This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–3279 Filed 2–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

[International Trade Administration]

[A–475–818]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy

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

SUMMARY: On August 7, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Italy. The review covers shipments of this merchandise to the United States by eight respondents during the period January 19, 1996, through June 30, 1997.

For our final results, we have found that, for certain exporters, sales of the subject merchandise have been made below normal value. We will instruct the Customs Service to assess antidumping duties equal to the difference between the export price or constructed export price and the normal value.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations codified at 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Case History

This review covers the following manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Italy: (1) Arrighi S.p.A. Industrie Alimentari (''Arrighi''); (2) Barilla Alimentari S.r.L. (''Barilla''); (3) F. lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''); (4) Industria Alimentari Colavita S.p.A. (''Indalco''); (5) La Molisana Industrie Alimentari S.p.A. (''La Molisana''); (6) Pastificio Fratelli Pagani S.p.A. (''Pagani''); (7) N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''); and (8) Rummo S.p.A. Molino e Pastificio (''Rummo'').

On August 7, 1998, the Department published the preliminary results of this review. *See Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 63 FR 42368 (*Preliminary Results*). From July 22 through July 30, 1998, we verified the cost information submitted by De Cecco [1]. From July 27 through July 31, 1998, we verified the cost information submitted by Puglisi. On September 23 and September 24, 1998, we received case briefs from the following parties: (1) Borden Foods Corp., Hershey Pasta and Grocery Group, Inc., and Gooch Foods, Inc. (collectively, ''the petitioners''), (2) the five manufacturers/exporters that responded to our requests for information (De Cecco, Indalco, La Molisana, Puglisi, and Rummo); (3) Barilla; and (4) World Finer Foods, Inc. (''World Finer Foods''), an importer of pasta produced by Arrighi. We received rebuttal briefs from the petitioners, De Cecco, Indalco, Puglisi, and Rummo from October 6 through October 8, 1998. On the basis of requests by interested parties, a public hearing was held on October 19, 1998.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, 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 review 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 Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, by QC&I International Services or by Ecocert Italia.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders, (*see* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997).

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. (*See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.)

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation against Barilla S.r.L., an Italian producer and exporter of pasta. On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Act, circumvention of the

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[1] We verified De Cecco's sales information prior to the *Preliminary Results*, from May 4–8, 1998.

antidumping duty order is occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently are repackaged in the United States into packages of five pounds or less for sale in the United States. (*See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).)

(4) On October 26, 1998, we self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On November 18, 1998, the Department received comments regarding this scope inquiry. The Department received rebuttal comments on November 30, 1998. In accordance with 19 CFR 351.225(f)(iii)(5), the Department will issue a scope ruling within 120 days of the initiation of the inquiry.

Partial Rescission

As noted in the preliminary results, on September 2, 1997, the petitioners withdrew their request for reviews of Castelletti S.p.A., Societa Transporti Castelletti, General Noli S.p.A., and R. Queirolo & Co., S.p.A. In addition, Petrini, S.p.A. (''Petrini'') withdrew its request for a review on October 24, 1997, and Delverde Srl (''Delverde'') and Tamma Industrie Alimentari di Capitanata, SrL (''Tamma'') withdrew their requests for a review on November 10, 1997. Because there were no other requests for reviews of these companies, and because the letters withdrawing the requests for reviews were timely filed, we rescinded the review with respect to these companies in accordance with 19 CFR 351.213(d)(1).

Use of Facts Available

Arrighi, Barilla, and Pagani ''failed to cooperate by not responding to our antidumping questionnaire and, thus, have not acted to the best of their abilities to comply with requests for information * * * .'' *See Preliminary Results*, 63 FR at 42369. Accordingly, we based the antidumping duty rate for these companies on facts otherwise available and assigned to them the highest margin from the petition, as adjusted by the Department, 71.49 percent. For the reasons described below, we are continuing to assign Arrighi, Barilla, and Pagani the highest margin from the petition, as adjusted by the Department, for these final results.

Section 776(a) of the Act requires the Department to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person ''fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782.'' As provided in section 782(c)(1) of the Act, if an interested party ''promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Arrighi communicated with the Department concerning the difficulties which impeded its ability to respond to the Department's questionnaire. In a letter dated October 1, 1997, Arrighi stated that it would be unable to respond to the Department's questionnaire due to a deficiency of financial and personnel resources. Arrighi did add, however, that it ''might be able to supply limited information if the Department felt that might be worthwhile or helpful in the context of this [review].''

While responding to the Department's questionnaire may be a burden on Arrighi, the company has not demonstrated that it was unable to do so. The company made only general claims regarding limited personnel and financial resources, which is true for many companies that respond to our questionnaires. Arrighi gave neither specific reasons why it could not respond nor any specific proposal for what the company was prepared to do and why it could do no more. Instead, the statements in Arrighi's letter of October 1, 1997, demonstrate that the company merely made a business decision not to allocate resources to this task. Furthermore, it was also evident from the letter, taken as a whole, that any ''limited information'' Arrighi might provide would be insufficient to calculate a dumping margin. Therefore, given that the company did not demonstrate an inability to respond to our questionnaire or a willingness to cooperate to the best of its ability, we find that the use of facts available in accordance with section 776(a) of the Act is warranted.

Barilla and Pagani neither responded to the Department's questionnaire nor provided any notification or information to the Department pursuant to section 782(c)(1) of the Act. Accordingly, we find that these companies did not cooperate to the best of their abilities and the use of facts available is appropriate for Barilla and Pagani.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. As discussed above, Arrighi, Barilla, and Pagani failed to act to the best of their abilities to comply with our requests for information. Accordingly, we have determined that an adverse inference with respect to Arrighi, Barilla, and Pagani is warranted.

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the antidumping investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The petition margin is reliable if, in light of evidence reasonably available, it provides a reasonable estimate of a level at which dumping occurred during the period of investigation (''POI''). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that a selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

In this instance, as discussed below in Comment 5, we have no reason to believe that the application of the highest petition margin for Italian pasta, as revised by the Department, is inappropriate. Therefore, for purposes of these final results, we are continuing to assign Arrighi, Barilla, and Pagani the rate of 71.49 percent as adverse facts available. We find that this margin continues to be of probative value and continues to be an appropriate basis for facts otherwise available. We note that the SAA, at 870, states that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference * * * .'' In addition, the SAA at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

Comparisons

We calculated export price (EP), constructed export price (CEP), and normal value based on the same methodology used in the *Preliminary Results,* with the following exceptions:

General

For those companies which have both CEP sales and commissions, we have revised our commission and CEP-offset calculation (*see* Comments 2 and 3).

For those companies which have CEP sales, we have included U.S. commissions in the calculation of the total selling expenses that we deducted from revenues to determine the CEP-profit amount for calculation of the CEP-profit rate (*see* memorandum from Jarrod Goldfeder to the file, *Analysis Memorandum for F. lli De Cecco di Filippo Fara S. Martino S.p.A.,* December 7, 1998).

We have corrected a clerical error which had caused the weighted-average normal value to be calculated over the 90/60-day contemporaneity period rather than monthly (*see* Comment 8).

Indalco

We recalculated certain Indalco home market discounts (*see* a separate business proprietary memorandum from Cindy Robinson to John Brinkmann, *Recalculation of Certain Home Market Discount for Industria Alimentare Colavita, S.p.A in the Final Results of the First Administrative Review of Certain Pasta from Italy,* December 7, 1998). We have corrected the following three computer-programming errors: (1) An error concerning our level-of-trade comparison which matched EP sales erroneously to only one level-of-trade (LOT–1) in the home market when we intended to match to all home market sales (*see* Comment 8); (2) an error concerning Indalco's U.S. invoice adjustments in which we subtracted Indalco's invoice adjustments erroneously from, rather than added them to, the reported U.S. gross unit price or U.S. sales quantity, respectively (*see* memorandum from Cindy Robinson to the file, *Analysis Memorandum for Industria Alimentare Colavita, S.p.A,* December 7, 1998); and (3) an error which prevented the computer program from implementing an intended correction for commissions paid to one of Indalco's home market sales agents (*see Id.*).

La Molisana

We matched U.S. sales to sales at the LOT1 level of trade (*see* Comment 10B) and corrected a clerical error which caused us to double-count the cost of vitamins in the U.S. total and variable costs of manufacturing (*see* memorandum from Constance Handley to the file, *Analysis Memorandum for La Molisana Industrie Alimentari S.p.A.,* December 7, 1998) (*La Molisana Analysis Memo*).

Rummo

We used November 3, 1997, as a surrogate payment date to calculate credit expenses for those sales without a reported date of payment (see Comment 21). In addition, we corrected a programing error which converted inventory carrying cost to a kilogram basis incorrectly. The expense had already been reported in kilograms (*see* memorandum from James Kemp to the file, *Analysis Memorandum for Rummo S.p.A. Molino e Pastificio,* December 7, 1998).

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether each of the five respondents participating in the review made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP for these final results following the same methodology as in the preliminary results, with the following exceptions:

De Cecco

Based on minor corrections presented at the onset of the cost verification, we revised the total cost of manufacture for several control numbers and the interest expense factor. We also excluded the general and administrative expenses (G&A) of Molino, De Cecco's affiliated semolina supplier, in the calculation of the G&A rate (*see* memorandum from Garri Gzirian to Neal Halper, *Cost of Production and Constructed Value Adjustments for the Final Determination,* December 5, 1998).

Puglisi

We recalculated G&A to include the input of government grants received (*see* Comment 13). We also adjusted Puglisi's product-specific manufacturing costs in the following ways: (1) By reallocating the product-specific depreciation and electricity expenses (*see* Comments 17 and 18); (2) by using the transfer prices for services provided by Puglisi's affiliate (*see* Comment 16); and (3) by including certain lease payments and a portion of the garbage tax paid at the end of the year (*see* memorandum from Laurens van Houten to Neal Halper, *Cost of Production and Constructed Value Adjustments Calculations in the Final Results of Pasta from Italy—N. Puglisi & F. Industria Paste Alimentari S.p.A.,* November 24, 1998 (''*Puglisi COP Memo*'')).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioners and respondents.

