DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy

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

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske, Vincent Kane, Todd Hansen, or Cynthia Thirumalai, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189, 482–2815, 482–1276, or 482–4087, respectively.

FINAL DETERMINATION: The Department of Commerce (''the Department'') determines that countervailable subsidies are being provided to manufacturers, producers, or exporters of pasta in Italy. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of our preliminary determination in this investigation on October 17, 1995 (60 FR 53739), the following events have occurred:

On October 21, 1995, we aligned the date of our final determination with the date of the final determination in the companion antidumping duty investigation of certain pasta from Italy (60 FR 54847, October 26, 1995). Subsequently, the final determinations in the antidumping and countervailing duty investigations were postponed until June 3, 1996 (61 FR 1346, January 13, 1996).

We conducted verification of the countervailing duty questionnaire responses from October 26 through November 11, 1995.

Three parties, Liguori Pastificio dal 1820, S.p.A, F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''), and Pastificio Fratelli Pagani S.p.A (''Pagani''), made untimely submissions containing factual information. These submissions were returned on January 29, 1996, March 22, 1996, and April 12, 1996, respectively.

On February 14, 1996, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that date (61 FR 3672, February 1, 1996) (*see, Suspension of Liquidation* section, below).

Petitioners and respondents filed case briefs on April 2–4 and rebuttal briefs on April 10–11, 1996. A public hearing was held on April 15, 1996.

Scope of Investigation

The merchandise under investigation consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation 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 Associazione Marchigiana Agricultura Biologica (''AMAB'').

The merchandise under investigation is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion for Certain Organic Pasta

On October 2, 1995, a U.S. importer of Italian pasta requested that the Department exclude from the scope of this investigation and the companion antidumping duty investigation pasta certified to be ''organic pasta'' in compliance with European Economic Community (''EC'') Regulation No. 2092/91. This regulation sets forth a regime of standards for the cultivation, processing, storage, and transportation of organic foodstuffs with inspections of farms and processing plants by EC-approved national certification authorities. In addition to the description of the EC regime, the request included a copy of a sample certificate issued by the AMAB and a description, in English, of the AMAB organization.

On November 9, 1995, petitioners stated that they were willing to modify the scope of the petition and the investigation to exclude certified organic pasta of Italian origin if U.S. imports of such pasta were accompanied by certificates issued pursuant to EC Regulation No. 2092/91.

On November 21, we requested additional data on the EC regulation from the Section of Agriculture of the Delegation of the European Commission of the European Union. On December 8, 1995, the European Commission submitted responses to our inquiries. The information included a list of seven Italian inspection and certification authorities (of which AMAB was one) and the statement that EC Regulation No. 2092/91 ''* * * does not provide for certification of products intended for export to third countries.'' Although the Department was not able to fashion an exclusion of organic pasta from the scope of these investigations in the preliminary determination of the companion antidumping duty investigation, the Department stated that if certification procedures similar to those under the EC regulation were established for exports to the United States, we would consider an exclusion for organic pasta at that time.

On April 2, 1996, the importer that had originally requested the exclusion submitted a letter attaching a copy of a decree, with a translation into English, of the Italian Ministry of Agriculture and Forestry authorizing AMAB to certify foodstuffs as organic for the implementation of EC Regulation 2092/91. On April 30, 1996, this importer forwarded letters (with accompanying translations into English) from the Director General of the Italian Ministry of Agriculture and Forestry and from the Director of AMAB. The letter from the Ministry states that it has authorized AMAB to insure compliance with organic farming methods and to issue organic certificates since December of 1992. The letter from the Director of AMAB states that this organization will take responsibility for its organic pasta certificates and will supply any necessary documentation to U.S. authorities. On this basis, we are able to exclude—and do exclude—imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by AMAB from the scope of these investigations.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the ''Act''). References to *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, (54 FR 23366, May

31, 1989) (''Proposed Regulations''), which have been withdrawn, are provided solely for further explanation of the Department's countervailing duty practice.

Petitioners

The petition in this investigation was filed by Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc.

Respondents

Respondent companies in this investigation are Agritalia, S.r.l. (''Agritalia''); Arrighi S.p.A. Industrie Alimentari (''Arrighi''); Barilla G. e R. F.lli S.p.A. (''Barilla''); Pastificio Campano, S.p.A. (''Campano''); F.lli De Cecco di Filippo Fara S. Martino S.p.A.; Molino e Pastificio De Cecco S.p.A. Pescara (''Pescara''); De Matteis Agroalimentare S.p.A. (''De Matteis''); La Molisana Alimentari S.p.A. (''La Molisana''); Delverde, S.r.l. (''Delverde''); Gruppo Agricoltura Sana S.r.L. (''Gruppo''); Pastificio Guido Ferrara (''Guido Ferrara''); Industria Alimentare Colavita, S.p.A. (''Indalco''); Isola del Grano S.r.L. (''Isola''); Italpast S.p.A. (''Italpast''); Italpasta S.r.L. (''Italpasta''); Labor S.r.l. (''Labor''); Pastificio Riscossa F.lli Mastromauro S.r.l. (''Riscossa''); and Tamma Industrie Alimentari di Capitanata (''Tamma'') .

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is calendar year 1994.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: With the exception of Barilla, the companies under investigation did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under investigation were given. Therefore, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. The methodology used to adjust the reference rate was described in our preliminary determination.

In the case of Barilla, the company reported and we verified that it had secured fixed-rate obligations during two years of the relevant period. Therefore, in accordance with section 355.49(b)(2) of the Proposed Regulations, we used this company-specific benchmark as the discount rate for Barilla in those years.

Allocation Period: Non-recurring benefits are being allocated over a 12-year period, the average useful life of physically renewable assets in the food processing industry (as reported in the Internal Revenue Service Asset Depreciation Range System).

Benefits to Mills: Several companies under investigation produce pasta using semolina sourced either internally or from affiliated mills. In our preliminary determination, we concluded that subsidies to the production of semolina, a primary input in the manufacture of pasta, were properly analyzed under the upstream subsidy provision of the Act (Section 771A).

Petitioners claim that the upstream subsidy provision is applicable only when the producer of the subject merchandise purchases the input product from an unrelated company. Petitioners assert that where the input producer is affiliated with the producer of the subject merchandise, production is sufficiently integrated that benefits bestowed upon the manufacture of the input product will necessarily flow down to the production of the subject merchandise. Petitioners have not made an upstream subsidy allegation.

Respondents argue that because semolina is an ''input product,'' subsidies to the production of semolina are correctly examined under the upstream subsidy provision of the statute. Respondents contend that the language in the upstream subsidy provision of the statute expressly defines ''upstream subsidies'' in terms of input products and makes no distinction between purchases from related or unrelated suppliers.

A thorough examination of the Department's past practice reveals a clear precedent for applying the upstream subsidy provision for subsidies to the input product where the producer of the input product is separately incorporated from the producer of the subject merchandise, regardless of whether the two companies are affiliated (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Oil Country Tubular Goods from Austria* (60 FR 33534) and *Initiation of Countervailing Duty Investigation; Converted Paper-related School and Office Supplies from Mexico* (49 FR 58347, 58348)). However, in two cases where the input product and the subject merchandise are produced within a single corporate entity, the Department has found that subsidies to the input product benefit total sales of the corporation, including sales of the subject merchandise, without conducting an upstream subsidy analysis (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada* (''*Lumber*'') (57 FR 22570) and *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel* (52 FR 25447)).

Therefore, in accordance with our past practice, where the companies under investigation purchase their semolina from a separately incorporated company, whether or not they are affiliated, we have not included subsidies to the mill in our calculations. However, for those companies where the mill is not incorporated separately from the producer of the subject merchandise, we have included subsidies for the milling operations in our calculations. Where appropriate, we have also included sales of semolina in calculating the *ad valorem* rate.

Changes in Ownership

We noted in our preliminary determination that one of the companies under investigation, Delverde, purchased an existing pasta factory from an unrelated party. Additionally, Indalco and De Matteis experienced changes in ownership, and Barilla purchased an existing pasta producer. With the exception of De Matteis, the previous owners of the purchased enterprises or factories had received non-recurring countervailable subsidies prior to the transfer of ownership and during the period 1983–1994.

For our preliminary determination, we calculated the amount of those prior subsidies that passed through to Delverde with the acquisition of the factory, following the methodology described in the *Restructuring* section of the General Issues Appendix in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37268–69) (''General Issues Appendix''). At the time of our preliminary determination, we did not have the information needed to perform this calculation with respect to Indalco and Barilla.

We noted in our preliminary determination that aspects of the General Issues Appendix methodology were being reviewed by the Court of Appeals for the Federal Circuit (''CAFC''), and that we would re-examine whether the General Issues Appendix methodology is appropriate for change of ownership transactions in light of facts developed in the final investigation, ongoing litigation, and section 771(5)(F) of the Act.

Since the time of our preliminary determination, the CAFC has issued a ruling supporting our determination in those cases that subsidies were not necessarily extinguished as a result of the sale of an enterprise in an arm's length transaction. Litigation, however, continues with regard to certain aspects of our methodology.

For our final determination we have continued to follow the General Issues Appendix Methodology and applied it to each of the respondents involved in a change of ownership. We note that Barilla did not provide the information necessary to analyze Barilla's acquisition of an existing pasta producer. Without this information we cannot estimate the portion of the purchase price that can reasonably be attributed to prior subsidies. Therefore, we have treated all previously bestowed subsidies as having passed through to the purchaser.

Related Parties

In the present investigation, we have examined several affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, such companies that produce the subject merchandise or that have engaged in certain financial transactions with the company under investigation are required to respond.

In accordance with this practice, we have determined that the following companies warrant treatment as a single company with a combined rate: Delverde and Tamma, Arrighi and Italpasta, De Cecco and Pescara, and De Matteis and Demaservice S.r.L. (''Demaservice'').

In our preliminary determination, we stated that Tamma held less than a 20 percent ownership interest in the Delverde group. However, upon reconsideration of the facts of their relationship, we have concluded that the relationship between Tamma and the Delverde group is substantially greater than 20 percent. We reach this conclusion by aggregating the ownership interests of Tamma and Tamma Service, S.r.L, which is appropriate given their relationship. In addition, the same individual is the president of Tamma, Delverde, and Delverde's parent company. Therefore, we have calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

In the cases of Arrighi and its affiliated producer, Italpasta, and De Cecco and its affiliated producer, Pescara, we have found that the respondents and their respective affiliates should be treated as a single company based on the extent of common ownership. Therefore, we have calculated a combined rate for Arrighi and Italpasta using the methodology described above. For De Cecco and Pescara, because De Cecco failed to provide subsidy information regarding Pescara, we have calculated a combined rate using facts available, as described in the *Facts Available* section of this notice.

As was noted in our preliminary determination, De Matteis is related to another company, Demaservice, through common ownership. Verification confirmed that while Demaservice does not produce the subject merchandise, it is deeply involved in the operations of De Matteis. Therefore, we have calculated a single countervailing duty rate for the two companies as described above.

Facts Available

Section 776(a)(2)(A) of the Act requires the Department to use facts available if ''an interested party or any other person * * * withholds information that has been requested by the administering authority or the Commission under this title.'' Two of the companies selected to provide responses in this investigation, Italpast and Labor, did not respond to our countervailing duty questionnaire. Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of the non-responding party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because the petition did not include subsidy rates, we were unable to use the petition as a source for facts available.

In the absence of verified data concerning benefits received by Italpast and Labor during the POI, we have determined that rates based on record data obtained from similarly situated firms constitute the most appropriate data available. Therefore, we have used the sum of the highest rates calculated for each program used by any of the companies as the facts available for Italpast and Labor.

In addition, we have determined that the final margin percentage for Isola and its affiliated producer, Alce Nero, should also be based on adverse facts available. At verification, Isola, a producer of organic pasta, was unable to support the completeness and accuracy of its response to our questionnaire. In particular, Isola did not demonstrate that all grants received during the period 1983–1991 were reported because it did not provide us with company records for that time. We also found unreported grants during 1992–1994, the period for which we were able to examine company records. In addition, Isola did not report receiving reduced-rate loans; however, at verification we found that during the POI it did have outstanding reduced-rate loans. Therefore, lacking verified data concerning benefits received by Isola, we have based its subsidy margin on adverse facts available, applying the sum of the highest rates calculated for each program for respondent companies.

Finally, De Cecco failed to include in the related parties section of its questionnaire response information concerning Pescara, a related producer of subject merchandise. We have determined that the relationship between Pescara and De Cecco warrants treating them as one company, as described in the *Related Parties* section of this notice. After verification, De Cecco attempted to submit information into the record of this investigation concerning Pescara. This information was returned, however, as it was not filed in a timely manner. We retained information on the record concerning the relationship of the companies and the value and volume of sales made by Pescara during the POI.

We have determined that De Cecco's failure to provide a complete response to the Department's countervailing duty questionnaire calls for the use of facts available under section 776(a)(2) and (b) of the Act. We have applied facts available with adverse inferences with respect to the sales of Pescara relative to the combined sales of Pescara and De Cecco, adjusted to eliminate intercompany transactions. Specifically, we calculated an amount of subsidies for each program by multiplying the highest calculated rate for any of the responding companies by Pescara's sales, and then adding this amount to De Cecco's subsidies under that program. This combined amount was then divided by the companies' combined adjusted sales data to calculate the *ad valorem* rate for De Cecco and Pescara.

Based upon our analysis of the petition and the responses to our questionnaire, we determine the following:

Claims for ''Green Light'' Subsidy Treatment

Section 771(5B) of the Act describes subsidies that are non-countervailable, the so-called ''green light'' subsidies. Among these are subsidies to disadvantaged regions. The GOI and the EC have requested that certain of their regional subsidies be considered non-countervailable under the green light provisions of section 771(5B).

