



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary No Shipment Determination and Preliminary Intent to Revoke Order, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests by interested parties, the Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on certain pasta (“pasta”) from Italy for the period of review (“POR”) July 1, 2010, through June 30, 2011.

This review covers the following seven companies: Botticelli Mediterraneo S.a.r.l.

(“Botticelli”), Fiamma Vesuviana S.r.L. (“Fiamma”), Industria Alimentare Filiberto Bianconi

1947 S.p.A. (“Filiberto”), Pastificio Fratelli Cellino, S.r.l. (“Fratelli”), Pastificio Attilio

Mastromauro Granoro S.r.L. (“Granoro”), Rummo S.p.A. Molino e Pastificio and its affiliates

(“Rummo”), and Pastificio Zaffiri (“Zaffiri”). We preliminarily find that Rummo, Filiberto,

Fratelli, and Zaffiri sold subject merchandise at less than normal value (NV) (dumping). We

further find that there were no exports of subject merchandise to the United States during the

POR by Fiamma and Botticelli. Finally, in response to its request for revocation and because

this would be the third year of no dumping by Granoro, we preliminarily intend to revoke the

antidumping duty order with regard to Granoro. If these preliminary results are adopted in the

final results of this administrative review, we will instruct U.S. Customs and Border Protection

(“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Dennis McClure or George McMahon

AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5973 or (202) 482-1167, respectively.

SUPPLEMENTARY INFORMATION

Background

On July 24, 1996, the Department published in the Federal Register the antidumping duty order on pasta from Italy.¹ On July 1, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.² Pursuant to requests from interested parties,³ the Department published in the Federal Register the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period July 1, 2010, through June 30, 2011: Botticelli, Fiamma, Filiberto, Labor S.r.L. (“Labor”), PAM. S.p.A. and its affiliate, Liguori Pastificio dal 1820 SpA (“PAM”), P.A.P. SNC Di Paziienza G.B. & C. (“P.A.P.”), Premiato Pastificio Afeltra S.r.L. (“Afeltra”), Pasta Lensi S.r.l. (“Lensi”), Zaffiri, Granoro,⁴ Pastificio Di Martino Gaetano & F.lli

¹ See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 38547 (July 24, 1996).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 76 FR 38609 (July 1, 2011).

³ The petitioners include New World Pasta Company, Dakota Growers Pasta Company and American Italian Pasta Company (collectively, “petitioners”).

⁴ The Department notes that, on August 31, 2010, the Department deferred the 7/1/2009 - 6/30/2010 administrative review for Pastificio Attilio Mastromauro-Pasta Granoro S.R.L. for one year. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review, 75 FR 53274

SpA (“Di Martino”), Fratelli, Pastificio Lucio Garofalo S.p.A. (“Garofalo”), Pastificio Riscossa F.lli Mastromauro S.p.A. (“Riscossa”), Rummo, Rustichella d’Abruzzo S.p.A. (“Rustichella”) and Industria Alimentare Colavita, S.p.A. (“Indalco”).

On September 13, 2011, the Department announced its intention to select mandatory respondents based on U.S. Customs and Border Protection (“CBP”) data.⁵ On October 3, 2011, the Department selected Garofalo and Rummo as mandatory respondents.⁶ On October 5, 2011, Granoro requested that it be granted voluntary respondent treatment. On October 11, 2011, Garofalo withdrew its request for a review. On November 7, 2011, Granoro withdrew its request for a deferred review of certain pasta from Italy for the POR of June 1, 2009 to June 30, 2010. On October 19, 2011, and November 17, 2011, respectively, the Department published in the Federal Register notices of partial rescission of the administrative reviews with respect to Garofalo and with respect to the deferred review of Granoro.⁷ On November 18, 2011, Lensi withdrew its request for a review. On November 21, 2011, Indalco and Labor withdrew their requests for a review. On November 22, 2011, Granoro timely submitted its Sections A-D Voluntary Questionnaire Response for the 2010-2011 review that remains active within the case deadlines established for the mandatory respondent, Rummo. On November 22, 2011, PAM, P.A.P., Riscossa, and Rustichella withdrew their requests for a review. On November 23, 2011,

(August 31, 2010). We initiated this review one year later along with the 7/1/2010 - 6/30/2011 administrative review. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 76 FR 53404, 53408 (August 26, 2011) (“First Initiation Notice”). The Department amended the Initiation of the instant review to include Industria Alimentare Colavita, S.p.A., because this company was inadvertently omitted from First Initiation Notice. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part, 76 FR 61076 (October 3, 2011).

