

would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. Duties would be deferred or reduced on foreign production equipment admitted by Bender to the zone until which time it becomes operational. The manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is September 22, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 6, 2003.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above.

Dated: July 29, 2003.

**Pierre V. Duy,**

*Acting Executive Secretary.*

[FR Doc. 03-20178 Filed 8-6-03; 8:45 am]

BILLING CODE 3510-D8-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### **Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews**

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

**ACTION:** Notice of extension of time limit for the preliminary results of antidumping duty administrative and new shipper reviews.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the administrative and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China until October 31, 2003. This extension applies to the administrative review of four exporters, Jinan Yipin Corporation, Ltd., Shandong Heze International Trade and Developing Company, Top Pearl Ltd., and Wo Hing (H.K.) Trading Co., and the new shipper reviews of three exporters, Jining Trans-High Trading Company, Zhengzhou Harmoni Spice Co., Ltd., and Xiangcheng Yisheng Foodstuffs Co., Ltd.<sup>1</sup> The period of review is November 1, 2001, through October 31, 2002.

**EFFECTIVE DATE:** August 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian Ellman or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4852 and (202) 482-1690, respectively.

#### **Background**

On December 26, 2002, the Department of Commerce (the Department) published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 78772), in which it initiated an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). On January 6, 2003, the Department published in the **Federal Register** the *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China* (68 FR 542), in which it initiated new shipper reviews for three companies. On March 10, 2003, we aligned the new shipper reviews with the administrative review pursuant to 19 CFR 351.214(j). As such, the time limits for the new shipper reviews were aligned with those for the administrative review. See memorandum to the File from Jennifer

<sup>1</sup> On July 31, 2003, we issued a notice partially rescinding the administrative review covering sales made during the period November 1, 2001, through October 31, 2002, by Clipper Manufacturing Ltd., Fook Huat Tong Kee Pte., Ltd., Huaiyang Hongda Dehydrated Vegetable Company, Golden Light Trading Company, Ltd., Good Fate International, Phil-Sino International Trading Inc., and Mai Xuan Fruitex Co., Ltd.

Moats entitled "Request for Alignment of Annual and New Shipper Reviews," dated March 10, 2003.

#### **Extension of Time Limit for Preliminary Results of Administrative and New Shipper Reviews**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department has determined that the aligned administrative review and new shipper reviews are extraordinarily complicated and that it is not practicable to complete the preliminary results by the current deadline of August 2, 2003. There are a number of complex factual and legal questions related to the calculation of the antidumping margins in the administrative review and new shipper reviews, in particular the analysis of the *bona fides* of the sales at issue and the valuation of the factors of production. We require additional time to issue supplemental questionnaires addressing these matters, review the responses, and verify certain information. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 90 days, until no later than October 31, 2003.

Dated: August 1, 2003.

**Laurie Parkhill,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement I.*

[FR Doc. 03-20175 Filed 8-6-03; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-818]

#### **Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy**

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

**ACTION:** Notice of preliminary results and partial rescission of antidumping duty administrative review and intent not to revoke in part.

**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, 2001 through June 30, 2002.

We preliminarily determine that during the POR, Pastificio Garofalo S.p.A. ("Garofalo"), IAPC Italia S.r.l. ("IAPC"), and Industria Alimentare Colavita, S.p.A. ("Indalco") and its affiliate Fusco S.r.l. ("Fusco") (collectively "Indalco"), P.A.M. S.p.A. ("PAM"), Molino e Pastificio Tomasello S.r.l. ("Tomasello"), and Pastificio Zaffiri S.r.l. ("Zaffiri"), 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 the Bureau of Customs and Border Protection ("BCBP") to assess antidumping duties equal to the difference between the export price ("EP") or constructed export price ("CEP") and NV.

We preliminarily determine that during the POR, Pastificio Guido Ferrara ("Ferrara"), Pastificio Antonio Pallante S.r.l. ("Pallante") and its affiliate Industrie Alimertari Molisane s.r.l. ("IAM") (collectively "Pallante"), Pastificio F.LLI Pagani S.p.A. ("Pagani") and Rummo S.p.A. Molino e Pastificio ("Rummo") did not make sales of the subject merchandise at less than NV (i.e., sales were made at "zero" or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct the BCBP to liquidate appropriate entries without regard to antidumping duties. Furthermore, two companies, F. Divella S.P.A. ("Divella") and Labor S.r.l. ("Labor"), timely withdrew their requests for review of the antidumping order. Because the requests were timely and there were no other requests for review of the companies, we are rescinding the review for these two companies. See 19 CFR 351.213(d)(i).

Finally, we preliminarily intend not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Pagani because its sales were not made in commercial quantities. See 19 CFR 351.222 (e)(ii) and "Intent Not to Revoke" section of this notice.

Interested parties are invited to comment on these preliminary results

and partial rescission. Parties who submit comments in this segment of the proceeding should also submit with them: (1) A statement of the issues; and (2) a brief summary of the comments. Further, parties submitting written comments are requested to provide the Department with an electronic version of the public version of any such comments on diskette.

**EFFECTIVE DATE:** August 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Alicia Kinsey or Carrie Farley, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793 or (202) 482-0395, respectively.

**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 Agreement Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

**Case History**

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). On July 1, 2002, we published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of this order (67 FR 44172).

On July 31, 2002, 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)(2). There were requests made for thirteen Italian companies. In addition, on July 31, 2002, Pagani requested that the Department revoke the antidumping duty order with respect to it. See "Intent Not to Revoke" section of this notice.