In its initial response, the EC requested green light treatment for the regional aspects of the Structural Funds it administers (*i.e.*, the European Regional Development Fund (''ERDF''), the European Social Fund (''ESF''), and the European Agricultural Guidance and Guarantee Fund (''EAGGF'')). However, the EC also claimed that no companies under investigation had received assistance under the ESF or the EAGGF programs, and for this reason, the EC only responded to the green light section of our questionnaire with respect to the ERDF program. We have since learned that two companies did, in fact, receive assistance under the ESF program.

Each of the Structural Funds was established with a different purpose. The ERDF is tasked with helping to redress the main regional imbalances in the Community by assisting in the development and structural adjustment of underdeveloped regions and to help in the conversion of declining industrial regions. The ESF was set up to improve the employment opportunities for workers and to help raise their living standards. The EAGGF assists in financing national agricultural aid schemes and in developing and diversifying the EC's rural areas.

The EC has established five priority objectives which govern the operation of the Structural Funds:

Objective 1: To promote the development and structural adjustment of the regions whose development is lagging behind;

Objective 2: To convert regions seriously affected by industrial decline;

Objective 3: To combat long-term unemployment;

Objective 4: To facilitate the occupational integration of young people;

Objective 5(a): To speed up the adjustment of agricultural structures; and

Objective 5(b): To promote the development of rural areas.

In a submission made in connection with consultations held on March 11, 1996, the EC restated its claim that all regional aspects of the Structural Funds merit green light treatment. In this submission, the EC argued that green light status should not be analyzed separately for each of the Structural Funds. Instead, the EC argued that each Structural Fund ''objective'' should be treated as a program for green light purposes. In other words, the EC focuses on the three regional objectives under the Structural Funds, *i.e.*, Objective 1, Objective 2, and Objective 5(b). The EC considers the operation of Objective 1 under the ERDF, the ESF, and the EAGGF as a distinct and separate aid program, the operation of Objective 2 under the ERDF and the ESF as another distinct and separate aid program, and the operation of Objective 5 (b) under the ERDF, the ESF, and the EAGGF as yet another distinct and separate aid program.

With respect to the ESF grants bestowed on the companies under investigation, we do not have the information necessary to make a determination on whether this assistance is entitled to green light status. The EC opted not to provide a response to the green light questionnaire for the ESF. Moreover, there is no evidence on the record of this case regarding the particular objectives under which the ESF aid in question was granted.

The only ERDF assistance received by a company under investigation was granted under Objective 2 of the Structural Funds because the company was located in a declining industrial region. According to EC regulation, regions of a certain size which satisfy the following three criteria may be entitled to Objective 2 status:

(a) the average rate of unemployment recorded over a period of three years must be above the Community average;

(b) the percentage share of industrial employment to total employment must have equaled or exceeded the Community average; and

(c) there must have been an observable fall in industrial employment.

In addition, other types of regions may be accorded Objective 2 status in certain circumstances. These include smaller, adjacent areas that satisfy the above three criteria, areas defined by sectoral problems, and urban areas with serious unemployment or certain other problems.

According to section 771(5B)(C) of the Act, in order for a subsidy to be non-actionable it must have been provided pursuant to a general framework of regional development, within which regions must be considered disadvantaged on the basis of neutral and objective criteria. These neutral and objective criteria must contain a measure of economic development which is based on either a per capita income that does not exceed 85 percent of the national average (in this case the EC average) or an unemployment rate that is at least 110 percent of the national average (also the EC average).

Regardless of whether we treat the ERDF itself as the relevant program or adopt the EC's objective-by-objective approach, we find that the assistance is not entitled to green light treatment. The Objective 2 criteria, described above, do include the level of unemployment; however, by requiring unemployment only to exceed the Community average, the criteria do not satisfy the requirement in our statute (or the WTO Subsidies Agreement) that unemployment be at least 110 percent of the national average. Moreover, the information on the record is insufficient to indicate whether the region in which the sole recipient of ERDF assistance is located does meet the requirements laid out in section 771(5B)(C). Therefore, we need not decide whether such information would be relevant. Finally, several of the various other possible bases for according a region Objective 2 status do not include one of the requisite measures of economic development.

For the foregoing reasons, we determine that subsidies received by the Italian pasta producers under the ERDF and the ESF are countervailable. Our treatment of these subsidies is discussed further in the program specific section of this notice.

The GOI has requested that the Department find the following subsidies to disadvantaged regions to be non-countervailable under section 771(5B)(C):

- ILOR and IRPEG Tax Exemptions under Decree 218 of 1978;
- Industrial Development Grants under Law 64 of 1986;
- Industrial Development Loans under Law 64 of 1986; and
- VAT Reductions on Capital Goods under Law 675 of 1977.

The GOI has maintained a system of ''extraordinary intervention'' in southern Italy since the 1950's. Over time, various laws were passed relating to the extraordinary intervention in the

South. Included in these laws were Law 64/86 and its predecessors, which provided for capital grants and interest contributions to productive investments in southern Italy, as well as the other programs for which green light treatment has been requested. In 1986, Law 64/86 was passed in order to consolidate all laws relating to the extraordinary intervention in the south into one development policy. Each of the programs for which the GOI has requested green light treatment can be considered part of Law 64/86 for this reason.

There is no indication that the GOI performed any analysis, using neutral and objective criteria, in order to select the regions which would be eligible for assistance. GOI officials admitted at verification that the first time that a systematic review of the regions eligible for assistance was applied in Italy was when Law 64/86 was investigated by the EC.

Subsequent to passage of Law 64/86, the EC initiated an investigation as to whether this law was consistent with the EC's competition policy rules. The EC competition policy rules contain a general prohibition against member state aid schemes, with certain exceptions which include two specific exceptions relating to regional development. In particular, member states are allowed to provide one level of aid intensity to regions with a per capita GDP that is less than or equal to 75 percent of the EC average and another, lower level of aid intensity to regions with a per capita GDP equal to 85 percent of the member state average or an unemployment rate equal to 110 percent of the member state average.

In its decision, dated March 2, 1988, the EC found that the majority of the Italian provinces eligible for assistance under Law 64/86 met the criteria of the competition policy rules and were entitled to receive aid at the higher intensity level. However, the decision also called for a reduction of Law 64/86 benefits for one province and the elimination of assistance for four additional provinces. The EC allowed the GOI until 1992 for the complete reduction and elimination of assistance to these areas.

The EC, the GOI, and certain respondents have argued that the Department's analysis should recognize that Law 64/86 is part of a community-wide framework of regional development. We need not reach the issue of whether the nature of Law 64/86 as a green light subsidy is governed by a community-wide framework of regional development because we find that Law 64/86 does not meet the criteria established in the community-wide framework. First, the EC itself concluded in 1988 that several regions were ineligible to receive assistance under the competition policy rules. In fact, Law 64/86 was not fully in compliance with the competition policy rules until the close of 1992. All of the Law 64/86 benefits included in this investigation were received or approved prior to the close of 1992. In addition, the Abruzzo region has continually been eligible to receive Law 64/86 assistance even though it did not meet the EC criteria (or even the less stringent criteria in section 771(5B)(c)).

For the foregoing reasons, we determine that benefits provided under Law 64/86 do not qualify as non-countervailable subsidies. Our treatment of the individual benefits is discussed below in the program specific section of this notice.

I. Programs Determined to be Countervailable

A. Local Income Tax (''ILOR'') Exemptions

Companies located in the Mezzogiorno may receive a complete exemption for a period of 10 years from the ILOR on profits deriving from new plant and equipment or from plant expansion and improvement under Presidential Decree 218 of March 6, 1978. In addition, otherwise non-qualifying profits which are reinvested in plant or equipment may receive an exemption from the ILOR for the year of reinvestment. The provision for ILOR exemptions expired on December 31, 1993, but companies which were approved for the exemptions prior to this date may continue to benefit from the exemption until the expiration of the 10-year benefit period approved for each company.

We have determined that these tax exemptions are countervailable subsidies. They constitute subsidies within the meaning of section 771(5) of the Act, as the tax exemptions represent revenue foregone by the GOI and confer tax savings on the companies. Also, they are regionally specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno.

Barilla, De Cecco/Pescara, and Delverde/Tamma claimed ILOR tax exemptions on tax returns filed during the POI.

To calculate the countervailable subsidy for each company, we divided the tax savings during the POI by the company's sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.06 percent *ad valorem* for Barilla, 1.00 percent *ad valorem* for De Cecco/Pescara, and 0.05 percent *ad valorem* for Delverde/Tamma.

B. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote industrial development in the Mezzogiorno. Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament decided to abrogate Law 64/86. This decision became effective in 1993. Projects approved prior to 1993, however, were authorized to receive grant amounts after 1993.

Barilla, De Cecco/Pescara, La Molisana, Delverde/Tamma, Indalco, and Riscossa received industrial development grants.

We determine that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the grant. Also, these grants are regionally specific, within the meaning of section 771(5A).

We have treated these grants as ''non-recurring'' based on the analysis set forth in the *Allocation* section of the General Issues Appendix. In accordance with our past practice, we have allocated those grants, net of any taxes paid, which exceeded 0.5 percent of a company's sales in the year of receipt over time.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to the POI for each company by that company's sales in the POI. On this basis, we determine the countervailable subsidy for this program to be 0.00 percent *ad valorem* for Barilla, 0.56 percent *ad valorem* for De Cecco/Pescara, 0.36 percent *ad valorem* for La Molisana, 1.86 percent *ad valorem* for Delverde/Tamma, 0.58 percent *ad valorem* for Indalco, and 2.51 percent *ad valorem* for Riscossa.

C. Industrial Development Loans Under Law 64/86

Law 64/86 also provided reduced rate industrial development loans with interest contributions to companies constructing new plants or expanding or modernizing existing plants in the

Mezzogiorno. The interest rate on these loans was set at the reference rate, with the GOI's interest contributions serving to reduce this rate. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants but not to establish new plants.

Barilla, De Cecco/Pescara, Delverde/Tamma, Indalco and La Molisana received industrial development loans with interest contributions from the GOI.

We determine that these loans are countervailable subsidies within the meaning of section 771(5). They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they are regionally specific within the meaning of section 771(5A).

It is the Department's practice to measure the benefit conferred by interest rebates using our loan methodology if the company knew in advance that the government was likely to pay or rebate interest on the loan at the time the loan was taken out. (*See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* (58 FR 37327) (''*Certain Steel from Italy*'').) Because, in this case, the recipients of the interest contributions knew, prior to taking out the loans, that the GOI likely would provide the interest contributions, we have allocated the benefit over the life of the loan for which the contribution was received. We divided the benefit attributable to the POI for each company by that company's sales. On this basis, we determine the countervailable subsidy for this program to be 0.09 percent *ad valorem* for Barilla, 0.42 percent *ad valorem* for De Cecco/Pescara, 0.80 percent *ad valorem* for Delverde/Tamma, 0.09 percent *ad valorem* for Indalco, and 0.42 percent *ad valorem* for La Molisana.

D. Export Marketing Grants Under Law 304/90

To increase market share in non-EU markets, Law 304/90 provides grants to encourage enterprises operating in the food and agricultural sectors to carry out pilot projects aimed at developing links between Italian producers and foreign distributors and improving the quality of services in those markets. Emphasis is placed on assisting small- and medium-sized producers.

We have determined that the export marketing grants under Law 304 provide countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOI providing a benefit in the amount of the grant. The grants are also specific because their receipt is contingent upon anticipated exportation.

Delverde/Tamma received a grant under this program for a market development project in the United States.

Each project funded by a grant requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in new overseas markets. Therefore, we have treated the grant received under this program as ''non-recurring'' based on the analysis set forth in the *Allocation* section of the General Issues Appendix. Further, we have determined that the grant exceeded 0.5 percent of Delverde/Tamma's exports to the United States in the year it was received. Therefore, in accordance our past practice, we allocated the benefits of this grant over time.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefits attributable to the POI by the total value of Delverde/Tamma's exports to the United States. On this basis, we determine the countervailable subsidy to be 0.18 percent *ad valorem* for Delverde/Tamma and 0.00 percent *ad valorem* for De Cecco/Pescara.

E. Social Security Reductions and Exemptions

1. Sgravi Benefits

Pursuant to Law 1089 of October 25, 1968, companies located in the Mezzogiorno were granted a 10 percent reduction in social security contributions for all employees on the payroll as of September 1, 1968, as well as those hired thereafter. Subsequent laws authorized companies located in the Mezzogiorno to take additional reductions in social security contributions for employees hired during later periods, provided that the new hires represented a net increase in the employment level of the company. The additional reductions ranged from 10 to 20 percentage points. Further, for employees hired during the period July 1, 1976 to November 30, 1991, companies located in the Mezzogiorno were granted a full exemption from social security contributions for a period of 10 years, provided that employment levels showed an increase over a base period.

We determine that the social security reductions and exemptions are countervailable subsidies within the meaning of section 771(5). They represent revenue foregone by the GOI and they confer a benefit in the amount of the savings received by the companies. Also, they are specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno.

Barilla, De Cecco/Pescara, Delverde/Tamma, La Molisana, Guido Ferrara, Campano, De Matteis, Riscossa, and Indalco received social security reductions and exemptions during the POI.

To calculate the countervailable subsidy, we have divided the total savings in social security contributions realized by each company during the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.38 percent *ad valorem* for Barilla, 0.94 percent *ad valorem* for De Cecco/Pescara, 1.40 percent *ad valorem* for Delverde/Tamma, 2.57 percent *ad valorem* for La Molisana, 0.93 percent *ad valorem* for Guido Ferrara, 1.85 percent *ad valorem* for Campano, 2.03 percent *ad valorem* for De Matteis, 0.95 percent *ad valorem* for Riscossa, and 1.06 percent *ad valorem* for Indalco.

2. Fiscalizzazione Benefits

In addition to the sgravi deductions described above, the GOI provides Social Security benefits of another type, called ''fiscalizzazione.'' Fiscalizzazione is a nationwide measure which provides a deduction of certain social security payments related to health care or insurance. The program provides an equivalent level of deductions throughout Italy for contributions related to tuberculosis, orphans, and pensions. However, the program also provides a deduction from companies' contributions to the National Health Insurance system which is equal to 3.44 percent of salaries paid in northern Italy and 9.60 percent of salaries paid in southern Italy.

