Department's calculations of the final margins.

DOC Position: All corrections as confirmed on-site at the sales verification were incorporated in the Department's calculation of the final margin.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pasta from Turkey, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after January 19, 1996, the date of publication of our preliminary determination in the Federal Register. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' The Department has determined, in its *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey,* that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent CVD investigation, we would instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price (as shown below), minus the amount determined to constitute an export subsidy. (*See, Antidumping Order and Amendment of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 46150 (October 7, 1992)). However, in this investigation, Filiz has not cooperated with the Department and has not acted to the best of its ability in providing the Department with necessary information. This has prevented the Department from making its normal determination of whether the subsidies in question may have affected the calculation of the dumping margin. Thus, as indicated above, Filiz's margin is based on total adverse facts available, taken from the petition. Insofar as the dumping margin for Filiz is not a calculated margin, there is no way to determine the portion of the antidumping duty which is attributable to the export subsidy. For that reason, and to prevent Filiz from benefitting from its non-cooperation in this investigation, we have not subtracted the amount of any export subsidy from that margin. For Maktas, we are subtracting for deposit purposes the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation (12.61 percent) from the antidumping bonding rate for Maktas. We are also subtracting from the ''All Others'' rate the cash deposit rate attributable to the export subsidies included in the countervailing duty investigation for All Others.

This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentages	Deposit percentages
Filiz	63.29	63.29
Maktas	56.87	44.26
All Others	56.87	47.49

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded Filiz's margin from the calculation of the All Others rate because it was determined entirely under section 776 of the Act.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14735 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–475–818]

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

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

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Michelle Frederick, 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 or (202) 482–0186, 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 Italy 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 publication of the preliminary determination of sales at less than fair value in this investigation on December 14, 1995, (60 FR 1344, January 19, 1996) (*Preliminary Determination*) the following events have occurred:

In January 1996, the Department received letters from the AFI Pasta Group, Pastaficio Guido Ferrara (interested parties), and Hershey Foods Corp., Borden Inc., and Gooch Foods, Inc. (collectively ''the petitioners'') regarding the provisional antidumping measures in this investigation and whether the suspension of liquidation affected entries of the subject merchandise 120 days after the Department's preliminary determination. The Department determined that the requests for an extension of the final determination contained an implied request to extend the provisional measures period, during which liquidation is suspended, to six months (*see Extension of Provisional Measures* memorandum dated February 7, 1996).

On January 22, 1996, the Department requested that Arrighi S.p.A. Industrie Alimentari (Arrighi); F.lli De Cecco di Filippo Fara San Martino S.p.A. (De Cecco); Delverde S.r.l. (Delverde); De Matteis Agroalimentare S.p.A. (De Matteis); La Molisana Industrie Alimentari S.p.A. (La Molisana); Liguori Pastificio Dal 1820 S.p.A. (Liguori); Pastificio Fratelli Pagani S.p.A. (Pagani); and Saral Industrie Alimentari Della Sardegna S.r.l. (Saral) (collectively respondents) provide additional information and comments relating to level of trade.

After publication of the preliminary determination, the petitioners, Pastaficio Guido Ferrara, and two of the respondents, De Matteis and La Molisana, alleged that the Department made ministerial errors in calculating the preliminary margins. We determined that ministerial errors were made with regard to Arrighi and Pagani. (*See, Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, (61 FR 7472, February 26, 1996).)

The Department received responses to supplemental section D questionnaires from Pagani, Delverde, De Matteis, Arrighi, La Molisana, Liguori, and De Cecco in February 1996. Minor corrections to their cost responses were filed by Pagani, De Matteis, Arrighi, Liguori, and La Molisana prior to the respective cost verifications.

Prior to verification, the Department requested each company to provide a reconciliation between the quantity and value reported in its questionnaire response and the company's published financial reports. The Department verified the respondents' sales and cost questionnaire responses during the months of February, March, and April in Italy and the United States. Verification of De Cecco's sales and cost responses were canceled for reasons described in the ''Facts Available'' section, below.

On February 13, 1996, the petitioners argued that the Department should employ transaction-specific export and constructed export price comparisons for Delverde in the Department's final determination (*see* ''Targeted Dumping'' below).

On April 2 and April 30, 1996, Spruce Foods, a U.S. importer of organic pasta from Italy, submitted materials from the Italian Ministry of Agriculture and Forestry and from Associazione Marchigiana Agricultura Biologica concerning the certification of organic pasta in Italy to support its request that the Department exclude organic pasta from the scope of both this investigation and the companion countervailing duty investigation. (*See* ''Scope'' section, below.)

Case and rebuttal briefs were submitted on April 29, 1996, and May 1, 1996, respectively, by the petitioners and the respondents. At the request of the petitioners and several respondents, a public hearing was held on May 6, 1996.

Facts Available

At the preliminary determination, the Department found that De Cecco had not provided a complete reporting of all of its ''affiliated parties,'' as requested in the antidumping questionnaire. The Department stated that, ''[i]nasmuch as the company's responses to date indicate that both the U.S. and home market sales databases are incomplete and that certain sales data and production costs have not been reported, we cannot conduct an accurate cost of production analysis or less-than-fair-value analysis using the reported prices.'' *See Preliminary Determination.* Because of these deficiencies, the Department was unable to use De Cecco's responses to calculate a margin for the preliminary determination of sales at less than fair value. The Department stated that it would proceed with the investigation and attempt to verify De Cecco's information if De Cecco cooperated and provided ''accurate and complete'' information in response to supplemental questionnaires.

On January 11, 1996, the Department issued a supplemental questionnaire to De Cecco, requesting that it revise its section D response so as to incorporate cost information for its affiliated party, Molino e Pastificio De Cecco S.p.A. (Pescara). On February 2, 1996, De Cecco submitted a response to the January 11, 1996, supplemental questionnaire. On February 5, 1996, the Department issued a supplemental questionnaire regarding the Pescara portion of the February 2, 1996, response and the Department reiterated several questions that remained unanswered from the January 11, 1996, supplemental questionnaire. On February 6, 7, and 9, De Cecco submitted revisions to its February 2nd response. On February 8, 1996, the Department received a request from the petitioners to cancel verification of De Cecco's new data and to use facts available to determine the final dumping margin. On February 15, 1996, the Department issued a decision memorandum announcing that it would not verify De Cecco's responses because it was determined that the February 2 and 6 submissions constituted completely new cost of production (COP) responses (the latter of which was untimely), and 2) the acceptance of new responses would have imposed undue difficulties on the Department in completing the case within the statutory deadlines. These points were further developed in a Memorandum to the File from the Office of Accounting, ''Analysis of cost of production and constructed value data submitted by F.lli De Cecco di Filippo Fara San Martino S.p.A.,'' dated February 16, 1996. That memorandum stated:

(1) Rather than addressing the Department's initial concerns documented in the January 11, 1996, supplemental questionnaire regarding the November 27 cost questionnaire response, De Cecco's February 2 submission reported revised COP and constructed value (CV) figures based on a new cost calculation methodology, developed by the company after the Department's preliminary determination.

(2) Every COP and CV figure reported by De Cecco changed between the February 2, 1996, response and the February 6, 1996, submission.

(3) De Cecco failed to explain the significant decreases between the costs reported in the November 27, 1995, and February 2, 1996, responses, and between the February 2, 1996, response and the February 6, 1996, submission.

(4) The inclusion of Pescara's costs did not explain the significant differences we observed in De Cecco's own total cost figures reported originally in the November 27 response and later in the February 6, 1996, submission.

(5) For every product reported by Pescara, specific production quantities for internal product code numbers changed between the February 2 and February 6 responses.

(6) In its February 2 and February 6 responses, De Cecco added new product control numbers but failed to explain the source of these new products.

(7) De Cecco's February 2 response included completely new information, and was subsequently superseded by additional submissions.

(8) It was not until February 13 that De Cecco submitted its reconciliation of reported costs to its financial statements, 37 days after the Department's request and ten days after the deadline.

(*See also* Memorandum to Barbara R. Stafford from Pasta Team, ''Antidumping Duty Investigation of Certain Pasta from Italy: Use of Facts Available for F.lli De Cecco di Filippo Fara San Martino S.p.A.,'' dated February 15, 1996.)

Because it was not possible for the Department to analyze the new responses, issue necessary supplemental questionnaire(s), receive responses to the supplemental questionnaire(s), and conduct verification within the statutory time limits, the Department did not verify the cost responses submitted by De Cecco.

Section 776(a) requires the Department to resort to facts available when, *inter alia*, an interested party or any other person ''fails to provide {requested} information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,'' and when the use of facts available is consistent with section 782(d) of the statute. Section 782(c)(1) provides for the Department to modify its information request if a party, ''promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner. * * * '' As De Cecco provided no such notification to the Department, subsection (c)(1) was inapplicable.

The determination under section 776(a) as to whether a respondent ''fail{ed} to provide {requested} information by the deadlines for submission of the information or in the form and manner requested,'' must be considered in light of section 782(d), ''Deficient Submissions.'' Section 782(d) provides that, if the Department ''determines that a response to a request for information * * * does not comply with the request, {the Department} shall promptly inform the person submitting the response of the nature of the deficiency and shall, *to the extent practicable*, provide that person with an opportunity to remedy or explain the deficiency *in light of the time limits established* for the completion of investigations or reviews under this title.'' [Emphasis added.] On January 11, the Department informed De Cecco by means of the Department's supplemental questionnaire that its November 27, 1995, COP response did not comply with the Department's original COP questionnaire and explained why the response was deficient. Further, the Department provided De Cecco with ''the opportunity to remedy or explain the deficiency *in light of the time limits established*.'' In order to ensure completion of the investigation within the statutory time period, the Department provided De Cecco with the opportunity to remedy its submission by February 2, which would allow the Department sufficient time to analyze the supplemental information, prepare for verification of the response, as supplemented, and conduct verification.

However, on February 2 and February 6, De Cecco submitted two separate responses to the supplemental questionnaire. The Department determined that neither of these responses constituted a ''remedy'' or ''explanation'' of the deficiencies of its original COP response, but rather were entirely new COP responses. Section 782(d) states that: ''If that person submits further information in response to such deficiency and either—(1) {the Department} finds that such response is not satisfactory, or (2) such response is not submitted within the applicable time limits, then {the Department} may, subject to subsection (e), disregard all or part of the original and subsequent responses.'' The SAA at 195 states that 782(d) ''is not intended to allow parties to submit continual clarifications or corrections of information or to submit information that cannot be evaluated within the applicable deadlines. If subsequent submissions remain deficient or are not submitted on a timely basis, Commerce and the Commission may decline to consider all or part of the original and subsequent submissions * * * '' As detailed, the Department found that De Cecco's responses of February 2 and February 6 were ''not satisfactory'' because they constituted entirely new responses to the Department's original COP questionnaire. Moreover, the February 6 submission was ''not submitted within the applicable time limits.'' Thus, because De Cecco's original response constituted a deficient submission within the meaning of section 782(d), and because its responses to the opportunity to remedy or explain the deficiency did not satisfy the requirements of section 782(d), De Cecco ''failed to provide {requested} information by the deadlines for submission of the information or in the form or manner required.'' Section 776(a) directs the Department in this situation to use the facts available, subject to section 782(e).

Section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by {the Department}, if:

(1) The information is submitted by the deadline established for its submission;

(2) The information can be verified;

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination;

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by {the Department} with respect to the information; and,

(5) The information can be used without undue difficulties.''

Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination. In conducting our analysis, the Department assumed, *arguendo*, that De Cecco's information (except for the clearly untimely February 6 submission) satisfied the first two criteria. With regard to the third criterion, whether the information may serve as a ''reliable basis'' for the Department's determination, the respondent had indicated on the record that the original response was fundamentally unreliable (*i.e.*, although De Cecco stated its response was based upon standard costs, counsel noted that De Cecco ''does not have a standard cost accounting system''). When this statement was considered in combination with the fact that De Cecco's February submissions replaced the initial response, it was clear that the deficient original response could not serve as a reliable basis for the Department's determination. Moreover, as the February 6 submission explicitly stated that the February 2 submission was unreliable, the February 2 submission could not serve as a reliable basis for the Department's determination.

As to criterion four, De Cecco had not demonstrated that it acted to the best of its ability in providing the requested information because De Cecco had failed to respond in a satisfactory manner to the Department's supplemental request for information and had provided completely new COP responses in February 1996, long after the Department's November 27, 1995, deadline for such a response. Finally, as to the last criterion, if the Department would have accepted the new submissions, it would have experienced undue difficulties in performing an analysis, obtaining any clarifications prior to verification, and permitting petitioners to participate fully in the process.

Because section 782(e) did not prevent the Department from declining to consider De Cecco's COP information, and 782(d) allowed the Department to disregard De Cecco's original deficient COP response and its unsatisfactory responses to the Department's subsequent request, the Department

determined that De Cecco failed to provide its COP information by the deadlines established or in the form and manner requested. Section 776(a) thus required the Department to use the facts available in making its determination as to De Cecco.

The resort to facts available for De Cecco's cost data rendered its home market sale prices unusable, as the home market sales could not be tested to determine whether they were made at prices above production cost. A second problem with using the home market sales data was the absence of reliable difference in merchandise figures (DIFMERS). Under section 773(a)(6)(C) of the statute, when comparing normal value to export price the Department is required to account for the effect of physical differences between the merchandise sold in each market. In this case, DIFMERS were required for substantially all United States and home market matches; the pasta product sold in the United States is vitamin-enriched while nearly all the pasta sold in the home market is not. Because DIFMER data is based on cost information from the section D response (which was rejected by the Department), the effect of physical differences could not be taken into account. Because the home market sales data could not be verified, it could not be used by the Department in making its final determination.

In the absence of home market sales data (*i.e.,* when the home market is viable but there are insufficient sales above COP to compare with U.S. sales), the Department would normally resort to the use of constructed value as normal value. However, the constructed value information reported by De Cecco was part of the rejected cost data. Therefore, the use of facts available for cost of production data precluded the use of the submitted constructed value information.