On August 27, 2002, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2001, through June 30, 2002, listing these thirteen companies as respondents: Divella, Ferrara, Garofalo,

IAPC, Indalco, IAM, Labor, Pagani, Pallante, PAM, Rummo, Tomasello and Zaffiri.<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002) (*Initiation Notice*).

On August 29, 2002, we sent questionnaires to the twelve companies.

On October 2, 2002, Divella and Labor withdrew their requests for administrative review of the antidumping duty order.

During the most recently completed segments of the proceeding in which the following companies participated, the Department disregarded sales that failed the cost test: Indalco, Pagani, Pallante, PAM and Rummo.<sup>3</sup> Pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production ("COP"). Therefore, we initiated cost investigations of these companies, and instructed the companies to fill out sections A-D<sup>4</sup> upon issuance of the initial questionnaire. The companies submitted their section D responses on the following dates: Pagani on October 21, 2002; Indalco on October 28, 2002; Pallante on October 28, 2002; PAM on November 5, 2002; and Rummo on January 24, 2003.

After several extensions, the respondents submitted their responses to the appropriate sections of the questionnaire during the months of October and November 2002. In its

<sup>2</sup> Although the Department initiated this review on thirteen companies, included within that number were companies known to be affiliated, namely, Pallante/IAM and Indalco/Fusco. After accounting for known affiliated parties, this review covers twelve companies.

<sup>3</sup> The fourth administrative review was the most recently completed review for Pallante, PAM, and Rummo. See *Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy*, 67 FR 300 (January 3, 2002). The most recently completed review that Pagani participated in was the fifth administrative review. See *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy*, 68 FR 6882 (February 11, 2003). The first administrative review was the most recent segment of the proceeding in which Indalco participated. See *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615 (February 10, 1999).

<sup>4</sup> Section A: Organization, Accounting Practices, Markets and Merchandise;  
Section B: Comparison Market Sales;  
Section C: Sales to the United States;  
Section D: Cost of Production and Constructed Value.

<sup>1</sup> New World Pasta Company; Dakota Growers Pasta Company; Borden Foods Corporation; and American Italian Pasta Company.

initial release of the antidumping questionnaire, the Department did not require Ferrar, Garofalo, IAPC, Tomasello, or Zaffiri to respond to section D of the questionnaire.

As stated in its questionnaire response, IAPC filed a Section D response because some of its U.S. sales had no contemporaneous comparison market matches during the appropriate window period. See IAPC's response to the Section D questionnaire (November 4, 2002). Although IAPC had a viable comparison market, for those sales which did not have a comparison market match, we used constructed value ("CV").

In November 2002, petitioners submitted cost allegations against Ferrar, Garofalo, Tomasello, and Zaffiri. We determined that petitioners' cost allegations provided a reasonable basis to initiate a COP investigation, and as a result, we initiated cost investigations of these four companies. See the company-specific COP initiation memoranda, dated December 13, 2002, in the case file in the Central Records Unit, main Commerce building, room B-099 ("the CRU"). Also on December 13, 2002, we informed these four companies that they were required to respond to the section D of the antidumping questionnaire. See December 13, 2002, letters from the Department to these respondents requiring section D questionnaire responses, in the CRU. On January 27, 2003, we received responses to the section D questionnaires from the above-mentioned companies.

On March 27, 2003, the Department published an extension of preliminary results of this review, extending its preliminary results until July 31, 2003. See *Certain Pasta from Italy: Extension of Preliminary Results of Antidumping Duty Administrative Reviews*, 68 FR 14945 (March 27, 2003).

During the months of February, March, April, and May of 2003, the Department issued supplemental, second supplemental, and third supplemental questionnaires to each respondent, as applicable.

We conducted verification of the sales information as follows: (1) Indalco/Fusco from June 12 through June 25, 2003; (2) PAM from May 12 through May 16, 2003; (3) Rummo and Rummo USA from June 3 through June 11, 2003; (4) Tomasello from June 2 through June 6, 2003; and (5) Zaffiri from June 9 through June 13, 2003. We verified the cost information submitted by: (1) Indalco/Fusco from May 5 through May 9, 2003; (2) Rummo from May 26 through May 30; (3) Tomasello from May 19 through May 23, 2003; and (4)

Zaffiri from May 12 through May 16, 2003. The Department did not verify PAM's cost information. However, on May 21, 2003, the Department sent PAM a second supplemental section D questionnaire. PAM's response was originally due on June 4, 2003. At PAM's request, the Department granted PAM an extension until June 18, 2003, to submit its response to the second supplemental section D questionnaire. On June 18, 2003, PAM submitted its response. The Department, in reviewing PAM's response, discovered that PAM had included untimely filed new factual information in the response.

On July 1, 2003, the Department rejected PAM's second supplemental section D questionnaire response because it contained untimely filed new factual information. PAM was requested to re-submit the response without this information. See The Department's Letter to David Craven, counsel for PAM, dated July 1, 2003, in the CRU. On July 2, 2003, PAM asked for an extension to re-submit its June 18, 2003, response to the second supplemental section D questionnaire and requested that the Department reconsider its rejection of the untimely filed new factual information. The Department granted PAM's request for an extension and subsequently further extended PAM's time to re-submit the response upon being informed by PAM that it was experiencing difficulties delivering the submission. See July 9, 2003, Memorandum to the File from Lyman Armstrong to Eric B. Greynolds, Program Manager, regarding an additional extension for the removal of untimely filed new factual information, in the CRU. On July 21, 2003, the Department informed PAM that at PAM's request, it had reconsidered its July 1, 2003, rejection of PAM's untimely new factual information, and that it continued to determine not to accept PAM's untimely filed new factual information. See July 21, 2003 letter to PAM; see also July 21, 2003, Memorandum to the File from Nancy Decker, Senior Accountant, through Michael Martin, Program Manager, available in the CRU.