We determine that the fiscalizzazione reductions are countervailable subsidies within the meaning of section 771(5) for companies with operations in southern Italy. They represent revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they are regionally specific within the meaning of section 771(5A).

Barilla, De Cecco/Pescara, Delverde/Tamma, La Molisana, Guido Ferrara, Campano, De Matteis, Riscossa, and Indalco received the higher levels of fiscalizzazione deductions available to companies located in the Mezzogiorno during the POI.

To calculate the countervailable subsidy, we have divided the amount of the excessive fiscalizzazione deductions realized by each company in the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.11 percent *ad valorem* for Barilla, 0.53 percent *ad valorem* for Campano, 0.38 percent *ad valorem* for De Cecco/Pescara, 0.40 percent *ad valorem* for De Matteis, 0.32 percent *ad valorem* for Delverde/Tamma, 0.28 percent *ad valorem* for Guido Ferrara, 0.44 percent *ad valorem* for Indalco, 0.71 percent *ad valorem* for La Molisana, and 0.51 percent *ad valorem* for Riscossa.

3. Law 407/90 Benefits

Prior to verification, one of the respondent companies, Agritalia, informed the Department that it had received benefits under Law 407/90. Agritalia officials explained that this program grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years. According to Agritalia, a 100 percent exemption was allowed for companies in southern Italy. However, companies located in northern Italy received only a 50 percent exemption. During verification, two other companies, Campano and De Matteis, also indicated that they had received benefits under this program, and a review of documents related to Indalco's social security payments indicated that Indalco had also received benefits under this program.

We determine that the 100 percent exemptions provided to companies with operations in southern Italy under Law 407 are countervailable subsidies within the meaning of section 771(5). They represent revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they are regionally specific within the meaning of section 771(5A).

To calculate the countervailable subsidy, we have divided the amount of the Law 407 exemption which exceeds the amount available in northern Italy realized by each company during the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.03 percent *ad valorem* for Agritalia, 0.21 percent *ad valorem* for Campano, 0.02 percent *ad valorem* for De Cecco/Pescara, 0.04 percent *ad valorem* for De Matteis, and 0.01percent *ad valorem* for Indalco.

4. Law 863 Benefits

One of the respondents, Barilla, reported receiving Law 863 training benefits. According to Barilla, this law provides companies in northern Italy a 25 percent reduction in social security payments for employees who are participating in a training program. Companies in southern Italy receive a 100 percent reduction in social security payments for such employees.

None of the other responding companies reported receiving benefits under this program. Additionally, we reviewed the social security documentation for other responding companies and noted nothing to indicate that any of the other respondents had claimed benefits under this program.

We determine that the Law 863 reductions are countervailable subsidies within the meaning of section 771(5) for companies with operations in southern Italy. They represent revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they are regionally specific within the meaning of section 771(5A).

To calculate the countervailable subsidy, we have divided the amount of the Law 863 reductions which exceeds the amount available in northern Italy realized by Barilla during the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.01 percent *ad valorem* for Barilla and 0.00 percent *ad valorem* for De Cecco/Pescara.

F. European Regional Development Fund

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

Arrighi/Italpasta received an ERDF grant.

We determine that the ERDF grant received by Arrighi/Italpasta constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The grant is a direct transfer of funds providing a benefit in the amount of the grant. Also, ERDF grants are regionally specific within the meaning of section 771(5A) of the Act.

We view this as a ''non-recurring'' grant based on the analysis set forth in the *Allocation* section of the General Issues Appendix. The grant was received in two disbursements. The first disbursement was received in 1993 and was less than 0.5 percent of Arrighi/Italpasta's total sales in that year. Accordingly, this disbursement was expensed in 1993. The second disbursement was received in 1994 (the POI) and was also less than 0.5 percent of Arrighi/Italpasta's total sales in that year. Therefore, in accordance with our past practice, we are allocating the full amount of this disbursement to the POI.

To calculate the countervailable subsidy, we divided the full amount of the grant by Arrighi/Italpasta's total sales. On this basis, we calculated the countervailable subsidy from this program to be 0.19 percent *ad valorem* for Arrighi/Italpasta and 0.02 percent *ad valorem* for De Cecco/Pescara.

G. European Social Fund

The ESF is also one of the Structural Funds operated by the EC. The ESF was created under Article 123 of the Treaty of Rome in order to improve employment opportunities for workers and to help raise their living standards. The ESF principally provides vocational training and employment aids. At the EC verification, we learned that ESF aid is generally provided directly to public institutions or non-commercial enterprises. However, it can also be provided directly to a company, provided that it is located in an Objective 1, Objective 2, or Objective 5(b) region. The ESF provides grants to such companies in order to train current employees for new jobs or to hire new employees.

Barilla and Delverde/Tamma received ESF grants.

As stated in section 355.44(j) of the Proposed Regulations, the Department considers worker assistance programs to be countervailable when a company is relieved of an obligation it would otherwise have incurred. We verified at the EC that in addition to providing funds for training programs which may or may not relieve companies of an obligation, ESF funds are available to aid companies in hiring new employees. Because a company is normally obligated to meet its hiring needs without assistance from the government, we determine that ESF funds relieve companies of an obligation. Therefore, we determine that ESF grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds providing a benefit in the amount of the grant. Also, because ESF assistance to individual companies is limited to companies located in Objective 1, Objective 2, and Objective 5(b) regions, we have determined that ESF grants are regionally specific within the meaning of section 771(5A) of the Act.

In our preliminary determination, we treated ESF grants as ''recurring'' because worker training grants are among the types of benefits the Department normally expenses in the year of receipt. However, in light of the GOI verification and comments received by interested parties, we have determined that ESF grants are ''non-recurring'' (see Comment 20, below). We also have determined that the grants received by Barilla and Delverde/Tamma were less than 0.5 percent of each company's respective sales in the year of receipt. Therefore, in accordance with our past practice, we expensed these non-recurring grants in the year of receipt. On this basis, we calculated the countervailable subsidy from this program to be 0.00 percent *ad valorem* for Barilla, 0.00 percent *ad valorem* for Delverde/Tamma, and 0.00 percent *ad valorem* for De Cecco/Pescara.

H. Export Restitution Payments

Since 1962, the EC has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products.

Generally, under this program, a restitution payment is available to any EC exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EC. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate on the date of exportation by the weight of the unmilled durum wheat used to produce the exported pasta. The weight of the unmilled durum wheat is calculated by applying a conversion factor to the weight of the pasta. The EC calculates the restitution payment rate, on a monthly basis, by first computing the difference between the world market price of durum wheat and an internal EC price and then adding a monthly increment (in all months except June and July, which are harvest months). The EC normally will not allow the restitution payment rate to be higher than the levy that the EC imposes on imported durum wheat, as it would lead to circular trade.

Additionally, under this program, the EC permits a pasta exporter to purchase a certificate that locks in a restitution payment rate if the pasta exporter promises to export a certain amount of pasta by a certain date. The promised export date can be as much as six months later. Moreover, the pasta exporter is free to sell this certificate to another pasta exporter. The selling price is determined through negotiations between the seller and the purchaser and typically will be dependent on such factors as the amount of time left until the certificate expires, the purchaser's projected volume of exports, the restitution payment rate under the certificate, and the current and expected future restitution payment rates set by the EC. A pasta exporter that fails to use a certificate by the date set forth in the certificate must pay a penalty.

In 1987, the nature of this program changed with regard to exports to the United States as a result of a settlement reached by the United States and the EC. This settlement arose out of a GATT panel proceeding, brought by the United States, in which the panel ruled (in 1983) that the restitution program violated the EC's GATT obligations and did not fall within the exception under Item (d) of the Illustrative List of Export Subsidies.

Under the settlement, the EC agreed to allow the importation of durum wheat from any non-EU country free of any levy under a system described in the settlement as ''Inward Processing Relief'' (''IPR''). Under this system, the EC pasta exporter would not receive a restitution payment when exporting to the United States pasta products containing durum wheat imported with IPR. Essentially, a restitution payment no longer was necessary because no levy had been paid upon importation of durum wheat in the first place.

As to pasta products containing EC durum wheat or durum wheat that had been imported without IPR, a restitution payment remained available for exports to the United States, except that the restitution rate was reduced, originally by 27.5 percent and later by approximately 35 percent, from the normal level available for exports to all other countries.

As a further condition of the settlement, the EC agreed to attempt to balance its exports to the United States equally between pasta products containing durum wheat imported with IPR, on the one hand, and pasta products containing EC durum wheat or durum wheat imported without IPR, on the other hand. The goal was for 50 percent of the EC's pasta exports to the United States to contain durum wheat imported with IPR (for which the exporter had paid world market price, free of any levy, and had received no restitution payments), while the remaining 50 percent of the EC's pasta exports to the United States would contain EC durum wheat or durum wheat imported without IPR (for which the exporter could receive reduced restitution payments). In all other respects, the program remained unchanged.

We have concluded that the restitution payments made are countervailable subsidies within the meaning of section 771(5) of the Act. Each payment represents a direct transfer of funds from the EC providing a benefit in the amount of the payment. The restitution payments are specific because their receipt is contingent upon export performance.

In our preliminary determination, we calculated export restitution benefits on an earned basis, following the methodology set forth in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from New Zealand* (52 FR 37196, 37197). Based on information available at the time of our preliminary determination, it appeared that the restitution rate was known at the time of export and the respondents were confident of receiving benefits.

In accordance with our normal practice of recognizing subsidy benefits when there is a cash-flow effect, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POI for purposes of our final determination. We learned during verification that export restitution benefits are not ''automatic'' in that their receipt is not certain until an application has been filed, at the earliest. Applying for restitution is voluntary, and not all parties eligible for restitution always apply for benefits (*see, e.g.*, verification report for the European Union). We also noted that the amounts received, while generally quite close to the amounts requested, did not always equal the amount indicated by the company on its request form. We have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POI.

Agritalia, Arrighi/Italpasta, Delverde/Tamma, and Riscossa received export restitution payments during the POI on shipments to the United States.

To calculate the countervailable subsidy, we divided the export restitution payments received during the POI on shipments to the United States by the company's total export sales to the United States during the POI. We calculated a countervailable subsidy under this program of 0.42 percent *ad valorem* for Agritalia, 2.25 percent *ad valorem* for Arrighi/Italpasta, 0.02 percent *ad valorem* for De Cecco/Pescara, 0.94 percent *ad valorem* for

Delverde/Tamma, and 2.94 percent *ad valorem* for Riscossa.

I. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy

The Sabatini Law was enacted in 1965 to encourage the purchase of machine tools and production machinery. It provides for a deferral of up to five years of payments due on installment contracts for the purchase of such equipment and for a one-time, lump-sum interest contribution from Mediocredito Centrale toward the interest owed on these contracts. The amount of the interest contribution is equal to the present value of the difference between the payment stream over the life of the contract based on the reference rate and the payment stream over the life of the contract based on a concessionary rate. The concessionary rate for companies located in the Mezzogiorno is the reference rate less eight percentage points. The concessionary rate for companies located outside the Mezzogiorno is the reference rate less five percentage points.

Two companies in northern Italy received interest contributions under the Sabatini Law for loans which were outstanding during the POI. In addition, La Molisana received an interest contribution at the concessionary rate available in the Mezzogiorno for a loan which was still outstanding during the POI.

With respect to the benefits provided in northern Italy, we analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A)(D)(i) and (iii). Section 771(5A)(D)(iii) of the Act provides the following four factors to be examined with respect to *de facto* specificity: 1) the number of enterprises, industries or groups thereof which use a subsidy; 2) predominant use of a subsidy by an enterprise, industry, or group; 3) the receipt of disproportionately large amounts of a subsidy by an enterprise, industry, or group; and 4) the manner in which the authority providing a subsidy has exercised discretion in its decision to grant the subsidy.

The Sabatini Law, which created the program, contains no limitations on the types of industries that can apply for assistance. Further, during the years 1988 through 1993, assistance under the program was distributed over 19 sectors, representing a wide cross-section of the economy. On this basis, we concluded that the subsidy recipients were not limited to a specific industry or group of industries. We also examined evidence regarding the usage of this program and found no predominant use by the pasta industry. We next examined whether a disproportionately large share of benefits was granted to the pasta industry. We found that on average, benefits to the food processing industry, which includes the pasta industry, amounted to 4.9 percent of all benefits granted. Considering the number and variety of sectors receiving benefits and the range of benefits over the various sectors, we do not consider the benefits received by the food processing sector to constitute a disproportionate share of the benefits distributed under this program. Given our findings that the number of users is large and that there is no dominant or disproportionate use of the program by the pasta producers, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Thus, for companies located outside the Mezzogiorno, we determine that interest contributions under the Sabatini Law are not specific, and not countervailable.

However, because the concessionary rate for companies in southern Italy is lower than the benchmark interest rate, we determine that the Sabatini Law interest contributions to companies in southern Italy are countervailable subsidies within the meaning of section 771(5). They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies. In addition, they are regionally specific within the meaning of section 771(5A).

As stated earlier (*see, Industrial Development Loans* section, above), when a company knows in advance that the government is likely to pay or rebate interest on a loan, the Department will measure the benefit conferred by that rebate using our loan methodology. Because La Molisana knew, prior to taking out the loan, that it would receive the interest contribution, we have allocated the benefit over the life of the loan for which the contribution was received. We divided the benefit attributable to the POI by La Molisana's total sales in the POI. On this basis, we determine the countervailable subsidy for this program to be 0.06 percent *ad valorem* for La Molisana and 0.01 percent ad valorem for De Cecco/Pescara.

J. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77

The Special Section for Export Credit Insurance (''SACE'') was created under Article 2 of Law 227/77 as the branch of the GOI responsible for the administration of government export credit insurance and guarantee programs. Pursuant to Article 3 of Law 227/77, SACE insures and reinsures political, catastrophic, economic, commercial and exchange-rate risks which Italian operators are exposed to in their foreign activities.