We considered the use of ranged public data submitted by other respondents or the petitioners' own cost data as possible alternatives to De Cecco's reported constructed value information. The petitioners' cost data was not on the record because their allegation of sales below cost of production was based on De Cecco's discredited DIFMER data. Moreover, it would not have been appropriate to use ranged public data submitted by other respondents as facts available for normal value in this investigation. Each control number covers sales of numerous unique product codes. The use of ranged public data would likely have resulted in the comparison of De Cecco's U.S. sales to the constructed value of a completely different product mix reported by the remaining respondents. Such comparisons would have been meaningless. Thus, neither the use of petitioners' cost, nor the use of ranged public data, was an acceptable alternative for normal value.

In conclusion, there was no reasonable basis for determining a normal value for De Cecco. It was impossible, therefore, to perform any comparison to U.S. prices. As a result, we did not use De Cecco's U.S. sales data in determining an antidumping margin. The Department, therefore, had no choice but to resort to a total facts available methodology.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* SAA at 870. De Cecco's failure to provide complete and accurate information in a timely manner and its failure to clarify inconsistencies in its submissions to the record demonstrate that De Cecco has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available for De Cecco, an adverse inference is warranted.

On the basis of our having compared the sizes of the calculated margins for the other respondents to the estimated margins in the petition, we have concluded that the petition is the only appropriate information on the record which could form the basis for a dumping calculation for De Cecco. In accordance with section 776(c) of the Act, we attempted to corroborate the data contained in the petition. When analyzing the petition, the Department reviewed all of the data the petitioners had submitted and the assumptions that petitioners made in calculating estimated dumping margins. As a result of that analysis, the Department revised the home market prices that petitioners relied upon in calculating the estimated dumping margins. On the basis of those adjustments, the Department recalculated the estimated dumping margins for certain pasta from Italy and found them to range from 21.85 percent to 71.49 percent. *See Initiation of Antidumping Duty Investigation: Certain Pasta from Italy and Turkey,* 60 FR 30268, 30269 (June 8, 1995). Because De Cecco made some effort to cooperate, even though it did not cooperate to the best of its ability, we did not choose the most adverse rate based on the petition. As facts otherwise available, we are assigning to De Cecco the simple average of the range of the margins stated in the notice of initiation, 46.67 percent.

Targeted Dumping

On February 13, 1996, the petitioners requested that the Department compare Delverde's transaction-specific export prices in the United States to weighted-average normal values, in accordance with the ''targeted dumping'' provisions of section 777A(d)(1)(B) of the Act. The petitioners alleged that there was a statistical pattern of different export prices among different groups of both Delverde's EP and CEP purchasers and that the use of a weighted-average price would have the effect of masking lower prices. The Department has denied this request on the ground that the petitioners' analysis failed to meet the basic requirements of subsections 777A(d)(1)(B) (i) and (ii) of the Act.

The petitioners' allegation was the result of their having selected groups of customers on the basis of relatively higher and lower prices. After the groups had been selected, petitioners ran statistical procedures to establish that the prices of certain groups were lower than those of other groups. These results, however, were predetermined by the initial composition of the different groups. Moreover, by not supplying any relevant source of comparison benchmark prices, petitioners failed to demonstrate that the price differences were ''significant,'' as required by section 777A(d)(1)(B)(i) of the Act.

Even assuming, arguendo, that petitioners had shown targeting, in order for the targeted dumping provision to be applied, section 777A(d)(1)(B)(ii) requires that the price differences cannot be taken into account by comparing the weight-averaged normal values to the weight-averaged U.S. prices. The petitioners' allegation fails to make this demonstration. Accordingly, this targeted dumping allegation does not provide the Department with a sufficient basis for comparing Delverde's transaction-specific export prices in the United States to its weighted-average normal value.

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 these investigations 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 countervailing duty investigation, pasta certified to be ''organic pasta'' in compliance with European Economic Community 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 EEC-approved national certification authorities. In addition to the description of the EEC regime, the exclusion 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, the 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 EEC Regulation No. 2092/91.

On November 21, we requested additional data on the EEC 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 EEC 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 our preliminary determination, we stated that if certification procedures similar to those under the EEC regulation were established for exports to the United States, we would reconsider an exclusion for organic pasta.

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, from the Italian Ministry of Agriculture and Forestry authorizing AMAB to certify foodstuffs as organic for the implementation of EEC 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.

Period of Investigation

The period of investigation (POI) is May 1, 1994, through April 30, 1995.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of Investigation section and sold in the home market during the POI, to be foreign like products for the purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's antidumping questionnaire.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and the level of trade of the normal value sale. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which normal value is determined.

Section 773(a)(7)(B) of the Act establishes the procedures for making a CEP offset when: (1) normal value is at a different level of trade; and (2) the data available do not provide an appropriate basis for a level of trade adjustment. In addition, in accordance with section 773(a)(7)(B), in order to qualify for a CEP offset, the level of trade in the home market must constitute a more advanced stage of distribution than the level of trade of the CEP.

In implementing these principles in this case, the Department's first task was to obtain information about the selling activities of the producers/exporters. Information relevant to level of trade comparisons and adjustments was requested in our July 10, 1995 questionnaire, and in supplemental questionnaires sent on October 23, 1995, and January 22, 1996. We asked each respondent to establish any claimed levels of trade based on the selling functions provided to each proposed customer group, and to document and explain any claims for a level of trade adjustment.

Our review of these submissions shows that the respondents have identified levels of trade in various manners. In some instances, respondents used traditional customer categories (*e.g.*, wholesaler, retailer), or customer groups (*e.g.*, supermarkets, wholesalers, buying consortium) to identify levels of trade, while in other instances they used factors such as channels of distribution. In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling functions attributable to the customer groups claimed by the respondents. Pursuant to section 773(a)(1)(B)(i) of the Act, and the SAA at 827, in identifying levels of

trade for directly observed (*i.e.*, not constructed) export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustments. For constructed export price (CEP) sales, we considered the selling functions reflected in the price after the deduction of expenses and profit under Section 772(d) of the Act. Whenever sales within a customer group were made by or through an affiliated company or agent, we ''collapsed'' the affiliated parties before considering the selling functions performed. The selling functions and activities examined for each reported customer group were: (1) the process used to establish the terms and conditions of sale (''sales process''); (2) whether the sale was produced to order or filled from normal inventory (''inventory maintenance''); (3) whether the customer was serviced from a forward warehouse (''forward warehousing''); (4) freight and delivery provided or arranged by the manufacturer/exporter (''freight''); (5) manufacturer provided or shared direct advertising or in-store promotion expenses (''advertising''); and (6) warranty service program or after-sales service provided by producer (''warranties'').

In reviewing the selling functions reported by the respondents for each customer group, we considered all types of selling functions, both claimed and unclaimed, that had been performed. Where possible, we further examined whether the selling function was performed on a substantial portion of sales within the relevant customer group. In analyzing whether separate levels of trade exist in this investigation, we found that no single selling function in the pasta industry was sufficient to warrant a separate level of trade (*see, Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7307, 7348 (February 27, 1996)) (Proposed Regulations).

In determining whether separate levels of trade existed in or between the U.S. and home markets, the Department considered the level of trade claims of each respondent, but the ultimate decision was based on the Department's analysis of the selling functions associated with the customer groups reported by the respondents. (In this analysis, customer group refers to the customers or groups of customers identified by respondents.) Although Liguori, De Matteis, Arrighi, and Delverde did not argue that comparisons should be made on the basis of level of trade, the statute requires that, where possible, the Department make comparisons at the same level of trade. Therefore, we looked at the issue of level of trade for each respondent for which we calculated a margin.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale. For respondents Arrighi, Delverde, and La Molisana we compared the sole level of trade in the U.S. market to the home market level of trade which we found to be identical in aggregate selling functions to the level of trade in the United States. In the case of De Matteis and Pagani, we found two home market levels of trade, one of which was determined to be identical in aggregate selling functions to that found in the United States. For respondent Liguori, we compared the level of trade in the U.S. market to the sole home market level of trade and found them to be dissimilar in aggregate selling functions. Therefore, we established normal value at a level of trade different than the U.S. sales.

We then examined whether a level of trade adjustment was appropriate for Liguori when comparing its U.S. level of trade to its home market level of trade. However, because there was only a single home market level of trade, there was no basis for making a level of trade adjustment based on a demonstration of a consistent pattern of price differences between the home market levels of trade. The SAA states that ''if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products.'' *SAA* at 830. The alternative methods for calculating a level of trade adjustment for Liguori were examined. However, we do not have information which would allow us to examine pricing patterns based on Liguori's sales of other products at the same level of trade as the home market sales and there are no other respondents with the same levels of trade as those found for the home market sales of Liguori. Therefore, we were unable to calculate a level of trade adjustment for Liguori based on these alternative methods. Accordingly, Liguori's U.S. sales were compared to home market sales based solely on the product characteristics of the merchandise.

Although Pagani did have identical U.S. and home market levels of trade, for certain U.S. product categories there were no sales of comparable merchandise at the same level of trade. We then examined the prices of comparable product categories, net of all adjustments, between Pagani's two home market levels of trade, and found a consistent pattern of price differences. Therefore, for the U.S. product categories without a match to an identical home market level of trade, we made the comparison at a different level of trade, and made a level of trade adjustment based on the weighted-average difference between the prices at the two home market levels of trade. In this case, the adjustment resulted in an increase to normal value.

As noted below in the ''Comparison Methodology'' section of this notice, where there were distinct price differences between a respondent's customer categories within similar levels of trade, or within different levels of trade in the case of Liguori and Pagani, we considered the customer category in creating the averaging groups for our comparisons.

A complete description of the level of trade analysis for each respondent is presented in the DOC Position to Comment 1E below.

Fair Value Comparisons

To determine whether sales of pasta by the Italian respondents to the United States were made at less than fair value, we compared the Export Price (EP) and/or Constructed Export Price (CEP) to the Normal Value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparisons to weighted-average NVs. For a further discussion, see the Comparison Methodology section, below.

Export Price and Constructed Export Price

We calculated EP, in accordance with subsections 772 (a) and (c) of the Act, for each of the respondents, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. In addition, for Delverde, we calculated CEP, in accordance with subsections 772 (b) through (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

Furthermore, as in the preliminary determination, we did not include the resale of subject merchandise purchased in Italy from unaffiliated producers. For Arrighi, however, we were unable to

determine which particular U.S. sales were of merchandise produced by firms other than Arrighi. Therefore, we weight the dumping margin for Arrighi for each product category it identified by (1) calculating a ratio of the volume of Arrighi-produced product to the combined total volumes of Arrighi-produced and purchased product in the same period, and (2) applying the ratio to the quantity for the corresponding product sold to the United States during the POI. This allowed us to calculate a margin based on an estimated quantity of Arrighi-produced product (*see* Arrighi's Comment 6).

We calculated EP and CEP based on the same methodology used in the preliminary determination. For certain respondents, we recalculated reported credit expenses in instances where they had not reported a shipment and/or payment date because the merchandise had not yet been shipped or paid for at the time of filing the response. For those sales missing a shipment and/or a payment date, we used the average credit days of all transactions with a reported shipment and payment date. Additional company-specific adjustments were made as follows:

Arrighi

We made minor corrections to the U.S. sales database based on errors noted at verification and we recalculated the warranty claim expense for U.S. sales to reflect verified claim expenses. We also recalculated inventory carrying expense to correct the price basis used in the calculation, and to apply a weighted average short-term interest rate based on Arrighi's and Italpasta's company-specific short-term interest rates (*see* Arrighi's Comment 2).

Delverde

In those instances where negative values were reported for U.S. credit expenses (*i.e.*, where Delverde received payment prior to shipment), we set the credit expense to zero. As discussed in Comment 5 for Delverde below, we did not rely on certain CEP sales by Delverde USA because we determined that the date of these sales fell outside the POI. Consistent with our treatment of slotting fees paid in the home market, we reclassified the slotting expenses reported by Delverde USA (*i.e.*, field ''ADVERT2U'') as indirect selling expenses. We made deductions for warranties and additional direct selling expenses reported by Tamma Industrie Alimentari di Capitanata, SrL (Tamma), a Delverde affiliate. We also increased Tamma's packing costs, indirect selling expense and warehousing cost to reflect the findings of the cost verification.

De Matteis

We deleted one invoice from the U.S. database because it was discovered at verification that the sale was made outside of the POI.

La Molisana

We adjusted La Molisana's reported direct advertising expense by reclassifying a portion as an indirect expense. *See*, Comments 2C and 3B for La Molisana, below. We recalculated the reported indirect selling expenses to reflect verified expenses. In addition, we increased the indirect expenses by including certain unreported expenses discovered at verification. We also corrected the control number associated with certain products to reflect the shape classifications confirmed at verification.

Liguori

For certain of Liguori's U.S. sales, that are associated with a particular invoice number, we corrected the shipment date and the imputed credit expenses, based on errors noted at verification.

Pagani

We revised the interest rate used for calculating Pagani's credit expense and its inventory carrying costs based on information found at verification. We deleted the following sales from the U.S. sales listing: sales made outside of the POI, duplicate entries, and a sale made to a Canadian company.

Normal Value

In accordance with section 773(a)(1)(B) of the Act, we have based NV on sales in Italy or, where appropriate, on constructed value (CV).

For each of the respondents, we made adjustments, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57. In addition, we deducted home market packing costs and added U.S. packing costs for all respondents.

We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2) as follows: Where commissions were paid on some home market sales to calculate normal value and U.S. commissions were greater than the sum of both home market commissions and indirect selling expenses, we deducted from normal value either (1) home market indirect selling expenses attributable to those sales on which commissions were not paid, or (2) the difference between the U.S. and home market commissions. Where commissions were paid on home market sales but not on sales to the U.S., we deducted the lesser of either (1) the home market commissions, or (2) the sum of the weighted average indirect selling expenses paid on U.S. sales. Where no commissions were paid on home market sales used to calculate normal value, we deducted the lesser of either (1) the amount of the commissions paid on the U.S. sales, or (2) the sum of the weighted average indirect selling expenses paid on home market sales, capped by the amount of the commission paid on U.S. sales. Finally, regardless of the applicable scenario, the amount of the commission paid on the U.S. sales was added to normal value.

For certain respondents, we recalculated reported credit expenses in instances where they had not reported a shipment and/or payment date because the merchandise had not yet been shipped or paid for at the time of filing the response. For those sales missing a shipment and/or a payment date, we used the average credit days of all transactions with a reported shipment and payment date.