#### Affiliations

Petitioners have alleged that because Garofalo and Pastificio Antonio Amato & C. S.p.A. ("Amato"), a pasta company, were found to be affiliated pursuant to section 771(33) of the Act in the fifth review, they should be determined to be affiliated for this review and collapsed, in accordance with 19 CFR 351.401(f). Section 771(33) of the Act considers the following persons to be affiliated: members of a family; any officer or

director of an organization and the organization; partners; employer and employee; persons directly or indirectly owning, controlling, or holding with the power to vote five percent or more of outstanding stock or shares of an organization and the organization; two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and any person who controls any other person and that person. As further provided in section 771(33) of the Act, "A person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." Section 351.401(f)(1) of the Department's regulations states that in an antidumping proceeding, the Department "will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production." Paragraph two of that section goes on to state that in identifying a significant potential for manipulation, the Department may consider:

- The level of common ownership;
- The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers.

In the previous review, we found that Garofalo and Amato were affiliated pursuant to 771(33) of the Act, but that there was no common control, and consequently, a significant potential to manipulate products or prices did not exist to justify collapsing the two companies. See Petitioners' November 5, 2002 Submission, Attachment 1, July 31, 2002 Memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, "Whether to Collapse Garofalo and Amato in the Preliminary Results" ("Garofalo Collapsing Memo"), the public and proprietary versions of which are on file in the CRU. See also *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy*, 68 FR 6882 (February 11, 2003).

In the current review, petitioners have provided no new information or argument on the relationship between Garofalo and Amato, nor has the Department discovered new information during the course of this review. Consequently, the Department's analysis from the previous review, which is contained in the Garofalo Collapsing Memo that the petitioners placed on the record in this review, is adopted in its entirety. For the reasons set forth in the Garofalo Collapsing Memo, the Department determines that Garofalo and Amato are affiliated pursuant to section 771(33) of the Act and 19 CFR 351.102(a), but lack common control, so that a significant potential to manipulate products or prices does not exist and it is not appropriate to collapse the two companies under section 351.401(f) of the Department's regulations.

In Indalco's April 30, 2003, second supplemental questionnaire response, Indalco presented the Department with evidence that Indalco and Fusco are affiliated by means of common ownership and common board of directors, and therefore should be collapsed. Because both companies have production facilities which would not require substantial retooling for producing similar or identical products, and there is a significant potential for the manipulation of prices or production, as demonstrated by the level of common ownership, the commonality of the board of directors and the intertwined operations of the companies, there is sufficient record evidence supporting a finding that Indalco and Fusco should be collapsed in the preliminary results.

On the basis of this information, and because nothing we reviewed at the verification of these companies caused us to revise our position, the Department has preliminarily determined to collapse Indalco and Fusco pursuant to section 351.401(f)(1) of the Department's regulations. For a more detailed discussion on the Department's decision to collapse Indalco and Fusco, see the May 14, 2003, Memorandum to Melissa Skinner from Eric Greynolds, Re: Whether to Collapse Industri Alimentare Colavita S.p.A. ("Indalco") and Fusco S.r.l. ("Fusco"), in the case file in the CRU.

On December 19, 2002, petitioners alleged that Rummo and one of its U.S. customers were affiliated under section 771(33) of the Act and section 351.102(b) of the Department's regulations. As noted above, the Act and the Department's regulations direct the Department to find affiliation between two parties when one party is able to

control another party. The statute provides that control can be established if one person is legally or operationally able to "exercise restraint or direction" over the other. Section 351.102(b) of the regulations contains a list of factors to be considered by the Department in determining whether control exists: corporate or family groupings, a franchise or joint venture agreement, debt financing, or a close-supplier relationship. The Department, however, may not find control based on these factors unless the relationship has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise.

Specifically, petitioners cite four factors as evidence that Rummo is affiliated with its U.S. customer: (1) Warehouse and distribution arrangements; (2) sales process and sample U.S. sales documents demonstrating joint sales operations and common control over inventories; (3) Rummo's financial statements including an amount for a note receivable; and (4) a product brochure submitted in the questionnaire response providing information connecting the customer and Rummo. Although the petitioners have not specifically classified the bases for their claim, their allegations appear to be premised upon debt financing and a close-supplier relationship. See July 31, 2003 Memorandum from the Team to Melissa G. Skinner, through Eric Greynolds, regarding Whether Rummo S.p.A. Molino e Pastificio (Rummo) and one of its U.S. customers are Affiliated for the Preliminary Results.

On January 3, 2003, Rummo disputed petitioners' affiliation arguments. Respondents argue that petitioners failed to prove that affiliation exists through control between Rummo and its U.S. customer. Specifically, respondents claim that petitioners did not allege that Rummo has a "close-supplier" relationship with its U.S. customer. Respondents argue that petitioners' argument of a "supplier/buyer" relationship is an attempt to circumvent the "close-supplier" relationship threshold identified by the *Statement of Administrative Action* accompanying H.R. 5110, H.R. Doc. No. 316, Vol. 1, 103d Congr., 2d Sess. 911-955 (1994) ("SAA"). See SAA at 838.