During the POI, only one private insurance company, Societa Italiana Crediti S.p.A. (''SIAC''), had a reinsurance agreement with SACE. Under the reinsurance agreement, SIAC passed along a fixed percentage (*i.e.*, 45 percent) of its export credit insurance premia to SACE. In return, SACE assumed that same percentage of risk on export credit insurance policies sold by SIAC (*i.e.*, SACE would pay 45 percent of any claim for which SIAC would become liable).

Article 33 of Law 227/77 provides for the remission of insurance taxes on policies directly insured or reinsured with SACE. For reinsurance policies, this remission of insurance taxes applied not only to the portion of the risk covered by SACE, but also the remaining portion covered by the private insurance company. As a result, export credit insurance policies sold by SIAC during the POI were totally exempt from the insurance tax by virtue of its reinsurance agreement with SACE. Export credit insurance policies sold by other private insurance companies, however, were not exempt from the insurance tax. The insurance tax rate was 12.5 percent of premia paid.

We determine that the exemption from the insurance tax for policies directly insured or reinsured with SACE is a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the GOI and confer tax savings on the companies. Also, because export credit insurance is available only to exporters and is by its nature contingent upon export performance, we find the remission of taxes on export credit insurance to be specific within the meaning of section 771(5A) of the Act.

La Molisana obtained export credit insurance from SIAC for its exports to the United States. We saw no evidence at verification to indicate that other responding companies purchased export credit insurance from SIAC. To calculate the benefit received by La Molisana, we multiplied the amount of premia paid during the POI for exports to the United States by the insurance tax rate and divided the amount by total exports to the United States. We calculated a countervailable subsidy rate of 0.05 percent *ad valorem* for La

Molisana and 0.00 percent *ad valorem* for De Cecco/Pescara.

II. Program Found To Be Not Countervailable

A. Disaster Relief

Four respondent companies, Barilla, Campano, De Matteis, and Guido Ferrara, reported receiving disaster relief assistance between the period 1983–1994 under Law 219/81. Law 219 was enacted following one of the worst earthquakes to strike Italy in 50 years. Under Law 219, aid was granted for the repair and reconstruction of residential buildings, public locations, schools, churches and industries damaged in the earthquakes of November 1980 and February 1981. Aid to industries was provided to repair and rebuild facilities, such that the rebuilt facility would employ the same number of workers as prior to the disaster. The eligibility criteria for a facility to receive aid under Law 219 consisted of the following:

- It had to be a productive unit (*e.g.*, shopkeepers were ineligible);
- It had to be extant at the time of the earthquake;
- It had to have experienced actual damage (*i.e.*, being located in the applicable area was not sufficient);
- The damage had to be more than minor in nature.

The amount of assistance provided was capped by a formula based on the number of employees at the time of the earthquake and by a set percentage of project cost.

In the past, the Department has found that disaster relief does not confer countervailable subsidies where it constituted general assistance to anyone in affected areas. *In Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy* (47 FR 39360 (1982)), in reviewing a similar disaster relief program, we stated:

> Although not all areas would be eligible at any one time, disaster relief is not selective in the same manner as other regional programs since there is no predetermination of eligible areas and no part of the country, and no industry, is excluded in principle, from participation.

Accordingly, we have determined that, on a *de jure* basis, the disaster relief provided under Law 219 was general in nature and available to all who were affected. Moreover, at verification, we confirmed that aid under Law 219 was granted to numerous companies in a variety of industries. Therefore, we have determined this program to be not countervailable.

III. Programs Determined To Be Not Used

A. VAT Reductions

The responses indicated that certain companies received VAT reductions under Law 675/77. We have determined that any payments received under this program are ''recurring,'' as they are not exceptional and companies can expect to receive them on an ongoing basis. Moreover, receipt of the VAT reductions is automatic provided the company is eligible and the proper forms are filed. Such benefits are among the types of benefits the Department has identified as normally being expensed in the year of receipt. (*See, Allocation* section of the General Issues Appendix.)

Since no payments were received by any investigated companies under this program during the POI, we are treating the program as ''not used'' and, consequently, have not analyzed whether it confers a countervailable subsidy.

B. Export Credits Under Law 227/77

C. Capital Grants Under Law 675/77

D. Retraining Grants Under Law 675/77

E. Interest Contributions on Bank Loans Under Law 675/77

F. Interest Grants Financed by IRI Bonds

G. Preferential Financing for Export Promotion Under Law 394/81

H. Corporate Income Tax (''IRPEG'') Exemptions

I. European Agricultural Guidance and Guarantee Fund

J. Urban Redevelopment Under Law 181

Interested Party Comments

Comment 1: Subsidies bestowed under previous ownership: Respondents Barilla, Indalco and Delverde argue generally that grants received by the companies located in the Mezzogiorno (under Law 64/86) were used to invest in new plant and equipment, and that the investment in new plant and equipment increased the value of the enterprise. Respondents argue that this increase in value was fully reflected in the sales price of the acquired enterprise or its assets because, where a change of ownership occurred, the sale was a private transaction at arm's length. Thus, respondents argue, any competitive benefit would have been included in the sales price of the enterprise, benefiting the previous owner but not the new owner.

Barilla argues that neither Cagliari (a pasta producer acquired by Barilla) nor Barilla was a state-owned enterprise and, accordingly, Barilla's acquisition of Cagliari involved an arms-length transaction resulting from fair and open negotiations between two purely private parties. Barilla argues that it paid a market price for Cagliari, and that this price reflected any remaining economic benefit from any pre-acquisition grants that Cagliari received. Barilla further argues that the grants received by Cagliari were received many years ago, and can have no distortive impact on competition today.

Indalco argues that the assistance the company received under Law 64 was modest and that the company was not being rescued or bailed-out by the government. Indalco argues that while the language of section 771(5)(F) may indicate that the provision applies both to privatization of state-owned enterprises and to changes in ownership of private firms, the legislative history makes it clear that the Congress intended the provision to address privatization. In support of this argument, Indalco cites to the Statement of Administrative Action (''SAA'') at 258 where, referring to section 771(5)(F), the SAA reads: ''The issue of privatization of a state-owned firm can be extremely complex and multifaceted.''

Delverde cites to *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada* (51 FR 15037, 15042) (''*OCTG from Canada*'') where the assets of a responding company had been purchased in an arm's length transaction in bankruptcy liquidation and the Department stated: ''In an arm's length transaction, such as this one, subsidies, if there are any, are not passed through.'' Delverde also argues that newly added amendments to the Act clearly do not compel the Department to reach the conclusion that subsidies to MI.BA (the previous owner of the pasta factory purchased by Delverde) passed through to Delverde. Delverde cites section 771(5)(F) of the Act and emphasizes that the statute indicates that a change in ownership ''does not by itself require'' a determination by the Department that subsidies do not pass through. Delverde argues that the language in the statute indicates that it is possible for subsidies to not pass through to a new owner when there is an arm's length transaction.

Delverde further argues that MI.BA and Delverde are both private entities, and that there has never been any government ownership of the pasta factories. Delverde argues that, from an economic perspective, it paid a market price for MI.BA, purchasing the assets of MI.BA at a price determined by an independent appraiser, so it should be irrelevant whether MI.BA had received any subsidies.

Petitioners first point out that in *Saarstahl AG* v. *United States* (Nos. 94–1457, –1475, Slip Op. (Fed. Cir. Mar. 12, 1996)) (''*Saarstahl*''), the CAFC sanctioned the Department's position that ''the subsidy survives unless there is evidence that it went elsewhere or was repaid.'' Petitioners then argue that there is no evidence on the record that would allow the Department to measure the precise amount of the benefit that passed through to the current owner or that remained with the previous owner, and as a result the Department must countervail the entire amount of the prior subsidies. Petitioners further argue that since the government was not involved in any of the transactions, no repayment to the government of any previously bestowed subsidies could have resulted from the changes in ownership. Finally, petitioners argue that the type of subsidies bestowed on pasta production under previous ownership is, for the most part, identical to the subsidies bestowed on the production of pasta under the current ownership. Therefore, it would be inconsistent and illogical to countervail only the subsidies that benefited pasta production received under current ownership while leaving the remaining portion of the subsidies received by a facility under its previous owner uncountervailed.

Petitioners argue that respondents are claiming that asset sales at arm's length and for fair-market value, by themselves, insulate previously bestowed subsidies from countervailability. Petitioners argue that current law clearly establishes that subsidies received under prior ownership are actionable. With regard to change of ownership, petitioners point to the SAA, at page 258, which reads:

> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct such an extreme interpretation.

Petitioners contend further that the Department has been careful to distinguish its findings in *OCTG from Canada* from other cases where there have been changes in ownership. Petitioners cite to the General Issues Appendix, at 37236, where the Department stated:

> *OCTG from Canada* involved a situation where a company had become defunct and non-operational. Its assets were disposed of through a bankruptcy proceeding. This is a unique situation not involving the sale of an ongoing operating company exporting subsidized merchandise to the United States.

Petitioners additionally argue that the respondent company in *OCTG from Canada* was engaged in the manufacture of a different product from the predecessor company.

Petitioners next argue that the Department's own grant allocation methodology recognizes that the value of a grant should be spread out over several years. Petitioners cite to the General Issues Appendix at 37261:

> The Department allocates non-recurring subsidies over time in recognition of the fact that the statutory goal of providing a remedy against subsidies would be defeated by allocating the subsidies to a single moment or year. The statutory presumption that subsidies benefit goods produced by their recipients must, in order to have the intended effect, be applied over a reasonable period of time * * *.

Petitioners contend that considering these subsides to be extinguished when there is a change of ownership is tantamount to circumscribing all of the subsidies to a single moment in time, a result that is inconsistent with the Department's practice of allocating non-recurring subsidies.

DOC Position: We have determined that a portion of the subsidies bestowed while the enterprise was under previous ownership pass through, as described in the *Change of Ownership* section of this notice.

In *Saarstahl*, the CAFC stated that ''the statute does not limit Commerce to countervailing only subsidies that confer a competitive advantage on merchandise exported to the United States. Nor does the legislative history say that Commerce was expected to perform any calculations of competitive advantage.'' (*Saarstahl* at 245.) The CAFC then cited to S. Rep. No. 1298, 93d Cong., 2d Sess. 184 (1974), which states, ''Whenever the Secretary * * * has sufficient evidence to determine the existence of a bounty or grant, he can and should make his final determination and impose countervailing duties.''

Respondents argue that a purchaser is indifferent between buying a previously subsidized enterprise and an enterprise that has not been subsidized. As noted above, the CAFC in *Saarstahl* specifically stated that the Department does not need to demonstrate competitive benefit. The Department calculates a subsidy rate based upon the countervailable subsidies to the merchandise. These subsidies do not necessarily lose their countervailable nature by simple virtue of an arm's length transaction, as the CAFC in *Saarstahl* and section 771(5)(F) confirm.

With *Saarstahl*, the CAFC upheld the Department's position that subsidies were not necessarily extinguished as a result of the privatization of a state-owned enterprise through an arm's length transaction. In so doing, the CAFC rejected the position of the Court of International Trade (''CIT'') that an arm's length sale automatically extinguished prior subsidies. It was the CIT's ''extreme position'' that led to the addition of section 771(5)(F) to the Act (*see*, SAA at 258).

Respondents attempt to distinguish the changes in ownership in the instant investigation from *Saarstahl* by arguing that in addition to an arm's length transaction at fair market value, the respondent parties are privately held entities and there was no government ownership, nor involvement in the sales of the companies'' shares or assets. Accordingly, respondents argue, this lack of involvement by the state in the transaction means that the previous owners retain the benefit from the subsidies.

Respondents' argument conflicts with section 771(5)(F), which reads:

> Change in ownership.—A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

If Congress had intended that this section apply only to privatizations of state-owned enterprises, the language would have been more explicit in that regard. It is apparent that Congress intended that this provision be applicable to all changes of ownership. Moreover, the language of this provision purposely leaves much discretion to the Department. As the SAA explains, ''Commerce must exercise its discretion carefully through its consideration of the facts of each case and its determination of the appropriate methodology to be applied.'' (SAA at 258.)

Finally, we have rejected petitioners' arguments for countervailing the entire amount of the prior subsidies, as these arguments are contrary to the methodology described in the General Issues Appendix.

Comment 2: Expensing of subsidies bestowed on companies under previous ownership: Barilla argues that in the event the Department concludes it is appropriate to include in its calculations the non-recurring subsidies received by Cagliari prior to the company's purchase by Barilla, the amount of the grants is less than Barilla's sales in the years of receipt, so the subsidies should be allocated entirely to the years of receipt.

DOC Position: We disagree with respondent. To determine whether or not a grant should be allocated over several years or entirely to the year of receipt, the Department compares the amount of the grant to the revenues of the grant recipient (in this instance, Cagliari) in the year the grant is received. Barilla did not provide us with information concerning the revenues of Cagliari in the year of receipt of the grant. Lacking this information, we have assumed that the grant exceeded 0.5 percent of Cagliari's sales in that year and have allocated this grant using our standard allocation formula.

Comment 3: Expensing test for non-recurring subsidies: Respondents La Molisana and Barilla argue that the Department should raise the threshold used to decide whether a non-recurring countervailable subsidy should be allocated to future periods or allocated entirely to the year of receipt from 0.5 percent to one percent. Respondents cite to *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium* (47 FR 39304, 39317) where the Department established its current methodology for allocating grants over time and instituted the practice of expensing small grants which were recognized by the Department at the time to be generally less than one percent of the appropriate denominator in the year of receipt. Respondents state that the Department lowered this expensing threshold to 0.5 percent in *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18016, 18018) (''*Steel from Argentina*'') to accord with the then newly instituted *de minimis* level of 0.5 percent. Respondents contend that the Department aligned the expensing and *de minimis* rates because the application of an expensing rate different from the *de minimis* rate could lead to anomalous results. Respondents cite to the hypothetical example given in *Steel from Argentina* where a respondent receiving a single countervailable grant slightly above the *de minimis* rate, but below the expensing threshold, is subject to an order; whereas another firm receiving a larger grant that is above the expensing threshold and is, therefore, allocated over time receives a *de minimis* rate and is excluded from any order. Respondents argue that having an expense rate that is below the *de minimis* rate is equally undesirable because such a policy would require application of the allocation process for a subsidy the Department considers too small to be countervailed.