I. General Issues

Comment 1: Level-of-Trade Methodology and Constructed Export Price (''CEP'') Offset

The petitioners argue that the Department applied an improper methodology when conducting its level-of-trade analysis for De Cecco, Rummo, and Puglisi. Specifically, they claim that the Department granted De Cecco, Rummo, and Puglisi a CEP offset incorrectly on the grounds that the Department conducted its level-of-trade analysis based on the adjusted CEP, rather than the CEP starting price, and cite *Borden Inc.* v. *United States,* 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998) (''*Borden*''), and the *Final Remand Results for Borden, Inc. et al.* v. *United States,* Consol. Court No. 96–08–01970 (August 28, 1998) (''*Remand Results*''). In addition, the petitioners comment on the Department's apparent intent to consider the level of trade of the CEP starting price in determining the CEP offset, after the Department had already established the level of trade of the adjusted CEP price. The petitioners contend that section 773(a)(7)(B) of the Act grants the CEP offset but it does not envision the use of two distinct and different levels of trade. They urge the Department to revise its decision.

De Cecco argues that the Department examined CEP properly in conducting its level-of-trade analysis for De Cecco and that the Department's decision to grant a CEP offset is valid and correct and should be sustained. It maintains that the petitioners' arguments concerning the application of a CEP offset are immaterial to De Cecco because De Cecco is entitled to the CEP offset regardless of whether the Department conducts its analysis of level of trade based on the U.S. starting price or the CEP.

Rummo states that the Department granted Rummo a CEP offset properly after a level-of-trade analysis that was based on the CEP price after adjustments made pursuant to section 772(d) of the Act. Citing the *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea,* 63 FR 8934 (February 23, 1998) (*SRAMs*), Rummo claims that it has been the Department's long-standing practice and is consistent with the statute and SAA to analyze the level of trade of CEP sales at the constructed export level price, *i.e.,* after expenses associated with economic activities in the United States have been deducted. Therefore, Rummo contends that the petitioners' arguments are contrary to the statute, the SAA, and the Department's long-standing policy. Furthermore, Rummo notes that the *Borden* case the petitioners cite is not final or conclusive because the Department is appealing that decision. Rummo urges the Department to continue to apply the same level-of-trade analysis for the final results.

Puglisi argues that the Department's level-of-trade methodology in this review is both lawful and in accordance with each of the Court's five stated guidelines in *Borden.* Specifically, concurring with the Department in its remand results in *Borden,* Puglisi maintains that ''the Court did not explicitly require the Department to determine the level of trade of the CEP based upon the CEP starting price.'' Furthermore, Puglisi states that the Department's level-of-trade methodology focused on the selling functions, not the adjustments to price, and as such was analytically distinct from the price calculation. Finally, Puglisi states that the CEP offset was not applied automatically as suggested by the petitioners; rather it was only applied after the Department determined that there was no information to provide an appropriate basis for determining a level-of-trade adjustment. Therefore, Puglisi urges the Department to sustain its preliminary decisions.

DOC Position: We agree with De Cecco, Rummo, and Puglisi that we were consistent with the statute and with our long-standing policy when we granted a CEP offset to De Cecco, Rummo, and Puglisi after conducting both qualitative and quantitative level-of-trade analyses based on adjusted CEP, rather than the CEP starting price. The *Borden* case the petitioners cite is not a final and conclusive decision because it is still subject to appeal. Accordingly, the *Borden* decision is not binding on the Department.

As stated in the level-of-trade memorandum from John Brinkmann to Susan Kuhbach, dated July 31, 1998, our level-of-trade analyses for De Cecco, Rummo, and Puglisi showed that each company had only one CEP level of trade in the U.S. market. This CEP level of trade differed considerably from the single level of trade in the home market for each company and was at a less advanced stage of distribution than the home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on these three respondents' home market sales. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. Because this is so, and because the normal value is at a more advanced level of trade than the CEP, we made a CEP offset in accordance with section 773(a)(7)(B) of the Act.

Inasmuch as our level-of-trade methodology is consistent with the statute and with our practice, we continued to apply the same methodology to make level-of-trade comparisons based on the adjusted CEP starting price for the purposes of the final results.

Comment 2: Commission Offset

The petitioners contend that the Department made a commission offset to account for the difference in the commissions amount paid by Rummo when U.S. commissions are greater than home market commissions. They claim that an offset is authorized under 19 CFR 351.410(e) only when there is a commission paid in one market but none in the other market. If the Department disagrees with the petitioners' contention, then they believe that a similar offset should be made when home market commissions are greater than U.S. commissions. Further, with regard to CEP sales, the petitioners point out that there was no offset made for instances where there were commissions in the home market but none in the U.S. market.

Rummo argues that the offset was applied correctly because Rummo did not pay commissions on all of its home market sales. In a review, Rummo contends, the Department compares individual U.S. sales to monthly weighted-average prices in the home market. Therefore, because Rummo had commissions on some sales, it states that the result was weighted-average prices with small commissions which were significantly less than commissions paid on U.S. sales. Rummo contends that the Department's offset methodology is intended to compensate for this imbalance.

DOC Position: We applied the EP commission offset in the preliminary results correctly. When calculating normal value for EP comparisons, the Department makes a circumstance-of-sale adjustment by deducting home market commissions and adding U.S. commissions. In this case, only a portion of home market sales have commissions; therefore, only that portion of home market sales was reduced by a home market commission. To account for those home market sales with no commissions, we calculated a weighted-average surrogate home market commission based on indirect selling expenses incurred on home market sales and deducted that amount from the weighted-average monthly normal value, limited by the amount of the difference between U.S. commissions and home market commissions. Because we look at each individual sale in the U.S. market, this problem does not occur and therefore there is no reason to make an adjustment when U.S. commissions are lower than home market commissions as suggested by the petitioners.

We agree with the petitioners that, for CEP sales, a commission offset should be made in those instances where there were commissions in the home market and none in the U.S. market. We have done so for these final results. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; Canned Pineapple Fruit from Thailand,* 63 FR 43661, 43671 (August 14, 1998).

Comment 3: Segregation of Commission and CEP Offsets

The petitioners argue the Department erred in combining the CEP and commission offsets in its computer program, thereby failing to limit the CEP offset by the amount of U.S. indirect selling expenses.

Rummo and De Cecco agree with the petitioners that the offsets should be segregated. Rummo points out that the offsets are intended to accomplish different goals; the CEP offset is meant to be a surrogate level-of-trade adjustment and the commission offset is meant to account for the presence of commissions in one market and not the other (or for unbalanced commission situations). Rummo contends these offsets should be treated separately in the final results.

De Cecco also contends that the Department calculated the CEP offset incorrectly based on the relationship of home market and U.S. commissions. According to De Cecco, where commissions are paid in both the domestic and U.S. markets on CEP sales, the Department calculates the offset as the lower of home market indirect selling expenses (including imputed expenses) or the sum of U.S. indirect selling expenses (excluding those expenses incurred in the home market) and U.S. commissions. Thus, De Cecco maintains this offset is assigned without regard to the relationship between commissions in the two markets.

DOC Position: While commissions and CEP offsets are two separate offsets, separating them in the computer program could result in our double-counting indirect selling expenses incurred in the home market. The Department's regulations state that ''the amount of the [CEP] offset will be the amount of indirect selling expenses included in normal value, up to the amount of indirect selling expenses deducted in determining constructed export price.'' 19 CFR 351.412(f)(2). Thus, like the commission offset, the CEP offset is based on home market indirect selling expenses. We will not deduct an amount greater than home market indirect selling expenses for the combination of the two offsets.

We do recognize, however, that the language in the computer program for the preliminary results did not combine the two offsets properly. We have used different programming language for the final results, which allows us to combine the two offsets and limit the combined deduction at the amount of home market indirect selling expenses. In other words, the applicable offset is the full amount of the commission offset, plus a CEP offset. The CEP offset is the lower of indirect selling expenses incurred in the United States or the indirect selling expenses incurred in the home market that remain after making the commission offset.

II. Company-Specific Comments

Arrighi and Barilla

Comment 4: Use of an Adverse Inference for Arrighi and Barilla

World Finer Foods, who was an unaffiliated U.S. importer of Arrighi's pasta products during the POR, and Barilla submitted comments addressing the Department's application of the highest rate from the petition, *i.e.*, 71.49 percent, as the adverse facts available rate assigned at the *Preliminary Results.*

Arrighi

World Finer Foods submitted comments addressing the Department's application of an adverse inference in determining a rate for Arrighi. According to World Finer Foods, and as noted in the ''Facts Available'' section above, Arrighi stated in a letter dated October 1, 1997, that it would be unable to respond to the Department's questionnaire due to deficiency of financial and personnel resources. World Finer Foods notes that Arrighi did add, however, that it ''might be able to supply limited information if the Department felt that might be worthwhile or helpful in the context of this [review].'' Citing *Allied Signal Aerospace Co.* v. *United States,* 996 F.2d 1185, 1192–93 (Fed. Cir. 1993), World Finer Foods argues further that the Department may not find a respondent uncooperative where a respondent is experiencing financial difficulties impeding its ability to provide the information as requested and where it suggests alternative reporting methods.

World Finer Foods also argues that in a letter dated October 20, 1997, it offered to supply the Department with information concerning its purchases from Arrighi. An officer of World Finer Foods met with Department officials on January 8, 1998, and subsequently submitted such information for the Department's examination on March 10, 1998. On the basis of this information, the company asserts that the Department had information demonstrating that during the POR Arrighi had significantly increased its selling price to World Finer Foods since the less-than-fair-value (LTFV) investigation. According to World Finer Foods, the Department could have reasonably created a surrogate for Arrighi's home market prices by using other respondents' information ''in order to develop a reasonably complete estimate of Arrighi's costs and prices during the period of review.'' Moreover, World Finer Foods alleges that the results of this review will affect only World Finer Foods with respect to the assessment of antidumping duties, inasmuch as Arrighi no longer sells its products in the U.S. market. Given World Finer Foods' cooperation by responding to the best of its ability, it asserts that the Department should not use an adverse inference in applying the facts available to Arrighi.

With respect to Arrighi's failure to respond, the petitioners contend that Arrighi made a deliberate business decision not to respond, and indeed never filed any questionnaire responses, but only stated that it might be able to supply limited information. The petitioners note that, in Arrighi's October 1 letter to the Department, the company acknowledged that it could not respond to the Department's questionnaire because its company resources were dedicated to developing alternative markets upon ceasing sales to the United States. The petitioners distinguish Arrighi's situation from that of a company in *Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Administrative Review,* 59 FR 15159 (March 31, 1994), where the Department acknowledged that a respondent undergoing liquidation proceedings was precluded from utilizing its financial and personnel resources toward providing a response to the Department's questionnaire. The petitioners argue further that Arrighi's offer to supply limited information does not in itself constitute a willingness to cooperate fully since piecemeal data is not sufficient to conduct a complete and accurate dumping analysis.