With respect to the petitioners' allegation of debt financing, we find that the outstanding note receivable from the U.S. customer does not demonstrate that the companies are engaged in joint operations. The information on the record does not demonstrate that either company was providing financial support to the other during the POR. The record shows that the note

receivable was given prior to the POR and was being repaid during the POR. Furthermore, we disagree with petitioners' argument that the outstanding note receivable indicates joint operations during the POR, as the financial statements show that the note receivable was being repaid rather than providing new debt financing.

The SAA describes "close-supplier" relationships as those "in which the supplier or buyer becomes reliant upon the other." See SAA at 838; see also *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from Indonesia*, 62 FR 1719, 1725 (Jan. 13, 1997). The evidence that petitioners refer to does not support a relationship in which one party is reliant upon the other. Rummo's sample sales documents do not demonstrate common control over inventories or an exclusive distributor relationship with the U.S. customer. Notably, Rummo USA provided evidence in its questionnaire response that it had customers in the U.S. market, other than the one that petitioners are alleging are affiliated. The evidence before the Department refutes petitioners' claim that Rummo and its customer have an exclusive distributor relationship.

We also find petitioners' argument that the U.S. customer has control over Rummo USA's inventory to be inaccurate and therefore not persuasive. For instance, Rummo's verification report at page 6, shows that Rummo USA and not its U.S. customer is in charge of: (1) Invoicing and billing; and (2) reordering when Rummo USA's warehouses' inventory is low. Rummo USA orders a product from Rummo when it needs more. See July 30, 2003, Memorandum to Eric B. Greynolds, Re: Verification of the Sales Response of Rummo S.p.A. Molino e Pastificio (Rummo) and Rummo USA Inc. (Rummo USA) in the Sixth Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy ("Rummo's Verification Report"). Furthermore, as explained in Rummo's Verification Report, Rummo had to request that information pertaining to other customer's sales not be forwarded to the U.S. customer. If the U.S. customer had control over Rummo USA's warehousing and inventory there would be no reason for Rummo USA to make such a request to its freight company. Rummo USA and the U.S. customer are not engaged in joint warehousing or the joint marketing of pasta; we therefore find that the U.S. customer does not have control over Rummo USA's inventory.

We also disagree with petitioners' argument that Rummo USA and its U.S. customer have a warehouse and distribution agreement. During verification, we found that Rummo sends pasta to two types of warehouses: (1) Locations where Rummo USA rents space; and (2) direct containers. An official explained that for direct sales, Rummo ships to the customer's determined location, which Rummo provided in Appendix A-3 of its October 21, 2002 questionnaire response. Because the direct sales to the U.S. customer go to the company's designated location and Rummo USA rents its own warehouse space to hold its own inventory, we find that Rummo USA and its U.S. customer are not involved in joint warehousing.

Lastly, we find that Rummo's brochure which petitioners referenced as evidence of Rummo and its U.S. customer's exclusive importer/distributor relationship is outdated and, therefore, not persuasive in finding an exclusive importer/distributor relationship between Rummo and its U.S. customer during the POR. Rummo reported in its March 17, 2003 supplemental questionnaire response that, "copies provided in the October 21, 2002 submission were in fact filed in a previous administrative review," thus the brochure was not current for this POR.

The facts before the Department do not support a finding "in which the supplier or buyer becomes reliant upon the other." Neither Rummo nor Rummo USA are in a position to control its U.S. customer and this customer is similarly not in a position to exercise control over Rummo or Rummo USA. As such, the relationship between the companies is not a "close-supplier" relationship. Therefore, we preliminarily find that Rummo and its U.S. customer are not affiliated companies, as defined by 771(33) of the Act or section 351.102(b) of the regulations.

#### Partial Rescission

On October 2, 2002, Divella and Labor withdrew their requests for a review within 90 days of the publication of the *Initiation Notice*. Because the letters withdrawing the requests were timely filed, and because there were no other requests for review of Divella and Labor, we are rescinding the review with respect to Divella and Labor in accordance with 19 CFR 351.213(d)(1).

#### Scope of Review

Imports covered by this review 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 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, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

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 and AntiCircumvention Inquiries

The Department has issued the following scope rulings to date:

(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, in the CRU.

(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, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the

investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). 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, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. See Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). See *Certain Pasta from Italy: Notice of Initiation of Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

(6) On July 30, 2003, we issued a preliminary finding on the anti-circumvention inquiry; however, the notice has not yet been published in the **Federal Register**. See *Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*.

#### Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information provided by Indalco/Fusco, Rummo, Tomasello, and Zaffiri, and the sales information provided by PAM. We used standard verification procedures, including on-

site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are detailed in the company-specific verification reports placed in the case file in the CRU. We made certain minor revisions to certain sales and cost data based on verification findings. See the company-specific verification reports and calculation memoranda, in the CRU.

