

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-475-818]

**Certain Pasta from Italy: Notice of Preliminary Results of Twelfth Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to requests by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Italy for the period of review ("POR") July 1, 2007, through June 30, 2008. This review covers four producers/exporters of subject merchandise. We preliminarily determine that during the POR, respondents sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* August 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett or Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4161 or (202) 482-5075, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy. See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996).

On July 11, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 73 FR 39948 (July 11, 2008). We received requests for review from petitioners<sup>1</sup>

and from individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(1) and (2). On August 26, 2008, the Department published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2007, through June 30, 2008, listing the following companies as respondents: Arrigi, S.p.A. ("Arrigi"), Domenico Paone fu Erasmo S.p.A., F. Divella SpA ("Divella"), Industria Alimentare Colavita, S.p.A., P.A.M. S.p.A. ("PAM"), Pasta Lensi, Pasta Zara SpA ("Zara"), Pastificio Di Martino Gaetano & F.lli S.r.L. ("Di Martino"), Pastificio Felicetti S.r.L. ("Felicetti"), Pastificio Fratelli Pagani S.p.A., Pastificio Labor S.r.L., Pastificio Lucio Garofalo ("Garofalo"), Pastificio Riscossa F.lli Mastromauro S.r.L., Rummo S.p.A. Molino e Pastificio, and Rustichella d'Abruzzo S.p.A. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008) ("Initiation Notice").

On August 26, 2008, due to the significant number of requests received and the Department's resource constraints at the time of initiation of the instant review, the Department informed known interested parties its intent to limit the number of companies examined in the current review, and requested comments. See memo to Melissa Skinner, through James Terpstra, from Christopher Hargett, "2007-2008 Antidumping Duty Administrative Review of Certain Pasta from Italy: Customs and Border Protection Data for Selection of Respondents for Individual Review," dated August 26, 2008.

On September 25, 2008, the Department selected the two exporters/producers accounting for the largest volume of exports—PAM and Garofalo, as mandatory respondents.<sup>2</sup>

As a result of timely withdrawals of request for review, we rescinded this review, in part, with respect to Zara, Felicetti, Divella, Di Martino, and Arrigi.<sup>3</sup>

Between September 2008 and May 2009, the Department issued its initial questionnaire and supplemental questionnaires to each respondent, as applicable. We received responses to the Department's initial and supplemental questionnaires on December 3, 2008, December 10, 2008, March 5, 2009, April 10, 2009, May 4, 2009, May 11, 2009, and May 29, 2009, from PAM.

<sup>2</sup> See Memorandum to James Terpstra, from the Team regarding Selection of Respondents for Individual Review, September 25, 2008.

<sup>3</sup> See *Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 23392 (May 19, 2009).

Garofalo provided responses to the Department's initial and supplemental questionnaires on November 10, 2008, November 24, 2008, December 10, 2009, April 15, 2009, May 14, 2009, and July 7, 2009.

On March 16, 2009, the Department fully extended the due date for the preliminary results of review from April 2, 2009, to July 31, 2009. See *Certain Pasta from Italy: Extension of Time Limits for the Preliminary Results of Twelfth Antidumping Duty Administrative Review*, 74 FR 11084 (March 16, 2009).

On May 8, 2009, the petitioners alleged that a particular market situation exists with respect to the Italian market for certain pasta that warrants the Department rejecting home market prices as the basis for NV and instead, relying on constructed value ("CV"). On May 20, 2009, the Department requested additional information from the petitioners regarding their allegation. On June 12, 2009, the petitioners provided the information requested. On June 22, 2009, the respondents submitted rebuttal comments.

**Scope of the Order**

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

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Istituto per la Certificazione Etica e Ambientale ("ICEA") are also excluded from this order. See Memorandum from Audrey Twyman to Susan Kuhnach, dated February 28, 2006, "Recognition of Istituto per la Certificazione Etica e Ambientale."