DOC Position: We disagree with World Finer Foods. As discussed in the ''Facts Available'' section above, we have concluded that the record demonstrates that Arrighi has not cooperated to the best of its ability. Therefore, we are continuing to assign Arrighi 71.49 percent as facts available for purposes of these final results.

Section 776(b) of the Act states that we may draw an adverse inference where the party has not acted to the best of its ability to comply with our requests for necessary information. Despite the numerous arguments put forth by World Finer Foods, we disagree with World Finer Foods' contention that Arrighi acted to the best of its ability, given its financial circumstances, to comply with our requests for information in this administrative review. Under certain limited circumstances, such as where a company informs the Department in a timely manner that it cannot comply with the Department's information requests due to the liquidation of its assets, it may be appropriate not to use an adverse inference in applying the facts available. However, where a respondent continues to produce the subject merchandise but fails altogether to provide information, we find that it has failed to act to the best of its ability. *See Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 16772, 16775 (April 8, 1997), and *Certain Fresh Cut Flowers From Colombia: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287 (October 14, 1997)

(''*Flowers from Colombia*'') (an adverse inference is warranted where a respondent states merely ''that it was on the verge of bankruptcy'' but provides no further information).

In the instant case, Arrighi was still in operation and reported that it was devoting its company resources toward developing alternative markets to the United States. Thus, unlike the respondent in *Flowers From Colombia,* Arrighi made a conscious business decision not to respond to the Department's questionnaire. Under these circumstances, we find that Arrighi was unwilling, rather than unable, to comply with our requests for information.

We also find that World Finer Foods' argument concerning *Allied Signal* is unpersuasive. In *Allied Signal,* the Court held that the Department's determination that SNFA, the respondent, had refused to cooperate was unreasonable because it supplied some of the requested information and also offered an alternative proposal to provide the remaining information in a simplified form. However, in the present case, Arrighi did not submit any information for the record nor did it suggest any alternative or simplified reporting method. Arrighi merely ended its letter of October 1, 1997, with a general offer to supply limited information if it would be helpful. However, if a respondent cannot provide information in the form or manner requested, section 782(c) of the Act places on the respondent the burden of suggesting alternative forms in which the party is able to submit the information. In this case Arrighi neither demonstrated that it could not respond in the form or manner requested nor proposed an alternative.

Furthermore, we noted in the *Preliminary Results* that we examined the documentation submitted by World Finer Foods, an importer that is not a respondent in this review, and determined that it was insufficient for purposes of calculating a dumping margin for Arrighi in accordance with the statute. We find World Finer Foods' argument that we had information demonstrating that Arrighi had significantly increased its selling price to it during the POR, as compared to the selling price during the LTFV investigation, to be unpersuasive. The basis for the Department's determination of whether subject merchandise has been sold at LTFV is a comparison between the export price or constructed export price and normal value or constructed value. In this case, we cannot determine the normal value of the subject merchandise.

Furthermore, we examined the information submitted by World Finer Foods and have determined that it is inadequate for purposes of estimating Arrighi's U.S. prices during the period of review. The information is so incomplete that World Finer Foods' efforts cannot overcome Arrighi's failure to respond.

Finally, we find that World Finer Foods' argument concerning the effect the results of this review will have on an importer, such as itself, is unpersuasive. Section 737(b)(1) of the Act requires that any antidumping duties in excess of the amount deposited be collected when the amount deposited is lower than the duty determined. Therefore, importers are on notice that the cash deposit rate is not a duty assessment rate but, rather, an estimate. Assessment may depend upon the results of a review and, hence, the continued cooperation of the exporter. There is no guarantee that the final assessment rate will not be higher than the cash deposit rate. ''When a U.S. importer deals with a foreign company that is subject to an antidumping duty order, the importer must realize that the dumping margin could change to its benefit or detriment.'' *Union Camp Corporation* v. *United States,* CIT Court No. 97–03–00483, Slip Op. 98–38 at 22 (March 27, 1998).

Barilla

Barilla maintains that it informed the Department at the onset of the review that it would not respond to the Department's questionnaire due to the company's expenditures associated with building a new plant in Iowa. Accordingly, Barilla characterizes its communication with the Department as a ''course of action designed to minimize the administrative inconvenience for the Department'' and, therefore, has been ''as cooperative as possible within the constraints of reasonable business practices.'' Thus, Barilla contends that an adverse inference was not warranted.

The petitioners assert that the Department was justified in assigning Barilla the highest petition rate as adverse facts available. Since Barilla did not file any questionnaire responses and did not lack the resources to do so, as evidenced by its ability to hire counsel to file case briefs, the petitioners contend that Barilla's participation in this review cannot be properly characterized as cooperative.

DOC Position: We disagree with Barilla. With respect to Barilla's claim of cooperation in this review, we find the company's arguments unpersuasive. Barilla has stated unequivocally that it made a deliberate decision not to respond to the Department's questionnaire. The primary issue is not administrative inconvenience, but rather the Department's responsibility to conduct a review and calculate a margin. It is evident, therefore, that Barilla's refusal to comply with the Department's requests for information has significantly impeded this proceeding. Therefore, we find that Barilla has failed to cooperate by not acting to the best of its ability.

Comment 5: Reliability of the Highest Petition Margin

Barilla submitted comments addressing the use of the highest petition margin as the facts available rate. According to Barilla, the adverse facts available rate should be the highest calculated margin from any segment of the proceeding, which is more reliable, reflective of current market conditions, and consistent with the Department's recent practice and judicial rulings. Barilla argues further that the highest margin from the petition cannot be corroborated and has been discredited by calculated, verified margins. Barilla also notes that, in the LTFV investigation, the Department used an average of the petition margins in applying adverse facts available to De Cecco, a respondent the Department found to have significantly impeded the Department's investigation, at considerable inconvenience and expense, by not cooperating, citing *Borden Inc. et al.* v. *United States,* Consol. Ct. No. 96–08–01970 (August 28, 1998 (''*Redetermination on Remand*'') [2]. As such, Barilla asserts that it should not receive a more adverse rate than that applied to De Cecco.

World Finer Foods considers the Department's application of the highest rate of the petition as adverse facts available to be punitive, arbitrary, and inconsistent with the statute, the Department's regulations, judicial decisions, and the Department's normal

[2] In litigation arising out of the LTFV investigation, the CIT remanded to the Department its decision to use an adverse inference for De Cecco and its determination of the appropriate rate to use as facts available. Even if the Department determined that an adverse inference was warranted, the CIT instructed the Department that it could use a rate of no more than 21.34 percent, the highest calculated and verified margin from the LTFV investigation. In performing this remand, the Department applied this rate as adverse facts available but argued that ''the use of this rate thwarts the purpose of the adverse inference provision of the Statute by failing to provide the necessary incentive for cooperation.'' On December 16, 1998, the CIT affirmed the Department's decision to use an adverse inference and the CIT's decision to apply an antidumping duty margin of 21.34 percent for De Cecco.

practice. It alleges that, because the results of this review will only affect World Finer Foods with respect to the assessment of antidumping duties (inasmuch as Arrighi no longer sells the subject merchandise in the U.S. market) and given World Finer Foods' cooperation by responding to the best of its ability, the Department should not apply the highest petition rate as an adverse inference against Arrighi.

The petitioners agree with the Department's application of the highest petition margin as adverse facts available. They assert that the facts between De Cecco in the LTFV investigation and Arrighi and Barilla in the instant review are different. According to the petitioners, De Cecco was assigned an average rate from the petition because it had made some effort to cooperate, although not to the best of its ability, whereas Arrighi and Barilla never attempted to respond to the Department's questionnaire. The petitioners contend further that the Department assigned the highest margin from the petition as an adverse facts available rate properly inasmuch as the Department need not prove that the petition margins are the best alternative information. They argue further that the Department must ensure that Arrighi and Barilla do not benefit from their failure to respond to the Department's questionnaire.

DOC Position: We disagree with Barilla and World Finer Foods. Section 776(b) of the Act notes that adverse inferences may include reliance on information derived from (1) the petition; (2) a final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. Thus, the statute does not limit the specific sources from which the Department may obtain information for use as facts available. The SAA recognizes the importance of facts available as an investigative tool in antidumping duty proceedings. The Department's potential use of facts available provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires. *See* SAA at 868.

In this segment of the proceeding, we have chosen as adverse facts available the highest rate based on corroborated petition data, 71.49 percent. Our decision to use a rate higher than the average petition rate is consistent with our decision in the LTFV investigation. In the investigation, we determined that ''[b]ecause De Cecco made some effort to cooperate, even though it did not cooperate to the best of its ability, we did not choose the most adverse rate based on the petition.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326, 30329 (June 14, 1996). *See also Oil Country Tubular Goods From Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 48594 (September 16, 1997), and *Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review,* 62 FR 46947 (September 5, 1997). Thus, the Department chose an adverse facts available rate of 46.67 percent; this represented the average rate based on corroborated petition data.[3]

In this case, Arrighi, Barilla, and Pagani did not cooperate at all with our requests for information. Since they made no attempt to cooperate, we agree with the petitioners that these companies should not receive the same or a lower rate than that of a company that made some effort to cooperate with our requests for information. Moreover, we believe that the highest petition margin is sufficiently adverse to induce cooperation in subsequent administrative reviews. Therefore, for purposes of these final results, we are continuing to assign the highest margin from the petition as adverse facts available.

At the time of initiation of the LTFV investigation, we reviewed all of the data the petitioners had submitted and the assumptions they made in estimating dumping margins and, as a result, we adjusted the petition rates. *See Notice of Initiation of Antidumping Duty Investigations: Certain Pasta from Italy and Turkey,* 60 FR 30268, 30269 (June 8, 1995). For purposes of these final results, we compared the petition rates with the range of transaction margins we found during the investigation based on actual data submitted, which were the basis for the final company-specific weighted-average dumping margins. *See* ''The Facts Available Rate and Corroboration of Secondary Information'' memorandum, dated February 3, 1999. Specifically, we reviewed the transaction margins for those fully cooperative respondents that were found to have dumping margins in the investigation and found that certain respondents had a number of calculated margins in excess of the highest petition margin. Thus, we concluded that the petition rates were within the range of transaction dumping margins found for certain respondents during the POI. Therefore, the petition rates represent a reasonable estimate of a level of dumping that occurred during the POI, *i.e.,* they are reliable. In addition, there is no evidence of circumstances that would render the petition margin inappropriate as facts available. Therefore, we consider the petition rates corroborated. Moreover, we have compared the petition rates with the range of transaction margins calculated for the final results of this review. Id. We found that the petition rates fall within the range of individual transaction margins calculated for cooperative respondents. While it is not necessary to find that the petition rates fall within the range of margins calculated in this review, this evidence further confirms the reliability of these rates in this case. Thus, we have considered information reasonably at our disposal and no record evidence exists indicating that the highest petition rate, as adjusted by the Department, is aberrational, uncorroborated, or unduly punitive.