Liguori and La Molisana reported that the sales to their respective affiliated customer(s) were made at arm's length prices. We used the affiliated party test applied at the preliminary determination to determine whether sales to affiliated customers were made on an arm's-length basis, although we modified it to consider price differences that result from comparisons of sales to different customer categories. (For a further discussion of this issue *see*, Comment 1 under the ''Company Specific Comments—La Molisana'' section of this notice, below. Sales not made at arm's-length prices were excluded from our LTFV analysis.

We compared all home market sales to the cost of production (COP), as described below. Where home market prices were above COP, we calculated NV based on the same methodology used in the preliminary determination, with the following exceptions:

Arrighi

We made minor corrections to the home market sales database based on errors noted at verification (*see* Arrighi's Comment 1). For home market credit expense calculation, we used a weighted average short-term interest rate based on Arrighi's and Italpasta's company-specific short-term interest rates (*see* Arrighi's Comment 2). We also recalculated inventory carrying expense to correct the price basis used in the calculation, and to apply the weighted average short-term interest rate. We reclassified as indirect selling expenses advertising expense 1 and direct selling expenses based on verification findings (*see* Arrighi's Comments 4 and 5). For

Italpasta sales that incurred inland freight, we used the lowest reported unit inland freight expense as ''facts available'' because this expense could not be completely verified (*see* Arrighi's Comment 3).

Additionally, because section 773(a)(1)(B)(i) of the Act incorporates, by reference, the definition of foreign like product in section 771(16) of the Act, it prohibits our using sales of merchandise produced by persons other than the respondents in our calculation of normal value. Accordingly, we have excluded from our analysis all of the sales from each of the companies of subject merchandise in the Italian market that were not produced by the respondent companies (*see* Arrighi's Comment 7).

Delverde

We recalculated home market credit based on the weighted average of the company-specific short term borrowing rates reported by Delverde and Tamma. We also increase Tamma's packing cost, indirect selling expenses and warehousing cost to reflect the findings of cost verification.

De Matteis

All reported commission expenses that were found to be salaries were reclassified as indirect selling expenses.

La Molisana

We disallowed La Molisana's claim for a certain rebate (REBATE2H) because the company failed to provide support documentation for the claimed amount at verification. *See* La Molisana Comment 4, below. We recalculated the indirect selling expense factor to reflect the amounts confirmed at verification. In addition, we reclassified trade promotion expenses as direct advertising expenses. *See* Comment 2B, below. Finally, we reallocated the POI expenses over the appropriate denominator confirmed at verification.

Additionally, we increased the reported advertising expense to include the ''television sponsorship'' expense discovered at verification. *See* La Molisana Comment 2A, below.

Liguori

For certain home market sales, associated with a particular invoice, we corrected the payment date and the imputed credit expenses based on errors noted at verification.

Pagani

We deleted home market sales of enriched pasta, other than enriched whole wheat pasta, because these sales were deemed to have been made outside of the ordinary course of business. In addition, we deleted duplicate entries, sales recorded as gifts, sales made outside of the POI, and sales to employees from the home market database. We also updated the interest rate used for calculating Pagani's credit expense and its inventory carrying costs.

Cost of Production Analysis

As discussed in the preliminary determination notice, the Department conducted an investigation to determine whether each respondent made home market sales during the POI at prices below COP within the meaning of section 773(b) of the Act. Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the cost of materials, fabrication, general expenses, and home market packing in accordance with section 773(b)(3) of the Act. We relied on the submitted COP data, except in the following instances where the costs were not appropriately quantified or valued.

Arrighi

1. We corrected Arrighi's understated depreciation expense to reflect its normal, full-year depreciation expense for fixed assets that were temporarily idle.
2. We corrected general and administrative expenses (G&A) for costs that were improperly excluded by Arrighi and its affiliate, Italpasta S.p.A. (Italpasta).
3. We revised the cost of goods sold figure used as the denominator in the G&A and financial expense ratios and recalculated Arrighi and Italpasta's G&A and financial expense ratios.
4. We recalculated the semolina costs reported by Arrighi's affiliated mill to correct for errors in the cost of raw materials
5. We increased Arrighi's material costs to agree with the actual material costs reported under the company's financial accounting system.
6. We increased Arrighi's G&A expenses to include the G&A expenses incurred by its parent company.
7. We revised Arrighi and Italpasta's financial expenses to include bank charges and to exclude exchange gains and losses related to sales transactions.

De Matteis

1. We revised the cost of goods sold figure used as the denominator in De Matteis' submitted G&A and financial expense rates, and recalculated its per-unit G&A and financial expenses using the revised rates.

Delverde and Tamma

1. We corrected the depreciation expense reported by Tamma, a Delverde affiliate.
2. We increased Tamma's financial expenses to include foreign exchange losses incurred on the extinguishment of debt.
3. We revised the combined cost of sales figure used by Delverde to calculate its G&A and financial expense rates, reducing it for byproduct revenues and intercompany transfers between Delverde and Tamma.
4. We did not calculate a separate financial expense rate for use in the CV calculations because the statute states that COP and CV are based on the actual costs and not imputed costs.

Pagani

1. We increased Pagani's cost of semolina for unreported freight costs.
2. We increased Pagani's fixed overhead for clerical errors reported to the Department on the first day of verification. We also increased fixed overhead to include an additional two months of depreciation expense on a new production line.
3. We revised Pagani's cost of sales figure used to calculate the G&A expense ratio to exclude packing costs and to include all fixed overhead costs.
4. We revised Pagani's consolidated financial expense rate calculation to account for the following: we reduced the costs of sales figure for byproduct revenue that was used to offset the cost of production; we included fixed overhead costs that had been omitted from the costs of sales figure; we excluded packing costs from the cost of sales figure; and we adjusted the consolidated cost of sales figure to account for intercompany transfers.

Liguori

1. We reallocated fuel costs based on the number of pasta production lines in operation.

La Molisana

1. We increased reported costs to account for an unreconciled difference between La Molisana's cost and financial accounting systems.
2. We increased the reported cost of semolina production, disallowing La Molisana's offset for revenues received from sales of finished semolina.
3. We increased the reported costs for the understatement of wheat, labor and electricity costs due to the use of the calendar year 1994 costs rather than POI costs.

4. We increased reported costs to account for an unreconciled difference between La Molisana's total production costs and its reported production costs for 1994.

5. We reduced reported depreciation expense for an overstatement discovered during verification.

6. We increased G&A expenses to disallow an offset for foreign exchange gains related to sales transactions.

7. We increased reported financial expenses to disallow long-term interest income used to offset financial expenses and to include financial expenses that were allocated to the flour mill.

8. We revised the cost of sales figure used as the denominator in La Molisana's G&A and financial expense ratios, and recalculated its per-unit G&A and financial expenses using the revised rates.

B. Test of Home Market Prices

We compared the adjusted weighted-average COP figures to home market sales of the foreign like product on a product-specific basis, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period of time. The home market prices compared were net of any applicable movement charges, discounts, rebates, packing, and direct and indirect selling expenses.

C. Results of COP Test

Pursant to section 773(b)(2)(C), where less than 20 percent of sales during the POI of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in substantial quantities within an extended period of time. Where 20 percent or more of sales of a given product are at prices less than the COP, we disregard only the below-cost sales because such sales are found to be made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, and at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all sales of a specific product are at prices below the COP, we disregard all sales of that product, and calculate NV based on CV, in accordance with section 773(a)(4) of the Act.

We found that, for certain types of pasta, more than 20 percent of the following respondents' home market sales were sold at below COP prices within an extended period of time in substantial quantities: Arrighi, Delverde, De Matteis, La Molisana, Pagani and Liguori. Further we did not find that these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1). For those types of pasta for which there were no above-cost sales in the ordinary course of trade, we compared export prices to CV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of cost of materials, fabrication, general expenses and U.S. packing costs as reported in the U.S. sales database. We recalculated the respondents' CV based on the methodology described in the calculation of COP above.

For each of the respondents, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where the difference in merchandise adjustment for any product comparison exceeded 20 percent, we based normal value on CV. In addition, in accordance with section 773(a)(6)(B), we deducted home market packing costs and added U.S. packing costs for all respondents.

Comparison Methodology

In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted average normal values, or to constructed values, where appropriate. The weighted averages were calculated and compared by product characteristics and, where appropriate, level of trade and/or price averaging groups. The SAA states that in determining the comparability of sales for inclusion within a particular average, ''Commerce will consider factors it deems appropriate, such as * * * the class of customer involved,'' *SAA* at 842. The Department, not the respondents, determines which customers may be grouped together for product comparison purposes. *Cf., N.A.R., S.p.A.* v. *U.S., 741 F. Supp. 936* (CIT, 1990). Based on the chain of distribution for the pasta industry, we have identified the following five distinct customer categories that represent different points in the chain of distribution: (1) other pasta manufacturers (Pastificios) who purchase and resell pasta; (2) distributors; (3) wholesalers; (4) retailers; and (5) consumers. Each of these customer categories was defined by functions commonly associated with each category of customer in the areas of: (1) category of the supplier; (2) contractual relationship with the supplier; (3) exclusivity of sales territory; (4) exclusivity of product range; (5) sales practices; and (6) downstream customer category.

For those respondents (De Matteis and Pagani) with the same level of trade in the U.S. and home markets and a single, identical customer category in each market, the weighted-average prices were calculated and compared by product characteristics and level of trade. For those respondents having the same level of trade in the U.S. and home markets, and multiple customer categories, the weighted-average prices were calculated and compared by product characteristics, level of trade, and the identical or, in the case of La Molisana, the most comparable customer category in terms of remoteness from factory, if we found that there were consistent price differences among the various customer categories. Price differentials were analyzed by first calculating the average price net of all reported expenses for each product control number and unique customer category in each market. The average net unit prices for each control number in the customer category least remote in the chain of distribution were compared to the identical product control number in the customer category at the next most remote level in the chain of distribution. Price differentials were considered to be consistent if there were uniform price differences between the customer categories. For those respondents (Arrighi and Delverde) with the same level of trade in the U.S. and home markets and multiple customer categories, but no consistent price differentials, the weighted-average prices were calculated and compared by product characteristic and level of trade. We determined for Arrighi that a price differential analysis was not measurable because Arrighi had grouped different customer categories in its reported customer groups, and we were unable to separate these customers by customer category. For those respondents (Liguori) with different levels of trade in the U.S. and home market, the weighted-average prices were calculated and compared by product characteristics and by customer category, if we found that there were consistent price differentials among the customer categories.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal

Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. The benchmark is defined as the moving average of rates for the past 40 business days. (For an explanation of this method, *see, Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434, March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Italian lira did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents, with the exception of De Cecco, using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. In addition, we conducted verification of Saral to confirm its claim that it no longer exports pasta to the United States.

Interested Party Comments

I. General Issues

Comment 1 Level of Trade: Comment 1A Whether the Department Should Consider the Class of Customer and/or Channel of Distribution in Determining Whether Separate LOTs Exist: The petitioners and La Molisana argue that the level of trade (LOT) methodology adopted by the Department in its preliminary determination is flawed and should be substantially revised in the final determination. Specifically, the petitioners and La Molisana assert that the Department improperly focused solely on selling functions and ignored the customer groups and/or channels of distribution identified by each respondent as potentially different points in the chain of distribution.

The petitioners assert that it has been long recognized by the Department and the Court of International Trade (CIT) that levels of trade reflect ''an attempt to reconstruct prices at a specific, 'common' point in the chain of commerce * * *'', *Smith Corona* v. *United States*, 713 F.2d 1568, 1571–72 (Fed. Cir. 1983). Claiming that the new statute, the SAA, and the Department's Proposed Regulations do not define LOT or establish criteria for determining separate LOTs, the petitioners and La Molisana argue that the fundamental concept of LOT has not changed under the new statute. Therefore, they each contend that the definition of LOT still reflects the Court of Appeals' and the Department's longstanding interpretation of that term (*i.e.*, that LOT refers to different points in the chain of distribution). (*See, e.g.*, Import Administration Policy Number 92/1 at 2 (July 29, 1992), (''In asking for LOT information, the Department is trying to determine where in the distribution chain the respondents' customer falls (end user, distributor, retailer).'') *Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18,791, 18,794 (April 20, 1994), (''Comparisons are made at distinct, discernable levels of trade based on the function each level of trade performs, such as end-user, distributor, and retailer.'')).

Although the petitioners and La Molisana recognize that the new statute contains certain refinements to the LOT concept, both parties argue that the amendments to the law made by the URAA did not alter the fundamental definition of LOT as noted above. Consequently, they argue that the starting point for determining whether different LOTs exist is whether the sales take place at different points in the chain of distribution. The petitioners and La Molisana cite *Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8916 (March 6, 1996) (*French Rod*) as a recent case where, in analyzing potential LOTs, the Department relied upon the distinctions the respondents identified between channels of distribution. (''Respondents reported two channels of distribution in the home market. * * * We examined and verified the selling functions performed in each channel. * * * Overall we determine that the selling functions between the two sales channels are sufficiently similar to consider them one level of trade in the home market.'')), *French Rod*, 61 FR 8916. Therefore, both La Molisana and the petitioners assert that the Department should consider the potential LOTs identified by the respondents, in terms of channels of distribution or customer groups, in determining whether separate LOTs exist.

Arrighi argues that the LOT methodology adopted by the Department in its preliminary determination was factually correct and in accordance with the law and the URAA. Arrighi disagrees with the petitioners' and La Molisana's claim that the amendments to the law made by the URAA did not alter the fundamental definition of LOT. According to Arrighi, because the SAA specifically states that ''in order to establish the existence of different LOTs, a respondent company must show that different *selling activities* are performed *by the respondent company* at each LOT,'' and there is no mention of another criterion or test in either the statute or the SAA, the position in the chain of distribution of the respondent's customers should not be a precondition to finding separate LOTs.

Arrighi contends that the Department confirmed that the selling functions of a respondent are the proper determinative factor in establishing different LOTs in its comments that were issued with the Proposed Regulations for the URAA. Arrighi claims that while certain commentators argued that a respondent company must sell to customers at different points in the chain of distribution before asserting that different LOTs exist, the Department rejected this position, stating that the ''only test identified in the statute for the legitimacy of the claimed LOTs is the activity of the seller.''