#### Adverse Facts Available

In accordance with section 776(a)(2) of the Act, the Department has determined that the use of facts available is appropriate for purposes of determining the preliminary antidumping duty margins for the subject merchandise sold by PAM. Section 776(a)(2) of the Act provides:

If an interested party (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and the manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides that:

If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the administering authority, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

PAM failed to provide significant home market sales information that was requested by the Department. The Department gave PAM many opportunities to report a complete home market sales database. Specifically, the Department issued to PAM two supplemental questionnaires in addition to the initial sections A–C of the questionnaire, and granted PAM's requests for extensions for each questionnaire response due date. Despite these opportunities, the Department discovered at verification that PAM failed to report at least two-thirds of the home market sales it was required to report. Prior to verification, the Department had no way of knowing such data was missing. In addition to the detailed instructions given in the questionnaires issued to PAM, PAM has participated in previous reviews of this order in which the Department verified

PAM's sales information, and is therefore aware of the Department's reporting requirements. See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, Partial Recision of Antidumping Administrative Review, and Revocation of Antidumping Duty Order in Part*, 66 FR 300 (January 3, 2002); see also *Certain Pasta from Italy: Final Results of Antidumping Administrative Review and Determination to Revoke the Antidumping Duty Order in Part*, 65 FR 77853 (December 13, 2000). For the reasons set forth in the following sections, we have determined that PAM's failure to report a significant portion of its home market sales warrants the use of facts otherwise available. Because the Department finds that PAM failed to cooperate by not acting to the best of its ability in complying with the Department's requests for a complete home market sales database, the Department is using an inference that is adverse to PAM.

#### PAM Verification Failure

On May 2, 2003, the Department issued a verification outline for PAM. As noted therein, the verification of PAM's questionnaire response was set for May 12 through May 16, 2003. Thereafter, from May 12 through May 16, 2003, the Department conducted a verification of PAM's questionnaire response at the company's headquarters in Gagnano, Italy. At the verification, as provided in the May 2, 2003 verification outline, the Department's verifiers required PAM to reconcile the total reported quantity and value of its home market sales to its financial records and to demonstrate the completeness of its reported home market sales database. In its verification outline, the Department requested that PAM prepare specific worksheets and have available certain records which the verifiers intended to use to ensure that PAM properly reported all of its home market sales of subject merchandise. See the May 2, 2003 letter from the Department to PAM, transmitting PAM's verification outline, available in the CRU ("As part of this review, we must ensure that all sales of the subject merchandise were properly included in, or excluded from, your sales listings."). The Department also informed PAM in the letter transmitting the verification outline that:

Please note that *verification is not intended to be an opportunity for submission of new factual information*. New information will be accepted at verification only when: (1) The need for that information was not evident previously; (2) the information makes minor corrections to information already on the

record; or (3) the information corroborates, supports, or clarifies information already on the record.

See PAM's verification outline (emphasis in original).

At verification, it became apparent to the Department's verifiers that PAM had failed to prepare most of the material requested by the Department in the verification outline. Although PAM provided invoices and other source documents, company officials had not prepared adequate supporting documentation in advance, such as the worksheets requested by the Department, to demonstrate how the total reported quantity and value of sales reconciled to the company's financial statements or accounting records. Despite this lack of preparation, during the course of the verification, the verifiers afforded PAM officials the opportunity to reconcile the total reported quantity and value of the company's home market sales to its financial records.<sup>5</sup> See the July 28, 2003, Memorandum to the File: Verification of PAM's Sales Response ("PAM's Sales Verification Report"). After discussions with company officials, and in the absence of prepared worksheets, the verifiers requested that the officials provide for review, a sales listings and records so that the Department could reconcile the total quantity and value reported in the U.S. and home market sales databases. PAM provided: (1) The VAT sales book for the months of October 2001 and May 2002 and the total of all invoices issued during the same period; (2) the VAT receipts for October 2001 and May 2002; and (3) a chart showing a breakout of the subject and non-subject merchandise sold during these two months. See PAM's Sales Verification Report at Exhibit 14.

Using this information, the Department was able to reconcile PAM's sales for the months of October 2001 and May 2002 to its financial statement. However, the verifiers noticed a large discrepancy between the numbers of sales reported in the home market database and the number of sales reported in VAT sales while checking invoices from the VAT sales account for the month of May 2002. Company officials were initially unsure as to the cause of this discrepancy, but did determine the source of the mistake. According to company officials there are several types of invoices used in PAM's computerized accounting system.

<sup>5</sup> Consistent with the instructions accompanying the verification outline, PAM did notify the Department of certain minor corrections to its databases prior to the start of verification.

Company officials stated that a particular type of invoice used in this review was not used in the prior review in which PAM participated, specifically those invoices issued by PAM for merchandise sold from a non-PAM warehouse. As the program which instructs PAM's accounting system to extract this information when reporting PAM's quantity and value of home market sales was not modified from the previous review, the sales associated with this new invoice type were not reported. See PAM's Sales Verification Report at page 18.

The verifiers reviewed a company generated list showing all invoices issued by PAM for merchandise sold from non-PAM warehouses for the month of May 2002, and noted that these sales were not reported to the Department. In addition, we noted that there were several of these invoices that were not included in this list, but appeared to reference subject merchandise sold in the home market. These missing invoices were all to one customer. When asked why PAM did not report these sales, company officials stated they thought that because the sales were outside of the ordinary course of trade, PAM was not required to report the invoices. PAM's failure to report these sales is contrary to the explicit instructions set forth in the initial questionnaire sent to PAM. See the General Instructions to the Department's August 29, 2003 Antidumping Duty Questionnaire at page G-7, number 13 ("You must report all sales, including those sales which you believe are outside the ordinary course of trade. If you claim that some sales are outside the ordinary course of trade, you should then identify those sales. You must include a complete explanation in your narrative why you consider those sales to be outside the ordinary course of trade.") (emphasis added). Combining the sales to this customer and the FP invoices, PAM failed to report approximately two-thirds of its home market sales to the Department. See PAM's Sales Verification Report at page 18 and 19 (emphasis added).