De Cecco

Comment 6: Major Inputs

De Cecco argues that, for the final results, the Department should not use transfer prices to value transactions between De Cecco and its affiliated semolina supplier, Molino F.lli De Cecco di Filippo S.p.A. (''Molino''). Instead, De Cecco suggests that, for purposes of computing cost of production and constructed value, the Department should value transfers of semolina, the major input of pasta, from Molino to De Cecco at Molino's cost.

De Cecco argues that the corporate entity Molino, 97.9 percent of which is owned by De Cecco and the remainder by shareholders of De Cecco's parent company, is in essence a wholly owned subsidiary of De Cecco. De Cecco contends that sections 773(f)(2) (''transactions disregarded'') and 773(f)(3) (''major-input rule'') of the Act do not apply in this instance because, although Molino is incorporated separately from De Cecco, Molino's semolina production and De Cecco's pasta-manufacturing operation are part of a single integrated production process under the same ownership. According to De Cecco, Molino's sole purpose is to process grain, selected by De Cecco, into semolina that is then transferred to De Cecco, which consumes all of Molino's semolina production. Therefore, De Cecco contends that the Department

[3] On December 16, 1998, the CIT affirmed the revised antidumping duty margin of 21.34 percent for De Cecco, stating that ''De Cecco's new margin of [21.34%] fulfills the statutory purposes to provide an incentive to cooperate with Commerce without utilizing punitive, aberrational, or uncorroborated margins.'' The Department has until February 16, 1999, to file an appeal with the Court of Appeals for the Federal Circuit.

should value transfers of semolina from Molino to De Cecco at Molino's cost in order to reflect the economic and operational reality of the relationship and transactions between these two companies. De Cecco points out that the application of the major-input rule could subject it to a dumping margin on the basis of an element of profit to the De Cecco Group which De Cecco has chosen to accord to Molino rather than to itself. The respondent argues that these matters are tax-driven and not issues of economics or production.

Noting that the Department ''collapsed'' De Cecco and Molino e Pastificio F.lli De Cecco S.p.A. (''Pescara''), another affiliated supplier of semolina and a pasta producer, De Cecco argues that Molino should be granted the same treatment since, as a provider of semolina to De Cecco, Molino is no different than Pescara. De Cecco claims that, because it conducts operations essential to De Cecco, Molino is in fact more integral to De Cecco than Pescara. De Cecco asserts that it would be inconsistent with the reasoning set forth in *Final Results of Antidumping Administrative Review: Certain Cold Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea,* 62 FR 18430 (April 15, 1997), to treat transfers of semolina from Molino to De Cecco differently from transfers of semolina from Pescara to De Cecco.

The petitioners maintain that sections 773(f)(2) and (3) of the Act permit the Department to value major inputs between affiliated companies at the higher of transfer price, market price, or the cost to the affiliated producer to value raw materials or services fairly used in the production of subject merchandise. Citing *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review,* 63 FR 13217, 13218 (March 18, 1998), the petitioners argue that for the final results the Department should continue to apply the transactions-disregarded and major-input rules in this case.

The petitioners point out that the Department's criteria for ''collapsing'' two or more affiliated producers are the following: (1) the producers must be affiliated; (2) the producers must have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there must be a significant potential for manipulation of price or production, citing *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 16974, 16975 (April 7, 1998). The petitioners also cite the *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411, 31421–27 (June 9, 1998), which, according to the petitioners, demonstrates the Department's application of sections 773(f)(2) and 773(f)(3) of the Act. The petitioners contend that, since Molino is a supplier of semolina and not a producer of subject merchandise, the affiliation between De Cecco and Molino does not satisfy the three criteria stated above, and, therefore, the transactions-disregarded and major-input provisions of the statute should continue to be applied.

DOC Position: The Department does not agree that semolina De Cecco purchased from its affiliated supplier, Molino, should be exempt from the application of the major-input rule. Thus, we have continued to rely on the higher of transfer price, market value, or the affiliate's cost of production in accordance with sections 773(f)(2) and (3) of the Act to value those transactions.

Sections 773(f)(2) and (3) of the Act prescribe how the Department is to treat affiliated-party transactions in the calculation of cost of production and constructed value. With respect to major inputs purchased from affiliated suppliers, the Department's practice is that such inputs will normally be valued at the higher of the affiliated party's transfer price, the market price of the inputs, or the actual costs incurred by the affiliated supplier in producing the input.

Since implementation of the URAA, the Department has applied this interpretation consistently (*see, e.g., Fresh Atlantic Salmon From Chile: Final Determination of Sales at Less Than Fair Value,* 63 FR 31426, 31427 (June 9, 1998) (Comment 22); *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review,* 63 FR 13217, 13218 (March 18, 1998) (Comment 1)), except in those situations where it treats respondents who are producers of the subject merchandise as a single entity for purposes of sales reporting and margin calculations (*see, e.g., Steel Flat Products from Korea* (Comment 19)).

Each company in question, De Cecco and Molino, is a separate legal entity in Italy. We disagree with the respondent that the operational reality of close association between the two companies outweighs the legal form of the entities. The Department has observed the legal status of the responding parties to the proceeding consistently when determining if the ''transactions-disregarded'' and ''major-input'' rule sections of the Act are applicable. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom,* 61 FR 54613, 54614 (October 21, 1996) (Comment 1) (''*Crankshafts*''). In *Crankshafts,* UES Steels and UEF were unincorporated divisions of the same corporation and, thus, we did not apply the ''transactions-disregarded'' and ''major-input rule'' sections of the Act.

We disagree with De Cecco that Molino should be granted the same treatment as Pescara, a producer of the subject merchandise, because Molino's operational relationship to De Cecco renders it more integral to the respondent than Pescara. We collapsed the sales and production activities of Pescara and DeCecco in accordance with 19 CFR 351.401(f), not because of the integral nature of what each entity does for the other. Section 351.401(f) of the regulations provides for special treatment of affiliated producers where the potential for manipulation of prices or production in an effort to evade antidumping duties imposed on the sale of subject merchandise exists. In accordance with this section of the regulations, we collapse all sales prices and production costs of the affiliated entities as if they were a single company. Since we do not apply the major-input rule for transactions within the same company, the major-input rule does not apply for transactions between Pescara and DeCecco. Inasmuch as Molino is not a producer of the subject merchandise, is solely a producer of semolina, and, unlike Pescara, has not been collapsed with De Cecco for purposes of sales reporting and margin calculation, we have continued to treat De Cecco and Molino as separate entities for the purposes of reporting costs. We have continued to treat De Cecco and Pescara, which is both a producer of the subject merchandise and a semolina supplier, as a single entity for sales reporting and the calculation of an antidumping margin for the final results. Thus, consistent with the exception to the major-input rule established in the *Steel Flat Products from Korea* case, we have collapsed De Cecco and Pescara for cost calculation purposes. In effect, the Department, for purposes of these final results, has treated De Cecco and Pescara as one entity and, thus, the major-input rule is not applicable.

Therefore, we have used the actual COP to value semolina obtained by De Cecco from Pescara.

Indalco

Comment 7: Treatment of Artiginal Pasta

The petitioners argue that the Department should disregard the added pasta-shape codes and the corresponding product control numbers (CONNUMs) for artiginal pasta which was produced by Indalco's affiliate. They maintain that these added shape codes and CONNUMs are improper because they were derived from differences in plant facilities, a non-physical characteristic, rather than for differences in shapes, as claimed by Indalco. According to the petitioners, Indalco has not demonstrated in its response any *bona fide* differences in shape or quality between artiginal pasta and other Indalco pasta produced in its own facility (hereafter referred to as industrial pasta). They also contend that Indalco failed to tie the cost difference associated with artiginal pasta to differences in shapes of pasta. Therefore, they urge the Department to consolidate Indalco's reported CONNUMs and revise Indalco's reported COP and CV database to calculate a single, weighted-average COP and CV for each product, as defined by the Department's questionnaire.

The petitioners argue further that Indalco's use of line speeds to differentiate artiginal pasta from industrial pasta is unwarranted because the slower line speeds associated with artiginal production could be attributable to the age or inefficiency at the artiginal pasta plant, which is unrelated to pasta shape. By contrast, the petitioners note that the Department's use of line speeds in the original investigation to distinguish pasta shapes produced on the same production line was warranted because some pasta cuts require slower line speeds than other cuts. They argue that the issue of line speeds in the original investigation and the line speed for artiginal pasta in this review differs in that the shape of pasta dictated the line speed during the investigation, but it is the production facility, rather than pasta shape, that dictates the line speed for artiginal pasta.

Indalco maintains that artiginal pasta has distinctive physical characteristics—such as rougher texture, unique hand-made appearance and shape—which require it to be identified separately and matched with other artiginal pasta and not with Indalco's industrial pasta. Indalco notes that artiginal pasta's different characteristics are obtained by using coarser semolina, bronze dies, smaller machines, and lower temperature and slower speeds during the extrusion and drying processes. Indalco argues that these distinctive physical characteristics are commercially significant and relevant to consumers and that they enable Indalco to command a selling price three to five times higher for artiginal pasta than for industrial pasta.

With respect to the petitioners' argument regarding line speeds, Indalco maintains that its affiliate's artiginal facility was newly established in 1997 and, therefore, the differences in processing artiginal and industrial pasta are not accidental differences in efficiency or age of machinery but are specifically designed to produce the unique artiginal characteristics. According to Indalco, artiginal pasta cannot be produced on its industrial-pasta machinery using the high-speed, high-temperature industrial process; rather, it must be produced using slower, lower pressure and lower temperature during the extrusion and drying processes in order to preserve artiginal pasta's unique physical characteristics.

Indalco argues further that, in the original investigation, the Department established seven pasta-shape categories to differentiate the hundreds of pasta shapes that the pasta industry produces. Indalco claims that, except in the most broad terms (long, short, nested, etc.), the Department did not use the exact physical shape to classify its shape categories. Rather, Indalco states, the Department used line speed and the resulting impact on production cost and final price as a distinguishing characteristic for classifying shape categories. Indalco claims that, since the differences in line speed, production cost and end price between industrial and artiginal shapes are far greater than the differences the Department has already recognized among the various industrial shape categories it identified, creation of the two new artiginal shape categories is consistent and appropriate. Indalco notes further that the Department's questionnaire contains instructions for companies to follow in modifying shape classifications based on documented differences in line speed.