DOC Position: We agree with Arrighi that it is appropriate to look at the selling functions of a respondent to determine whether separate levels of trade exist. While neither the Act nor the SAA provides an explicit definition of level of trade or establishes criteria for determining whether separate levels of trade exist, the SAA does specify that the Department requires evidence that ''different selling activities are actually performed at the allegedly different levels of trade'' before recognizing distinct levels of trade. *SAA* at 829. This is confirmed again by the SAA in the discussion of the required pattern of price differences for the LOT adjustment, where it states that ''where it is established that there are different levels of trade based on the performance of different selling activities * * *,'' Commerce will make a LOT adjustment. *SAA* at 830. Thus, the Act and the SAA have identified selling activities as a key factor in determining levels of trade; however, the statute does not require that this analysis begin and end with the selling activities of the producer/exporter.

In the preliminary determination, the Department stated that it would continue to examine its policy for

making level of trade comparisons and adjustments. After reviewing the comments we received on this issue as well as the Department's recent practice for determining the existence of levels of trade, we have determined that certain modifications to the LOT methodology used in the preliminary determination are warranted. As described in the ''Level of Trade'' section of this notice, above, in order to determine whether distinct levels of trade exist, we have examined the full array of selling functions provided to each of the customer groups alleged by the respondents. As noted in Comment 1C below, we believe that this approach will allow us to consider all types of selling functions, both claimed and unclaimed, that had been actually performed in determining the level of trade and avoid instances where a single selling function difference on individual sales transactions warrants the finding of a distinct level of trade. Finally, by reviewing the selling functions within each of the alleged customer groups, we expect that the analysis will capture any possible differences in the mix of selling activities provided for each customer group.

Comment 1B Whether the Selling Functions of a Respondent Should be Considered in Determining Whether Separate LOTs Exist: La Molisana argues that the functions or services performed by the respondents are not determinative of whether different LOTs exist and should not be taken into consideration in the Department's LOT analysis. La Molisana asserts that Section 773(a)(7)(A) of the new statute provides for a *LOT adjustment* ''if the difference in LOT * * *involves the performance of different selling activities.'' Accordingly, La Molisana asserts that the selling activities of the respondent cannot be part of the definition of LOT and only become relevant *after* it is determined that separate LOTs, in fact, exist. Therefore, La Molisana argues that the question of whether the seller performs different selling functions is only relevant in determining whether a LOT adjustment is warranted.

The petitioners argue that the SAA is clear in stating that selling functions are intended to be an integral part of establishing whether different LOTs exist. (''Commerce will grant [LOT] adjustments only where: 1) there is a difference in the LOT (*i.e.*, there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets)). *SAA* at 829. The petitioners contend that the SAA's reference to a ''difference between the *actual functions performed*'' clearly implies that a distinction in LOT should not be made without a finding of functional differences. In addition, the petitioners claim that the SAA implies that something more than a mere reference to the class of customer would be needed to identify separate LOTs (''[n]ominal reference to a company as a 'wholesaler,' for example, will not be sufficient'' [in determining LOT]). *SAA* at 829. Therefore, the petitioners argue that a selling function analysis is relevant in determining whether separate LOTs exist and that the Department should continue to examine the selling functions of the respondents in its final determination. The petitioners cited *French Rod* as a recent case where the Department examined the selling activities of the respondent in determining whether there were separate LOTs (''In order to identify LOTs, the Department must review information concerning the selling functions of the exporter,'' *French Rod*, 61 FR 8916 (March 6, 1996).

Finally, the petitioners claim that because all of La Molisana's U.S. sales are EP sales, no indirect selling expenses are deducted from either the U.S. or home market prices. Therefore, the petitioners argue that La Molisana is incorrect in stating that an examination of selling functions is double counting and that the margin calculations already account for all expenses incurred by La Molisana.

Arrighi and De Matteis both argue that the existence of different selling functions is the proper basis for establishing whether different LOTs exist. For a further discussion of Arrighi's arguments concerning this issue, *see* Comment 1A, above.

DOC Position: We agree with the petitioners. The SAA states that, ''Commerce will require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade * * *. On the other hand, Commerce need not find that the two levels involve no common selling activities to determine that there are two levels of trade.'' *SAA* at 159, and *Cf., Proposed Regulations* at 7348. Thus, as noted in Comment 1A above, information about the selling activities of the producer/exporter is essential to the identification of levels of trade.

Comment 1C Whether the Department Should Reject The Four Selling Function Coding System Used in the Preliminary Determination: In the event the Department determines it is appropriate to define LOTs based on selling function distinctions, the petitioners, La Molisana, Delverde and De Matteis argue that the LOT coding methodology used in the preliminary determination should be rejected because it is inconsistent with law and commercial reality. Neither Liguori, Pagani or Arrighi commented on the specifics of the LOT coding methodology used in the preliminary determination. However, Arrighi and Liguori state that they agree with the outcome of the Department's preliminary LOT analysis.

First, the petitioners and La Molisana assert that the Department's LOT coding system resulted in a finding that a difference in any one selling function is sufficient to define a separate LOT. The petitioners and La Molisana argue that this methodology is at odds with the Department's Proposed Regulations which specifically reject the notion that a difference in one selling function alone would be sufficient to define an entirely separate LOT in most instances. *Cf., e.g., Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7348 (February 27, 1996) (*Proposed Regulations*) at 7348.

Second, the petitioners argue that the selling function categories used in the preliminary determination are unreasonable and overly narrow. Given the different combinations of the four selling function categories used in the preliminary determination, there were 16 possible LOT combinations in each market. Both the petitioners and La Molisana assert that because LOT is used as a matching criterion, the overly-narrow LOT segments resulted in large amounts of home market sales not being used to determine whether dumping was occurring. For example, with respect to Arrighi, the petitioners claim that as a result of the Department's preliminary LOT methodology, less than one percent of Arrighi's home market sales were used as comparison sales to determine whether dumping was occurring.

Third, La Molisana and De Matteis both argue that the Department's use of sales with the same number of selling expense categories to determine the ''next most comparable LOT'' in the preliminary determination has no factual or logical basis. Specifically, La Molisana and De Matteis assert that the Department's methodology essentially treats each selling function category as having an equal effect on the sales price. La Molisana and De Matteis contend this not true and that in reality, each selling function influences pricing in a different manner.

Fourth, La Molisana and De Matteis argue that the Department's preliminary methodology erred by measuring the existence or absence of a selling activity in absolute terms, rather than in degrees. La Molisana and De Matteis assert that in determining LOT comparisons, the relative degree or extent to which an activity or function is performed (*e.g.,* ''great degree,'' ''moderate degree'' or ''small degree'') should be taken into account by the Department in the final determination.

The petitioners argue that the extent or cost of the function provided should not be used to distinguish selling activities. The petitioners assert that while expenses for services to some customers may be more than to others, the expense difference may not reflect a true difference in selling activities or services, but instead represent the costs associated with sales shipped in larger or smaller quantities or to different geographic locations. In addition, the petitioners note that because the Department did not request data concerning the degree to which any selling activity is performed, there is no basis for the Department to perform such an analysis in this case.

Fifth, Delverde argues that the LOT coding methodology is fundamentally flawed in concept because it ''constructed'' a LOT based on selling functions that were not part of CEP. Specifically, Delverde argues that the statutory definition of CEP clearly describes a price at an ex-factory LOT. Delverde claims that although the Department concluded that Delverde provided movement and advertising services in connection with its CEP sales, both types of expenses were deducted from the U.S. starting price when CEP was calculated. Therefore, Delverde contends that the Department's preliminary methodology created a ''constructed'' CEP LOT that was more advanced than the LOT of the actual CEP.

DOC Position: In the preliminary determination, the Department stated that it would continue to examine its policy for making level of trade comparisons and adjustments. After reviewing the comments we received on this issue as well as the Department's recent practice for determining the existence of separate levels of trade, we agree with the respondents that certain modifications to the LOT methodology utilized in the preliminary determination are warranted. Specifically, we find that: (1) the preliminary coding methodology measured levels of trade based on the existence of individual selling functions, rather than basing levels of trade on the collective array of selling activities performed by the seller; and (2) the coding system led to the result that a difference in just one selling function on any given sale necessarily justified a difference in level of trade. Although neither the Act nor the SAA provide explicit guidelines for identifying levels of trade, the preamble to the Proposed Regulations reflects our practice and states that ''small differences in the functions of the seller will not alter the level of trade.'' *Proposed Regulations* at 7348. Although the Proposed Regulations provide that a single function may be so significant as to constitute the existence of a separate level of trade, we have determined that no single selling function in the pasta industry warrants the finding of a separate level of trade. Therefore, as noted in the ''Level of Trade'' section of this notice, above, we have revised the level of trade methodology used for the final determination. In order to determine whether separate levels of trade existed within or between the U.S. and home markets, we have reviewed the full array of selling functions, in the aggregate, provided to each of the customer groups alleged by the respondents. In addition, because we have determined that no single selling function in the pasta industry is so significant as to alter the LOT, we have no longer considered a single difference in selling function to justify the finding of a separate level of trade.

We agree, in part, with La Molisana and De Matteis' assertion that the relative extent to which an activity or function is performed should be considered in the Department's LOT analysis. As noted in the ''Level of Trade'' section of this notice, above, before determining that a particular selling function was performed for a particular customer group, we examined whether the selling function was performed on a substantial number of sales within the customer group. We disagree with La Molisana and De Matteis, however, that the degree to which a selling function is performed (*i.e.,* ''great degree'', ''moderate degree'' or ''small degree'') should be considered in our LOT analysis for this investigation. While it is conceivable that the Department may determine in a particular case that it is necessary to consider the degree to which a particular selling function is performed in its analysis, the selling functions in this case were such that they can be viewed as either having been performed or not having been performed. Accordingly, we have not taken the degree to which a selling function is performed into consideration in conducting our LOT analysis.

Delverde's arguments concerning whether the LOT coding methodology improperly ''constructed'' a LOT based on selling functions that were not part of CEP are addressed separately under the ''Company Specific Comments'' section of this notice, below.

Comment 1D Which Selling Functions Should be Considered in Determining Whether Separate LOTs Exist: In lieu of the LOT methodology adopted in the preliminary determination, the petitioners and De Matteis argue that the Department should examine the full array of selling functions, in the aggregate, provided to each potential LOT to determine whether separate LOTs exist. The petitioners assert that this methodology was adopted by the Department in the *French Rod* case where the Department examined the collective array of selling activities performed for each channel of distribution and found that minor differences between the home market sales examined did not justify segmenting the sales into different LOTs (''[we] found that the two sales channels provided many of the same or similar selling functions including: strategic planning, order evaluation, warranty claims, technical services, inventory maintenance, packing and freight and delivery. We found some differences between the two channels of trade in advertising, customer contacts, computer systems (order input/invoice system), and administrative functions. Overall, we determine that the selling functions between the two sales channels are sufficiently similar to consider them as one level of trade in the home market''). 61 FR at 8916.

Specifically, the petitioners assert that the following selling functions are relevant to the Department's LOT analysis for the U.S. and Italian pasta markets: (1) freight & delivery; (2) customer sales contacts; (3) advertising; (4) technical services; (5) warranties; (6) inventory maintenance (pre-sale); (7) post-sale warehousing; and (8) administrative functions. In addition, the petitioners contend that in performing the selling function analysis, the Department should ensure that the selling activity is consistently applied to all, or at least the vast majority, of customers at each potential LOT identified. The petitioners claim it would be inappropriate to consider a selling function applicable to a particular LOT where the function was not provided to all customers, or on some but not all sales.

In the event the Department determines it is appropriate to consider

the selling functions of the respondent in determining whether separate LOTs exist, La Molisana argues that by examining the selling activities of respondents, the Department is ''in a sense double-counting'' because the selling functions have already been accounted for in the margin calculations. For example, La Molisana claims that in its margin calculations, the Department deducts freight expenses from both the export price and home market price in order to make an ''apples to apples'' comparison of the prices. Accordingly, La Molisana asserts that it is unnecessary to account for potential price differences in freight expenses by treating sales sold on an ex-factory basis to be a different LOT than sales made on a delivered basis. Therefore, La Molisana asserts that only those selling activities that are not otherwise accounted for in the margin calculation should be considered in determining the LOT.

Regarding whether the Department should examine all selling activities undertaken or should focus only on those activities that are not already accounted for in the dumping calculation, the petitioners note that the SAA cautions the Department against making adjustments for the same activities twice, once as a circumstance of sale adjustment and once as a LOT adjustment. *SAA* at 830. Therefore, the petitioners assert that it might be appropriate to consider selling functions only to the extent that such functions were not already accounted for as a COS adjustment. Because all of La Molisana's U.S. sales are EP sales, the petitioners claim that indirect selling expenses are not deducted from either the U.S. or home market prices. Therefore, only indirect selling expenses (and their related selling activities) might serve as the basis for distinguishing LOTs.

Whichever approach the Department adopts (either examining all selling functions or only those not otherwise accounted for in the margin calculations), the petitioners argue that the Department must begin with the same starting point for the sales prices compared. For example, the petitioners assert that if the Department adjusts CEP sales to exclude U.S. selling functions, the Department should similarly adjust EP and normal value sales for all statutory adjustments before examining LOT.

Finally, the petitioners argue that the Department should *not* attempt to define LOTs based on the following factors because they do not relate to differences in selling activities:

(1) *Quantities/Volumes Sold:* The petitioners assert that the SAA states that differences based on quantities sold are not a legitimate basis for defining LOTs or LOT adjustments. *SAA* at 830.

(2) *Geographical Location of the Customer:* The petitioners claim that the fact that two customers may be located in physically distinct geographical areas does not, in and of itself, demonstrate that different LOTs exist.

(3) *Which Selling Entity Performs the Functions:* The petitioners assert that whether a selling function is performed by an unaffiliated sales agent, an affiliated sales agent or the manufacturer, the same function is provided and the costs to the seller are the same. Therefore, the petitioners argue that the Department should not differentiate LOT based on which entity performs the selling function. La Molisana asserts the LOT can only be defined with respect to the first arm's length transaction. Therefore, La Molisana argues that selling activities performed by an unaffiliated agent should not be considered in the Department's analysis.