The Department's antidumping analysis is based fundamentally on an evaluation of a respondent's home market and U.S. selling practices. Thus, complete and accurate reporting of home market sales is central to determining accurate dumping margins. The Department verified that only one-third of PAM's home market sales were reported. Therefore, the Department's ability to calculate PAM's dumping margin using the data reported by PAM has been severely compromised. Such a

small sample may not provide a reasonable approximation of PAM's actual sales practice in the home market. Not only may these sales not be representative, but any allocated expenses calculated by PAM for these sales are incorrect, because allocated expenses are calculated by dividing the total expenditure on a particular item by total sales. As PAM's total sales figure is incorrect, all of PAM's allocated expenses, including expenses such as direct and indirect selling expenses, in the home market are significantly overstated. Therefore, the data on the record cannot be used to calculate the actual percentage of sales at less than fair value.

PAM could not establish the completeness of its reported home market sales database. As noted above, the Department discovered at verification that PAM had failed to report approximately two-thirds of its home market sales, despite the Department's requests for such information. Given this significant omission from its home market database, we consider that PAM withheld information requested by the Department, and attempted to provide such information after the Department discovered the omission, but the information could not be verified. Consequently, the Department has determined to use facts otherwise available, consistent with section 776(a) of the Act. Put simply, PAM failed verification.

#### **Application of Adverse Facts Available**

As noted above, the record in this review demonstrates that PAM failed to report sales information representing approximately two-thirds of its home market sales during the POR. Therefore, pursuant to section 776(a)(2)(A) and (D) of the Act, we have relied upon facts available in reaching our preliminary results for PAM. The Department has determined that PAM has not acted to the best of its ability in failing to report approximately two-thirds of its home market sales in this review, because, (1) the Department issued clear instructions requiring this information in its initial questionnaire; (2) PAM had the opportunity to provide the information in responding to two supplemental questionnaires, all of the deadlines of which were extended at PAM's request by the Department; (3) the Department had instructed PAM to report all sales, including those claimed to be outside the ordinary course of trade; and (4) PAM has successfully participated in previous reviews. Moreover, the fact that the Department readily obtained general information regarding the

existence of such sales at verification adds support to our determination that PAM did not act to the best of its ability in reporting its home market sales.

PAM had the ability to report these sales; however, it failed to do so. Therefore, pursuant to section 776(b)(3) of the Act, we have used an adverse inference in selecting facts available margins for PAM. See *Reiner Brach GmbH & Co. v. United States*, 206 F. Supp. 2d 1323, 1333, 1336 (Court of International Trade 2002) (CIT). The CIT upheld the Department's determination to apply facts otherwise available and apply an adverse inference resulting from Reiner Brach's failure to provide all information regarding home market sales. The court noted, among other things, that "Reiner Brach failed to provide information regarding home market sales of similar merchandise despite the clear language of the questionnaire asking for information on 'all sales' of the foreign like product." See also *Acciai Speciali Terni v. United States*, 142 F. Supp. 2d 969, 994 (CIT 2001). The CIT affirmed the Department's application of adverse facts available occasioned by the respondent's failure to timely report 84 U.S. sales. The court noted that the respondent "has made no allegations that it could not provide the additional U.S. sales. It claims that the omission was inadvertent; inadvertence is not the same as inability." Accordingly, we have based PAM's preliminary margin on the highest margin upheld during the proceeding: 45.49 percent. See *World Finer Foods Inc. v. U.S.*, 120 F. Supp. 2d 1131, 1134 (CIT 2000).

#### **Corroboration of Secondary Information Used As Adverse Facts Available**

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not



to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel from Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.

For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc. v. United States*, 4 F Supp 2d 1221, 1246-48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here. Accordingly, for PAM we have resorted to adverse facts available and have used the highest margin upheld in this proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such a margin is not appropriate as adverse facts available.

#### Use of Partial Facts Available

Sections 776(a)(2)(A), (B) and (D) of the Act, provide for the use of facts available when an interested party withholds information that has been requested by the Department, when an interested party fails to provide the information requested in a timely manner and in the form required, or provides such information but the information cannot be verified.

From June 12, through June 26, 2003, the Department conducted a verification of Indalco's questionnaire response at the company's headquarters in Ripalimosani, Italy. At verification, the Department's verifiers asked Indalco to present minor changes, if any, to its questionnaire response resulting from

verification preparation. The Department notified Indalco of these requirements in its verification agenda dated, May 21, 2003. *See* the May 21, 2003 letter from the Department to Indalco, transmitting the verification outline. At the onset of verification, Indalco submitted a list of minor errors to the Department as Exhibit 1. Although, there were several errors with its selling expenses, Indalco did not bring these errors to the Department's attention until after Indalco's submission of minor corrections. Specifically, Indalco used fiscal year 2001, instead of POR, expenses to compute its direct and indirect selling and advertising ratios. For a more detailed discussion *see* Memorandum to Eric Greynolds, from Mark Young and Tipten Troidl, Re: Verification of the Sales Response of Industria Alimentare Colavita, S.p.A. ("INDALCO") and Fusco S.r.l. ("Fusco") in the 01/02 Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy, ("Indalco/Fusco Verification Report"), which is available in the CRU.

While the Department granted Indalco's requests for additional time to respond to the questionnaires, and Indalco did appear to cooperate to the best of its ability, Indalco did not submit the information in the form and manner requested by the Department.