⁵ See Memorandum from Christopher Hargett to Melissa Skinner titled “Customs and Border Protection Data for Selection of Respondents for Individual Review,” dated September 13, 2011 (CBP Data Memo).

⁶ See Memorandum from Christopher Hargett to Melissa Skinner titled “Selection of Respondents for Individual Review,” dated October 3, 2011.

⁷ See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review, 76 FR 64897 (October 19, 2011); see also Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review, 76 FR 71311 (November 17, 2011) (“Granoro: Partial Rescission of Deferred Review”).

Afeltra and Di Martino withdrew their requests for a review. On December 12, 2011, the Department published in the Federal Register a notice of partial rescission of the administrative reviews with respect to Afeltra, Di Martino, Indalco, Labor, Lensi, PAM, P.A.P., Riscossa, and Rustichella.⁸ The instant review continues with respect to Botticelli, Fiamma, Filiberto, Fratelli, Granoro, Rummo, and Zaffiri. As noted above, Rummo was selected as and remains a mandatory respondent. Pursuant to Granoro's November 22, 2011 request, the Department accepted Granoro as a voluntary respondent on December 12, 2011.⁹

Between October 2011 and June 2012, the Department issued its initial questionnaire¹⁰ and supplemental questionnaires to each respondent, as applicable. The Department issued the section D questionnaire to Granoro and Rummo because we disregarded sales by these companies that were below the COP in the most recently completed administrative review of each respective company. We received responses to the Department's initial questionnaire on November 22, 2011 from Granoro. We received responses to the Department's initial questionnaire from Rummo on December 6, 2011 (Section A), and December 12, 2011 (Sections B-D). We issued section A, B, C, and D supplemental questionnaires to both Granoro and Rummo. We received Granoro's supplemental questionnaire responses in February and March 2012. We received Rummo's supplemental questionnaire responses in March, April, May, and June 2012.

⁸ See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review, 76 FR 77204 (December 12, 2011).

⁹ See Memorandum from Dennis McClure to Melissa Skinner through James Terpstra, dated December 12, 2011, titled "Treatment of Pastificio Attilio Mastromauro-Pasta Granoro S.r.L. as a Voluntary Respondent."

¹⁰ The antidumping duty questionnaire issued to respondents includes section A (i.e., the section covering general information about the company) of the antidumping duty questionnaire, section B (i.e., the section covering comparison market sales), section C (i.e., the section covering U.S. sales), and section D (i.e., the section covering the cost of production ("COP") and constructed value ("CV")).

On February 28, 2012, the Department fully extended the due date for the preliminary results of review from April 2, 2012, to July 30, 2012.¹¹

The Department conducted the sales verification of Granoro from May 28, 2012, through June 1, 2012, in Bari, Italy. The Department conducted the cost verification of Granoro from May 21, 2012, through May 25, 2012, in Bari, Italy.

Verification

As provided in section 782(i) of the Act, we have verified information provided by Granoro. We conducted this verification using standard verification procedures including the examination of relevant sales and financial records and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public version of our verification reports, which are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building.

Preliminary Determination of No Reviewable Entries

On August 30, 2011, and September 6, 2011, Fiamma¹² and Botticelli,¹³ respectively, reported to the Department that neither company had any exports, sales or entries of pasta subject to the antidumping order on pasta from Italy to the United States during the POR. The

¹¹ See Certain Pasta From Italy: Extension of Time Limits for the Preliminary Results of Fifteenth Antidumping Duty Administrative Review, 77 FR 12008 (February 28, 2012).

¹² In its letter of August 30, 2011, Fiamma stated that "Fiamma Vesuviana hereby informs the Department of Commerce that it had no exports, sales or entries of pasta subject to the antidumping order on pasta from Italy to the United States during the period of review, July 1, 2010 through June 30, 2011."

¹³ In its letter of September 6, 2011, Botticelli stated, "Botticelli Mediterraneo further informs the Department of Commerce that it is located in Tunisia; that it produces and exports olive oil and is not involved in the production, distribution or sale of pasta in any way; and that it does not have any operations of any type in Italy."

Department transmitted a “No-Shipment Inquiry” to CBP regarding Botticelli and Fiamma.¹⁴ Pursuant to this inquiry, the Department received no notifications from CBP of any entries of subject merchandise from either company within the 10-day deadline. Accordingly, based on record evidence, we preliminarily determine that Botticelli and Fiamma had no reviewable entries during the POR.