(4) *Commissions:* The petitioners argue that commissions are merely payments to an agent to perform the same function that would otherwise be incurred by the manufacturer directly. Accordingly, the petitioners argue that commissions are an invalid basis to distinguish LOT.

(5) *Whether the Services Were ''Intentionally'' Provided:* Arrighi argues that the Department should differentiate between selling functions that were provided based on whether Arrighi intentionally marketed the service to the customer or not (*see* Comment 1E, below). The petitioners assert that nothing in the statute authorizes the Department to distinguish between selling functions based on the intent of the seller. Therefore, the petitioners argue that Arrighi's attempt to include the factor of ''intent'' into the LOT analysis should be rejected.

(6) *Discounts and Rebates:* The petitioners and La Molisana argue that discounts and rebates are pricing mechanisms, not selling functions or activities, and that the presence of a discount or rebate has no bearing on the point in the chain of distribution at which the transaction occurs. In addition the petitioners and La Molisana contend that the dumping calculations recognize that discounts and rebates are a function of price by deducting them as ''price adjustments'' rather than ''circumstance of sale (COS) adjustments.'' *Proposed Regulations* at 7381. For all of these reasons, the petitioners and La Molisana argue that discounts and rebates should not be included as a selling function distinction for LOT purposes.

(7) *Distinctions Between Customers Based on Price:* The petitioners assert that the statute does not suggest that LOT distinctions can be based on price differentials. (For a further discussion and arguments on a related issue - whether to consider price distinctions in defining customer categories, see Comment 2D, below.)

DOC Position: We agree with the petitioners and De Matteis that the Department's level of trade analysis should consider the full array of selling functions in the aggregate, and ensure that the selling function was consistently applied to at least the vast majority of customers and sales in each level of trade. As stated in the ''Level of Trade'' section of this notice, above, no single selling function in this industry warranted a separate level of trade and, wherever possible, we examined whether the selling function was performed on a substantial portion of sales within the customer groups reported by the respondents. A company specific description of the selling functions assigned to the level(s) of trade for each respondent is provided in Comment 1E, below. Three of the respondents, Pagani, Delverde and De Matteis, were found to have more than one (but no more than two) levels of trade in either their U.S. or home market; in each of these instances there were at least two selling function differences between the levels of trade. In determining whether a selling function was applicable to a substantial portion of customers in the reported customer group, we relied on the respondent's narrative responses and sales transaction data, as well as information obtained during verification.

We disagree with La Molisana and, in part, with the petitioners regarding the starting point for considering selling functions in determining the level of trade. The process of establishing whether separate levels of trade exist is distinct from both the margin calculation and the level of trade adjustment. We reject any attempt to alter the statutory criteria for levels of trade, even if such alteration might arguably eliminate a redundant step.

Section 773(a)(1)(B)(i) of the statute states that normal value will be based on ''the price at which the foreign like product is first sold * * * and to the extent practicable, at the same level of trade as the export price or constructed export price.'' The SAA specifies that normal value will be calculated ''at the same level of trade as the constructed export price or the starting price for

export sales.'' *SAA* at 827. Therefore, in identifying levels of trade for export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustment, for the customer group reported by the respondent. Section 772(d) of the Act provides that constructed export price will be based on the price after the deduction of expenses and profit. Thus, for CEP sales, we considered the selling functions reflected in the price after the deduction of expenses and profit under Section 772(d) of the Act.

We agree, in part, with the petitioners regarding the types of selling functions that should or should not be considered in defining levels of trade. The selling functions to be considered in establishing whether separate levels of trade exist were based on the nature of the pasta industry. The five selling functions used by the Department to establish the levels of trade in this investigation are reflective of the functions and activities incurred in the sale of pasta to the U.S. and in the home market. These functions have been identified in the ''Level of Trade'' section of this notice, above. However, we disagree with the petitioners that technical services or post-sale warehousing should be included in the selling function analysis; these activities did not occur in the pasta industry. Regarding the other selling functions, we were generally in agreement with the petitioners' recommendations regarding which selling functions to include in determining levels of trade. Regarding La Molisana's claim that we should start our level of trade analysis with the first arm's length transaction, as noted in the ''Level of Trade'' section of this notice, above, we collapsed affiliated parties before considering the level of trade.

Comment 1E Company-Specific Analysis of Selling Functions: The petitioners argue that a review of the selling functions undertaken by each of the respondents to the U.S. and home market customers, based on the collective approach to analyzing selling functions utilized in *French Rod*, shows that there are few, if any, functional differences between the U.S. and home market sales of pasta. Therefore, petitioners claim that the Department should determine that different LOTs do not exist for any of the respondents within the U.S. or Italian markets or between the U.S. and Italian markets.

Certain respondents challenge the petitioners' assumptions regarding the selling functions performed. The petitioners' analysis and the respondents' rebuttal comments are summarized below. Insofar as the Department has conducted its own selling function analysis to determine whether separate LOTs exist, many of the arguments presented by the petitioners and the respondents are now moot and, therefore, have not been specifically addressed. Therefore, the Departmental Position for each respondent reflects the results of the Department's selling function analysis. The selling function analysis utilized by the Department is described in the ''Level of Trade'' section of this notice, above.

(1) Liguori

The petitioners claim that there are no differences in selling functions accorded to its home market customers by Liguori. Therefore, the petitioners assert that a single LOT exists in the home market. In the U.S. market, the petitioners claim that Liguori's record establishes no functional distinctions between the services offered on Liguori's U.S. sales. Thus, the petitioners claim that a single LOT exists for all U.S. sales. Regarding the U.S. to home market comparison, the petitioners contend that the only functional differences between the U.S. and home market sales are the presence of freight and delivery and warranty services on home market sales that are not present on U.S. sales. The petitioners assert that these differences are not sufficient to distinguish LOTs and that the Department should consider all U.S. and home market sales to be at the same LOT. If the Department determines that the home market sales are at a more advanced LOT, the petitioners argue that no LOT adjustment should be applied because Liguori has not claimed or demonstrated entitlement to such an adjustment. (For a further discussion of LOT adjustments, *see* Comment 1F, below.)

Liguori agrees with the petitioners. Specifically, Liguori states that the company has neither claimed a level of trade adjustment to normal value nor has it requested that its U.S. prices and normal value be compared within levels of trade. Thus, Liguori asserts that the level of trade methodology employed in the preliminary determination achieved a result consistent with Liguori's own position (*i.e.*, no level of trade adjustment was granted).

DOC Position: We agree with the petitioners and Liguori, in part. Based on our own analysis of the selling functions performed by Liguori, as described in the ''Level of Trade'' section of this notice, above, we found that all U.S. and home market sales were made at a single LOT. However, we determined that the U.S. LOT was different from the home market LOT.

Liguori reported two customer groups in the U.S. market. We found that Liguori performed similar selling functions for these customer groups in the areas of inventory maintenance, forward warehousing, freight, advertising, and warranties. However, we found different sales processes for these customer groups. Overall, we determined that the selling functions between these two customer groups are sufficiently similar to consider them as one level of trade. For the home market, Liguori reported six customer groups. We found these customer groups to be similar in that Liguori performed the following selling functions for certain customer groups: sales process, inventory maintenance, forward warehousing, freight, advertising and warranties. We found these customer groups to be different in how Liguori performed the following selling functions for certain customer groups in the areas of sales processing, forward warehousing, and advertising. Overall, we determined the selling functions between these six customer groups to be sufficiently similar to consider them one level of trade.

We then compared the level of trade in the U.S. market to the home market level of trade and found the selling functions performed for certain customer groups in the areas of sales processing, forward warehousing, and advertising to be similar. We found the selling functions performed for certain customer groups in the areas of sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties to be dissimilar. Overall, these factors warrant finding the U.S. and home market sales to be made at different levels of trade.

(2) La Molisana

The petitioners argue that its review of the array of selling functions offered to La Molisana's home market customers reveals no significant distinctions in the selling functions which would justify a finding of different LOTs in the home market. The petitioners contend that the selling functions La Molisana relied upon to differentiate its home market LOTs are invalid. Specifically, the petitioners contend the following: (1) any price distinctions between distributors and non-distributors are a result of differences in the quantities purchased and geographic location of the customer, both invalid bases for differentiating LOTs; (2) no matter whether La Molisana incurs administrative services directly or pays others to incur these

expenses, the question of which entity performs the function is not a valid basis to distinguish LOTs; and (3) the degree or extent to which inventory maintenance and advertising functions were performed is irrelevant.

Since all of La Molisana's U.S. sales are made to a distributor, the petitioners assert that a single LOT exists in the U.S. market. Regarding the U.S. to home market comparison, the petitioners argue that with the exception of inventory maintenance, the selling functions offered to its U.S. and home market customers are the same and that all U.S. and home market sales should be considered to be at the same LOT in the final determination.

La Molisana argues that in the event the Department determines it is appropriate to examine the selling functions in determining whether separate LOTs exist, the petitioners have failed to support their assertion that the home market distributor LOT is not distinguished from the rest of its home market sales. La Molisana recognizes that price differences are not a basis for determining distinctions in LOTs. However, La Molisana argues that the mere existence of separate price lists is important evidence of the significance of the different customer categories in commercial practice in the home market. In addition, La Molisana contends that the distributor price list applies to all sales to distributors, regardless of the volume sold. Further, La Molisana argues that while there is inevitably some ''inventory'' on all sales, since it takes time to pack and load the merchandise, this type of inventory is very different from maintaining stocks of inventory for just in time (JIT) delivery, a function not performed on its distributor sales. In addition, La Molisana asserts that it does not incur advertising expenses for advertisements directed at its customer's customer for sales made to wholesalers and distributors. Instead, La Molisana asserts that this advertising is directed at its customer's customer's customer. Therefore, La Molisana argues that its home market distributor sales should be found to be a different LOT than its other home market sales and that all of its U.S. distributor sales should be compared to the home market distributor sales in the final determination.

DOC Position: We agree with the petitioners and La Molisana, in part. Based on our own analysis of the selling functions performed by La Molisana, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in each market and that all U.S. and home market sales were made at the same LOT.

La Molisana reported one customer group in the U.S. We found one level of trade for the U.S. market because La Molisana performed the same selling functions to all customers in that single category. For the home market, La Molisana reported six customer groups. We found that La Molisana performed similar selling functions to certain customer groups with regard to: sales process, inventory maintenance, forward warehousing, freight, advertising and warranties. We found that La Molisana performed different selling functions for certain customer groups with regard to forward warehousing. Overall, we determined the selling functions performed by La Molisana for each of the six home market customer groups to be sufficiently similar to consider them as one level of trade.

We then compared the level of trade in the U.S. market to the home market level of trade and found the selling functions performed by La Molisana for certain customer groups for inventory maintenance and forward warehousing to be dissimilar between the markets. However, we found the selling functions performed by La Molisana for certain customer groups in the area of sales process, forward warehousing, freight, advertising, and warranties to be similar. Overall, these factors warrant finding U.S. and home market sales as the same level of trade.

(3) Arrighi

In its original questionnaire responses, Arrighi requested that LOT distinctions in the home market be made based on customer groups, and submitted data that would allow the Department to segregate home market data by either channel of distribution or customer group to determine whether different LOTs exist. The petitioners contend that a review of the actual selling functions associated with home market and U.S. sales demonstrates that selling functions do not vary based on either customer group or channel of distribution. In addition, with respect to customer category, the petitioners contend that Arrighi has not differentiated its customer groups based on commercial points in the chain of distribution and selling functions, but rather has made LOT distinctions based on factors such as the volume of the sales involved. With respect to channel of distribution, petitioners cite Arrighi's own statement that ''the functions performed and services offered by Arrighi in each distribution channel do not vary'' (*see*, Arrighi's August 16, 1995, questionnaire response, at A–8) in support of their claim that all of Arrighi's sales to both markets occur at the same level of trade.

Regarding the U.S. to home market comparison, the petitioners contend that since all of Arrighi's U.S. sales are to a single class of customer and all home market sales are made at a single level of trade based on the absence of distinct selling functions, all U.S. sales should be compared to all home market sales, without regard to LOT distinctions.

Arrighi contends that since the petitioners' arguments are based on a flawed LOT analysis, their comments concerning Arrighi's and Italpasta's levels of trade are likewise meritless and factually incorrect. Contrary to the petitioners' arguments, Arrighi claims that its LOTs are based upon differing selling functions and services, not sales quantities or geographic location. Specifically, Arrighi claims that the customers at one of its LOTs require a disproportionate amount of sales and administrative support relative to customers at the other LOTs. Concerning the petitioners' claim that Arrighi's LOTs are based on geography, Arrighi argues that while geographic location is the reason some of the selling functions for certain customers are provided, it is the difference in selling functions, and not geographic location, which distinguishes these customers as being at a distinct LOT. With respect to the specific selling functions, Arrighi claims that its provision of freight and inventory maintenance to a certain class of customers constitute selling functions.

DOC Position: We agree with the petitioners and Arrighi, in part. Based on our own analysis of the selling functions performed by Arrighi, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in each market and that all U.S. and home market sales were made at the same LOT.

Arrighi reported one customer class in the U.S., that was comprised of three customer groups. However, as noted in the ''Comparison Methodology'' section of this notice, above, Arrighi provided insufficient information in the sales database for the Department to perform an analysis of the selling functions performed for each of the three customer groups. Therefore, we found one level of trade for the U.S. market. For the home market, Arrighi reported three customer groups. As noted in the ''Normal Value'' section of this notice, above, we have excluded sales to one customer group because we determined that the quantity of these sales was insignificant and there were no sales

made by Arrighi to a comparable customer in the U.S. (for further discussion, *see*, the Department's June 3, 1996, final determination calculation memorandum for Arrighi). We found the remaining two customer groups similar in that Arrighi performed the same selling functions for each group. Overall, we determined the selling functions performed for these two home market customer groups are sufficiently similar to consider the sales made to them to be at one LOT.

We then compared the LOT in the U.S. market to the home market LOT and found them to be only dissimilar in Arrighi's performance of the freight selling function. We found the selling functions performed, including sales process, inventory maintenance, forward warehousing, advertising and warranties, to be similar. Overall, these factors warrant finding the U.S. sales and home market sales to be at the same level of trade.