Petitioners assert that there is no statutory or regulatory requirement that compels the Department to align the expensing rate and the *de minimis* rate. Petitioners argue that in *Steel from Argentina* the Department did not consider a hypothetical circumstance where the expense rate is lower than the *de minimis* rate, since such an exercise was not required. Petitioners contend that raising the expensing rate to one percent would enable foreign governments to subsidize companies through numerous small grants. Additionally, petitioners argue, if the Department were to carry respondents' logic further, and align the expensing rate with the *de minimis* rate of two percent for developing countries set by section 703(b)(4)(B), a government could obtain a subsidization level of immense proportions while avoiding countervailable duties by awarding numerous grants, each below a two percent threshold.

DOC Position: Although the Department normally will allocate nonrecurring grants over time, under the so-called 0.5 percent test, the Department will generally allocate nonrecurring grants received under a particular subsidy program entirely to the year of receipt if the total amount of such grants is less than 0.5 percent of a firm's sales in that year.

Respondents are correct in their assertion that the floor amount was decreased from one percent to 0.5 percent when the *de minimis* rate of 0.5 percent was instituted. However, the recent statutory increase in the *de minimis* rate for investigations does not require an equivalent increase in the rate used to determine whether a non-recurring countervailable subsidy will be allocated over time or entirely to the year of receipt. The use of an expensing rate that is below the *de minimis* rate does not produce the ''anomalous results'' described by the Department in *Steel from Argentina* where the expensing rate was above the *de minimis* rate.

Additionally, a one percent *de minimis* rate is being applied only to certain investigations; investigations in certain developing countries have higher *de minimis* rates of two percent and three percent, and the *de minimis* rate will remain 0.5 percent for all administrative reviews (SAA at 269). We believe retaining a consistent expensing rate of 0.5 percent across all investigations and reviews is desirable.

Comment 4: Northern Italy all-others rate: Pagani, an Italian pasta producer, contends that a single all-others rate, applicable throughout Italy, is unfairly prejudicial to Pagani. Pagani claims that the inclusion of programs available exclusively to producers located in the Mezzogiorno in the calculation of the all-others rate is unfair to pasta producers located in northern Italy.

Pagani argues further that statutory changes resulting from the URAA require the Department to assign Pagani an individual rate. To support this position, Pagani cites to section 777A(e)(1) of the Act which reads: ''[T]he administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.''

In the event the Department declines to assign it an individual countervailing duty deposit rate, Pagani proposes that the Department calculate a separate all-others rate applicable only to producers located in northern Italy, and that programs for which companies located in northern Italy were ineligible to participate be excluded in calculating this rate. Pagani argues that the Act recognizes the independent nature of regions of a subject country in particular situations. Pagani argues that the statute's treatment of ''disadvantaged regions'' under the green light provisions permits Commerce to treat a region as a separate country for purposes of the specificity test. Pagani proposes that the Department recognize the distinction between the Mezzogiorno and northern Italy and determine an all-others rate for companies located in the north of Italy.

Petitioners argue that Pagani's assertion that the Act entitles it to an individual rate is erroneous. Petitioners point to the SAA which states that the amendment cited by Pagani ''eliminates the presumption in favor of a single country-wide CVD rate and amends section 777A of the Act to establish a general rule in favor of individual CVD rates for *each exporter or producer individually investigated*'' (SAA at 271) (emphasis added).

Petitioners state that Pagani's reliance on the regional green light provisions in the statute is misplaced. Petitioners contend that the green light amendments were enacted only to determine whether or not a subsidy was countervailable, and have no bearing on how a subsidy should be calculated.

DOC Position: We agree with petitioners that Pagani is not entitled to an individual rate. While section 777A calls for the application of individual rates, section 705(c)(1)(B)(i) of the Act, which describes the all-others rate, states the Department shall determine ''an estimated all-others rate for all exporters and producers not individually investigated * * *'' Pagani was not individually investigated in this proceeding; it was not selected to respond, nor did it submit a voluntary response to our questionnaire. Therefore, we see no statutory basis for Pagani's argument.

Moreover, such a proposal is contrary to past practice (*see, e.g., Lumber,* 22578) and would be unadministrable. While there are regional programs in the instant investigation that are available only to producers in the Mezzogiorno, the Department hypothetically could perform an investigation where there are dozens of regional programs, each covering different regions, which would result in dozens of different regional countervailable subsidy rates if we were to follow the methodology proposed by Pagani. Therefore, we have not calculated separate all-other rates for northern and southern Italy.

Comment 5: Trading company deposit rate: Agritalia claims that it should be assigned an individual countervailing duty deposit rate based only on countervailable subsidies it received, and its rate should not include any subsidies received by its suppliers. At the same time, Agritalia states that it does not object to the imposition of duties on its exports to the United States based on any rates assigned to its suppliers.

Agritalia argues that information in the record of this investigation demonstrates that Agritalia received *de minimis* countervailable subsidies, so it should be excluded from any order resulting from this investigation. Agritalia cites to section 705(c)(1)(B)(i)(I) of the Act, which states that the Department will determine an ''individual countervailable subsidy rate for each exporter or producer individually investigated.'' Agritalia argues that a rate based on a weighted average of the rates of its suppliers which produced the pasta it sold during the POI is not the same as an individual rate for each exporter or producer as prescribed in the statute.

Petitioners argue that, contrary to Agritalia's assertions, section 705(c)(1)(B)(i)(I) does not mean that a company's ''individual'' rate must be calculated based solely on subsidies ''individually'' received. Petitioners state that Agritalia should receive a rate based on an aggregation of the countervailable subsidies received by Agritalia and the subsidies received by its producers attributable to the merchandise sold by Agritalia during the POI. Petitioners cite to *Certain Carbon Steel Products from Brazil; Preliminary Results of Countervailing Duty Administrative Review* (51 FR 39774, 39777) (''*Steel from Brazil*''), where the Department stated that subsidies to suppliers benefit the merchandise exported by trading companies. Petitioners request that the Department follow the calculation methodology laid out in *Steel from Brazil* where subsidies to the producers of merchandise sold by export trading companies are included in the margin calculation.

DOC Position: We agree that the Department must calculate a countervailable subsidy rate for each exporter or producer of the subject merchandise which is individually investigated. However, certain subsidies to producers also benefit the merchandise exported by the trading companies. Therefore, we have included all of the countervailable subsidies which benefit the subject merchandise in the countervailing duty rate assigned to Agritalia. A detailed explanation of our calculation methodology for Agritalia's rate is provided in the *Suspension of Liquidation* section of this notice.

Comment 6: Exclusion of de minimis companies: Petitioners assert that the Department should not exclude any *de minimis* companies from any countervailing duty order that is issued as a result of this investigation. Petitioners cite to *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from the Federal Republic of Germany* (47 FR 39345) (''*Steel from the FRG*''), where the Department did not exclude a *de minimis* company from the order due to likelihood that company would continue to receive benefits under investigated subsidy programs. Petitioners argue that the Department applies strict standards to companies that request individual, company-specific rates in administrative reviews. Further, petitioners argue that the standards for termination or revocation of an order require affirmative evidence that a government has eliminated all subsidies on the merchandise, and that there is an absence of likelihood that the subsidies will be reinstated in the future.

Petitioners assert that the export restitution program has existed for more than 20 years, and there is no indication that this program will be terminated or revoked. Petitioners emphasize that export restitution payments were only available during two months of the POI; accordingly, petitioners contend, it is likely that respondent companies will receive higher levels of countervailable subsidies in the future.

Petitioners further argue that the possibility for circumvention is very real, and that the record of this investigation has demonstrated that pasta producers in Italy maintain an interrelated web of relationships which could allow companies to funnel exports through low-margin, or excluded, respondents. Petitioners think an exception to the Department's general practice of excluding *de minimis* companies is in order in light of these circumstances.

Respondents Arrighi and Barilla argue that any respondent receiving a *de minimis* rate, should be excluded, as a matter of law, from any countervailing duty order the Department might issue in connection with this investigation. Respondents point to section 705(c)(1)(B)(i)(I) of the Act which states that the Department will determine an ''individual countervailable subsidy rate for each exporter or producer individually investigated.'' Respondents then point to section 705(a)(3) of the Act which states: ''In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is *de minimis* * * *'' Respondents argue that since the statute requires the Department to disregard any *de minimis* countervailable subsidy, the Department must exclude respondents which are found to have *de minimis* countervailable subsidy rates.

Respondents further argue that the Department has a long established practice of excluding *de minimis* companies from the order. Respondents point out that *Steel from the FRG,* cited by petitioners, is more than ten years old, and is not reflective of current Department practice.

DOC Position: We disagree that the circumstances surrounding this investigation merit a departure from our usual practice of excluding *de minimis* respondents from an order, even if the law permitted this. The facts in this case differ from those in *Steel from the FRG.* In that case, the Department did not exclude from the order a respondent that had experienced a loss during the POI because there was a pattern of prior subsidization through coverage of losses. Hence, the Department had evidence that countervailable benefits associated with the coverage of losses were likely to be received after the POI. In this case, we have no evidence that the pattern of subsidization will change in such a way that benefits to firms which are currently below *de minimis* level will increase.

Comment 7: Export Restitution Payments: Respondents Delverde and Tamma argue that, due to amendments effected by the URAA, the Department cannot recognize the benefits from export restitution payments on an ''earned'' basis. Delverde and Tamma assert that the new statute requires a ''financial contribution'' before a subsidy can be found and that ''earning'' a payment does not amount to a financial contribution.

Agritalia and Arrighi argue that the Department should use the date export restitution is recorded in company books as the basis upon which to calculate any potentially countervailable subsidies. Agritalia and Arrighi claim that accrual in the company records is an indication that the company has reached a commercial and legal conclusion that the receipt of the benefit is certain, thereby signifying that there has been an economic effect on the company. Agritalia further claims that the complex documentation process required to receive restitution payments results in the company being uncertain it will receive benefits until it receives confirmation from the GOI.

The EC argues that export restitution benefits should be calculated at the time of the event giving rise to the benefit, *i.e.*, the exportation of the merchandise. The EC argues that the timing of the payment can vary for reasons external to the objective of the subsidy, such as delays in the administrative mechanism paying out the restitution. The EC argues that the objective of the subsidy is a payment for exportation, so restitution should be calculated based on date of exportation.

Petitioners argue that the record in this investigation provides evidence of substantial delays between the date of exportation, the date a request is filed, and the date funds are eventually received. In addition, petitioners contend that the various permutations associated with the export restitution program, such as pre-fixing of the restitution rate and the ability to sell and buy pre-fixing rights, should lead the Department to the conclusion that the best method for measuring restitution benefits is to calculate the benefit rates on a received basis.

DOC Position: We agree with petitioners that various permutations associated with the export restitution program create a level of uncertainty that the amount of restitution expected at the time of export will equal the amount received. Moreover, as stated in the *Export Restitution* section of this notice, we found at verification that companies do not always receive the amount of restitution expected at the time of receipt. Therefore, we have calculated the benefits under this program on a received basis.

Comment 8: Purchased Restitution Benefits: Arrighi argues that any export restitution payments received as a result of using an advance-fixing certificate it purchased are non-countervailable, as Arrighi purchased the certificate from an unrelated party and paid adequate remuneration for the certificate.

Petitioners argue that export restitution benefits, regardless of whether they result from a purchased certificate, represent a direct transfer of funds from the EC to the recipient, and that the Department must countervail at least the net amount received by Arrighi.

DOC Position: We have calculated the benefits of export restitution payments on a received, rather than earned, basis for our final determination. As Arrighi did not receive any payments resulting from purchased export restitution certificates during the POI, this issue is moot.

Comment 9: Fee Received by Agritalia: Petitioners argue that Agritalia was potentially eligible for export restitution on a sale of pasta to the United States, but instead claimed IPR as a service to another party. Petitioners claim that Agritalia would not have been able to receive fees for this service absent the export restitution subsidy program so, in effect, Agritalia indirectly benefited from the export restitution program, and the fees received by Agritalia should be countervailed. Petitioners argue that the fees received by Agritalia represent a benefit provided indirectly by the GOI in that their very existence stems from the design of the export restitution/IPR system in Italy.

Agritalia responds that the fees it received were related to inward processing relief and not to export restitution. Agritalia argues that the Department has not found IPR countervailable, so any fees related to IPR should not be countervailable. Agritalia argues that neither the EU nor the GOI were involved in the transactions associated with the fees, and that there is no more relationship between the fees received by Agritalia and restitution than there is between IPR and restitution. Since the IPR scheme is not a countervailable benefit, the fees received by Agritalia are not a countervailable benefit.

DOC Position: When Agritalia accepted the fees, it surrendered its eligibility to receive any restitution payments on those exports. The fees were payment to Agritalia to give up its export restitution rights with respect to those shipments where it was paid to claim IPR.

Accordingly, we have determined that the fees received by Agritalia should be included in our calculation of countervailable export restitution benefits for Agritalia.

Comment 10: VAT Reductions: Petitioners argue that VAT reductions under Law 675/77 are grants associated with the purchase of capital equipment and should be treated as non-recurring subsidies. Petitioners refer to the verification report in support of their argument that the GOI uses the VAT rebates to distribute these grants as a matter of convenience, and that the method of distribution should not outweigh the consideration that these are grants for capital equipment.

Respondents Delverde and Tamma cite to the General Issues Appendix at 37226 where the Department indicates that its practice is to find benefits to be non-recurring when:

> the benefits are exceptional, the recipient cannot expect to receive the benefits on an ongoing basis from review period to review period and/or the provision of funds by the government must be approved every year.