The merchandise subject to this order is currently classifiable under subheadings 1901.90.95 and 1902.19.20

<sup>1</sup> New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company.

of the *Harmonized Tariff Schedule of the United States* (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

#### Model Match Clarification

In the eleventh review of pasta from Italy the Department stated that it would solicit comments from interested parties with respect to the appropriate standards and criteria to be applied in differentiating among wheat codes, and make any necessary changes and/or clarifications to the model match criteria for pasta to apply to all future respondents. *See Certain Pasta from Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review*, 73 FR 75400 (December 11, 2008).

On January 9, 2009, we contacted interested parties and solicited comments on the following four factors: (1) Industry standards, (2) measuring material cost differences, (3) defining commercial significance, and (4) physical characteristics. Parties submitted comments on February 23, 2009, and rebuttal comments on March 10, 2009.<sup>4</sup>

Because of a lack of consistency in the Department’s treatment of separate wheat codes in model match decisions in previous determinations, we solicited comments in order to articulate a clearer statement of our policy. Our goal was to develop objective criteria that would apply in each review of this antidumping duty order. Petitioners and the two respondents in this review submitted factual information and comments. Based on our analysis of these comments, and our review of prior determinations, we propose to clarify and modify our treatment of the wheat code physical characteristic. *See* memorandum from James Terpstra, Program Manager, to John M. Andersen, Acting Deputy Assistant Secretary, entitled “Preliminary Model Match Clarification on Pasta Wheat Code Classifications,” dated July 31, 2009. We propose replacing the existing single Wheat Code field with the following three fields: Wheat species, form, and protein content.

We note that the threshold set forth in Protein Content corresponds to the minimum protein content of 12.5 percent established by the Italian Commodity Exchanges. We are

requesting that interested parties provide comments on the proposed model match changes included there in. We will evaluate comments on the proposed methodology. Any new model match criteria developed will be applicable in the 2008–2009 and subsequent administrative reviews of pasta from Italy.

#### Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (“the Act”), we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment, by quarter. When there were no sales of identical merchandise in the comparison market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

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

#### Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the export price (“EP”) or constructed export price (“CEP”) to the NV by quarter, as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. Because we are using a quarterly costing approach, we have not made price-to-price comparisons outside of a quarter to lessen the potential distortion to sales prices which result from significantly changing costs. *See* Memorandum Through James Terpstra from Christopher Hargett titled “Sales Analysis Memorandum—PAM S.p.A., Liguori Pastificio dal 1820 S.p.A. (“Liguori”), and Chirico Molini e Pastificio S.p.A. (“Chirico”) (collectively, “PAM”)” (“PAM Sales Analysis Memo”), and Memorandum

from Christopher Hargett to James Terpstra titled “Sales Analysis Memorandum—Pastificio Lucio Garofalo (“Garofalo”)” (“Garofalo Sales Analysis Memorandum”), both dated July 31, 2009, and available in the Central Records Unit (“CRU”) in Room 1117 of the Main Commerce Building.

#### Export Price/Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed cost-insurance-freight (“CIF”), ex-factory, free-on-board (“FOB”), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. inland freight expenses, warehousing, and U.S. duties. In addition, when appropriate, we increased EP or CEP as applicable, by an amount equal to the countervailing duty (“CVD”) rate attributed to export subsidies in the most recently completed CVD administrative review, in accordance with section 772(c)(1)(C) of the Act.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, banking, slotting fees, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by its affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with

<sup>4</sup> In addition, we sent a letter on June 4, 2009, soliciting additional information from PAM and Garafalo. PAM and Garafalo submitted responses on July 7, 2009.

sections 772(d)(3) and (f) of the Act. *See* PAM's Sales Analysis Memo; *see also* Garofalo's Sales Analysis Memo.