(4) De Matteis

The petitioners contend that although De Matteis identifies a number of customer categories, it does not correlate these customer classes to its reported LOTs. Therefore the petitioners have based their LOT analysis on De Matteis' reported channels of distribution. The petitioners argue that their review of the selling functions offered to De Matteis' home market channels of distribution reveals that the only functional difference between the selling functions offered on De Matteis' home market sales is the presence of freight and delivery services on sales of De Matteis' own brand name pasta which are not present on sales made to resellers. Citing the Proposed Regulations, the petitioners assert that this difference is not sufficient to distinguish LOTs and that the Department should consider all of De Matteis' home market sales to be at one LOT (small differences in the functions of the seller will not alter the level of trade). *Proposed Regulations* at 7348.

Regarding De Matteis' assertion that there are significant differences in LOT based on whether the company markets its own brand name pasta or sells it to a reseller, the petitioners argue that because the pasta sold to resellers is produced to order, De Matteis takes an active role. Therefore, the petitioners assert that customer contacts are present on both types of sales and cannot be a basis for differentiating LOTs.

Since De Matteis reports that all of its U.S. sales are at a single LOT, the petitioners assert that U.S. and home market sales should be compared without regard to LOT distinctions. If the Department determines that differences exist between the U.S. and home market LOTs, the petitioners argue that no LOT adjustment should be applied because De Matteis has not claimed or demonstrated entitlement to such an adjustment. (For a further discussion of LOT adjustments, see Comment 1F, below.)

De Matteis argues that the petitioners erroneously state that the company has not correlated its home market or U.S. customer categories to its reported LOTs. De Matteis asserts that it has consistently stated in its submissions that it sells to the following channels of distribution/customer groups in the U.S. and home markets: (1) sales to companies that resell the pasta under their own name (*i.e.*, pastificios and the U.S. trading company); and (2) sales of its own brands of pasta to distributors and retailers. De Matteis asserts that these two channels of distribution/ customer groups should be considered to be separate LOTs because its sales to retailers and distributors are one step further in terms of remoteness from the factory than its sales to pastificios and the U.S. trading company.

In addition, De Matteis asserts that a collective examination of the selling functions performed for each channel of distribution show distinct LOTs in the home market. Contrary to the petitioners' arguments, De Matteis argues that although it must take an active role in its sales to pastificios, the degree to which it engages in overall selling functions differs significantly between the two channels of distribution/customer groups. For example, De Matteis asserts that it performs no significant functions or services for pastificio customers while it is responsible for warehousing and inventory control, advertising and promotional activities, brand name development, distribution, and the development of packaging materials for its sales to retailers and distributors. In addition, De Matteis asserts that its sales to pastificios are large orders which generally require less sales and administrative resources. Further, De Matteis contends that the extent to which the company engages in customer contacts and the development of packaging varies significantly between the two channels/customer groups.

Finally, regarding inventory maintenance services, De Matteis argues that the Department should distinguish between merchandise placed in the warehouse for production scheduling which is not intentionally marketed as a service to the customer and merchandise held in inventory for JIT delivery. De Matteis asserts that it intentionally markets an ''inventory'' service on merchandise sold from stock for JIT delivery and that its administrative expenses and risk exposure are greater on these sales than on sales produced to order. De Matteis asserts that these costs are reflected in the higher prices charged to the customer.

DOC Position: We agree with the petitioners and De Matteis, in part. Based on our own analysis of the selling functions performed by De Matteis, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in the U.S. market and that the home market sales were made at two different LOTs.

De Matteis reported one customer group in the U.S. that was comprised of a single class of customer. Therefore, we found one level of trade for the U.S. market. For the home market, De Matteis reported three customer groups described as distributors, retailers and pasta manufacturers. We found the distributor and retailer customer groups similar with regard to the selling functions performed by De Matteis for sales process, inventory maintenance, forward warehousing, advertising and warranties. We found these two groups to differ in De Matteis' performance of the selling function for freight. Overall, we determined the selling functions between these two customer groups are sufficiently similar to consider them as one level of trade (LOT 2). We found customer group ''pasta manufacturer'' similar to the other two groups (LOT 2) with regard to the selling functions performed for certain customer groups in the areas of warranty service and freight, and different in selling function regarding sales process, inventory maintenance, forward warehouse, freight, and advertising. Overall, we determined the selling functions between this customer group and the other two customer groups sufficiently dissimilar to consider these customer groups a separate level of trade (LOT 1).

We then compared the level of trade in the U.S. market to the two home market levels of trade and found that all selling functions performed for LOT 1 customers in the home and U.S. markets were the same. We found the level of trade in the U.S. market dissimilar to LOT2 with regard to the selling functions for certain customer groups in the areas of sales process, inventory maintenance, forward warehousing, freight, and advertising. Therefore, we are treating U.S. sales and home market sales in LOT 1 as being sold at the same level of trade.

(5) Pagani

The petitioners argue that their review of the array of selling functions offered to Pagani's home market customers reveals no significant distinctions in the selling functions which would justify a finding of different LOTs in the home market. The petitioners contend that the selling functions Pagani relied upon to differentiate its home market LOTs are invalid in that: (1) quantity differences or differences in the sales resources allocated to various customer classes do not meet the statutory standard for differentiating LOTs; (2) no matter whether Pagani takes the order and handles payment directly or an affiliate undertakes these functions, the question of which entity performs the function is not a valid basis to distinguish LOTs; and (3) the fact that different prices are offered to various customer categories does not show that different selling functions exist.

Since Pagani reports that all of its U.S. sales are at a single LOT, the petitioners assert that all U.S. and home market sales should be compared without regard to LOT distinctions.

Pagani did not comment on the petitioners' LOT analysis.

DOC Position: We agree with the petitioners, in part. Based on our own analysis of the selling functions performed by Pagani, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in the U.S. market and that home market sales were made at two different LOTs.

Pagani reported one customer group in the U.S. that was comprised of a single customer. Therefore, we found one level of trade for the U.S. market. For the home market, Pagani reported seven customer groups. We found that six of the seven customer groups had similar selling functions performed by Pagani with regard to: sales process, inventory maintenance, forward warehousing (for certain customer groups), freight, advertising and warranties. We found certain customer groups to differ in selling functions performed for forward warehousing. Overall, we determined the selling functions between these six customer groups are sufficiently similar to consider them as one level of trade (LOT 2). We found the remaining customer group ''pasta manufacturer'' similar to other customer groups in selling functions performed by Pagani with regard to sales process, forward warehousing, advertising, and warranties, and different from other customer groups in the areas of inventory maintenance, forward warehousing, freight and advertising. Overall, we determined the selling functions performed for this customer group compared to the other six customer groups sufficiently dissimilar to constitute a separate level of trade (LOT 1).

We then compared the level of trade in the U.S. market to the home market levels of trade and found the selling functions performed by Pagani in the U.S. to be identical to all selling functions performed on LOT 1 sales in the home market. We found the level of trade in the U.S. market dissimilar to LOT 2 with regard to certain customer groups in the areas of inventory maintenance, forward warehousing, freight, and advertising. Therefore, we considered U.S. sales and home market sales in LOT 1 to be made at the same level of trade.

(6) Delverde

The petitioners assert that Delverde failed to submit information necessary to determine whether different selling functions correspond to different levels of trade. Specifically the petitioners contend that Delverde failed to release under APO the customer names relating to certain customer codes. As a result, the petitioners claim they are unable to distinguish between the selling functions performed on EP and CEP sales, respectively. Therefore, the petitioners argue that the Department should find that all U.S. and home market sales are at the same LOT. In the event the Department determines it is appropriate to analyze Delverde's sales to determine whether separate LOTs exist, the petitioners argue that the Department should begin its analysis with an unadjusted CEP. (For a further discussion of this issue, see the ''Company Specific Comments—Delverde'' section of this notice, below).

Delverde argues that the petitioners mischaracterize the record as to the information submitted by the company. Delverde asserts that the CEP and EP sales are not intermixed in the database and were clearly identified as either ''CEP'' or ''EP'' sales in the sales listing as were the customer codes and categories. Finally, Delverde contends that it is under no obligation to provide customer names to the petitioners.

DOC Position: We agree with the petitioners and Delverde, in part. Based on our own analysis of the selling functions performed by Delverde, as described in the ''Level of Trade'' section of this notice, above, we found that single LOTs exist in each market and that all U.S. and home market sales were made at the same LOT.

Delverde reported four customer groups in the U.S. market. We found that certain customer groups were similar based on the following selling functions performed by Delverde in the areas of sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties. We found certain customer groups to differ in sales process and advertising. Overall, we determined the selling functions performed by Delverde for these four customer groups are sufficiently similar to consider them as one level of trade. For the home market, Delverde also reported four customer groups. We found certain customer groups similar in the following selling functions: sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties. We found that certain customer groups differed in the selling function for forward warehousing. Overall, we determined the selling functions performed by Delverde for these four customer groups as sufficiently similar to consider them as one level of trade.

We then compared the level of trade in the U.S. market to the home market level of trade and found the selling functions performed by Delverde in each market to differ for certain customer groups with regard to sales process and advertising. We found the following selling functions performed by Delverde for certain customer groups to be similar: sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties. Overall, these similarities warrant finding the U.S. sales and home market sales to be made at the same level of trade.

Comment 1F LOT Adjustments: To the extent the Department finds LOT distinctions between U.S. and home market sales, the petitioners argue that there is no justification for a LOT adjustment for any of the respondents in this investigation. Specifically, the petitioners assert that Section 773(a)(7)(A) of the Act states that LOT adjustments are permissible only to the extent that it has been *demonstrated* that the difference between EP or CEP and normal value reflects differences in LOTs involving the performance of different selling functions and ''a pattern of consistent price differences between sales'' at the different LOTs in the home market. In addition, the petitioners assert that the SAA states that ''if a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment.'' *SAA* at 829. Therefore, the petitioners argue that by law, the respondents bear the burden of

demonstrating entitlement to a LOT adjustment and that none of the respondents in this investigation have met this burden.

The petitioners assert that Arrighi, De Cecco, Liguori, Delverde, and De Matteis have not claimed a LOT adjustment. Absent even a claim for the LOT adjustment, let alone any evidence demonstrating entitlement, the petitioners argue that no LOT adjustment should be granted.

Although La Molisana and Pagani have each made claims for a LOT adjustment, the petitioners argue that neither respondent has demonstrated entitlement to the adjustment. The petitioners argue that La Molisana has admitted that a number of the selling function differences between the LOTs identified reflect factors already accounted for in the margin calculations. Therefore, the petitioners assert that if it is ''double counting'' to consider these functions in defining LOTs as La Molisana asserts (*see* Comment 1B, above), it is also ''double counting'' to calculate LOT adjustments reflecting these differences. In addition, the petitioners argue that because La Molisana has based its LOT adjustment on differences between the net prices for each control number by customer category, La Molisana has not demonstrated price distinctions based on LOTs that exist under the new law (*i.e.,* the petitioners assert that LOTs are based both on the point in the chain of distribution and the selling functions of the respondent).

The petitioners argue that Pagani has not tied its proposed LOTs to different selling functions because the company improperly relies on quantity differences and rebates in support of its claim for a LOT adjustment. In addition, the petitioners argue that Pagani's claimed price adjustment fails to establish a pattern of price differences.

Concerning the petitioner's argument that it is double counting to calculate LOT adjustments based on selling function differences which were accounted for in the margin calculations, La Molisana argues that certain functions (*e.g.*, indirect selling expenses and inventory maintenance) have not been fully accounted for in the Department's calculations. In addition La Molisana asserts that the statute states that the Department must base LOT adjustments on price differences. Finally, if the Department compares U.S. distributor sales to home market sales at other LOTs, La Molisana asserts that it has provided all the necessary information to calculate a LOT adjustment in accordance with the criteria set forth in the statute.

Liguori contends that the Department's preliminary determination incorrectly stated that Liguori claimed a LOT adjustment for comparisons between different LOTs (*Preliminary Determination,* 61 FR 1344, 1347 (January 19, 1996)). Liguori asserts that it has not claimed any LOT adjustment.

DOC Position: We agree with the petitioners, in part. As described in the ''Level of Trade'' section of this notice, above, Pagani was the only company for whom the Department made a level of trade adjustment. As noted, we found no basis for making a level of trade adjustment for any of the other respondents in this investigation. The level of trade adjustment for Pagani was not based on the adjustment claimed by Pagani but rather on the Department's independent analysis of the home market levels of trade and patterns of price differences. In light of the fact that we did not base this LOT adjustment on Pagani's claimed LOT adjustment, we regard the petitioners argument concerning the burden on respondent to demonstrate entitlement to a LOT adjustment to be moot.

In addition, we agree with Liguori that the preliminary determination incorrectly stated that Liguori claimed a LOT adjustment. Liguori has not claimed a LOT adjustment.

Comment 2 Price Averaging: Comment 2A Whether to Take Customer Category into Account in Creating the Weighted-Average Groups used for Product Comparisons: La Molisana, Arrighi and De Matteis argue that, in performing its product comparisons, the Department should compare products based on averaging groups that reflect customer categories. La Molisana, Arrighi and De Matteis claim that both the SAA and the Department's Proposed Regulations recognize that customer class is a factor the Department may consider in composing its averaging groups. (''In determining the comparability of sales for inclusion in a particular average, Commerce will consider factors it deems appropriate, such as * * * the class of customer involved..''). *SAA* at 842. *See also, Proposed Regulations* at 7348 (Nevertheless, the Department does recognize that prices within a single LOT, defined by seller function, can be affected by the class of customer, and the Department will make every effort to compare sales at the same LOT to the same class of customer).

In addition, La Molisana, Arrighi and De Matteis assert that record evidence demonstrates that each company consistently offers significantly different prices to its various customer categories. Therefore, La Molisana asserts that in accordance with the Department's Proposed Regulations, there is a clear and consistent dividing line between La Molisana's sales to different customer categories, ([in identifying averaging groups based on customer category] ''the Department's general approach ''[will be to look for *clear dividing lines* among sales] * * *''). *Proposed Regulations* at 7349. Finally, La Molisana, Arrighi and De Matteis assert that comparing products based on averaging groups that reflect customer categories would be consistent with a recent final determination where the Department found no separate LOTs, but compared averaging groups by customer category. *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14,064, 14069 (March 29, 1996) (*Polyvinyl Alcohol*) (* * * in composing an averaging group, customer classification is a factor the Department may take into account * * *. Therefore, we have made comparisons of average prices within the same customer class wherever possible). In addition, Arrighi and De Matteis cite *Fresh Kiwifruit from New Zealand: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15922, 15924 (April 10, 1996) (*Kiwifruit*) (finding that all sales were made at one LOT, but comparing averaging groups by channel of distribution) and *French Rod* (finding two levels of trade, but comparing averaging groups by channel of distribution within each LOT). La Molisana argues that, for the above reasons, the Department should compare its U.S. distributor sales to its home market distributor sales.