Delverde and Tamma argue that there is no lengthy application or approval process to receive VAT reductions under Law 675; benefits are claimed as a line item directly on a company's VAT return. Further, recipients can expect to receive benefits on an ongoing basis. Respondents further argue that because this provision of Law 675/77 provides a refund of VAT, it is a simple tax program and should be found recurring.

Respondent De Matteis cites to *Preliminary Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy* (57 FR 57739, 57744) where the Department determined that VAT reductions under Law 675/77 were recurring benefits. De Matteis argues that the Department should follow the precedent set in *Certain Steel from Italy* and in the preliminary determination for this investigation, and continue to treat VAT reductions under Law 675/77 as recurring benefits.

DOC Position: We agree with respondents. In determining whether subsidy benefits are recurring or nonrecurring, the Department considers whether or not the benefits are exceptional, expected to be received on an ongoing basis from review period to review period, and/or require approval every year.

Although no new VAT reductions under Law 675 have been offered since

1991, until that time the program had been longstanding, and pasta manufacturers expected to receive benefits under the program on a recurring basis, without any special approval. Therefore, we have continued to treat these benefits as recurring in our final determination.

Comment 11: Disaster Relief: Petitioners argue that assistance provided under Law 219 for disaster relief should be countervailed in the final determination. Petitioners acknowledge *Float Glass from Italy; Preliminary Results of Administrative Review of Countervailing Duty Order* (47 FR 56160) and *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Italy* (47 FR 39360 (1982)) as two cases where disaster relief was found to be non-specific because there was no predetermination of eligible areas and because no industry was excluded from eligibility. Petitioners contrast this with the 1993 determination in *Certain Steel from Italy,* where the Department found disaster relief to be countervailable because the government had not provided information on specificity. Petitioners conclude that disaster relief is countervailable when the government has failed to establish its non-countervailable status, or where the assistance appears to be *de facto* specific. Petitioners claim that this is the case in this investigation.

According to petitioners, the Italian government used Law 219 assistance as a mechanism for expanding and modernizing production in the Mezzogiorno region. As such, Law 219 assistance is a regionally specific, industrial development subsidy whose ''[g]eneral financial benefit to the production is sufficient to support a determination of subsidy * * *'' (*British Steel Corp* v. *United States,* 605 F.Supp. 286, 295 (C.I.T 1984). Petitioners maintain that the assistance does not appear to be limited to areas in need of assistance. In addition, petitioners point out that only slightly more than half of submitted applications were ultimately approved, indicating that benefits were distributed selectively. Petitioners also argue that respondents' failure to report Law 219 benefits in their original responses to the questionnaire warrants adverse inferences and, therefore, the Department should assume that these companies benefited from Law 219 to the maximum extent possible.

Guido Ferrara states that Disaster Relief benefits under Law 219 are not countervailable. According to Guido Ferrara, benefits pursuant to Law 219 went to build structures, businesses and churches destroyed during the 1980 earthquake. Guido Ferrara points out that the amount of assistance it received only helped to rebuild the factory, and not to expand beyond the original number of production lines. Guido Ferrara adds that the disaster relief assistance did not make up for several years worth of lost sales and lost customers. Guido Ferrara maintains that countervailing benefits received pursuant to Law 219 would create a bad precedent in that the United States has provided similar assistance during far less serious disasters.

Barilla, De Matteis and Campano argue that assistance under Law 219 was generally available to a wide range of facilities destroyed by the earthquake, *i.e.*, industries, residential buildings, public locations, schools, and churches within an objectively defined geographic area. These respondents also point out that the GOI used objective criteria to select damaged eligible industries and that all companies that met the criteria could participate. These respondents also point out that only 5 of 598 companies eligible for assistance under Law 219 were pasta producers.

DOC Position: We agree with respondents that assistance under Law 219 is non-specific within the meaning of section 771(5A) of the Act and, as such, is not countervailable. Verification showed that all companies that met the prescribed criteria were automatically eligible for assistance. The criteria are neutral and do not favor one enterprise or industry over another. Adherence to the criteria is monitored by the GOI beginning with the application and approval stages (*e.g.*, by requiring proof/documentation of actual damage and the extent of damage) and all the way through completion of the project by requiring proof of costs incurred (*e.g.*, receipts) and on-site verification by government-appointed inspectors to ensure completion of the approved plans.

As for petitioners' concern that the GOI is using Law 219 as another mechanism for expanding and modernizing production in the Mezzogiorno region, we saw no evidence that this program did anything more than assist in the rebuilding of facilities damaged by a natural disaster. Under the provisions of Law 219, the rebuilt facilities are required to produce the same product as the predecessor factory. In addition, eligibility for Law 219 assistance is strictly limited to facilities that suffered more than minor damage. If Law 219 had been designed to function as a mechanism for funneling more money into the Mezzogiorno region for expansion and modernization of production facilities, then one would expect to see looser eligibility requirements. While it is true that companies are not restricted to simple restoration of the damaged facilities, Law 219 assistance is capped by a formula based on the number of employees at the time of the earthquake and by a set percentage of project cost. To require that companies restrict themselves to mere restoration of the previous facility would be unreasonable and inefficient. This is especially true in the presence of technological advances achieved subsequent to the original capital purchases that would allow for cost effective building of plants and for the acquisition of advanced machinery.

Contrary to petitioners'' assertion that the assistance does not appear to be contained to areas in need of it, we found at verification that assistance was limited to facilities damaged by the earthquake within a defined geographic area centered about the area hardest hit by the earthquake.

Our findings at verification also showed that assistance granted to industries was non-specific in fact. First of all, there are numerous users of this program. As respondents pointed out above, the pasta industry is not a predominant user of this program. Also, we saw at verification that in addition to assistance for industries involved in production, all types of facilities (*e.g.*, schools, public facilities, residential structures) are eligible for assistance under other articles of Law 219. Petitioners point to a high application rejection rate as an indication that GOI discretion is being exercised in the distribution of Law 219 assistance for industries. At verification, GOI officials explained that many who sought approval were rejected for a number of reasons such as damage was not significant enough, or the company seeking assistance frequently was a retailer not involved in production activities who properly had to apply for assistance under another Article of Law 219. Hence, the rejections reflect application of the eligibility criteria, and provide no evidence that benefits under Law 219 were specific.

Comment 12: Treatment of Interest Contributions: Petitioners state that interest contributions on Law 64/86 loans received as lump-sum payments should be treated as non-recurring grants.

DOC Position: We disagree with petitioners that the lump-sum interest contributions should be treated as grants. Where the borrower can reasonably expect to receive interest subsidies at the time the loan is taken out, our practice has been to use our loan methodology to measure the benefit. (*See, e.g., Certain Steel from Italy,* 37331, 37339). In this case, companies applied for the interest subsidies at the same time they applied for the loan and in all but one case, the interest subsidy was granted. Hence we have followed our practice as articulated in *Certain Steel from Italy.*

Comment 13: Tamma's Industrial Development Loans: Delverde argues that no benefits were received pursuant to Tamma's warehouse loan under Law 64/86. According to Delverde, Tamma was paying the commercial rate during the entire POI. Delverde points out that it was not until after the POI that approval for Law 64/86 assistance was granted for this loan.

DOC Position: We disagree with Delverde that Tamma paid a commercial rate during the POI. We have compared the rate paid by Tamma (the reference rate) to our benchmark and determined that Industrial Development Loans conferred a benefit, in addition to the interest contributions, because the loan recipients paid less than they would pay for a comparable commercial loan (see section 771(5)(E)(ii)).

For the reasons stated above in the *Industrial Development Loans* section, we are treating Law 64/86 loans as reduced-rate loans throughout the life of the loans. Therefore, if a loan is outstanding during the POI, benefits are accrued whether or not official notification of approval of Law 64/86 benefits has been received; this is due to the nearly automatic nature of the assistance.

Comment 14: Fees for Loan Guarantees: Delverde argues that the benefit from its Law 64/86 loans should be calculated net of the guarantee fees it paid on these loans. To support its argument, Delverde cites section 701(a) of the Act where it states that the ''net countervailable subsidy'' should be used to calculate countervailing duties. ''Net countervailable subsidy,'' in turn is defined in section 771(6)(A), as follows:

> For the purpose of determining the net countervailable subsidy, [the Department] may subtract from the gross countervailable subsidy the amount of * * * any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.

Petitioners state that there is no evidence on the record showing that guarantee fees were required by the GOI in order to receive Law 64/86 interest subsidies. Instead, petitioners point out that the fees were required by the lending institution upon the transfer of the pasta factory from the previous owners to Delverde. As such, petitioners argue that the guarantee fees are related to the transfer of assets between the two companies, but not to the existence of the benefits on the applicable Law 64/86 loans. Petitioners also allude to potential future refunds of these fees as evidence of the speculative nature of these fees.

DOC Position: We agree with Delverde that the loan guarantee fees it paid on certain Law 64/86 loans should be deducted. These fees are part of the effective cost of the loan. It is Departmental practice to compare the effective cost of the government loan to the benchmark loan (*see,* section 355.44(b)(8) of the Proposed Regulations). In order to determine the interest rate differential between the benchmark interest rate and the interest rate on the loans provided pursuant to this program, we have deducted the loan guarantee fee from the loan interest rate.

Concerning petitioners' suggestion that these fees may be refunded in the future, we note that, as stated in the verification report, the agreement between Delverde and the lending institution speaks only of the possibility of reviewing the agreement in the future upon the reduction of the loan balances to a certain point—it does not mention the possibility of refunding the fees.

Comment 15: Other Subsidies: Petitioners argue that the Department should countervail all funds received from entities that appear to be administering bodies for Law 64/86 contributions. These entities include the Cassa per il Mezzogiorno (''CASMEZ''), the Institute for the Economic Development of Southern Italy (''ISVEIMER''), and Istituto Mobiliare Italiano S.p.A. (''IMI'').

DOC Position: We disagree with petitioners that all transactions via these institutions should be presumed to entail some form of government assistance. At verification we saw that some of these institutions acted as agents for Law 64/86 assistance while also engaging in commercial financial transactions (extension of loans, etc.). Payment schedules and other documents pertaining to the loans from these institutions outside of Law 64/86 did not contain any indication that government assistance was involved. Therefore, consistent with past practice (*see* Proposed Regulations at 355.44(b)(9)), we have not included these loans in our investigation.

Comment 16: Law 64/86 Grants: Petitioners urge the Department to capture all Law 64/86 assistance that was either reported to or found by the Department during the course of verification. In particular, they urge the Department to include unreported grants received by the previous owners of Delverde's pasta factory and by Delverde's related companies, grants received by Tamma pursuant to a predecessor law, and loans received by De Cecco and Indalco.

Delverde counters by stating that it did report Law 64/86 assistance pertaining to the pasta factory while under prior ownership. Delverde points out that the ''unreported'' grants under Law 64 pertained to other unrelated operations of the prior owners of Delverde's pasta factory. As for the grant disbursements received by Tamma under the predecessor law, Delverde comments that the proper denominators can be found in Tamma's financial statements provided to Department officials during verification and attached to Delverde's case brief.

DOC Position: We agree with Delverde that the ''unreported'' Law 64/86 grants referred to by petitioners pertained to unrelated operations (*e.g.,* a box factory, an olive oil producer) belonging to the prior owners of Delverde's pasta factory. As such, these grants were properly tied to operations other than the pasta factory presently owned by Delverde.

Likewise, we verified that the ''unreported'' Law 64/86 loans received by De Cecco pertained to the separately incorporated milling operations and olive oil company. Therefore, they do not provide a benefit to the production of the subject merchandise.

With respect to Indalco, we note that prior to verification the company reported two loans and two grants which were received under Law 64/86 while Indalco was under previous ownership. In addition, at verification we discovered three grants which were also provided under Law 64/86 while the company was under previous ownership. Each of these loans and grants related to the production of subject merchandise. Therefore, they have been included in our calculations.

Comment 17: Riscossa: According to petitioners, the Department should draw an adverse inference from Riscossa's inability to document the source of amounts recorded as ''Other Debt'' in its 1994 balance sheet and, as a result, should classify these amounts as Law 64/86 assistance.

DOC Position: We disagree with petitioners that the use of adverse facts available is warranted with respect to the portion of ''Other Debt'' for which company officials were not able to produce identifying documentation. Riscossa's accounting system has other accounts into which benefits received pursuant Law 64/86 and other programs would more properly be recorded.

During verification, we examined these other accounts and saw no indication that there were unreported loans granted under Law 64/86 or any other program.

Comment 18: Publicita Grants: Delverde argues that the *publicita* grants under Law 64/86 should not be countervailed since the assistance related solely to advertising and publicity expenses for selling products in Italy and not to the ''manufacture, production, or export'' functions enumerated in the Act.

Petitioners counter that the production and sale of merchandise are ''inextricably intertwined.'' According to petitioners, companies produce only with the expectation of selling that production. Petitioners also point out that the aim of governments in providing subsidies is to stimulate production and sales.

DOC Position: We agree with petitioners that benefits received in relation to selling activities do pertain to the manufacture, production and export of merchandise. Both grants pertaining to manufacturing activities and those to selling activities are given by governments with the intention of jointly benefitting production and sales. Hence, these subsidies are properly countervailed.

Comment 19: Publicita Grants: Petitioners argue that the *publicita* grants to Tamma under Law 64/86 should be tied only to pasta since Tamma was not able to distinguish between grants related to pasta and those related to other products at verification.

Delverde counters that for the one *publicita* grant to Tamma that applied to pasta and other products, company officials were able to provide supporting documentation at verification showing the allocation of those funds between pasta and the other products.

DOC Position: We agree with Delverde that Tamma was able at verification to support the allocation of funds between pasta and other products for one of its *publicita* grants. Accordingly, we considered only the portion applicable to pasta for the one grant and used as our denominator sales of all pasta products by Tamma. Since the other *publicita* grants to Tamma were tied to pasta, we applied the entire amounts received to sales of pasta by Tamma.

Comment 20: European Social Fund: Petitioners argue that the Department should find that ESF grants received by Barilla, Delverde, and De Matteis confer countervailable, non-recurring benefits to companies under investigation. According to petitioners, the GOI verification report clearly indicates that ESF grants are exceptional, one-time measures, and that each project requires separate application and government approval. Citing the *Allocation* section of the General Issues Appendix, petitioners argue that it is the Department's practice to treat this type of grant as non-recurring.