DOC Position: We agree with Indalco that information on the record in this case, including a video showing the production process, supports Indalco's position that artiginal pasta merits separate treatment. We also agree that it is the nature of the artiginal production process, rather than the age and inefficiency of the artiginal production plant, that leads to the slower line speeds for the production of artiginal pasta cuts. As Indalco stated in its response, its standard high-speed industrial pasta production lines can produce hundreds of pieces of pasta simultaneously through Teflon-coated dies while its artiginal machine produces only one or just a few pieces at a time.

We agree with the petitioners that we used a 75 percent line-speed benchmark in the investigation to distinguish pasta shape for speciality long and short pasta cuts from regular long and short pasta cuts produced on the same long or short production line. Typically, pasta producers dedicate specific production lines to either long or short pasta cuts and the purpose of the benchmark was to assign a ''speciality'' shape category to pasta cuts on a dedicated long or short production line that were produced at less than 75 percent of the rated line capacity. Thus, the use of line speed to distinguish speciality shapes within long and short pasta cuts was not due to any special physical differences in pasta cuts within the long or short shape category (other than being long or short) but rather was attributable solely to the higher production costs associated with slower line speeds. For example, fettuccine, linguine, vermicelli, and spaghetti are classified in the shape category for ''long cuts'' and capellini and bucatini are classified in the shape category for ''speciality long cuts.'' All are generally produced on the same long production line. While they share the same ''long'' shape characteristic, they differ physically from one another in other visible shape features (*e.g.*, width and thickness). Yet we segregated them ultimately into regular long or speciality long shape categories on the basis of line speed. We used this shape-classification methodology in both the original investigation and in this administrative review and it has been communicated to respondents both in instructions to the questionnaire, as well as in addressing respondent requests for assigning shape classifications to shapes not included in our questionnaire shape list (*see, e.g.*, letters to William Silverman of Rogers and Wells, dated October 27, 1995, and October 30, 1997).

While we agree with the petitioners that artiginal long and short pasta cuts are produced on different production lines and in a different factory than Indalco's industrial long and short pasta cuts, the difference in line speeds between artiginal and industrial pasta of the same general shape category (long or short) is dramatic and must be addressed. The fact that a long or short artiginal pasta cut takes up to 20 times longer to produce than the comparable industrial long or short pasta cut is sufficiently significant to warrant the creation of a special shape category for artiginal pasta long or short cuts for the same reason that led the Department to create speciality long and short shapes for industrial pasta long or short cuts; in other words, the production cost for artiginal pasta is significantly influenced by the slower line speeds required to produce the same long or short industrial pasta cut. We also note that artiginal long and short pasta cuts have different physical characteristics than the same cuts produced on Indalco's industrial pasta line. Rigatoni, for example, is classified as a regular short cut but artiginal rigatoni differs significantly in texture, shape, thickness and length from the industrial rigatoni. Accordingly, we agree with Indalco that the artiginal pasta constitutes a separate shape category and for these final results have continued to assign separate product-control numbers to artiginal pasta. For the same reason, we disagree with the petitioners that we should revise Indalco's reported COP and CV database to calculate a single, weighted-average COP and CV for industrial and artiginal pasta of the same shape category. Therefore, we have continued to assign COP and CV to the artiginal product-control numbers based on the cost associated with manufacturing artiginal pasta.

Comment 8: Level-of-trade Comparison

The petitioners state that, according to the Department's preliminary level-of-trade analysis, Indalco's home market consists of two groups of customers which constitute two levels of trade: group 1 (LOT 1) (including wholesalers, supermarket chains and retailers), and group 2 (LOT 2) (including food service entities). They claim that Indalco's U.S. sales should be compared to its home market sales to LOT 2 customers on the grounds that the selling activities associated with Indalco's U.S. sales were more similar to those associated with home market LOT 2 customers.

Indalco argues that its U.S. sales to distributors should not be matched to its home market sales to end-users (LOT 2). Rather, the respondent contends, they should be matched to its home market sales to wholesalers and supermarket chain distributors (LOT 1) on the following grounds: (1) Both U.S. sales and home market LOT 1 sales were high-volume, produced-to-order, direct sales, while home market LOT 2 sales were small-lot, warehouse sales from inventory; and (2) home market LOT 1 customers are at a very early level of trade while the end-users further down the chain of distribution are at the most advanced level-of-trade.

Indalco argues further that the Department's level-of-trade quantitative analysis erred in characterizing the warehousing function as ''low'' for home market LOT 2 sales. According to Indalco, a significant portion of home market LOT 2 sales were made from Indalco's own on-site warehouse, the cost of which was included in the production cost and, therefore, was excluded from the Department's level-of-trade quantitative analysis.

DOC Position: We agree with Indalco in part. We agree that U.S. sales should not be compared only to Indalco's home market LOT 2 sales, but we disagree with Indalco that its U.S. sales should be compared only to its home market LOT 1 sales. In this review, all of Indalco's U.S. sales were EP sales made at a single level of trade. We found that there were significant differences between the selling activities associated with the U.S. sales and those associated with each of the home market levels of trade. Consequently, we matched the U.S. sales to home market sales without regard to level of trade and made no level-of-trade adjustment. As noted in the ''Level-of-trade Findings'' memorandum from John Brinkmann to Susan Kuhbach dated July 31, 1998, because we determined that U.S. and home market sales were not made at the same level of trade, our intention in the preliminary results was to match Indalco's U.S. sales without regard to level of trade. However, in our preliminary computer program, we inadvertently matched U.S. sales only to home market sales at LOT 1. We have corrected the programming error in our final results.

Comment 9: Treatment of Indalco's Certain Home Market On-Invoice Discounts

This comment contains proprietary information which cannot be summarized here (*see* proprietary memorandum from Cindy Robinson to John Brinkmann, *Recalculation of Certain Home Market Discount for Industria Alimentare Colavita, S.p.A in the Final Results of the First Administrative Review of Certain Pasta from Italy,* December 7, 1998).

La Molisana

Comment 10: Level of Trade

La Molisana submitted comments proposing the following level-of-trade methodologies: (1) the Department should use brand distinctions in determining a level of trade (*see* Comment 10A below); (2) if the Department does not use brand distinctions, it should determine that the sole level of trade in the United States is similar to the least advanced level in the home market (*see* Comment 10B below); or (3) the Department should use price-averaging groups in making price-to-price comparisons (*see* Comment 10C below).

Comment 10A: Use of Brand Distinctions in Determining Level of Trade

In the U.S. and home markets, La Molisana sells both its own La Molisana brand pasta and private-label brands. La Molisana argues that, when customers contract with La Molisana to produce what is really the customer's product (*i.e.,* a private label), those customers occupy a different point in the chain of distribution. In effect, the respondent contends, such customers are ''co-manufacturers'' as compared to those customers which purchase pasta under the La Molisana brand. In this case, according to the respondent, the sole U.S. customer occupies two different places in the chain of distribution depending on the brand of pasta that it purchases.

Further, La Molisana states that different selling activities are performed for the two different brands. For example, it asserts it performs a high degree of advertising and promotional activities in connection with its own brand and none for private label brands. Also, La Molisana maintains an inventory of its own brand both at the factory and at regional warehouses, whereas all private-label sales are made to order. In terms of sales support, La Molisana uses both commissioned sales agents and internal sales people to sell the La Molisana brand, whereas all private-label sales are handled through its plant.

The petitioners point out that the Department already determined in a July 31, 1998, memorandum to the file, *''La Molisana's Proposed Level-of-trade Categories,''* that La Molisana's brand distinctions do not satisfy the criteria for establishing that La Molisana and private-label sales were made in different stages of the marketing process. Finally, according to La Molisana, the U.S. distributor orders both brands and occupies only one place in the chain of distribution.

DOC Position: We agree with the petitioners. As we stated in our memorandum to the file, differences in selling functions alone do not establish a level of trade. *See* Memorandum from John Brinkman to the file, *La Molisana's Proposed Level-of-trade Categories* (July

31, 1998). La Molisana's original response did not classify buyers of the private-label merchandise as a distinct customer category with a distinct channel of distribution. La Molisana's single U.S. customer for both La Molisana and private-label merchandise is defined by La Molisana in its response as a distributor, a classification that does not change depending on the brand purchased. Furthermore, in the case of this customer, the difference in selling functions between the two brands of merchandise rests primarily on advertising, which is not sufficient to establish differences in levels of trade in this case. Several home market customer categories, as defined by La Molisana, buy both La Molisana and private-label brands, and there is no evidence on the record to suggest that the channels of distribution within these customer categories vary greatly depending on the brand purchased or that a particular customer cannot receive both brands through the same channel. Therefore, we did not use brand distinctions to determine level of trade in these final results.

Comment 10B: Whether the U. S. Level of Trade is Comparable to the Least-Advanced Level in the Home Market

La Molisana argues that miscategorization of the level of certain selling functions caused the Department to conclude that the U.S. level of trade was not similar to either of the two home market levels of trade. First, La Molisana contends that distributors should be in the same level of trade as wholesalers, buying consortia and supermarket chains (HM1). Like these customers, the respondent asserts, distributors act as middlemen who do not sell directly to end customers, unlike the supermarkets, restaurants and retailers with whom distributors were grouped for the preliminary results.

Second, La Molisana claims that the Department did not look at the same sales and marketing selling functions in the two markets, looking at four factors (discounts, two types of rebates and commissions) in the home market, none of which were considered in the analysis of the U.S. level of trade. La Molisana comments that, in the quantitative frequency analysis of home market sales and marketing selling functions in the home market, the Department looked at the number of observations with positive values for each of the four factors considered and then used those values to determine an overall average frequency for the sales and marketing support category. La Molisana contends that the Department, by not taking into account those factors which had no observations with positive values, calculated an erroneous average. Further, in the *Preliminary Results* La Molisana observes, the Department gave equal weight to commissions and the three different categories of discounts and rebates when calculating the average. According to La Molisana, this resulted in understating the importance of the use of a sales agent as a selling function. La Molisana argues that the Department should consider discounts and rebates as a single factor and commissions as another factor within the sales and marketing support category; then it should give equal weight to both when averaging them. If commissions were given their proper weight, La Molisana contends, distributors would be found highly comparable to supermarket chains in relation to the level of sales-processing activity.