The petitioners argue that neither the law nor the facts of this investigation support making product comparisons based on customer classes unless it is demonstrated that the difference between customer classes reflect a difference in the LOT. Citing Section 773(a)(1)(B) of the Act, the petitioners contend that normal value is defined based on price comparisons reflecting the same physical characteristics and, where possible, the same LOT, as the export or constructed export price. Therefore, the petitioners assert that absent a finding of different LOTs among the various customer categories, the Department cannot make product comparisons based on customer categories or channels of distribution.

Although the petitioners recognize that the SAA refers to ''the class of customer involved'' as a factor that the Department may consider in creating averaging groups, the petitioners contend that the Department's Proposed Regulations emphasize that the use of

averaging groups was intended to apply only to U.S. prices, and was not meant to affect the calculation of normal value. (''In applying the average-to-average method, the Secretary will identify those sales * * * *to the United States* that are comparable, and will include such sales in an ''averaging group.'' ''An averaging group will consist of subject merchandise * * * that is sold *to the United States* at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region *of the United States* in which the merchandise is sold * * *''). *Proposed Regulations* at 7386 (section 351.414(d)). (Emphasis added).

The petitioners contend that normal value is still defined in the law based on price comparisons reflecting the same product characteristics and, where possible, the same LOT. Therefore, the petitioners argue that the Department does not have the authority under the new statute to subdivide home market sales into separate groups based on customer classes unless it is first demonstrated that the difference between customer classes reflects a difference in LOT. The petitioners claim that to do otherwise would effectively be using the product averaging concept to re-define normal value.

Finally, the petitioners argue that the Department's recent practice of considering either the class of customer or the channel of distribution as a factor in the averaging group without first finding distinct LOTs is unlawful and inconsistent. Specifically, the petitioners assert that in *Polyvinyl Alcohol* the Department created product averaging groups based on customer categories stating that it found ''significantly different prices, depending on the customer category.'' 61 FR at 14070. The petitioners contend that in *French Rod* and *Kiwifruit* the Department relied on channels of distribution, rather than customer categories, in determining the averaging groups and further identified no pricing distinctions between the channels examined. In all three cases the petitioners assert that the Department made no statutory citations and provided little or no explanation for its actions.

DOC Position: We agree with La Molisana, Arrighi and De Matteis that customer category is a factor the Department may consider in composing its averaging groups. Section 777A(d)(1)(A)(i) of the Act states that the Department will determine whether the merchandise is being sold in the United States at less than fair value ''by comparing the weighted average of the normal values to the weighted average of the export prices (and/or constructed export prices) for comparable merchandise.'' In addition, the SAA specifies that in order to ensure that the weighted-averages are meaningful, ''Commerce will calculate averages for comparable sales of subject merchandise'' sold in both the U.S. and foreign markets. ''In determining the comparability of sales for inclusion within a particular average, Commerce will consider factors it deems appropriate, such as * * * the class of customer involved.'' *SAA* at 842. *See also, Proposed Regulations* at 7349.

Although we agree with the petitioners that the Proposed Regulations refer to the term ''averaging groups'' only in the context of U.S. sales, we do not agree with the petitioners' assertion that the use of averaging groups was intended to apply only to U.S. prices, and was not meant to affect the calculation of normal value. As noted above, the statute directs the Department to compare weighted average normal values to weighted-average export prices/constructed export prices. In addition, the SAA states that for inclusion within a particular average, the Department will consider factors it deems appropriate. Therefore, in order to ensure a fair comparison, customer category is a factor that may be used in both the calculation of export price and/or constructed export price and normal value.

As noted in the ''Comparison Methodology'' section of this notice, above, and Comment 2B, below, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. Accordingly, consistent with the SAA and our practice in *Polyvinyl Alcohol*, we have relied on the revised customer categories in calculating the weighted-average values used for sales comparisons in instances where: (a) we found that distinct customer categories existed, and (b) we determined that there was a consistent and uniform pattern of pricing differences among the customer categories. (For a further discussion on price averaging and the calculation of the weighted average prices for each respondent, see the ''Comparison Methodology'' section of this notice, above.)

Comment 2B Whether to Accept the Customer Classifications or Channels of Distribution Alleged by the Respondents: The petitioners argue that in the event the Department determines it is appropriate to create averaging groups based on customer categories or channels of distribution, it is up to the Department, not the respondents, to determine which customers may be grouped together. *Timken Co.* v. *United States*, 630 F. Supp. 1327 (Ct. Int'l Trade 1986) (the Court held that the Department is obligated to choose the home market models for comparison and may not delegate this role to respondents). In addition, the petitioners cite to the SAA in support of their contention that the Department should not accept a respondent's ''nominal reference to customer classes'' without requiring evidence of actual class differences based on the selling functions of the respondent. *SAA* at 829. To the extent the Department rejects reliance on selling functions as a means of distinguishing customer categories, the petitioners argue that the Department should, at a minimum, determine whether different customers exist at different points in the chain of commerce. Citing *PETs from Singapore*, the petitioners assert that it is not the Department's practice to accept, without question, the respondents' characterizations of its customer classes as the basis for determining its product comparisons groups. (*See, e.g., Final Determination of Sales at less Than Fair Value: Certain Portable Electric Typewriters from Singapore*, 58 FR 43334, 43338–43339 (August 16, 1993) (*PETs from Singapore*) (stating that all retailers had the same function and, thus, no distinction between the claimed customer categories was justified.)

If the Department determines it is appropriate to weight-average by customer class, the petitioners argue that La Molisana's data do not support a distinction between the seven customer categories the company identifies in the home market. The petitioners assert that not only has La Molisana failed to demonstrate that the seven customer classes operate at different points in the chain of distribution, but La Molisana has also failed to demonstrate: (1) that there are different selling functions corresponding to each customer class; (2) that there are price distinctions among the customer categories (*i.e.*, as noted in Comment 1E, above, the petitioners assert that the price differences claimed by La Molisana resulted from the geographic location of the customer and quantities purchased, not differences due to the class of customer; and (3) that there is no other evidence on the record supporting La Molisana's contention that there are distinct customer categories in the home market.

In the absence of any verified data indicating distinctions between the various customer categories, the petitioners assert that the Department cannot distinguish between La Molisana's customer categories for purposes of defining LOT or product comparison purposes. Therefore, the petitioners argue that the Department should not find that there are distinct customer categories in the home market and should make its product comparisons based solely on the physical characteristics of the merchandise without regard to customer category or channel of distribution.

DOC Position: We agree with the petitioners that it is the responsibility of the Department, not respondents, to identify which customers may be grouped together for product comparison purposes. This has been our consistent practice and policy. *Cf., N.A.R., S.p.A.* v. *United States*, 741 F. Supp. 936 (Ct. Int'l Trade 1990). (Insofar as a foreign manufacturer, given the opportunity of selecting which product comparisons should be used, would most likely make a choice that is most advantageous to itself, the identification of product comparisons are made by the Department.) *See also, United Engineering & Forging* v. *United States*, 779 F. Supp. 1375, 1381 (Ct. Int'l Trade 1991); *See Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 58 Fed. Reg. 37199, 37202 (July 9, 1993). Therefore, as noted in the ''Comparison Methodology'' section of this notice, above, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. Based on the chain of distribution for the pasta industry, we reclassified the customer groups identified by the respondents into five distinct customer categories representing distinct points in the chain of distribution. For a further discussion, see the ''Comparison Methodology'' section of this notice, above.

Regarding the petitioners' assertion that La Molisana failed to demonstrate that there are distinct customer categories in the home market, we agree that La Molisana's data do not support a distinction between the six customer groups identified. Based on our analysis of La Molisana's proposed customer groups, we have determined that there are three distinct customer categories representing different points in the chain of distribution in the home market (*i.e.*, wholesalers, retailers and consumers). However, we disagree with the petitioners' contention that La Molisana has not demonstrated that there are price distinctions among the home market customer categories. Based on our analysis of the average net prices for each product control number and the three customer categories identified by the Department in the home market, we conclude that La Molisana consistently offered different prices, depending on the customer category. (For a further discussion of this issue, *See* Comment 1—Arm's Length Test of the ''Company Specific Comments—La Molisana'' section of this notice, below.)

Comment 2C Whether to Use Customer Category or Channel of Distribution in Defining the Averaging Groups used for Product Comparisons: The petitioners argue that to the extent a respondent has claimed distinctions in home market sales based on channels of distribution, the Department should reject these distinctions and instead rely on customer categories in creating the product comparison groups. The petitioners assert that nothing in the new statute, the SAA, or the Proposed Regulations permits the Department to consider channels of distribution in making product comparisons. As case precedent for their position, the petitioners cite *PETS from Singapore* where the Department explicitly rejected the respondent's request that it rely on channels of distribution as a comparison criteria, finding no support in the law for such an approach. (''Furthermore, channel of distribution is not a proper merchandise comparison criterion * * * ''there is no regulatory basis for comparing identical channels of distribution.'') *Id.* at 43338.

DOC Position: We agree with the petitioners that channels of distribution are not an appropriate basis for creating product averaging groups. As noted in Comment 2A above, the SAA states that in determining which sales to include within a particular average, ''Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and the class of customer involved.'' *SAA* at 842. *See also, Proposed Regulations* at 7349. The SAA does not contemplate the use of channels of distribution as a basis for creating an averaging group.

In addition, it has been the Department's past policy and practice, as outlined in Import Administration Policy Bulletin Number 92/2 (''Matching at Levels of Trade''), to consider the customer category, not channel of distribution, to determine whether the respondent's customers exist at distinct points in the chain of distribution (*e.g.*, end-user, distributor, retailer). Therefore, we have not relied on a respondent's reported channels of distribution in creating the weighted-average prices used for product comparisons in this final determination.

Comment 2D Whether the Department Can Rely on Price Differences as a Method for Distinguishing Customer Categories: If the Department determines it is not necessary to establish that there are different selling functions as a means of distinguishing customer categories, the petitioners argue that the Department should not define customer categories based on price distinctions as it did in *Polyvinyl Alcohol*. The petitioners assert that if price distinctions were all that were needed to define customer category, respondents would have a ''field day'' manipulating the dumping law by grouping its low-priced home market sales together and requesting that the Department compare its U.S. sales to this group of low-priced sales. Although the petitioners recognize that price distinctions may be relevant to a determination of whether product comparisons should be segmented by customer category, the petitioners argue that prices themselves cannot be the sole criterion. In order to establish that there are separate customer categories, the petitioners argue that the Department must first determine that different customers exist at different points in the chain of commerce.

DOC Position: We agree with the petitioners that price distinctions can not be a basis for determining the existence of customer categories. As noted in the ''Comparison Methodology'' section of this notice and Comment 2A, above, in order to determine whether the customer groups proposed by the respondents actually represented different customer categories, we considered whether the alleged customer groups represented distinct points in the chain of distribution. Therefore, price distinctions were not considered a relevant factor in defining the existence of customer categories. The existence of consistent price differences, however, was considered in determining whether customer categories should be taken into consideration in creating the product averaging groups.

Comment 3 Should Wheat Quality Be Considered as a Product Matching Criterion: The petitioners assert that Liguori, Delverde, and Tamma have altered the Department's product matching criteria by adding wheat quality as a physical characteristic. They urge the Department to delete

wheat quality as a product matching criterion for three reasons. First, petitioners allege that by changing the product matching criteria set out in the Department's questionnaire, these respondents have established a second ''foreign like product'' within the meaning of the Act. Petitioners argue that the Act does not allow for the introduction of additional foreign like products into an investigation. Second, petitioners argue that the product matching criteria ought to be confined to those specified in the Appendix to the Department's questionnaire. Permitting respondents to select matching criteria, would enable respondents to analyze their pricing data and, then, to select the matching criteria which would lower their exposure to dumping margins. Petitioners reference *Timken* v. *United States,* 630 F. Supp. 1327, 1338 (1986) (''*Timken*''), for the proposition that the Department is prohibited from delegating the selection of the physical characteristics for product matching. Third, as a factual matter, petitioners assert that both the physical differences and the cost differences associated with wheat quality are insignificant.

Respondents contend that the existence of different semolina qualities was confirmed by a wheat expert in the U.S. Department of Agriculture as well as by the Department at verification. Moreover, the Department had instructed respondents to establish product matching criteria which reflected all differences in physical product characteristics, not merely those listed in the Appendix to the Department's questionnaire. Accordingly, reporting wheat quality as a matching characteristic was an appropriate response to the Department's questionnaire. With respect to petitioners' assertions that the physical and cost differences associated with wheat qualities were inconsequential, respondents assert that these differences are material and that their materiality was verified by the Department.

DOC Position: We disagree with petitioners' reading of Section 771 (16) of the Act. This section sets out the basis for the Department's comparison of U.S. sales to sales in the home market. It defines ''foreign like product'' as follows:

The term foreign like product means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same by the same person as, that merchandise.

(B) Merchandise—

(i) Produced in the same country and by the same person as the merchandise which is the subject of investigation,

(ii) Like that merchandise in component material or materials and in the purposes for which used, and

(iii) Approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) Produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) Like that merchandise in the purposes for which used, and

(iii) Which the administering authority determines may reasonably be compared with that merchandise.

Foreign like products, therefore, are specific to each responding company. When certain respondents reported wheat quality as a physical characteristic which would result in more appropriate product matches, the Department required that they justify the claimed differences in wheat quality. At the respective verifications, each of these respondents established that different wheat (*i.e.,* semolina) qualities existed and that these were measured by ash and gluten content. It was primarily these characteristics which were used to select semolina for pasta production. We verified that physical differences exist and that the cost of the highest grade of semolina is materially more than that of the lowest grade. We found these quality differences reflected in semolina costs and pasta prices. We found that they are commercially significant and an appropriate criterion for product matching. Moreover, in our judgment, petitioners' reliance on *Timken* is misplaced. The differences in wheat quality reported by these respondents, and verified by the Department, resulted in more appropriate product matches, as contemplated by section 771(16).

