 2 obtained commercial long-term, variable-rate loans at the time of the second FRIE loan that were derived using almost identical base rates to those used for both the first and the second FRIE loans. Moreover, there is no record evidence indicating that the credit risk spreads that would have been added to these variable base rates would have changed in the relatively short time period between the two FRIE loans. Furthermore, where available and appropriate in light of the facts of a given case, company-specific loans may better reflect the actual experience of the firm in question in obtaining comparable commercial loans than would a national average rate. Thus, although we disagree with Pasta Zara/Pasta Zara 2's arguments with regard to this issue, upon further consideration of the record facts, we find that Pasta Zara/Pasta Zara 2's commercial loans are a better benchmark in this particular situation than would be the national average benchmarks that were utilized in the Preliminary Results, and have revised Pasta Zara/Pasta Zara 2's benefit calculation for its first FRIE loan accordingly.

Finally, we agree with Pasta Zara/Pasta Zara 2 that we should base the benchmark benefit calculation for Pasta Zara/Pasta Zara 2's first FRIE loan on the actual dates on which Pasta Zara/Pasta Zara 2 received the loan installments throughout the year. Accordingly, we have revised the benefit calculation for Pasta Zara/Pasta Zara 2's first FRIE loan to take into account the date on which each loan installment was received and the interest that should have been paid during the remainder of the POR for each individual installment.

Comment 3: Benefit for Pasta Zara 2's Second Law 908/55 FRIE Loan

Respondent's Argument: Pasta Zara/Pasta Zara 2 contends that the Department improperly calculated

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[5] See 19 CFR 351.505(a)(2)(iii), which states that, for long-term loans, the Department will "normally" select as a comparable commercial loan a loan the terms of which were established during or immediately before the year in which the terms of the government-provided loan were established. See also 19 CFR 351.505(a)(3)(ii), which states that the Department "may" use a national average interest rate for comparable commercial loans.

the benefit for its second FRIE loan. Specifically, Pasta Zara/Pasta Zara 2 points out that the Department calculated the benchmark interest payment amount over a twelve-month period, while the actual interest that was paid on this loan covered only a two-month period. Pasta Zara/Pasta Zara 2 argues that the Department should recalculate the benchmark interest payment amount to coincide with the time period interest was actually paid under the FRIE loan during the POR, i.e., November and December 2002.

Department's Position: We agree with Pasta Zara/Pasta Zara 2. Accordingly, we have revised the benefit calculation for the second FRIE loan so that we are comparing the actual interest paid by Pasta Zara/Pasta Zara 2 on this loan in November and December 2002 to what would have been paid under the benchmark interest rate in November and December 2002 in accordance with 19 CFR 351.505(c)(4).

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final net subsidy rates for the reviewed producers/exporters of the subject merchandise in the Federal Register.

________ Agree　　　　________ Disagree

____
James J. Jochum
Assistant Secretary
for Import Administration

____
Date