Third, La Molisana argues that customers in HM1, all of which purchase both La Molisana and private-label brands, benefit from a lesser degree of advertising and promotional activities because those activities are only performed for the La Molisana brand. La Molisana claims that the composition of sales to distributors with respect to the two brands is comparable to that of the other groups in the HM1 category.

Finally, La Molisana contends that the Department misclassified the level of activity for certain selling functions in the United States. Freight and delivery arrangements made for U.S. sales are, according to La Molisana, made in the same manner as those for the home market and should be classified accordingly. If the Department corrects these alleged miscategorizations, La Molisana believes it will conclude that the single level of trade in the U.S. market is comparable to the HM1 level of trade in the home market. La Molisana points out that in the underlying investigation the Department determined that sales were made at the same level of trade in both markets, and it contends that circumstances have not changed significantly.

The petitioners agree with the Department's level-of-trade analysis in the preliminary results. The petitioners point out that including the zero-frequency percentages in the quantitative portion of the ''sales and administration and marketing support'' category analysis would not have a large enough effect on the result to change the conclusion about the level of sales and marketing support provided by distributors. They point out further that, if the Department were to use the same factors to evaluate the U.S. sales and marketing support that were used in the home market (*i.e.* discounts, rebates, and commissions), the result would not change. With regard to La Molisana's contention that the circumstances have not changed since the investigation, the petitioners point out that the Department has refined its level-of-trade analysis since the original investigation and now conducts a more detailed examination.

DOC Position: We agree with La Molisana, in part. For the final results, where possible, we have compared La Molisana's U.S. sales to the HM1 level of trade in the home market and have included distributors in the HM1 level of trade.

With regard to the classification of La Molisana's selling functions, we recognize that the use of a sales agent is an important consideration in the sales administration and marketing support category. Therefore, in these final results we have given more weight to the fact that agents are not used for sales to distributors. Further, we have reviewed our analysis of the off-price-list discounts received by distributors and have found them comparable to those received by the other customers in HM1 (*see La Molisana Analysis Memo*). In terms of the quantitative frequency analysis we performed for the preliminary results, in which we determined the number of observations with positive values for each selling-function variable, we emphasize that this quantitative analysis was intended only as a guide for use in the final analysis. The existence of any zero frequencies, together with all other relevant factors as outlined in the narrative portion of the response, was taken into account in the qualitative portion of our level-of-trade analysis. Therefore, it is unnecessary to revise the quantitative portion of the analysis. We acknowledge that we did not look at the same functions in both the U.S. and home markets because the same fields in the computer database did not exist for both. With regard to the level of advertising and promotions support incurred by distributers, the data show La Molisana's statement that the composition of sales with respect to the two brands being similar between distributors and the other customers in the HM1 category is erroneous. We have not re-categorized the level of advertising support to distributors in our final level-of-trade analysis.

In considering the U.S. freight arrangements, we agree with La Molisana that these arrangements do require a comparable level of activity as the freight arrangements made in the home market, and we have factored that into our final level-of-trade analysis.

Finally, to determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user. The chain of distribution between the two may have many or few links, with the respondent's sales occurring somewhere along this chain. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 6173 (November 19, 1997). In looking at the chain of distribution to see where the customer categories in the U.S. and home markets fall, it is clear that La Molisana's U.S. customer is at the same point in the chain of distribution as its customers in the home market level of trade HM1. All of the home market customers in HM1 are the first to take possession of the merchandise from La Molisana and none of them sells directly to end-users. While position in the chain of distribution alone does not determine level of trade, we feel that the selling functions of these customers are sufficiently similar to those of the U.S. customer to warrant considering them the same level of trade.

Even without changing the analysis with regard to advertising, our revised analysis with regard to sales administration and marketing support and chain of distribution warrants including distributors in the HM1 level of trade with wholesalers, supermarket chains and buying consortia.

Comment 10C: Use of Price-Averaging Groups in Making Price-to-Price Comparisons

La Molisana argues that, if the Department does not match to the HM1 level of trade, it should continue with its practice established in the investigation of comparing sales by using price-averaging groups based on customer category.

The petitioners argue that use of price-averaging groups based on customer category would effectively substitute customer categories as defined by the respondent itself for the detailed level-of-trade analysis carried out by the Department.

DOC Position: Because we have decided to match La Molisana's sales at the HM 1 level of trade, this argument is moot.

Comment 11: Calculation of the Difference-in-Merchandise Adjustment

La Molisana argues that the only "physical difference" between U.S. and Italian pasta that it produces is the vitamin enrichment in the U.S. pasta. Any other differences in cost do not result in a physical difference and should not be included in the calculation of the difference-in-merchandise (difmer adjustment). It claims a cost differential arises between different types of pasta within a given shape category because of different extrusion times involved in producing them.

The petitioners claim that La Molisana's cost differences were based on brand distinctions and the Department calculated a weighted-average cost using the two submitted costs correctly to determine one unique cost of manufacturing for each control number and used that cost in the calculation of the difmer appropriately.

DOC Position: Contrary to the Department's instructions in Section D, page D–1, of the antidumping questionnaire, which requested that the respondent report one weighted-average cost for each unique control number, La Molisana reported two costs for each control number based on brand distinctions. The difference in these costs was not related to extrusion times as claimed by La Molisana in its brief. *See* La Molisana's November 10, 1998, section D response, p. D–20 and exhibit D–9. Therefore, we have continued to use the weighted-average figure based on the two costs presented by La Molisana as the basis for the difmer.

Comment 12: Comparing Green Nested Pasta to Constructed Value

La Molisana claims that its green nested pasta is sufficiently different from any other pasta type that it should be compared to constructed value (CV). In the preliminary results, the Department matched across shape, additives and enrichment resulting in a comparison of vitamin-enriched green nested pasta to unenriched, plain nested or, in some cases, specialty long cut pasta. Although the calculated difmer falls just within the 20 percent range the Department uses normally, La Molisana contends that in this case it results in an unreasonable comparison of dissimilar merchandise.

The petitioners point out that the home market sales that the Department used to compare La Molisana's U.S. sales of green nested pasta do not exceed the 20 percent difmer test. They contend that the Department's application of the decision in *Cemex, S.A.* v. *the United States* ("*Cemex*") dictates that the Department use similar merchandise rather than CV to calculate margins when there are no comparison sales of identical merchandise.

DOC Position: We agree with the petitioners. Although the 20 percent difmer test is not mandated by the statute, the Department has used it continuously for a long period of time and in 1992 established a clear policy on its use. *See Policy Bulletin 92.2 Difference in Merchandise; 20% rule* (July 29, 1992). While the bulletin states that we are not inflexibly bound to this guideline, we find no basis for making an exception to this policy in this case. Moreover, La Molisana's green nested pasta, which goes through the same production process as the other pasta types and has largely the same ingredients, is not sufficiently dissimilar from other pasta types to make these comparisons unreasonable.

Puglisi

Comment 13: Offset to G&A for Government Grants and Restitution of Lease Payments

Puglisi maintains that during Fiscal Year (FY) 1996 the company received (1) grants for equipment purchases and (2) loan-restitution payments for leased production equipment. Puglisi argues that the Department should uphold its long-standing and consistent practice and treat the grants for equipment purchases and the loan-restitution payments as offsets to G&A expenses as it did in previous cases, including the *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326 (July 14, 1996) (*Pasta from Italy*), and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22550, 22556 (May 8, 1995) (*Furfuryl Alcohol from South Africa*).

The petitioners contend that the Department should exclude non-production-related offsets from the calculation of G&A as was done in the preliminary analysis. The petitioners argue that, because the machinery-investment subsidy is available to all Italian companies, it is general in nature. Therefore, they argue that the Department should continue to exclude this subsidy as an offset to G&A for the final results.

DOC Position: We agree with Puglisi that the grants for equipment purchases and loan-restitution payments for leased production equipment should be treated as offsets to total G&A expenses. The grants relate specifically to the company's general operations. Consistent with our findings in *Pasta* *from Italy,* 61 FR 30326, 30355, and *Furfuryl Alcohol from South Africa,* 60 FR 22550, 22556, we have included the grants received for equipment purchases and loan-restitution payments for leased production equipment by the Italian government as offsets to total G&A expense for the final margin calculation.

Comment 14: Gain on Sale of Puglisi's U.K. Property

Puglisi contends that the gain on the sale of the company's U.K. property should be treated as an offset to G&A expense because the property was used not only as a residence but also as an administrative office and was therefore related to the general operations and administration of the company. Puglisi argues that the Department referred to the sale of the U.K. property incorrectly as a gain on a sale of investments in its *Preliminary Results.* According to Puglisi, the company sold an apartment in London in FY 1996, which had been used as the residence and administrative office of the managing director of an affiliated company, Puglisi Pasta (U.K.) Ltd. According to Puglisi, the use of the property was treated as compensation to the director of the affiliated company and benefitted the management operations as a whole and therefore was not a passive investment. Puglisi contends that the Department has treated the sales of fixed assets such as the London property consistently as a G&A item in various cases including *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea,* 57 FR 53693, 53704 (Nov. 12, 1992) (*Pipe from Korea*), and *Final Results of Antidumping Administrative Review: Fresh Kiwifruit from New Zealand,* 59 FR 48596, 48608 (September 22, 1994) (Kiwifruit 1994). Puglisi argues that compensation to a shareholder/director, in kind or otherwise (*e.g.,* the provision of a residence/office), has been held by the Department to be included properly in the calculation of COP. Thus, according to Puglisi, any gain or loss on the sale of this compensating item should also be included in G&A.

The petitioners contend that, for the final results, the Department should disallow the gain on the sale of real estate located in the United Kingdom as an offset to G&A expense. The petitioners argue that, according to the case record, the U.K. property had been used as a residence of the managing director and there is no evidence that this property related to the production of subject merchandise. Further, the petitioners contend that the gain on the sale of the U.K. real estate was not related to the general operations of the company and the disposition of the property does not reasonably reflect costs associated with the production and sale of the merchandise under review; therefore, they conclude, it should be excluded from G&A for the final results.

DOC Position: In its case brief, Puglisi indicated for the first time that this property is part of the compensation package paid to one of the shareholders who is the director of its affiliated company located in the United Kingdom. Pulgisi did not provide any support or documentation for this assertion. Even if we treated the gain on sale of the residential real estate as a G&A-type item and record support existed, the use of the dwelling was part of the total compensation package to the director of the affiliated company located in the United Kingdom, not Puglisi. Thus, we disagree that the gain should be included in Puglisi's G&A rate computation because the gain relates to an asset that directly benefits the operations of the U.K. company (the entity for which the compensated director works), not Puglisi. Accordingly, we have disallowed this gain as an offset to Puglisi's G&A expenses for the final results.