### Normal Value

#### A. Selection of Comparison Markets

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

On May 8, 2009, the petitioners alleged that a particular market situation existed in the Italian pasta market that prevents a proper comparison with the export price or constructed export price. Neither the antidumping statute nor the Statement of Administrative Action ("SAA") that accompanied the Uruguay Round Agreements Act specifically defines the term "particular market situation." The SAA, however, states that a particular market situation might exist where, for instance, a single sale in the home market constitutes five percent of sales to the United States, there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set, or the demand patterns in the home market are different from those in the United States. *See* SAA at 822. In their May 8, 2009 filing, the petitioners submitted a February 2009 press release of the Italian Competition Authority ("ICA") which contains a summary of its findings regarding an agreement among Italian pasta producers to increase

prices for non-egg dry pasta. The petitioners claimed that these findings demonstrate that the respondents' reported home market prices are *per se* unrepresentative and prevent a proper comparison with the respondents' U.S. sale prices. The petitioners requested, therefore, that the Department reject home market prices and rely on CV as the basis for NV. On June 12, 2009, the petitioners provided the Department a complete English translation of the ICA report and stated that a review of the complete report shows that the ICA was focused solely on anticompetitive conduct in the Italian market and did not cover export sales. The petitioners also noted that the ICA report is an Italian government finding. In this connection, the petitioners noted that the Italian government regularly participates in CVD reviews on pasta and the Department considers the evidence and information provided by the Italian government in its CVD findings. Finally, the petitioners noted that, in this review, they are only requesting that the Department resort to the statutorily-approved, alternative calculation for NV using CV because of the non-market nature of the home market prices.

On June 22, 2009, the respondents submitted rebuttal comments in which they noted that the ICA's decision is currently being appealed, that no fines have been paid to date, and thus, no final determination has been made by the ICA. Additionally, the respondents argued that the ICA did not find that home market prices were not market-based. Rather, the respondents asserted that the ICA specifically found that each producer set its prices in accordance with its own market position and cost structure. The respondents further argued that the Department properly is not interested in the various reasons dumping may occur, such as conditions of competition in the comparison market including the existence of a monopoly or oligopoly, or high import duty rates. Further, anticompetitive behavior in the home market is not covered by AD law. The respondents also asserted that the Department should not consider the ICA report because, unlike in a CVD review, the Italian government is not a party to this case, and the underlying data is not subject to review or verification.

In past cases, the Department has recognized a strong preference to use home market prices in its dumping calculations and, therefore, has established a high threshold for rejecting home market prices based

upon a particular market situation.<sup>5</sup> Based on the information and arguments submitted by the petitioners and the respondents, the Department has considered whether a particular market situation exists in the Italian pasta market that would warrant rejection of home market prices as the basis for NV. As discussed below, the Department preliminarily finds that there is not a particular market situation in the Italian pasta market that would prevent a proper comparison with the export price or constructed export price.

At the outset we note that, unlike in prior cases where the Department has examined whether home market prices were not competitively set and, therefore, could not be used as the basis for NV, in this case, petitioners' allegation claims that Italian producers of pasta colluded to increase home market prices. Specifically, the petitioners assert that according to the ICA press release and report, the ICA found that between October 2006 and at least March 2008, members of the Italian pasta industry had a concerted strategy to change prices in the Italian market. Further, the petitioners claim that just because the "non-competitive" behavior results in an increase in home market prices (and potentially dumping margins) does not diminish the fact that the behavior is "non-competitive" and therefore, rejection of home market prices is appropriate.

The Department has a longstanding practice of evaluating each particular market situation independently based on the facts of the record. In prior cases where the Department has evaluated whether home market prices were competitively set, the Department has found that government participation in

<sup>5</sup> *See Fresh Kiwifruit from New Zealand: Final Results of Antidumping Administrative Review*, 61 FR 46438 (September 3, 1996); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 62 FR 18404 (April 15, 1997) ("*Cold-Rolled from Korea*"); *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from South Africa*, 62 FR 61804 (November 14, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998); *Final Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Greece*, 65 FR 68978 (November 15, 2000); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003) ("*Wheat from Canada*"); *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 68336 (December 8, 2003), unchanged in final, *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 19388 (April 13, 2004) ("*Hot-Rolled from Thailand*").

the market place, and the government control, by itself, was not sufficient enough to determine that home market prices could not be considered to be competitively set. For example, in *Cold-Rolled from Korea* the Department noted that the petitioners provided evidence indicative of a not insubstantial level of government interest and involvement in the day-to-day operations of the Korean steel industry, including domestic price levels. The Department determined that absent substantial evidence that government control is so extensive that prices are not competitively set, the Department cannot find the Korean home market not viable.