Our past practice concerning no-shipment respondents was to rescind the administrative review if the respondent certified that it had no shipments and we confirmed the certified statement through an examination of CBP data.¹⁵ We would then instruct CBP to liquidate any entries of merchandise produced by the respondent at the deposit rate in effect on the date of entry. However, in our May 6, 2003, “automatic assessment” clarification, we explained that, where respondents in an administrative review demonstrated that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (“Assessment Policy Notice”). Because “as entered” liquidation instructions do not alleviate the concerns which the Assessment Policy Notice was intended to address, instead of rescinding the review with respect to Botticelli and Fiamma, we find it appropriate to complete the review and issue liquidation instructions to CBP concerning entries for these companies following the final results of the review. If we continue to find that Botticelli and Fiamma had no reviewable transactions of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries

¹⁴ No entries were reported in the data which the Department relied on for its selection of respondents. See CBP Memo (BPI document) and CBP Message numbers: 2165302 and 2165303, dated June 13, 2012.

¹⁵ See 19 CFR 351.213(d)(3); see also Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 1/2 Inches) From Japan: Final Results of Antidumping Duty Administrative Review, 77 FR 27428, 27430 (May 10, 2012).

of merchandise produced by Botticelli and Fiamma but exported by other parties at the all-others rate.¹⁶

Targeted Dumping Allegations

The petitioners note that they conducted their own targeted dumping analysis of Granoro's and Rummo's U.S. sales using the Department's targeted dumping methodology as applied in Steel Nails and modified in Wood Flooring.¹⁷ Based on their own analysis, the petitioners argue the Department should conduct a targeted dumping analysis and employ average-to-transaction comparisons without offsets should the Department find that the record supports its allegation of targeted dumping.¹⁸ Granoro and Rummo did not comment on the targeted dumping allegations submitted by the petitioners.

For purposes of these preliminary results, the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margin, the Department applied the calculation methodology adopted in the Final Modification for Reviews.¹⁹ In particular, the Department compared monthly, weighted-average export prices with monthly, weighted-average normal values, and granted offsets for negative comparison

¹⁶ See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 26922, 26923 (May 13, 2010), unchanged in Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989 (September 17, 2010).

¹⁷ See The petitioners' Allegation of Targeted Dumping with respect to Granoro, dated April 20, 2012, at 1-8, and the petitioners' Allegation of Targeted Dumping with respect to Rummo, dated April 20, 2012, at 1-8, both (citing Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33,977 (June 16, 2008) ("Steel Nails"), and accompany Issues and Decision Memorandum at Comment 8; Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (Oct. 18, 2011) ("Wood Flooring"), and accompanying Issues and Decision Memorandum at Comment 4).

¹⁸ See id. at 5-9 and 6-9, respectively.

¹⁹ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews").

results in the calculation of the weighted-average dumping margins.²⁰ Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review.

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope 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. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Istituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. 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).

²⁰ See id. at 8102.

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 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.

Notice of Intent To Revoke Order, In Part

On July 29, 2011, Granoro requested revocation of the order on pasta from Italy as it pertains to its sales. Pursuant to section 751(d)(1) of the Act, the Department “may revoke, in whole or in part” an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth at 19 CFR 351.222. Pursuant to 19 CFR 351.222(b)(2), the Department may revoke an antidumping duty order in part if it concludes that (A) an exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years, (B) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value, and (C) the continued application of the antidumping duty order is no longer necessary to offset dumping. Section 351.222(b)(3) of the Department’s regulations states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under 19 CFR 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

A request for revocation of an order in part for a company previously found dumping must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) the company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that, subsequent to revocation, the company has sold the subject merchandise at less than normal value. See 19 CFR 351.222(e)(1). We preliminarily determine that the request dated July 29, 2011, from Granoro meets all of the criteria under 19 CFR 351.222(e)(1).