Comment 15: Inclusion of Purchased Products in the G&A Allocation Denominator

Puglisi argues that the cost of the merchandise purchased for resale should be included in the denominator in calculating the G&A ratio because G&A expenses are the costs incurred by a company that relate to the administrative activities of the company as a whole and are not specific to one production line, one production facility or to self-produced merchandise. Puglisi contends that the exclusion of these cost-of-sales totals from the denominator used in the calculation of the G&A ratio would not only distort the G&A calculation but contradict clear and consistent Department policy. Puglisi argues that the Department has held that G&A expenses, like selling expenses, are to be treated as period-specific costs, relating to the general operations of the company during a particular period and not to production activities during the period. Puglisi also adds that the most recent version of the Department's antidumping manual confirms that ''G&A is calculated by dividing the fiscal year G&A expense by the fiscal year cost of goods sold (adjusted for categories of expense not included in the cost of manufacture (COM), such as packing) and then applying the percentage to the COM of the product,'' citing the AD manual, Chapter 8, XIII(c)(1)(d), pages 58–59. Therefore, Puglisi argues that G&A expenses should be allocated over the total cost of goods sold, not over the total cost of goods produced or over the total sales of goods produced.

The petitioners contend that the Department should exclude the cost of merchandise purchased for resale from the cost-of-goods-sold denominator used to calculate the G&A expense ratio in its final margin calculation. The petitioners argue that it would be inappropriate to allocate G&A expenses to merchandise that is purchased for resale because minimal, if any, G&A expenses would be incurred for this merchandise. In fact, according to the petitioners, any expenses Puglisi would incur related to the pasta purchased for resale may more appropriately be considered selling expenses.

DOC Position: We agree with Puglisi that the denominator we used to compute the company's G&A expense rate should be the total cost of sales as reported on the company's audited financial statements, including that related to the pasta purchased for resale. As was explained in the CIT decision in *U.S. Steel Group, et al.* v. *United States, et al.,* 998 F.Supp. 1151 (CIT 1998), G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process. As part of its normal operations, Puglisi is sometimes required to purchase pasta for resale to satisfy customer needs. Therefore, we consider the pasta purchased for resale to be related to the general operations of Puglisi as a whole and, for the final results, we recomputed Puglisi's G&A expense rate inclusive of the cost of sales related to the pasta purchased for resale.

Comment 16: Valuation of Inputs from Affiliated Parties

Puglisi argues that the Department should use the actual cost of the services provided by its affiliate and not the transfer price because the value of those services is not a significant percentage of COM. Further, since Puglisi collapsed the two companies for purposes of reporting cost of manufacturing, the major-input rule as provided under section 773(f)(2) of the Act does not apply. Puglisi concludes that, in the absence of the major-input rule, it is the Department's preference to use the actual cost of inputs as reflected in the affiliated party's accounting records and financial statements. Puglisi cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea,* 63 FR

40404, 40421 (July 29, 1998) (*Korean Rod*), to support its contention that intra-company transactions between affiliated parties should be valued at cost.

The petitioners argue that Puglisi should report the higher of transfer price or actual cost of services provided by its affiliated supplier, in accordance with the major-input rule.

DOC Position: We agree with Puglisi that, because the affiliated-party input in question is not a major input, the major-input rule does not apply. We disagree, however, that we should not use the transfer price between Puglisi and its affiliate. Section 773(f)(2) of the Act directs the Department to disregard transactions between two affiliated persons if such transactions did not occur at arm's-length prices. In this instance, we have determined that the transfer price between the two companies occurred at an arm's-length price. Because there were no comparable transactions between two non-affiliated parties to compare to the transfer price between Puglisi and its affiliate, we compared the transfer price to the affiliate's COP, noting that the transfer price exceeded the COP. Thus, there is no reason not to use the transfer price between Puglisi and its affiliate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434, 40440 (July 29, 1998).

We disagree with Puglisi that the facts in this case related to collapsing the costs of Puglisi and its affiliated supplier are the same as those in the *Korean Rod* case. In *Korean Rod,* we collapsed the affiliated parties under 19 CFR 351.401(f) which concerns special treatment of affiliated producers where there the potential for manipulation of prices or production in an effort to evade antidumping duties exists. In this case, Puglisi decided on its own to ''collapse'' itself and its affiliate for the purpose of reporting cost. However, the Department does not collapse affiliated companies for margin-calculation purposes unless both companies produce or sell the subject merchandise since the Department collapses affiliated companies only where the potential for price manipulation exists. In this case, the affiliated company does not produce or sell the subject merchandise; rather it provides certain services to Puglisi. Puglisi's unilateral decision to collapse the two companies and to use its affiliate's COP rather than the transfer price for transactions occurring between the two parties during the POR was not in accordance with Department practice. Therefore, we used transfer prices rather than COP for the purposes of the final results.

Comment 17: Allocation of Electricity Expenses

Puglisi argues that it allocated production-line electricity costs accurately and reasonably on the basis of total relative production throughput times. According to Puglisi, this method accounts for differences in electricity consumption or operating efficiencies between production machines reasonably, as well as accounting for differences in electricity usage due to drying times of the different pasta shape types. Puglisi disagrees with the Department's contention in the memorandum from Laurens van Houten to Christian B. Marsh, *Verification of the Cost of Production and Constructed Value Data,* at p.3, August 21, 1998 (*Verification Report*) that, because one particular shape of pasta is produced predominately on a machine that uses much less electricity than the other production lines, the reported electricity cost was misallocated to that pasta shape. Puglisi argues that, because it used relative production times, the electricity costs were allocated to all pasta shapes properly.

The petitioners argue that Puglisi did not use the most reasonable and verifiable method of electricity allocation available to it. Because one shape code was produced predominantly on a machine that uses significantly less electricity than the other machines, the petitioners contend that the shape code produced on that machine should be allocated less electricity consumption per standard machine time than the other shapes. The petitioners maintain that the smaller machine which produces the shape code in question is not more efficient but uses less electricity because it is ''significantly smaller.'' The petitioners argue that, because the shape code in question was produced predominately on this older, smaller machine and company officials indicated that this production line uses significantly less electricity, electricity costs were over-allocated to that shape code.

DOC Position: We agree with Puglisi that it is reasonable to allocate production-line electricity costs on the basis of total relative production throughput times only if all the pasta production machines consume the same amount of electricity per standard throughput time. At verification, company officials indicated that one of Puglisi's machines consumes significantly less electricity than the other machines (*see Verification Report* at page 18). Since the shape code in question was produced predominantly on the one machine which consumed significantly less electricity per standard throughput time, the electricity cost assigned to this shape is unreasonably high.

Evidence on the record shows that virtually all shapes produced by Puglisi, with the exception of the shape code in question, can only be made on the larger machines (*see Verification Report,* exhibit 20). Because the reported costs for those few shapes (other than the shape code in question) that can be produced on either the smaller or larger machines were based on standard machine times of the larger machines, we conclude that these shapes were produced predominantly on the larger machines. It follows that, because the reported costs for the shape code in question were based on the standard machine times for the small machine only, we conclude that the shape code in question was produced predominantly on the smaller machine. Therefore, for the final results we have adjusted Puglisi's reported product-specific electricity costs to take into account the lower electricity consumption of the older machine in question.

Comment 18: Allocation of Depreciation Expenses

Puglisi argues that it reported its depreciation expenses in a reasonable manner consistent with principles of Italian Generally Accepted Accounting Principles (''GAAP''), Italian tax law, and pursuant to its normal accounting practices. According to Puglisi, these depreciation expenses include a multitude of capital expenditures for repair, maintenance, modernization and calibration of machines of various ages which Puglisi cannot isolate by production line. However, it believes that the allocation of total depreciation expenses by relative production throughput times accounts for any such repair or improvement expense made after the initial purchase as well as any ''reasonable use allowance'' remaining on the older machines. Puglisi maintains that it is not required under Italian GAAP or Italian tax law to charge depreciation costs or expenses on a machine-specific basis. Puglisi therefore does not do so in its normal accounting records because there are too many additions to the depreciation expense account which would require an extraordinary manual accounting effort to isolate the costs per production line. Puglisi argues that the older production line requires more maintenance, repair and modernization expenditures than the newer lines and, thus, carries a higher proportion of the depreciable expenses for renovation maintenance from prior years than the newer machines. Puglisi contends that, by treating the older machine in a similar manner as the newer machines, it not only took into account the many capital expenditures which were incurred over all lines, but also the reasonable use allowance of a machine that was purchased earlier than the other machines.

Puglisi argues that the Department should accept its method of allocating depreciation expenses because this method is used in the company's normal accounting records. Furthermore, citing section 773(f)(1)(A) of the Act, Puglisi asserts that the Department's long-standing practice is to rely on data from a respondent's normal books and records if they are prepared in accordance with the home country's GAAP and reasonably reflect the cost of producing the merchandise.

The petitioners argue that the Department should reallocate depreciation expenses for the final results based on its verification findings. They contend that, because Puglisi treated all production lines equally with respect to depreciation expense per standard machine time, despite the fact that one line is significantly older, depreciation expenses should be reallocated. The petitioners argue that, while Puglisi states that there is ''a multitude of machine-related expenses for repair, maintenance, calibration and modernization of the various product lines'' and that the Department reviewed sample invoices and documents for services and capital improvements made to the long and short lines in FY 1992, there is no indication of this in the Department's verification report.

DOC Position: We agree with Puglisi that the allocation of total depreciation expenses by relative production throughput time is reasonable as long as all production lines incur approximately the same amount of depreciation expense. However, in this situation, we have reason to believe this is not the case. At verification, we had concerns as to whether Puglisi's oldest production line, which is significantly older than the other lines, had any depreciable basis remaining. We requested company officials to provide records to support that the oldest production line still had a depreciable basis remaining during the POR. Company officials failed to provide any such support (*see Verification Report* at page 19).

In its case brief, Puglisi for the first time makes the claim that its oldest production line incurred significantly more maintenance, repair, and modernization costs than the other lines, and, thus, its depreciable basis is comparable to that of the other lines. First, we note that normally repairs and maintenance costs are expensed in the year incurred, not capitalized and depreciated. Second, at verification, Puglisi provided no evidence to support its claim that it incurred and capitalized amounts related to repairs, maintenance, and modernization for either its oldest or newer machines.