As long recognized by the CIT, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries v. United States*, 641 F. Supp. 31, 39-40 (CIT 1987). Therefore, in accordance with section 776(a)(2) of the Act, we are applying partial facts otherwise available in calculating Indalco's dumping margin. However, because Indalco did cooperate to the best of its ability, we are not making any adverse inferences, for the reasons noted above. As a result of these miscalculations, as facts available, the Department will use the information verified and collected at verification to calculate Indalco's selling expenses.

#### Product Comparisons

In accordance with section 771(16) of 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. When there were no sales of identical merchandise in the home 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 EP or CEP to the NV, as described in the "Export Price and 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. *See* the company-specific verification reports and calculation memoranda, available in the CRU.

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. 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. duties, and U.S. inland freight expenses (freight



from port to the customer). In addition, when appropriate, we increased EP or CEP as applicable, by an amount equal to the countervailing duty rate attributed to export subsidies in the most recently completed 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, 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 affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Pagani and Zaffiri reported the resale of subject merchandise purchased in Italy from unaffiliated producers. In its April 23, 2003 supplemental response at page 23, Zaffiri amended its response and reported that its purchased pasta should actually be considered pasta that it toll produced with its unaffiliated supplier. Zaffiri argues that this pasta should be considered toll produced because it provided its unaffiliated supplier with packing materials and then the supplier would invoice Zaffiri for the semolina cost, the conversion cost, and the packing cost. Because Zaffiri does not control the production of this pasta, nor does it own or hold title to a significant input for this pasta (*i.e.*, semolina), we preliminarily determine that this pasta is, in fact, pasta purchased from an unaffiliated supplier.

In those situations in which an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the EP would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50876 (September 23, 1998). In the instant review, we determined that it was reasonable to assume that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the

merchandise was the United States because virtually all enriched pasta is sold to the United States. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta from Italy*, 65 FR 4867, 4869 (August 8, 2000).

Accordingly, consistent with our methodology in prior reviews (*see id.*), when a respondent purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded these sales of the purchased pasta from the margin calculation for that respondent. Where the purchased pasta was commingled with the respondent's production and the respondent could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales database, we included the sales of commingled purchased pasta in our margin calculations.

#### Normal Value

##### A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because each respondent, with the exception of IAPC, 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 all producers except IAPC.

Because IAPC did not have 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, the Department determined, in accordance with section 773(a)(1)(c) of the Act and section 351.404(b)(2) of the Department's regulations to use a third-country market, the United Kingdom, as IAPC's comparison market. We compared IAPC's volume of third country sales in the United Kingdom of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B)(ii) and 773(a)(1)(C) of the Act, because IAPC had an

aggregate volume of third-country 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, in accordance with section 351.404(c)(ii) of the Department's regulations, the third-country market of the United Kingdom was viable for IAPC.

##### B. Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer; *i.e.*, sales at arm's-length. *See* 19 CFR 351.403(c). Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. Garofalo reported sales of the foreign like product to an affiliated end-user customer and an affiliated reseller. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices to the affiliated party were, on average, between 98 and 102 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were at arm's-length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 53339 (August 15, 2002); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of the Final Determination, and Negative Preliminary Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand* 68 FR 42373, 42375-6 (July 17, 2003). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test. *See* 19 CFR 351.403; *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR at 27295 (May 19, 1997).

##### C. Cost of Production Analysis

###### 1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of Ferrara, Garofalo, Indalco, Pagani, Pallante, Rummo, Tomasello, and Zaffiri, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for

the foreign like product, plus amounts for selling, general, and administrative expenses ("SG&A") and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in instances where we used data with minor revisions based on verification findings for Indalco, Rummo, Tomasello, and Zaffiri. See the company-specific calculation memoranda on file in the CRU, for a description of any changes that we made.

## 2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the 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.

## 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 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 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 POR-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 purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Specifically, we are preliminarily disregarding below-cost sales made by Ferrara, Garofalo, Indalco, Pagani,

Pallante, Rummo, Tomasello, and Zaffiri. See the company-specific calculation memoranda on file in the CRU, for our calculation methodology and results.

### 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. We added interest revenue. 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 ("COS") 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, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales 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 the other 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 section 19 CFR 351.411 of the Department's regulations. We based this adjustment on the difference in the variable cost of manufacture ("VCOM") for the foreign like product and subject merchandise, using POR-average costs.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the "Export Price and Constructed Export Price" section of this notice.

### E. Calculation of Normal Value Based on Constructed Value

For IAPC, when we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In

accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing ("COM") of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by IAPC in connection with the production and sale of the foreign like product in the comparison market.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

### F. 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.

Pursuant to section 351.412 of the Department's regulations, 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 are 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 make a 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 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). Specifically in this review, we did not make an LOT adjustment for any respondent. However, we are preliminarily granting a CEP offset for IAPC and Rummo.

For a detailed description of our LOT methodology and a summary of

company-specific LOT findings for these preliminary results, *see* the company-specific verification reports and calculation memoranda, all on file in the CRU.

#### G. Company-Specific Issues

We relied on the respondents' information as submitted, except in instances where, based on verification findings, we made minor modifications to the calculation of NV and EP or CEP. See the company-specific calculation memoranda on file in the CRU.

#### 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.

#### Intent Not To Revoke

On July 31, 2002, Pagani submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(e), revocation of the antidumping duty order with respect to its sales of the subject merchandise. Pagani submitted along with its revocation request a certification stating that: (1) The company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(1)(i)); (2) the company sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agrees to immediate reinstatement of the order, if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than NV (*see* 19 CFR 351.222(b)(1)(iii)). Petitioners did not comment on the issue of revocation.