With regard to the criteria of 19 CFR 351.222(b)(2), our preliminary margin calculations show that Granoro sold pasta at not less than normal value during the current review period. See "Preliminary Results of Reviews" section below. In addition, it sold pasta at not less than normal value in the previous administrative review in which it was reviewed, including the intermediary period between the previous administrative review and this ongoing review. See Certain Pasta from Italy: Notice of Final Results of the Thirteenth Antidumping Duty Administrative Review, 75 FR 81212 (December 27, 2010). Based on our examination of the sales data submitted by Granoro, we preliminarily determine that Granoro sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Granoro to support its request for revocation. See Granoro's Sales Verification Report, dated July 9, 2012, at Exhibit SVE-10. Thus, we preliminarily find that the Granoro sold pasta at not

less than normal value for the last three consecutive years and sold in commercial quantities all three years. Also, we preliminarily determine that application of the antidumping duty order to Granoro is no longer warranted for the following reasons: (1) the company sold pasta at not less than normal value for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if we find that it has resumed making sales at less than fair value; (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we preliminarily determine that Granoro qualifies for revocation from the order on pasta from Italy pursuant to 19 CFR 351.222(b)(2) and, thus, we preliminarily determine to revoke the order with respect to pasta from Italy exported and/or sold to the United States by Granoro. If our intent to revoke results in revocation of the order in part with respect to merchandise exported and/or sold by Granoro, the proposed effective date of the revocation is July 1, 2011.²¹

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), we first attempted to match contemporaneous sales of products sold by Granoro and Rummo in the United States and comparison markets that were identical with respect to the following characteristics: (1) pasta shape; (2) wheat species; (3) milling form; (4) protein content; (5) additives; and (6) enrichment. In this review, the respondents did not report the protein content

²¹The Department amended its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, and the termination of suspended antidumping and countervailing duty investigations. Specifically, the Department's Final Rule eliminates the provision for revocation of an antidumping or countervailing duty order with respect to individual exporters or producers based on those individual exporters or producers having received antidumping rates of zero for three consecutive years, or countervailing duty rates of zero for five consecutive years. This Final Rule will apply to all reviews that are initiated on or after June 20, 2012, however, this provision regarding revocation does not apply to Granoro because the instant review was initiated prior to the aforementioned date. See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 77 FR 29875 (May 21, 2012) ("Final Rule").

as indicated on the packaging of the finished pasta, but instead reported based on their internal production records. Therefore, we clarified in a supplemental questionnaire to the respondents that they were expected to report the protein content based on the protein content indicated on the packaging of the finished product. In our calculations we used the protein content indicated on the packaging of the finished product, as reported by the respondents in their supplemental questionnaire responses. When there were no sales of identical merchandise in the comparison market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

We made comparisons to weighted-average comparison market prices that were based on all sales which passed the cost-of-production test and on those sales which did not pass the cost-of-production test but were made at prices which were considered to have provided for the recovery of costs within a reasonable period of time. Specifically, in making our comparisons, if an identical home market model was reported, we made comparisons to monthly weighted-average home market prices that were based on all relevant sales during the contemporary month or, lacking such sales, to a previous or subsequent month in the shorter cost period (see “Cost Averaging Methodology” below). If there were no sales of an identical model available for comparison during the relevant months, we substituted the most similar above cost home market model. If there were no home market models with a difference in merchandise of less than twenty percent available, we used constructed value for comparison purposes. We calculated the weighted-average comparison market prices on a level of trade-specific basis.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (“VCOM”) between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at prices below NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this notice. Pursuant to 19 CFR 351.414(c)(1) and (d), we compared the monthly weighted-average export price of U.S. transactions to the monthly weighted-average normal value of the comparable foreign like product where there were sales made in the ordinary course of trade.²²

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was first sold by the producer or exporter outside the United States directly to the unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the first sale to the unaffiliated purchaser in the United States of

²² In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

the subject merchandise. See section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we adjusted prices to reflect billing adjustments, rebates, and early payment discounts, quantity discounts, expenses recovered from customers, and commissions. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including movement expenses incurred at the production facility, U.S. warehouse expense, inland freight, inland insurance, brokerage & handling, international freight, marine insurance, freight rebate revenue, and U.S. customs duties. With respect to Granoro, we capped the transportation recovery amounts by the amount of U.S. freight expenses, incurred on the subject merchandise, in accordance with our practice. See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008), and accompanying Issues and Decision Memorandum (“2005-2007 OJ from Brazil”) at Comment 7.