Petitioners also argue that the failure of the GOI and the EC to provide accurate and timely information regarding the receipt of ESF grants requires the Department to countervail the grants using adverse inferences. They urge the Department to countervail all assistance received during the period 1983 through 1994 as if it were received in 1994 (*i.e.,* expensed during the POI). Petitioners also argue that the Department should include in its calculations the ESF grant received by De Matteis in 1995 (after the POI) because De Matteis applied for the grant in 1993 and recorded the amount in its books in the same year.

The EC states that ESF grants should be considered non-recurring because the grants relate to specific and individual projects and each project requires separate government approval.

Barilla argues that the Department should continue to find ESF benefits to be recurring because they are a type of benefit the Department has traditionally considered recurring (*i.e.,* worker assistance). In the event that they are found to be non-recurring, Barilla argues that each of its grants are below 0.5 percent of sales in the year of receipt. Accordingly, Barilla urges the Department to expense the ESF grants in the year of receipt.

Delverde argues that there is no basis for making any adverse inference regarding the receipt of ESF benefits by its predecessor company, MI.BA. Delverde claims that it has fully cooperated with the Department and the use of facts available against Delverde would be unlawful. Moreover, Delverde claims the Department was able to verify that Delverde provided all available information regarding MI.BA's use of the ESF program.

De Matteis argues that the Department's practice is to countervail benefits when they are received; therefore, because De Matteis did not receive its ESF grant until after the POI, there is no benefit to De Matteis during the POI. Moreover, De Matteis argues that if the Department were to change its methodology and measure the benefit from the date that De Matteis accrued or applied for the benefit, the benefit would not exceed 0.5 percent of sales and would be expensed prior to the POI.

DOC Position: We agree with petitioners and the EC that benefits under the ESF program are non-recurring. While worker benefits were identified in the General Issues Appendix in a list of benefits which are typically recurring, we note that the list was provided for illustrative purposes only. The General Issues Appendix states that ''[t]he unique factual circumstances of a particular case may indicate that a program listed generally as recurring be found nonrecurring or vice versa.'' It is clear from the GOI verification that ESF grants provide one-time assistance and should be considered non-recurring.

We do not agree, however, that an adverse inference of the type proposed by petitioners is warranted. Under section 776(b) of the Act, the Department is allowed to make an inference that is adverse to the interests of a party only if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' There is no evidence that Barilla, Delverde, or De Matteis did not act to the best of their abilities to supply information regarding this program. Therefore, we have calculated the benefits from the ESF grants using the appropriate years in which they were received, as reported by the companies.

With respect to the ESF grant received by De Matteis, we agree with the respondent that De Matteis received no benefit from this grant during the POI. It is the Department's normal practice to recognize a subsidy benefit when there is a cash-flow effect. In this instance, the cash-flow effect takes place after the POI; therefore, there is no benefit during the POI.

Comment 21: Benefits to Mills: Petitioners argue that the purpose of the upstream subsidy provision, as reflected in the legislative history, is to broaden the scope of subsidy practices that can be captured under U.S. countervailing duty law. Petitioners argue that using the upstream subsidy provision as a basis for excluding subsidies from the investigation would contravene the intended purpose of the provision.

Petitioners claim that the upstream subsidy provision is applicable only when the producer of the subject merchandise purchases the input product from an unaffiliated company. Petitioners point to *Live Swine from Canada; Final Results of Countervailing Duty Adminstrative Review* (59 FR 12243) (''*Live Swine*''), in which the Department has consistently countervailed the Alberta Crow Benefit Offset Program, which offsets the costs of feed grain fed to hogs, as precedent for this position. Petitioners claim that this program was a subsidy for the production of an input product and that it was found to benefit the subject merchandise—without an upstream subsidy allegation—due to the integrated nature of hog production.

Petitioners also argue that even if the Department determines that subsidies to mills constitute upstream subsidies, they are countervailable on other grounds. Petitioner asserts that they are countervailable as subsidies to related parties and as subsidies discovered during the course of the investigation.

Respondents argue that because semolina is an ''input product,'' subsidies to the production of semolina are correctly examined under the upstream subsidy provision of the statute. To support their position respondents cite *Canadian Meat Council* v. *United States* (661 F. Supp. 622 (CIT 1987)), wherein the Court determined that subsidies to live swine could be found to benefit pork packers only within the context of the upstream subsidy provision.

Respondents maintain that there is no exception to the upstream subsidy provision for input products produced by related parties. According to respondents, the only exception to the upstream subsidy provision, falls under section 771B of the Act, which allows the Department to dispense with the upstream subsidy analysis for processed agricultural products if certain conditions are met. Respondents argue that these conditions are not met with respect to pasta production for several reasons. Respondents contend that semolina is not a raw agricultural product and that the value added in converting semolina into unfinished pasta is substantial.

Finally, respondents refute petitioners' claim that subsidies to semolina mills are subsidies ''discovered during the course of'' a countervailing duty investigation. Respondents point out that information regarding these subsidies was on the record from the start of the investigation.

DOC Position: As discussed above, in the *Subsidies Valuation* section of this notice, the Department's past practice has been to apply the upstream subsidy provision for subsidies to the input product where the product is purchased from a separately incorporated company, whether affiliated or not. Petitioners'' reliance on *Live Swine* is misplaced. The subsidy program in question in that case was provided *directly* to the producers of the subject merchandise to offset the higher costs of the input product. Moreover, we agree with respondents that the processed agricultural products exception to the upstream subsidy provision (section 771B) is not met in the case of pasta. Therefore, where the companies under investigation purchase their semolina from separately incorporated companies, whether or not they are affiliated, we have determined that the upstream subsidy provision applies.

We disagree with petitioners that such subsidies are countervailable as subsidies to related companies or as subsidies discovered during the course of an investigation. We agree with respondents that there is no exception from the upstream subsidy provision for related input producers. Therefore, subsidies to separately incorporated input producers can only be examined in an upstream subsidy investigation. Moreover, we agree with respondents that these subsidies were not discovered during the course of the investigation.

Comment 22: Termination of certain Social Security benefits for Molise and Abruzzo: La Molisana claims that the Department should assign a ''zero'' duty deposit rate to La Molisana for certain social security benefits because companies in the Molise region became ineligible to receive these benefits at the end of 1994. La Molisana argues that because the benefits were terminated prior to the preliminary determination, setting the cash deposit rate at zero for these benefits will accurately reflect the level of subsidization on any entries which have been suspended from liquidation. Moreover, La Molisana claims that any countervailing duty deposits for these benefits will simply be refunded upon review.

Petitioners argue that the Department should reject La Molisana's claims regarding the termination of social security benefits for several reasons. Petitioners claim that La Molisana has not shown that the termination has affected any company other than La Molisana itself. In addition, petitioners point out that the basis of the change is the Molise region's increased level of economic development. Petitioners claim that neither La Molisana nor the government has given any indication that the program will not be reinstated in the event that the Molise region's level of development declines. Moreover, petitioners claim there is no evidence on the record that benefits for the Molise region were terminated by an official act. Finally, petitioners claim that none of La Molisana's allegations were verified at the GOI.

DOC Position: We have determined that the facts of the record do not support a finding that the social security benefits in question were terminated. While the GOI response indicated that benefits in the Molise and Abruzzo regions were terminated pursuant to an August 5, 1994, decree of the Italian Ministry of Labor, record evidence indicates that at least one company located in the Abruzzo region continued to receive benefits after the supposed termination. This indicates that residual benefits may be available under the program. According to section 355.50(d), of the Proposed Regulations, the Department will not adjust the cash deposit rate where residual benefits may continue to be bestowed under a terminated program. Therefore, we have not adjusted the cash deposit rate for companies located in the Abruzzo or Molise regions.

Comment 23: La Molisana Fiscalizzazione: La Molisana argues that there is no evidence on the record that La Molisana received fiscalizzazione deductions at the higher rate available in the Mezzogiorno. La Molisana claims that its 1994 DM–10S forms indicate that different rates were paid by La Molisana from region to region, but that the rates paid for employees in the south were not systematically lower than those paid for employees in the north.

Petitioners argue that La Molisana's claims regarding its use of the fiscalizzazione program directly contradict the verified information regarding the operation of this program, which is that the rate of deduction in southern Italy is greater than that in northern Italy.

DOC Position: We disagree that there is no evidence on the record that La Molisana received fiscalizzazione deductions at the higher rate available in the Mezzogiorno. The company's DM–10S forms reflect National Health Service payments equal to one percent for wages eligible for fiscalizzazione deductions, indicating that deductions were taken at the higher rate available in southern Italy. Therefore, we have calculated the resulting benefit to La Molisana according to the methodology described in the *Social Security* section of this notice.

Comment 24: De Matteis Fiscalizzazione: De Matteis argues that the greater fiscalizzazione deductions taken by De Matteis do not confer any financial benefit. De Matteis claims that in order to receive the greater fiscalizzazione deductions, companies located in the Mezzogiorno must agree to abide by a collective labor bargaining agreement. The company argues that the greater fiscalizzazione deduction is intended to offset the increased cost associated with the collective bargaining agreement and, for this reason, does not confer a benefit.

Petitioners claim that there is no record evidence to support De Matteis' claims. Petitioners assert that there is no official document establishing a connection between the additional fiscalizzazione benefits and labor agreement compliance. In addition, petitioners argue that neither De Matteis nor any other respondent has provided information regarding any obligations that arise from participating in a collective labor bargaining agreement. In addition, even if there was information on the record regarding potentially increased costs associated with a collective labor agreement, these costs do not fall within the carefully circumscribed list of allowable offsets under the statute.

DOC Position: We agree with petitioners. In order to claim any of the numerous allowable social security deductions in Italy, companies must be in compliance with the labor agreements. However, there is no record evidence that any social security deduction, including fiscalizzazione, is intended to offset any costs associated with labor agreements.

Comment 25: Treatment of De Cecco: De Cecco argues that it misinterpreted the Department's request for information regarding related parties and, hence, should not be penalized for its failure to provide information regarding its affiliate, Pescara. De Cecco claims that it interpreted the term ''related parties'' in the context of Italian tax law, and that because De Cecco and Pescara are not related for Italian tax purposes, De Cecco believed the two companies to be unrelated for purposes of this investigation. De Cecco argues that when it came to De Cecco's attention that their questionnaire response may have been deficient, De Cecco submitted a questionnaire response on behalf of Pescara to correct the error. De Cecco argues that in making this submission, the company was acting to the best of its ability to comply with the investigation and, therefore, adverse inferences may not be used against De Cecco.

De Cecco also argues that if the Department uses facts available for Pescara, the appropriate facts available should be based on De Cecco's verified submissions. According to De Cecco, its own information would be much more representative of Pescara than simply assigning Pescara the highest ''facts available'' rate for each program. In addition, De Cecco argues that De Cecco's own countervailing duty rates should remain unchanged in the event that the Department uses facts available to determine Pescara's countervailing duty rate. De Cecco argues that its responses have been verified and all possible subsidies that De Cecco was alleged to have received were fully investigated.

Finally, De Cecco argues that the Department's decision that adverse facts available is justified in the companion antidumping duty investigation is not relevant to this proceeding. De Cecco argues that the main distinction between the antidumping case and the countervailing duty case is that there was a complete verification of De Cecco in the countervailing duty investigation, during which the Department found no evidence that De Cecco withheld or attempted to withhold information. In addition, De Cecco argues that in the antidumping case, the Department sent a deficiency questionnaire requesting information on related parties from De Cecco, whereas none was sent in the countervailing duty case. De Cecco claims that it submitted information on Pescara before it was even requested by the Department.

Petitioners argue that De Cecco and Pescara are affiliated parties and that De Cecco's failure to respond to the Department's questionnaire on behalf of Pescara merits the use of facts available. Petitioners argue that the legal standard and the facts on which the Department based its affiliated party determination in the antidumping case are identical to those in the present case, and hence, an identical outcome is justified. Petitioners argue that in its responses, De Cecco deliberately withheld information regarding its relationship with Pescara. They argue that De Cecco provided a detailed list of related parties and yet continually declined to include Pescara. Petitioners argue that De Cecco's claim that it misinterpreted the Department's request for information regarding related parties, is without merit for several reasons. They point out that the Department's questionnaire contained explicit definitions regarding the terms used in its questionnaire and that De Cecco was represented by experienced trade counsel that presumably was aware that the relationship between two companies for purposes of foreign tax laws is irrelevant in the context of a countervailing duty investigation.

Petitioners assert that De Cecco's conduct represents consistent non-compliance with an information request, thereby justifying the use of adverse facts available. Petitioner's also argue that the facts available rate should be applied to both De Cecco and Pescara, pointing out that the purpose of facts available is to provide the Department with a necessary tool to encourage cooperation by respondents. In this case, the reporting obligation lay with De Cecco, not Pescara, such that any repercussions for non-cooperation should inure directly to De Cecco.

DOC Position: We agree with petitioners that De Cecco's failure to provide information regarding Pescara warrants the use of facts available with adverse inferences. We are not persuaded by De Cecco's argument that it misinterpreted the related party question because of its understanding of Italian tax law. The Department's questionnaire contained a detailed explanation of the definition of related parties to be used in this investigation; it did not reference foreign tax laws. In response to this and a supplemental questionnaire De Cecco reported several related parties, including two companies, Desemark S.r.L and Prodotti Mediterranei Inc. (''PMI''), which are related to De Cecco through similar circumstances as Pescara. (Presumably these two companies are also not considered related parties for Italian tax purposes, and yet De Cecco chose to include information regarding these companies in its responses.) Furthermore, contrary to De Cecco's assertions, the Department requested information in a supplemental questionnaire regarding whether there were other companies related to De Cecco that were previously not reported but that are involved in the production, distribution, or sale of pasta. In response, De Cecco identified only PMI. For these reasons, we have determined that De Cecco was not acting to the best of its ability to respond to the related party section of the questionnaire. Therefore, the use of facts available with adverse inferences regarding subsidies provided to Pescara is warranted. However, we agree with De Cecco that the company accurately reported and the Department verified, information regarding subsidies received by De Cecco itself. Therefore, we have calculated a combined rate using adverse inferences for Pescara's portion and De Cecco's own verified information for De Cecco's portion.