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751(d) of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. The regulation requires that exporters or producers covered by the order and desiring revocation submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise for at least three consecutive years in commercial quantities; and (3) an

agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

Pagani submitted the required certifications and agreements. However, after applying the criteria outlined in section 351.222(b) of the Department's regulations, and considering the evidence on the record, we have preliminarily determined that one of the Department's requirements for revocation has not been met. While we preliminarily find that Pagani has demonstrated three consecutive years of sales at not less than NV, we also preliminarily find that, based on Pagani's U.S. shipment data, its sales to the United States have not been made in commercial quantities during all three review periods at issue, in accordance with sections 351.222(d) and 351.222(e)(1)(ii) of the Department's regulations.

In particular, data on the record indicate that the amount of subject merchandise sold in the U.S. market by Pagani during the fourth and fifth review periods is small in quantity relative to Pagani's total U.S. sales volume during the period of investigation ("POI"). With respect to the sixth review period, we recognize that Pagani's volume of sales to the United States has substantially increased. However, because Pagani did not make sales in commercial quantities during the fourth and fifth review periods, Pagani did not satisfy the regulatory requirement to sell commercial quantities in each of the three years forming the basis of this revocation request. We conclude that Pagani's sales during the fourth and fifth PORs do not provide any meaningful information concerning Pagani's normal

commercial practice. Consequently, we find that Pagani's shipments during these PORs are not a reasonable basis for finding commercial quantities.<sup>6</sup>

Therefore, we have determined that the requirements for revocation have not been met because Pagani has not made sales to the United States in commercial quantities during the fourth or fifth segment of this proceeding.<sup>7</sup> Based on our examination of these facts, we find that, consistent with Department practice, we do not have a sufficient basis to conclude that the *de minimis* dumping margin calculated for Pagani for the fourth, fifth, or sixth administrative review is reflective of the company's normal commercial experience. *See e.g., Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 65 FR 7497, 7498 (February 15, 2000) ("*Silicon Metal from Brazil*") (finding that because sales and volume figures were so small the Department could not conclude that the reviews reflected what the company's normal commercial experience would be absent an antidumping duty order). Because Pagani has not met the commercial quantities requirement, we have not examined the issue as to whether the antidumping duty order is necessary to offset future dumping (*see Silicon Metal from Brazil*, at 7505). For a more detailed discussion, *see Memorandum to Melissa Skinner through Eric Greynolds from the Team, Re: Commercial Quantities*, issued simultaneously with this notice.

Based on the foregoing analysis, we have preliminarily determined that Pagani has not met one of the threshold

<sup>6</sup> Pagani's history of subject merchandise pasta sales is as follows: Pagani's 4th POR sales of subject pasta were 0.94 percent of its POI sales of subject pasta. Pagani's 5th POR sales of subject pasta were 1.06 percent of its POI sales of subject pasta. Pagani's 6th POR sales of subject pasta were 17.63 percent of its POI sales of subject pasta.

<sup>7</sup> As we noted in *Pure Magnesium from Canada: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part*, 64 FR 12977, 12979 (March 16, 1999) ("*Pure Magnesium from Canada*"), sales in commercial quantities is a threshold requirement that must be met by parties seeking revocation. We also note that while the regulation requiring sales in commercial quantities may have developed from the unreviewed intervening year regulation, its application in all revocation cases based on the absence of dumping is reasonable and mandated by the regulations. The application of this requirement to all such cases is reflected not only in the provision for unreviewed intervening years (*see* 19 CFR 351.222 (d)(1)), but also in the new general requirement that parties seeking revocation certify to sales in commercial quantities in each of the years on which revocation is to be based. *See* 19 CFR 351.222(e)(1)(ii). This requirement ensures that the Department's revocation determination is based upon a sufficient breadth of information regarding a company's normal commercial practice. *See Pure Magnesium from Canada*, 64 FR at 12979.

requirements for revocation (*i.e.*, sales in commercial quantities during the three consecutive PORs). We therefore preliminarily intend not to revoke the order, with respect to pasta produced and also exported by Pagani, if these preliminary findings are affirmed in our final results.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 2001, through June 30, 2002:

Manufacturer/exporter	Margin (percent)
Ferrara .....	0.18
Garofalo .....	1.44
IAPC .....	0.52
Indalco .....	17.25
Pagani .....	0.20
Pallante .....	0.12
PAM .....	45.49
Rummo .....	0.05
Tomasello .....	8.47
Zaffiri .....	6.36
All Others .....	11.26

The Department will disclose calculations performed 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). Any hearing, if requested, ordinarily will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in such briefs, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will 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 the BCBP 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.

#### Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period, with the exception of PAM, whose margin is based on AFA.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain 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 rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (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 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 11.26 percent, the "All Others" rate established in the LTFV investigation. 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).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### 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 the subsequent assessment of double antidumping duties.

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

Dated: July 31, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas,  
Under Secretary.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-814]

#### Pure Magnesium from Canada; Notice of Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of final results of 2001/2002 administrative review.

**SUMMARY:** On April 24, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 2001, through July 31, 2002. This review covers imports of pure magnesium from one producer/exporter. We provided interested parties with an opportunity to comment on the preliminary results of this review, but received no comments.

The final results do not differ from the preliminary results of this review, in which we found that sales of the subject merchandise have not been made below normal value. We will instruct the United States Bureau of Customs and Border Protection not to assess antidumping duties on the subject merchandise exported by this company.

**EFFECTIVE DATE:** August 7, 2003.