In addition, when appropriate, we increased EP by an amount equal to the countervailing duty (“CVD”) rate attributed to export subsidies in the most recently completed CVD administrative review, in accordance with section 772(c)(1)(C) of the Act. For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and other direct selling expenses). These expenses also include certain indirect selling expenses incurred by unaffiliated U.S. commission agents.²³

²³ See Memorandum from Dennis McClure to James Terpstra, Program Manager, entitled “Sales Analysis Memorandum for the Preliminary Results -- Granoro” (Preliminary Results Sales Analysis Memo – Granoro), dated

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price of the foreign like product sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price or constructed export price. The statute contemplates that quantities (or value) normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Granoro and Rummo each had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for both Granoro and Rummo.

B. Arm's-Length Sales

Granoro reported that all of its sales to the Italian market are to unaffiliated customers; however, it made a few sales to employees and shareholders and coded such sales as affiliated sales. See Granoro's section B questionnaire response, dated November 22, 2011. In accordance with the Department's practice, we have excluded such sales from consideration when the sales did not pass our Arm's Length Test. See Preliminary Results Sales Analysis

concurrently with this notice; see also Memorandum from George McMahon to James Terpstra, Program Manager, entitled "Sales Analysis Memorandum for the Preliminary Results -- Rummo" (Preliminary Results Sales Analysis Memo – Rummo), dated concurrently with this notice.

Memo – Granoro. Rummo reported that all of its sales to the Italian market are to unaffiliated customers.²⁴ In addition, Pasta Castiglione (“PC”), Rummo’s affiliated producer, reported that it did not make any sales to affiliates in the foreign market.²⁵ Therefore, we did not apply the arm’s length test with respect to Rummo’s sales.

C. Cost of Production Analysis

In the most recently completed segment of the proceeding in which Granoro and Rummo participated, the Department determined that the aforementioned respondents sold the foreign like product at prices below the cost of producing the merchandise and, as a result, we excluded such sales from the calculation of normal value.²⁶ Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Granoro and Rummo’s sales of the foreign like product under consideration for the determination of normal value in the instant review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act and, therefore, outside of the ordinary course of trade. Pursuant to section 773(b)(1) of the Act, we have conducted a COP investigation of Granoro and Rummo’s sales in the comparison market (sales below cost test) and required Granoro and Rummo to submit a response to Section D of the Department’s questionnaire.

1. Cost Averaging Methodology

The Department’s normal practice is to calculate an annual weighted-average cost for the POR.²⁷ However, we recognize that possible distortions may result if we use our normal annual-

²⁴ See Rummo’s Section B Questionnaire Response, dated December 12, 2011, at page B-9.

²⁵ See PC’s Section A Questionnaire Response, dated December 5, 2011 at A-24.

²⁶ See Certain Pasta From Italy: Notice of Amended Final Results of the Thirteenth Antidumping Duty Administrative Review, 76 FR 6601 (February 7, 2011) (Pasta Thirteenth Review); see also Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review, 72 FR 70298 (December 11, 2007) (“Pasta Tenth Review”).

²⁷ See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852

average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing (“COM”) recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or constructed value during the same shorter cost-averaging periods.²⁸

a. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.²⁹ In the instant case, record evidence shows that Granoro and Rummo experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR.³⁰ This change in COM is attributable primarily to the price volatility for semolina used in the production of pasta. *Id.*

b. Linkage Between Cost and Sales Information

(December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department’s practice of computing a single weighted-average cost for the entire period).

²⁸ See Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February 10, 2010) (“SSSS from Mexico”), and accompanying Issues and Decision Memorandum at Comment 6 and Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008) (“SSPC from Belgium”), and accompanying Issues and Decision Memorandum at Comment 4.

²⁹ See SSPC from Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

³⁰ See Memorandum from Sheikh Hannan to Neal M. Halper, Director of Office of Accounting, entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Granoro” (“Granoro Cost Calculation Memo”), dated concurrently with this notice at 2; see also Memorandum from Heidi Schriefer to Neal M. Halper, Director of Office of Accounting, entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – the Rummo Group” (“Rummo Cost Calculation Memo”), dated concurrently with this notice at 2.

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR.³¹ Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a pattern that changes in selling prices reasonably correlate to changes in unit costs.³² To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market and in the United States. Our comparison revealed that sales and costs for Granoro and Rummo showed reasonable correlation. See Granoro Cost Calculation Memo at pages 2-3 and Rummo Cost Calculation Memo at pages 2-3. After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between Granoro's and Rummo's changing sales prices and costs during the POR.³³ We have preliminarily determined that a shorter cost period approach, based on a quarterly-average COP, is appropriate for Granoro and Rummo because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices.