Comment 26: Export Promotion Assistance: Petitioners allege that information uncovered at verification indicates that Barilla is currently operating a project using export promotion loans under Law 394, which was found to be not used in the preliminary determination. Petitioners argue that while GOI officials stated at verification that no amounts had been disbursed to Barilla under this program, there is no evidence on the record to support this statement. In addition, petitioners argue that the export promotion grant received by Barilla under Law 304 in relation to an export promotion project in South America in fact promoted Barilla's pasta exports to the United States.

Barilla argues that export promotion benefits are countervailable only if they promote exports to the United States. Barilla asserts that nothing in the record demonstrates that Barilla received export promotion grants or loans for export to the United States. According to Barilla, the Department verified that the export promotion grant received by Barilla related solely to the Argentine and Brazilian markets and that the only export promotion loan for which Barilla applied had not even been approved as of the GOI verification.

DOC Response: We agree with Barilla. Verification at the GOI and at Barilla confirmed that Barilla accurately reported its receipt, or non-receipt, of export promotion grants and loans for export to the United States. We found no evidence at verification that Barilla received export promotion grants which benefit exports to the United States, nor that Barilla had any outstanding export promotion loans under this program.

Comment 27: Green Light Treatment for Law 64/86: The EC, GOI, and Delverde argue that, because of the superior nature of EC law, certain of the necessary conditions for qualifying for green light treatment are met at the Community level rather than at the national level. According to respondents, the Department should not limit its analysis to an examination of the Italian regional aid laws. Rather, the Department should examine the Italian laws in the context of EC competition policy rules which, respondents argue, form the basis of an EC-wide general framework of regional development pursuant to which all national regional aid programs must be granted.

The EC argues that within this general framework, the GOI performed an initial socio-economic analysis using specific criteria and identified all regions that were in need of regional aid. The GOI then notified the EC of its proposed aid scheme and the scheme was found to be compatible with the EC general framework of regional development with the exception of certain regions which were found not to meet the specific criteria of the competition policy rules. According to respondents, the fact that Law 64/86 was notified, modified, and ultimately approved according to the requirements of the competition policy rules demonstrates that Law 64/86 assistance was provided within a general framework of regional development. Respondents also argue that all of the remaining green light criteria were met by Law 64/86.

Petitioners argue that the programs in question were not provided pursuant to a generally applicable regional development policy in Italy. In support of this argument, they point to verification findings that, historically, the GOI has not maintained any statistical criteria for determining which regions were in need of assistance and that a systematic method of selection of the areas eligible for assistance was not applied until 1988 when the EC investigated Law 64. In addition, petitioners argue that it is inappropriate to consider Italy's regional development programs in the context of the EC's competition policy rules because there is no evidence linking the EC competition policy rules to the Italian programs under investigation at the time of their enactment. Petitioners also claim that the EC argument fails in light of its own determination that Law 64/86 was not fully compatible with the competition policy rules until the end of 1992.

Petitioners argue that regardless of whether the Italian regional aid programs are examined within the EC framework, the remaining green light criteria are not met. They argue that the GOI failed to establish that regional development assistance contains ceilings on the amount of assistance and that the GOI failed to establish that regional distribution of aid is not specific.

DOC Position: We disagree with the EC statement that the GOI performed a systematic analysis in order to identify the regions which would receive regional development assistance. There is no evidence on the record that such an analysis was undertaken and, moreover, statements from the GOI verification directly contradict such an assertion. Petitioners correctly note that the GOI verification confirmed that the first time that a systematic review of the regions eligible for assistance was applied in Italy was in 1988, when the EC examined Law 64/86.

Moreover, as discussed in the *Green Light* section of this notice, we need not reach the issue of whether the nature of Law 64/86 as a green light subsidy is governed by a community-wide framework of regional development because we find that Law 64/86 does not meet the criteria established in the community-wide framework. Therefore, we conclude that Law 64/86 programs do not qualify as non-countervailable subsidies.

Comment 28: Initiation of Research and Development and European Investment Bank (''EIB'') Loan Assistance: Petitioners argue that the Department improperly rejected petitioners' request to initiate a countervailing duty investigation of assistance provided through the EIB and of research and development assistance provided under Law 46 because the programs were found to be non-specific in previous investigations. According to petitioners, the fact that the Department found EIB loans and research and development assistance to be *de facto* non-specific in previous investigations is an insufficient basis for rejecting petitioners' allegations. They argue that the previous findings were fact-based, and thus, did not amount to a finding of non-countervailability as a matter of law.

Respondents Barilla and La Molisana argue that the Department correctly decided not to investigate EIB loans or research and development assistance because the programs had been previously found to be non-specific and, in the case of EIB loans, the Department has chosen several times not to investigate the programs. Respondents also argue that petitioners have provided no new evidence warranting a re-examination of these issues.

DOC Position: Our decision not to investigate these programs was based on the fact that petitioners had not provided a sufficient basis to believe that the programs had changed since the previous findings of noncountervailability. With respect to the EIB loan program, petitioners never addressed the fact that the program had been found not countervailable in a previous investigation and, therefore, made no effort to allege that the program had changed or that pasta producers may have received a disproportionate share of the benefits under the program. With respect to the research and development program, petitioners alleged that the Department's previous findings that the program was non-specific had not taken into account an amendment which made the program available to pasta producers. However, we noted in our notice of initiation that the amendment was made seven years prior to the finding that the program was non-specific. Therefore, we determined that this amendment did not constitute a change in the program and was not a sufficient basis for believing that pasta had received a disproportionate share of the benefits under the program.

Comment 29: Affiliated Parties: Petitioners assert that the relationships between several respondent companies and their affiliated parties contain mechanisms through which subsidies can be transmitted and/or exhibit the potential for channeling exports through the company with the lowest margin. Petitioners distinguish between two types of affiliated parties—those that produce the subject merchandise (*i.e.,* Delverde/Tamma and Arrighi/Italpasta) and those that do not produce the subject merchandise and yet still play a meaningful role in the production process (*i.e.,* De Matteis/Demaservice and Campano/Chirico).

With respect to Delverde and Tamma, petitioners argue that their common board member plays an integral role in the most important strategic decisions made by both companies, making it likely for subsidies to be transmitted between the two companies. Petitioners further argue that the day-to-day transactions between the companies provide a vehicle for the transmittal of subsidies and the potential for export-shifting. Petitioners claim that, for Arrighi and Italpasta, the level of common ownership, the shared board members, and the day-to-day transactions between the companies leads to a similar conclusion. For these relationships, petitioners propose assigning one rate to the affiliated companies, based on a weighted-average of their individually calculated rates using exports to the United States.

Petitioners also argue that the Department should include in its calculations subsidies to certain affiliated companies of Campano and De Matteis. Petitioners support the Department's preliminary determination that De Matteis' affiliated service company, Demaservice, plays an integral role in De Matteis' production and that subsidies to Demaservice are likely to benefit such production. In addition, petitioners allege that certain transactions between Campano and its affiliate exhibit the potential for transmitting subsidies between the two companies. For these types of relationships, petitioners argue that the Department should calculate a combined subsidy rate using subsidies received by both companies and their combined sales.

Delverde argues that the single weighted-average margin applied to Delverde and Tamma in the preliminary determination is an inappropriate and unfounded anti-circumvention measure. According to Delverde, the Department's preliminary finding that the relationship between Delverde and Tamma is not a likely vehicle for transmitting subsidies was confirmed at verification. Delverde asserts that Tamma holds less than a 20 percent ownership interest in Sangralimenti, the holding company that owns Delverde, and that while the companies share one common director they operate as separate commercial entities. Moreover, Delverde argues that there is no evidence on the record which suggests that the companies would (or even could) shift exports in response to differing subsidy rates. Therefore, Delverde claims, the imposition of anti-circumvention measures is unreasonable and unlawful.

Arrighi argues that the methodology proposed by petitioners of assigning a single margin for Arrighi and Italpasta based on a weighted-average of their individual rates is inconsistent with the Department's past practice and is unreasonable. According to Arrighi, the purpose of combining two companies is to treat them as if they were a single entity subsidized at the same rate. In the past, the Department has accomplished this by combining the subsidy information of the two companies and allocating them over their combined sales. Arrighi contends that petitioners' proposed methodology results in the Department not treating the combined companies as a single entity, but rather as two separate entities.

DOC Position: We agree with petitioners that the relationships between Delverde and its affiliate and Arrighi and its affiliate are sufficient that the companies should be treated as a single company. We disagree with Delverde that the ownership interest of Tamma does not meet the 20 percent threshold. As discussed in the *Related Parties* section of this notice, when the ownership interests of Tamma and its affiliate, Tamma Service, are aggregated, the ownership interest is above the 20 percent threshold. Therefore, we have calculated a single rate for the two companies.

However, we agree with Arrighi that the appropriate method for calculating a combined rate is to divide the total subsidy benefits of the two companies by their combined sales. The methodology used in our preliminary determination does not result in the two companies being treated as a single entity and does not accurately measure the level of subsidization of the subject merchandise.

With respect to the treatment of De Matteis and its affiliate, we agree with petitioners and have calculated a combined subsidy rate for the two companies accordingly. With respect to Campano, we note that Chirico does not produce the subject merchandise and therefore Chirico and Campano would only be treated as a single company if there were evidence of the transmittal of subsidies between the companies. While we agree with petitioners that certain transactions between the two companies may exhibit the potential for the transmittal of subsidies, through no fault of Campano's we do not have the information necessary to determine whether transmittal of subsidies was likely. Therefore, we have calculated a rate for Campano using only subsidies received by Campano divided by Campano's sales.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an all-others rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States, if available, or pasta exports to the United States. The all-others rate does not include zero or *de minimis* rates, or any rates based solely on the facts available.

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of pasta from Italy which were entered, or withdrawn from warehouse, for consumption on or after October 17, 1995, the date of publication of our preliminary determination in the Federal Register. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to terminate the suspension of liquidation for merchandise entered on or after February 14, 1996, but to continue the suspension of liquidation of entries made between October 17, 1995, and February 13, 1996. We will reinstate suspension of liquidation under section 706(a) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

Company	Ad valorem rate
Agritalia, S.r.l.	2.55
Arrighi S.p.A. Industrie Alimentari	2.44
Barilla G. e R. F.lli S.p.A.	0.65
De Matteis Agroalimentare S.p.A.	2.47
Delverde, S.r.l.	5.55
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	3.37
Gruppo Agricoltura Sana S.r.L.	0.00
Industria Alimentare Colavita, S.p.A.	2.18
Isola del Grano S.r.L.	11.23
Italpast S.p.A.	11.23
Italpasta S.r.L.	2.44
La Molisana Alimentari S.p.A.,	4.17
Labor S.r.L.	11.23
Molino e Pastificio De Cecco S.p.A. Pescara	3.37
Pastificio Guido Ferrara	1.21
Pastificio Campano, S.p.A.	2.59
Pastificio Riscossa F.lli Mastromauro S.r.L.	6.91
Tamma Industrie Alementari di Capitanata	5.55
All Others	3.78

We calculated the *ad valorem* rate for Agritalia, an export trading company, by weight averaging, based on the value of exports to the United States represented by each of Agritalia's suppliers, the adjusted subsidy rate for each supplier and adding to this rate the subsidy rate calculated for Agritalia based on subsidies it received directly. In performing this calculation, we adjusted the suppliers' rates to account for any mark-up or mark-down by Agritalia, to adjust prices to reflect Agritalia's f.o.b. export prices, and to exclude any export restitution benefits received by Agritalia's suppliers on export sales to the United States which were earned on sales made by the producer independently of Agritalia. We note that at the time of our preliminary determination, we lacked information to adjust the producers' subsidy rates for any mark-up or mark-down taken by Agritalia on sales. The methodology we have used in our final determination effectively calculates the f.o.b. subsidy rate for merchandise sold by Agritalia during the POI.

Since the estimated net countervailable subsidy rate for Barilla and Gruppo is either zero or *de minimis*, these companies will be excluded from the suspension of liquidation.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on pasta from Italy.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14734 Filed 6–13–96; 8:45 am]

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–489–805]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey

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

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Michelle Frederick or Sunkyu Kim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288, (202) 482–0186, or (202) 482–2613, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Final Determination

We determine that certain pasta (pasta) from Turkey is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on December 14, 1995, (60 FR 1351, January 19, 1996) (*Preliminary Determination*), the following events have occurred:

On January 22, 1996, the Department requested that Filiz Gida Sanayii ve Ticaret (Filiz) and Maktas Makarnacilik ve Ticaret T.A.S. (Maktas), the two respondents in this case, submit additional information relating to level of trade. Responses were received on January 31, 1996, as part of their supplemental Section D questionnaire responses.

On January 25, 1996, Hershey Foods Corp., Borden Inc., and Gooch Foods, Inc. (collectively the petitioners) alleged ministerial errors in the Department's preliminary determination calculations regarding the two respondents. The respondents alleged a ministerial error in the Department's preliminary determination on January 26, 1996.

With respect to the petitioners' allegation, we agreed that errors were made as alleged and the errors were found to constitute significant ministerial errors because the correction resulted in a difference of at least five absolute percentage points and was at least 25 percent greater than the preliminary margin, for both Filiz and Maktas. With respect to the respondents' allegation, we determined that the respondents' allegation did not constitute a ministerial error. *See* Memorandum to Barbara R. Stafford from the Team dated February 6, 1996. An amended preliminary determination was issued on February 12, 1996 (61 FR 6348, February 20, 1996).

We conducted verification of Filiz's and Maktas's sales and cost questionnaire responses in Turkey in February and March 1996.

On May 1, 1996, Maktas, at the request of the Department, submitted