Further, in *Wheat from Canada* *prelim*,<sup>6</sup> the Department noted that the fact that the Canadian Wheat Board, a government entity, operated as a monopoly buyer and seller of wheat in the Canadian domestic market raised legitimate concerns that a particular market situation might exist with respect to the Canadian home market. The Department, nonetheless, based on the record evidence, determined that the Canadian government did not control prices to such an extent that home market prices were non-competitive and inappropriate for use in the Department's dumping analyses.

Additionally, in *Hot-Rolled from Thailand*, the Department examined whether a government-imposed price ceiling, possibly affecting producers' ability to set prices competitively, constituted a particular market situation sufficient to warrant rejection of home market prices as the basis for NV. Based on the evidence on the record in that case, the Department found that the government-imposed price ceilings did not warrant a finding that a particular market situation existed that would prevent a proper comparison between home market prices and export price or constructed export price.<sup>7</sup>

In this case, there is no evidence of government control or intervention to suppress home market prices, although the evidence indicates that the majority of Italian pasta producers may have colluded to raise home market prices of pasta. However, there is no evidence that Italian pasta producers agreed upon a particular ceiling or floor price. Rather, each company set its own prices with its customers independently. Additionally, as we discuss more fully below, there was a change in the cost of manufacturing ("COM") that was

primarily attributed to the price volatility of semolina. Thus, the respondents' price increases could have resulted from objective market conditions (*i.e.*, significant increases in the price of inputs) rather than particular anti-competition conduct. Accordingly, we do not find sufficient evidence to conclude that a particular market situation exists that warrants a determination that home market prices cannot form the basis for a proper comparison. Therefore, the Department has not requested that either respondent report sales to its largest third country market.<sup>8</sup>

#### B. Cost Reporting Period

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR. *See, e.g., Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (Dec. 13, 2000) (*Pasta from Italy*), and accompanying Issues and Decision Memorandum at Comment 18 and *Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (Jan. 24, 2006) (*Wire Rod from Canada*), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that possible distortions may result when our annual average cost method is used during a period of significant cost changes. In these circumstances, in determining whether to deviate from our normal methodology, the Department has evaluated the case-specific record evidence using two primary factors: (1) The change in the COM recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must show that sales during the shorter averaging periods could be reasonably linked with the COP or CV during the same shorter averaging periods. *See, e.g., Stainless Steel Plate in Coils From*

*Belgium: Final Results of Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) (*SSPC from Belgium*) and *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Administrative Review*, 74 FR 6365 (February 9, 2009) (*2006–2007 Final Results*).

#### 1. Significance of Cost Changes

In the instant case, record evidence shows that both respondents, PAM and Garofalo, experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR, and that the change in COM is primarily attributable to the price volatility of semolina, the primary input consumed in the production of the merchandise under consideration. In examining the company-specific inventory records and commodity exchanges within Italy, we found that semolina prices changed dramatically throughout the POR and directly affected the total cost of manufacturing for pasta. Specifically, the record data shows that the percentage difference between the high and low quarterly costs for pasta products exceeded 25 percent during the POR. As a result, we have determined for the preliminary results that the changes in COM for both PAM and Garofalo are significant enough to warrant a departure from our standard annual costing approach for direct materials, as these significant cost changes create distortions in the Department's sales-below-cost test as well as the overall margin calculation.

#### 2. Linkage Between Cost and Sales Information

The Department evaluated whether there is evidence of linkage between the cost changes and the sales prices during the POR. The Department's definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which would demonstrate a reasonable correlation between the underlying costs and the final sales prices levied by the company. *See Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242, 31244 (June 30, 2009) (*SSP from Korea*). These correlative elements may be measured and defined in a number of ways depending on the associated industry and the overall production and sales processes.

To examine the correlation, we conducted a price and cost trend analysis using the quarterly net sale prices for the five most frequently sold

<sup>6</sup> See *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada*, 68 FR 24707 (May 8, 2003) (*"Wheat from Canada prelim"*), unchanged in final *Wheat from Canada*.

<sup>7</sup> See *Hot-Rolled from Thailand*.