2. Calculation of Cost of Production

Before making comparisons to normal value, we conducted a COP analysis of Granoro's and Rummo's sales pursuant to section 773(b)(3) of the Act to determine whether home market sales were made at prices below COP and that these costs were not recoverable within a

³¹ See SSSS from Mexico, and accompanying Issues and Decision Memorandum at Comment 6 and SSPC from Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

³² See SSPC from Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

³³ Id.; see also SSSS from Mexico, and accompanying Issues and Decision Memorandum at Comment 6 and SSPC from Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

reasonable period of time. For this analysis, the COP is based on a quarterly average COP rather than an annual average COP. See the “Cost Averaging Methodology” section, above, for further discussion. We calculated Granoro’s and Rummo’s quarterly COP on a product-specific basis, based on the sum of the Granoro’s and Rummo’s respective cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses, interest expenses, and the costs of all expenses incidental to packing the merchandise. We relied on the COP information submitted by both Granoro and Rummo except the following adjustments. With respect to Granoro, we corrected several errors noted during the cost verification, revised the reported semolina costs to differentiate for the protein content (the Department’s fourth physical product characteristic), and we weight-averaged the per-unit costs for certain control numbers (CONNUMs). For further discussion of these adjustments, see Granoro Cost Calculation Memo. With respect to Rummo, we have revised Rummo’s and Pasta Castiglioni’s reported protein-specific quarterly semolina costs to correct errors discovered in the calculation of the quarterly average semolina purchase prices. We have also revised the semolina calculations to express and apply yield losses as a percentage rather than as a nominal value. We then calculated and applied a POR scrap offset for each company. See Rummo Cost Calculation Memo at 4-5. For control numbers for which there was no production during the POR or during a POR quarter we chose or calculated surrogates respectively.³⁴

4. Cost Recovery Analysis

In accordance with sections 773(b)(1)(A) and (B) of the Act, for sales found to be made below cost, we examined whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery

³⁴ See Preliminary Sales Analysis Memorandum – Granoro and Preliminary Sales Analysis Memorandum – Rummo.

of all costs within a reasonable period of time in the normal course of trade. As stated in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review.

In light of the Court's directives in SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353 (Ct. Int'l Trade 2010), and SeAH Steel Corporation v. United States, 764 F. Supp. 2d 1322 (Ct. Int'l. Trade 2011) to use an unadjusted annual average cost for purposes of the cost recovery test, in the instant review we have used the approach to test for cost recovery when using a shorter cost period methodology.³⁵ Using the methodology adopted in SPT from Turkey, we calculated a control number specific weighted-average annual price using only those sales that were made below their quarterly COP, and compared the resulting weighted-average price to the annual weighted-average cost per control number. If the annual weighted-average price per control number was above the annual weighted-average cost per control number then we considered those sales to have provided for the recovery of costs and restored all such sales to the normal value pool of comparison-market sales available for comparison with U.S. sales. For further details regarding the cost recovery methodology and the application of our shorter-cost period methodology, see the Granoro Cost Calculation Memo at 1-2; see also the Rummo Cost Calculation Memo at 1-2.

5. Results of the Sales Below Cost Test

We found that for certain products, more than 20 percent of Granoro's and Rummo's home market sales were made at prices below COP and, in addition, these below cost sales were made within an extended period of time and in substantial quantities. In addition, pursuant to the

³⁵ See Certain Welded Carbon Steel Pipe and Tube From Turkey; Notice of Final Results of Antidumping Duty Administrative Review, 76 FR 76939 (December 9, 2011) ("SPT From Turkey").

cost recovery analysis described above, we found that these sales were at prices which did not permit the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales from the calculation of normal value, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, free on board (“FOB”) or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for discounts and rebates. We added expenses recovered from customers. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (“COS”) pursuant to section 773(a)(6)(C)(iii) of the Act. Specifically, we made adjustments to normal value for comparison to Granoro’s and Rummo’s EP transactions by deducting direct selling expenses incurred for home market sales (i.e., credit expenses) and adding U.S. direct selling expenses (i.e., credit expenses) and U.S. commissions. See section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c). We also made adjustments for Granoro and Rummo, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the “commission offset.” Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in

accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using weighted-average costs.

Sales of pasta purchased by Granoro and Rummo from unaffiliated producers and resold in the comparison market were disregarded. See Preliminary Results Sales Analysis Memo – Granoro and Preliminary Results Sales Analysis Memo – Rummo.

E. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same level of trade (“LOT”) as the EP and CEP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm’s-length affiliated) customers. The Department identifies the LOT based on: the starting price or constructed value (for normal value); the starting price (for EP sales); and the starting price, as adjusted under section 772(d) of the Act (for CEP sales). If the comparison-market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732-33 (November 19, 1997).

Granoro indicated there was a single level of trade for all sales in both markets, and petitioners have not claimed that multiple levels of trade existed for Granoro. Granoro provided information regarding channels of distribution and selling activities performed for different categories of customers. See Granoro's November 22, 2011, section A response, at Exhibit 3. Granoro's chart of specific selling functions indicates the selling functions performed for sales in both markets are virtually identical, with no significant variation across the broader categories of sales process/marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. For more details, see Preliminary Results Analysis Memorandum – Granoro. We have preliminarily determined there is one single level of trade for all sales in both the home market and the U.S. market and, therefore, that no basis exists for a level of trade adjustment.

Rummo reported that there was a single level of trade for its sales in the home market and claimed two levels of trade in the U.S. market. Rummo provided information regarding channels of distribution and selling activities performed for different categories of customers.³⁶ Rummo's and PC's³⁷ charts of specific selling functions indicate the selling functions performed for sales in both markets and demonstrates that there are significantly greater sales activities performed in

³⁶ See Rummo's and PC's December 5, 2011, section A response, at Exhibits A-3 and A-4.

³⁷ See PC's March 8, 2012 Supplemental response at page 33.

the home market as compared to Rummo's U.S. sales. We have preliminarily determined that these differences support a finding that the home market sales are made at a different and more advanced stage of marketing than the level of trade of Rummo's CEP sales. Accordingly, we have made a CEP offset to NV pursuant to section 773(a)(7)(B) of the Act.³⁸

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see our analysis contained in Preliminary Results Sales Analysis Memo – Granoro and Preliminary Results Sales Analysis Memo – Rummo.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank. See Preliminary Results Sales Analysis Memo – Granoro and Preliminary Results Sales Analysis Memo – Rummo.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margins exist for the period July 1, 2010, through June 30, 2011:

³⁸ The Department made a CEP offset to NV for Rummo in the most recent administrative review (2005-2006) in which Rummo was a mandatory respondent. See Certain Pasta from Italy; Notice of Preliminary Results and Partial Rescission of Tenth Antidumping Duty Administrative Review, 72 FR 44082 (August 7, 2007).

Manufacturer/exporter	Margin (percent) ³⁹
Granoro	0.00
Rummo	6.97
Review-Specific Average Rate ⁴⁰	
Applicable to the Following Companies:	6.97
Filiberto, Fratelli, and Zaffiri	

Public Comment

The Department intends to disclose the calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding, in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of this notice in the Federal Register. See 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

³⁹ The antidumping duty margins for Granoro and Rummo include an adjustment for the countervailing duty offset to account for the export subsidy portion of the countervailing duties applied to these companies, as defined in the field CVDU.

⁴⁰ This rate is a weight-average percentage margin calculated based on the two companies that were selected for individual review, excluding de minimis margins or margins based entirely on adverse facts available.

Pursuant to 19 CFR 351.213(h), the Department intends to issue the final results of this review, including the results of our analysis of issues raised in any submitted written comments, within 120 days after publication of this notice.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above de minimis (i.e., at or above 0.5 percent), the Department will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. Pursuant to the Final Modification for Reviews, “when a review is conducted applying the A-A {(average-to-average)} comparison methodology, and the weighted-average margin of dumping for the exporter or producer is determined to be zero or de minimis, no assessment rates will be calculated and the Department will instruct CBP to liquidate all imports from the exporter or producer without regard to antidumping duties, regardless of importer.”⁴¹ For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value.

The Department clarified its “automatic assessment” regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies

⁴¹ See Final Modification for Reviews, 77 FR at 8107.

did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

To calculate the cash deposit rate, we divided the total dumping margin by the total net value of the sales during the review period. The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, de minimis, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (“LTFV”) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 15.45 percent, the all-others rate established in the LTFV investigation. See Implementation of the Findings of the WTO Panel in US – Zeroing (EC): Notice of Determination Under

Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007). These cash deposit

requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Paul Piquado
Assistant Secretary
for Import Administration

July 27, 2012_
Date

[FR Doc. 2012-19057 Filed 08/02/2012 at 8:45 am; Publication Date: 08/03/2012]