Finally, we disagree with Puglisi that we should accept its method of allocating depreciation expense because it is used in the company's normal accounting records. Puglisi does not allocate depreciation expense to specific products in the normal course of business. Rather, it developed its reporting methodology specifically for antidumping purposes. For the final results, we adjusted Puglisi's allocation methodology for depreciation by allocating depreciation expense only to those products produced on the newer production lines.

Comment 19: Adjusted Leasing Costs

The petitioners argue that Puglisi made an adjustment incorrectly to its recorded machinery leasing costs for a particular leased machine. Accordingly, the petitioners contend that the Department should adjust for this error for the final results.

Puglisi argues that the petitioners' assertion that it had adjusted certain recorded machinery leasing cost incorrectly, for amounts posted to the accounts after June 30, 1997, is an inherently factual issue that must be decided based on the facts on the record. Puglisi contends that this issue is entirely distinct from the other issue concerning machinery-leasing restitution payments which are discussed separately in its briefs.

DOC Position: We agree with the petitioners that Puglisi made an adjustment to its recorded machinery leasing costs incorrectly. The purpose of the adjustment was to take into account the fact that it did not receive a particular leased machine until after the POR. Puglisi believed that in its normal books and records it had recorded the first lease payment related to this machinery during the first six months of 1997 (which falls within the POR). A review of the leasing account, however, shows that the lease payment for which Puglisi adjusted the account was not posted until after June 30, 1997. Thus, Puglisi reduced its recorded costs by an amount that was not included initially. For the final results, we increased Puglisi's costs to account for this error.

Rummo

Comment 20: Bug-Infested and Defective Pasta

Rummo argues that the Department should reverse the position it took in the preliminary results and exclude U.S. sales of defective or bug-infested pasta to food banks from the margin calculation or, in the alternative, craft a methodology to account for the unrepresentativeness and distortive nature of the food-bank sales. Rummo identifies five options for resolving this issue: (1) It contends that the Department has considerable discretion to exclude U.S. sales from the margin calculation when the sales are found to be distortive or unrepresentative. Otherwise, according to Rummo, the Department is required to employ a methodology which compensates for the distortion. (2) It claims that the merchandise sold to food banks constitutes a by-product of pasta and as such should be excluded from the margin calculation with revenue earned from the food bank sales applied to costs as an offset. (3) It contends that the Department has the authority to weight-average U.S. sales to account for the unrepresentativeness of distress sales of scope merchandise in the United States. The company asserts that, if the Department chooses not to exclude the sales in question altogether, this is a situation in which the Department should use its discretion to weight-average U.S. prices. (4) It contends that, if the Department does not exclude the food-bank sales from the margin calculation, the Department should compare the food-bank sales to constructed value, since the food-bank sales are not ''like'' its home market sales of prime merchandise. Rummo continues that, since merchandise sold to food banks constitutes a by-product, the Department should adjust constructed value by deducting the sales revenue generated from the sales in question. (5) Rummo argues that, if the Department does not exclude all food-bank sales from the margin calculation, it must exclude one sale to a food bank for which no consideration was received.

The petitioners respond that Rummo has not placed sufficient evidence on the record to support its claim that the merchandise sold to food banks was, in fact, bug-infested or defective. Additionally, the petitioners argue that the record evidence does not demonstrate that the entire volume of sales coded as food-bank sales in the database was sold to food banks. The petitioners contend that the Department must affirm the preliminary results because Rummo has not placed additional information on the record that would alter the Department's preliminary decision on this issue.

The petitioners claim that Rummo's internal memoranda and bills of lading, placed on the record to explain the managerial decision to sell the merchandise to food banks and to demonstrate that the merchandise actually went to food banks, do not account for the entire volume of sales coded as food-bank sales in Rummo's database. Furthermore, the petitioners argue that the internal memoranda are contradictory in that they indicate that some of the pasta discussed in the memoranda may not have been actually sold to food banks as Rummo claims.

DOC Position: We agree with the petitioners that Rummo has not demonstrated that the pasta coded as food-bank sales was defective or bug-infested nor that it was actually sold to food banks. Therefore, the arguments put forth by Rummo to account for the unrepresentative and distortive nature of these low-price sales are moot. We have included all of these sales in the margin calculation without making any special adjustment or consideration for sales identified as food-bank sales.

To support its claim that the merchandise in question was defective or bug-infested and was sold to food banks, Rummo provided the Department with four internal memoranda in its November 3, 1998, section A response and eight bills of lading in a March 17, 1998, submission. While the memoranda discuss food banks as a possible outlet for defective pasta, but not bug-infested pasta, they refer to only a small quantity of merchandise and provide no definitive evidence that any defective pasta was sold to food banks. The memoranda also discuss a problem with bug infestation, but they never refer to food banks as an outlet for that merchandise and, instead, mention a different remedy for the problem. Moreover, the quantity of problem merchandise discussed in the memoranda is not linked directly to sales in the database or to the bills of lading Rummo provided to document the food-bank sales.

Likewise, the eight bills of lading, which document a quantity far below that claimed as food-bank sales by Rummo, provide no direct link between the pasta listed on the bills of lading and the observations coded as food-bank sales in the database. Moreover, there is no indication that the merchandise on the bills of lading was defective or bug-infested, and, since we cannot link the pasta from the bills of lading to that in the internal memoranda, we have no basis to conclude that this merchandise was defective or bug-infested. Additionally, two of the bills of lading list pasta products that are not coded as food-bank sales in the database, which brings into question whether Rummo reported the product type of the merchandise sold to food banks properly. Therefore, we have concluded that the bills of lading do not demonstrate sufficiently that the merchandise shipped to food banks was defective or bug-infested. Finally, we note that Rummo did not provide any information linking any of the food-bank sales in the database to its support documentation.

Therefore, we have concluded that, while the documentation seems to indicate that Rummo had a problem with some quantity of defective and bug-infested pasta and may have shipped a portion of it to food banks, the memoranda and bills of lading do not confirm the quantity nor do they offer sufficient proof that any of the pasta labeled as food-bank sales in the database was defective or insect-infested and subsequently sold to food banks during the POR.

Comment 21: Credit Expenses

Rummo requests that the Department correct the calculation error in its reported U.S. credit expenses that it identified in its September 4, 1998, submission. Rummo contends that it erred in calculating credit expenses for U.S. sales in its supplemental response on sales for which Rummo had not yet received payment. Rummo explains that, for sales with missing payment dates, it calculated a weighted-average credit expense on a customer-specific basis, when there were other sales to the same customer for which Rummo had received payment. In cases where there were no other sales to the same customer, Rummo states that it calculated an overall credit expense based on all U.S. sales. Rummo continues that an error occurred because it based the overall and customer specific weighted-average credit expenses on a combination of sales, without adjusting for differences in currencies, where credit was reported in lira/kg for EP sales and $/lb for CEP sales. According to Rummo, the flawed calculation inflated the credit expense for the sales in question and resulted in a higher margin for Rummo.

The petitioners respond that the Department should recalculate credit expense using the date of the final results as payment date. They contend that it is the Department's practice to use the date of the final results as the surrogate payment date when the respondent does not provide the payment date.

DOC Position: Our review of Rummo's methodology for calculating the credit expense for U.S. and home market sales with missing dates of payment shows that Rummo calculated the credit expense using inconsistent methodologies in each market. We have rejected Rummo's methodology for calculating U.S. credit expense for sales with a missing date of payment based on the average credit expense for a specific customer or for aggregate customers because the credit expense was calculated using average expense, rather than average credit days. Furthermore, this methodology differs from the home market where Rummo calculated credit expense for sales with a missing date of payment using November 3, 1997, the date that Rummo submitted its sections A, B, & C questionnaire responses to the Department, as the surrogate date of payment. In order to achieve consistency in our calculations, we have recalculated the credit expense for Rummo's U.S. sales with a missing date of payment using November 3, 1997, as the date of payment.

We do not agree with the petitioners' assertion that we should use the date of the final results as the payment date for U.S. sales without a known date of payment. Although the Department has used the date of the final results as a surrogate for date of payment in past proceedings, we find that such a methodology would constitute an adverse inference and is not warranted in this case.

Therefore, for these final results, we have revised our calculations from the preliminary results by calculating credit expense in both markets for sales with missing dates of payment by using November 3, 1997, as the date of payment.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period January 19, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Arrighi	71.49
Barilla	71.49
De Cecco	[1] 0.32
Indalco	2.00
La Molisana	12.26
Pagani	71.49
Puglisi	1.46

Manufacturer/exporter	Margin (percent)
Rummo	7.02

[1] De minimis.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is *de minimis* (*see* 19 CFR 351.106(c)(2)).

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 11.26 percent, the all-others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–3277 Filed 2–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Renewal of the U.S. Automotive Parts Advisory Committee

AGENCY: International Trade Administration, Commerce.

SUMMARY: The U.S. Department of Commerce has renewed the Automotive Parts Advisory Committee (APAC), which advises Department of Commerce officials on issues related to sales of U.S.-made automotive parts and accessories to Japanese and other Asian markets.

FOR FURTHER INFORMATION CONTACT: Robert Reck, U.S. Department of Commerce, International Trade Administration, Trade Development, Office of Automotive Affairs, (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Department of Commerce has determined that the work of the U.S. Automotive Parts Advisory Committee (APAC) continues to be in the public interest and has renewed the (APAC) in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and Federal Advisory Committee Management Rule, 41 CFR Subpart 101–6.1001 (1997).

The APAC was originally established by the Secretary of Commerce on June 6, 1989, pursuant to the Fair Trade in Auto Parts Act of 1988, Public Law 100–418, to advise Department of Commerce officials on issues related to sales of U.S.-made automotive parts and accessories to Japanese markets. The Committee was then reauthorized for five years on April 30, 1994 as part of Public Law 103–236. On October 17, 1998, the Committee was re-authorized by the Fair Trade in Automotive Parts Act of 1998, Public Law 105–261 for an additional five years to advise Department of Commerce officials on issues related to sales of U.S.-made automotive parts and accessories to Japanese and other Asian markets.

The Committee functions as an advisory body in accordance with the Federal Advisory Committee Act. Authority for the committee is found in the Fair Trade in Automotive Parts Act of 1998 sections 3803 and 3804 of Public Law 105–261.

Dated: February 1, 1999.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 99–3276 Filed 2–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 88–2A015.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review originally granted to the Ferrous Scrap Export Association (''FSEA'') on December 12, 1988. Notice of issuance of the original Certificate was published in the **Federal Register** on December 21, 1988 (53 FR 51294).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce with the concurrence of the Attorney General to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set