<sup>8</sup> We note that contrary to the petitioners' assertion that the Department should resort to CV for calculating NV, were the Department to find that a particular market situation exists in the home market, preventing proper comparison with the export price or constructed export price, section 773(a)(1)(B)(ii) of the Act instructs the Department to use the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in a country other than the exporting country or the United States. The petitioners have not alleged that a basis exists for rejecting third country prices and, in fact, have specifically stated that the findings of the ICA do not apply to exports from Italy.

control numbers ("CONNUMs") in the U.S. market and the corresponding quarterly costs of this merchandise. Our comparison reveals that sales and costs for each of the sample CONNUMs generally trended in the same direction and demonstrated a high degree of correlation between the sales and cost data. The inventory records for both respondents demonstrate that the raw material and finished goods inventory are relatively low, indicating a minimal time lag between production and sale dates.

In light of the two factors discussed above, we have preliminarily determined that a quarterly costing approach, with respect to both PAM and Garofalo, would lead to more accurate comparisons in our antidumping duty calculations. Thus, we used quarterly indexed annual average direct material costs and annual weighted-average conversion costs in the cost of production ("COP") and CV calculations.

### C. Cost of Production Analysis

The Department disregarded sales below the COP in the last completed review in which each respondent, PAM and Garofalo, participated. *See Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 6832 (February 9, 2005) (*Pasta Seven*); *see also Amended Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 22761 (April 27, 2004) (*Pasta Six*). We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether sales from PAM and Garofalo in the home market were made at prices below the COP.

We compared sales of the foreign like product in the home market with model-specific COP figures. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative ("SG&A") expenses, financial expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we relied

on home market sales and COP information provided by PAM and Garofalo in its questionnaire responses, except where noted below.

### PAM

We are relying on PAM's reported quarterly indexed direct material costs and annual conversion costs.

We collapsed products PAM classified as wheat code "1" (*i.e.*, pasta made from superior semolina) with products classified as wheat code "2" (*i.e.*, pasta made from normal semolina), as we did in *Pasta Seven* at Comment 21. Therefore we recalculated the weighted-average costs for this merchandise.

We revised the general and administrative expense rate numerator to include costs related to the bankruptcy of Chirico, a producing entity within the PAM Group. *See* PAM Sales Analysis Memo and Memorandum from Angela Strom to Neal Halper "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—PAM S.p.A., Liguori Pastificio dal 1820 S.p.A. ("Liguori"), and Chirico Molini e Pastificio S.p.A. ("Chirico") (collectively, "PAM")," dated July 31, 2009 ("PAM Cost Calculation Memo").

### Garofalo

We are relying on quarterly direct material costs and annual conversion costs.

#### 1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of PAM and Garofalo pursuant to section 773(b) of the Act, to determine whether PAM's and Garofalo's comparison market sales were made at prices below the COP, by quarter. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act.

#### 2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the quarterly weighted-average COP to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement

charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. *See* PAM's Sales Analysis Memo; *see also* Garofalo's Sales Analysis Memo.

### 3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product during the POR were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP we determined such sales to have been made in "substantial quantities." *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to weighted-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for PAM and Garofalo, we disregarded below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* PAM's Sales Analysis Memo; *see also* Garofalo's Sales Analysis Memo.

### D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance-of-sale adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act. We also made adjustments for PAM and Garofalo, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the "commission offset."

Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacture ("VCOM") for the foreign like product and subject merchandise, using weighted-average costs.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were disregarded. *See* PAM's Sales Analysis Memo; *see also* Garofalo's Sales Analysis Memo.

#### E. Level of Trade

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

Consistent with 19 CFR 351.412, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

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

Both respondents claim two LOTs in the home market. PAM reported that it sold through three channels of distribution to nine customer categories. Garofalo reported that it sold through three channels of distribution to four customer categories.

We disagree with both PAM and Garofalo that there are two LOTs in the home market. Section 351.412 (c)(2) of the Department's regulations provides that the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

Our analysis of the selling activities for PAM shows that there is overlap in these activities for channels of distribution and customer categories. In other words, PAM performs similar selling activities for all customer categories and channels of distribution. Although there are differences in intensity of these activities for some of the claimed customer categories, this, in and of itself, does not show a substantial difference in selling activities that would form the basis for finding a different LOT. *See, e.g., Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4. Due to the proprietary nature of this issue, please refer to PAM's Sales Analysis Memo for further discussion.

Our analysis of the selling activities for Garofalo shows that Garofalo also performs similar selling activities for different customer categories, although some of the activities were at different levels of intensity. Moreover, some selling activities within the claimed LOT1 are at higher level of intensity while other selling activities are at lower level of intensity than the same selling activities in the claimed LOT2. In addition, there is overlap among the channels of distribution for the different customer categories in these two claimed LOTs. The differences in Garofalo's selling activities chart do not rise to a level of substantial differences that would support a finding that there are two LOTs in the home market. Due to the proprietary nature of this issue, please refer to Garofalo's Sales Analysis Memo for further discussion.

In the U.S. market, both PAM and Garofalo reported that their sales were

made through one channel of distribution to one customer category, and therefore, at one LOT. The Department has determined that PAM's and Garofalo's home market sales were made at LOT1 and at the same stage of marketing as the U.S. sales LOT. Therefore, the Department will not make an LOT adjustment for PAM and Garofalo's sales to the United States.

#### Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank. *See* PAM's Sales Analysis Memo; *see also* Garofalo's Sales Analysis Memo.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margins exist for the period July 1, 2007, through June 30, 2008, for the mandatory respondents:

Manufacturer/exporter	Margin (percent)
PAM .....	15.77
Garofalo .....	15.91

For those companies not selected as mandatory respondents, Domenico Paone fu Erasmo S.p.A., Industria Alimentare Colavita, S.p.A., Pasta Lensi, Pastificio Fratelli Pagani S.p.A., Pastificio Labor S.r.L., Pastificio Riscossa F.lli Mastromauro S.r.L., Rummo S.p.A. Molino e Pastificio, and Rustichella d'Abruzzo S.p.A., we preliminarily determine that the following simple average percentage margin (based on the two reviewed companies) exists for the period July 1, 2007, through June 30, 2008, is 15.84 percent.

The Department will disclose the calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding, in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). The Department intends to verify the information upon which we will rely in making our final determination. As a result, we intend to establish the briefing schedule upon the completion of verification.

Pursuant to 19 CFR 351.213(h), the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such

comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

#### Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value. For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

#### Cash Deposit Requirements

To calculate the cash deposit rate for PAM and Garofalo, we divided its total dumping margin by the total net value of its sales during the review period. For the responsive companies which were not selected for individual review, we have calculated a cash deposit rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 15.45 percent, the all-others rate established in the LTFV investigation. See *Implementation of the Findings of the WTO Panel in U.S.—Zeroing (EC): Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

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

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

Dated: July 31, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-952, A-583-844]

### Narrow Woven Ribbons with Woven Selvage from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations

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

**EFFECTIVE DATE:** August 6, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood at (202) 482-3874 or Miriam Eqab at (202) 482-3693 (Taiwan), AD/CVD Operations, Office 2; Maisha Cryor at (202) 482-5831 or Zhulieta Willbrand at (202) 482-3147 (the People's Republic of China (the "PRC")), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

#### The Petitions

On July 9, 2009, the Department of Commerce (the "Department") received petitions concerning imports of narrow woven ribbons with woven selvage ("narrow woven ribbon") from the PRC and Taiwan filed in proper form by Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (collectively, the "Petitioner"). See Petitions for the Imposition of Antidumping and Countervailing Duties on Narrow Woven Ribbons with Woven Selvage from the People's Republic of China and Taiwan dated July 9, 2009 (the "Petitions"). On July 14, 2009, the Department contacted the Petitioner by telephone seeking additional information and clarification regarding the Petition. See Memo to the File from Matthew Glass, "Scope Call with the Petitioner," dated July 14, 2009. On July 15, 2009, and July 22, 2009, the Department issued a request for additional information and clarification of certain areas of the Petitions. Also, on July 23, 2009, the Department contacted the Petitioner by telephone seeking additional information and clarification