II. Company-Specific Comments

Arrighi

Comment 1 Findings at Verification: The petitioners contend that the Department should make the following corrections to Arrighi's response: adjust Arrighi's claimed home market rebate percentage for one of its customers; revise Arrighi's U.S. sales listing to include allocated warranty expense claims; eliminate early payment discounts for an Italpasta invoice; adjust the credit period for another Italpasta invoice; and revise the rebate calculation for sales to a particular Italpasta customer to correct errors discovered at the Arrighi and Italpasta sales verifications.

DOC Position: We agree with the petitioners. We have used the corrected figures to calculate Arrighi's margin.

Comment 2 Interest Rates Used in Calculating Home Market Credit Expense: Arrighi states that, contrary to past Department practice, the Department mistakenly used Arrighi's home market short-term interest rate in calculating credit expenses for Italpasta's home market sales. Arrighi contends that the Department should calculate the credit expenses for Arrighi's and Italpasta's home market sales using verified company-specific short-term interest rates.

Petitioners counter that, because the Department determined that Arrighi and Italpasta are affiliated, the Department's use of Arrighi's short-term interest rate for both Arrighi's and Italpasta's sales was appropriate.

DOC Position: We agree with petitioners in part. The Department weight-averaged Arrighi's and Italpasta's short-term interest rates for home market credit expense calculations.

Comment 3 Inland Freight: Petitioners contend that because the Department could not verify Italpasta's claimed inland freight charges, it should deny Italpasta's claimed home market inland freight charges in their entirety or should, at a minimum, use the smallest freight cost reported by Italpasta for all of Italpasta's home market sales.

Arrighi maintains that the Department's verification report inaccurately implies that Italpasta refused to provide information about transport costs when using its own trucks. According to Arrighi, the tasks of identifying the sales where Italpasta used its own truck, calculating a transaction-specific transport expense, and substantiating its claim that common-carrier rates were a reasonable surrogate, would have been extremely burdensome because of the lack of comprehensive shipping records. Arrighi contends that the Department's requests at verification were unreasonable and untimely; therefore, Italpasta's inability to provide the requested information at verification should not be deemed by the Department as a refusal to cooperate. Accordingly, Arrighi argues that the Department should use the reported per-unit freight expenses for sales shipped using Italpasta's own trucks.

DOC Position: We agree with petitioners. As stated in the

Department's verification report, despite repeated efforts to verify various aspects of Italpasta's inland freight expense when its own trucks were used, this movement expense could not be verified. It is important to note that there is no way in which to determine, on a transaction-specific basis, whether the merchandise was transported by common carrier or using Italpasta's own truck. To account for this unverified movement expense in the margin calculation, as facts available, we have used Italpasta's lowest reported inland freight expense for all home market sales. We chose this adverse rate because, in our view, Italpasta did not act to the best of its ability to substantiate the expenses of using its own trucks.

Comment 4 Advertising expenses: Petitioners allege that the Department should treat both of Italpasta's claimed advertising expenses (*i.e.*, ''advertising expense 1'' and ''advertising expense 2'') as indirect selling expenses, rather than as direct selling expenses. Citing the verification report, petitioners contend that Italpasta was unable to support its claim that these expenses were directly related to sales or were directed at Italpasta's customers' customers.

With respect to advertising expense 1, Arrighi maintains that even though Italpasta's records do not note transfers of promotional items from Italpasta to its customer and then to the customer's customers, this should not detract from the fact that these items, by their nature, are promotional items of the type normally given out to the general public (*i.e.*, Italpasta's customer's customers). According to Arrighi, the large quantity of these items purchased by Italpasta make it highly unlikely that these items were not given to the general public.

Concerning advertising expense 2, Arrighi argues that samples shown at verification demonstrated that only the Italpasta brand name was displayed and that the advertising was directed at the general public. According to Arrighi, broadcast advertising and sponsorship of sport teams, by their nature, are directed at the general public and, therefore, these expenses were properly reported.

DOC Position: We agree with Arrighi concerning advertising expense 2. The information on the record reflects that advertising expense 2 was properly reported as a direct advertising expense for Italpasta brand sales. The Department requires that advertising expenses that are claimed as direct expenses must be shown to be directed to the ultimate consumer of the merchandise. *See, e.g., Final Results of Administrative Review: Antifriction bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Various Countries*, 58 FR 39729, 39741 (July 26, 1993). The advertising 2 expenses listed in Italpasta's subaccount noted banners shown at sports events and television publicity, which are typically considered by the Department to be advertising directed at the customer's customer. As Arrighi correctly noted, the samples provided at verification demonstrated that only the Italpasta brand was promoted through such advertising.

With respect to advertising expense 1, however, the information on the record does not demonstrate that these promotional items (such as sports trophies, calendars, pens, and so forth) are in any way directed at the customer's customers or directly tied to sales of the subject merchandise. Therefore, advertising expense 1 has been reclassified as an indirect selling expense for purposes of the final determination.

Comment 5 Direct Selling Expenses: Petitioners contend that the Department should treat Italpasta's claimed direct selling expenses for introduction incentive fees as indirect selling expenses. Citing the verification report, petitioners state that Italpasta failed to substantiate its claim that these payments were contingent upon the customer purchasing the pasta.

Arrighi counters that it is not unusual that such promotional agreements do not include language which specifies the merchandise purchasing requirement. According to Arrighi, if the customer did not already agree to purchase the pasta, then the agreements would never have been made. Therefore, Arrighi maintains that these promotional payments are directly related to the subsequently purchased pasta and should be treated as a direct selling expense.

DOC Position: We agree with petitioners that introduction incentive fees should be treated as indirect selling expenses. The Court of Appeals for the Federal Circuit has explained that direct selling expenses ''are 'expenses which vary with the quantity sold,' '' *Zenith Elecs. Corp* v. *United States*, 77 F.3d 426, 431 (Fed. Cir. 1996), or that are ''related to a particular sale,'' *Torrington Co.* v. *United States*, 68 F.3d at 1347, 1353 (Fed. Cir. 1995). While Arrighi has claimed that these promotional payments were contingent upon the customer purchasing the pasta, Arrighi has not proven that the payment varies with the quantity of pasta sold, or that the payment can be tied directly to a particular transaction. Therefore, we are treating these expenses as indirect selling expenses for purposes of the final determination.

Comment 6 U.S. Resales of Purchased Pasta: Arrighi argues that the methodology used to account for U.S. resales in the preliminary determination is inconsistent with past agency practice because it was applied on a control number-specific basis. Arrighi contends that the data on the record allows the Department to limit the impact of its adjustment to only those products that contained purchased merchandise by applying its methodology on a product-specific basis. Further, Arrighi argues that the Department did not implement its stated methodology from the preliminary determination. According to Arrighi, instead of calculating the adjustment ratio by dividing the volume of pasta produced for a particular control number by the combined volumes of produced and purchased pasta for that control number, the Department actually calculated the ratio by dividing the control number's production volume by its sales volume, resulting in an inconsistent ratio calculation.

For these reasons, Arrighi requests that the Department make the following changes to its resale methodology: (1) the adjustment should be performed on a product-specific basis; and (2) the adjustment ratio should be based on volume produced over volume produced plus volume purchased.

Petitioners counter that the Department's methodology for excluding U.S. sales of purchased pasta was reasonable and should be used in the final analysis. According to petitioners, Arrighi's request to change the methodology is an attempt to redefine product matching hierarchy and product characteristics and should be rejected by the Department.

DOC Position: We agree with Arrighi. The denominator of the resale adjustment ratio in the preliminary margin calculation was inconsistent with the numerator. For purposes of the final determination, the Department has used revised production and purchase volume data from Arrighi's February 12, 1996, submission to recalculate the adjustment ratio for purchased pasta, basing it on the ratio of purchased pasta to the sum of total production and purchases, by product code. We have applied this revised adjustment factor to the quantities of U.S. sales for each product code known to include sales of purchased pasta.

Comment 7 Home Market Resales of Purchased Pasta: Arrighi argues that the Department's methodology for excluding home market sales of

purchased pasta was unreasonable because it excluded a large number of sales of pasta that were actually produced by Arrighi and that should have been included in the calculation of Arrighi's margin. By excluding numerous sales of pasta produced by Arrighi, Arrighi contends that the Department eliminated a significant quantity of valid sales and price information decreasing the accuracy of the calculation of Arrighi's normal value.

Additionally, Arrighi asserts that the Department's treatment of home market resales is inconsistent with its adjustment methodology for Arrighi's U.S. resales of pasta. Arrighi requests that the Department modify its treatment of Arrighi's home market sales of purchased pasta and calculate product-specific quantity adjustment factors (*i.e.,* total volume of product produced divided by sum of total quantity of product produced and purchased) and apply this factor to the quantity of each sale of that product. Finally, Arrighi requests that the Department correct certain clerical errors concerning the control number references in Arrighi's margin calculation program.

The petitioners maintain that the Department's methodology is consistent with Department practice and conclude that there is no reason for the Department to depart from the methodology used in the preliminary determination to exclude home market sales of purchased pasta from the calculation of normal value.

DOC Position: We agree with petitioners. Section 771(16) prohibits the Department from using sales of merchandise produced by persons other than the respondents in the calculation of normal value. The information on the record only provides volume figures of purchased pasta, by product code, during the POI. Based on the information on the record, it is impossible to isolate the amount of purchased pasta actually sold by Arrighi during the POI. Therefore, we excluded all sales of pasta with product codes known to include purchased pasta during the POI to ensure that the pool of home market sales is not tainted with sales of purchased pasta.

Furthermore, Arrighi's alternative adjustment methodology is contrary to section 771(16) because it would allow sales of purchased pasta to be included in the calculation of normal value. Therefore, we have used the preliminary determination methodology for the final determination.

With respect to the alleged clerical errors in the control number identification of certain product codes for both U.S. and home market sales of purchased pasta, we agree with Arrighi and have corrected these errors pursuant to Arrighi's revised control number groupings.

Comment 8 Depreciation Expense: Arrighi believes its reported depreciation expense is correct because it is based on the costs recorded in its audited annual financial statements. It contends that a respondent's costs will normally be calculated based on that company's records if the records are kept in accordance with generally accepted accounting principles and reasonably reflect the company's costs. *See* section 773(f)(1)(A) of the Act. Arrighi holds that its auditors specifically reviewed its depreciation expense and they did not take issue with the lower depreciation rate. It claims that the reduced depreciation reflects its costs because the assets received less usage during the year. Arrighi suggests that if the Department adjusts the depreciation expense it should allow, at a minimum, the reduced depreciation expense on the assets placed in service during the year.

The petitioners state that the Department should increase the depreciation expense to reflect Arrighi's normal depreciation rates. The petitioners note that, unlike the reduced rates used in the submission, Arrighi's normal depreciation rates are based on fixed annual rates and do not reflect the number of units produced or reductions in capacity utilization. Thus, according to the petitioners, the reported depreciation expense should be based on the normal annual rate.

DOC Position: We agree with the petitioners. Recording of depreciation expenses provides a systematic, rational method of recognizing the costs of fixed assets. This allocates the one-time expense of purchasing (or constructing) fixed assets over the longer time period which these assets will benefit. In this case, the company simply elected to record less than a full year's depreciation expense without any change in the underlying economic assumptions and estimates on which its depreciation expense was based. Without documentary evidence of such a change in the underlying assumptions, it is inappropriate for the respondent to recognize less than a full year's depreciation expense.

We note that although the Department calculates costs in accordance with the generally accepted accounting principles (''GAAP'') of the home market country, the Department will not do so if the use of a country's GAAP does not reasonably reflect a company's costs. In such cases, the Department may make adjustments or may use alternative methodologies that more accurately reflect the costs incurred. *See, e.g., Final Determination of Sales at Less than Fair Value: New Minivans from Japan* (''Minivans from Japan'') 57 FR 21937, 21952 (May 26, 1992).

Comment 9 Excluded Costs: The petitioners note that Arrighi excluded from its reported costs the cost of purchased pasta, charitable contributions, and repairs. They also note that Italpasta excluded from its reported costs, the cost of purchased wheat flour, company vehicles, gifts to customers, and publication material. They argue that there is no basis for these costs to be excluded from the COP and CV since the Department's questionnaire requires respondents to report actual costs incurred during the POI. The petitioners state that the Department should revise Arrighi and Italpasta's cost data to include all costs incurred during the POI.

Arrighi argues that most of the amounts it excluded from the reported costs were related to purchased pasta and the purchase and sale of nonsubject merchandise. It contends that it properly excluded these costs.

DOC Position: We agree, in part, with both the petitioners and Arrighi. The Department excluded sales of purchased pasta from the sales reporting requirements. Therefore, Arrighi properly excluded the costs of the purchased pasta from its COP and CV. Additionally, the Department only requires a respondent to report the COP and CV for subject merchandise. Accordingly, Arrighi properly excluded the costs of nonsubject merchandise.

However, as the petitioners point out, Arrighi and Italpasta also excluded from reported costs certain types of general expenses. These expenses relate to company operations as a whole and not to a specific product. Moreover, Arrighi has not provided any information or reasonable grounds to conclude that these items are related solely to purchased pasta or non-subject merchandise. Therefore, we revised Arrighi and Italpasta's G&A expenses to include these costs.

Amounts incurred for gifts to customers and publication materials are related to the marketing of products and Italpasta should have included these costs in its reported indirect selling expenses. Therefore, we have revised the company's indirect selling expenses to reflect these items.

Comment 10 Cost of Sales: The petitioners state that Arrighi calculated its reported G&A and financial expense ratios using total sales as the

denominator. They contend that Arrighi applied these ratios to the cost of manufacture which understated the reported G&A and financial expenses. Italpasta, the petitioners argue, also calculated its G&A and financial expense ratios using an overstated denominator. They claim that Italpasta included selling expenses, packing expenses, and transportation expenses in the denominator of the ratio calculations but applied the ratio to a product cost of manufacture which did not include these costs. The petitioners contend that the Department should correct these errors in Arrighi's and Italpasta's G&A and financial expense ratios.

Arrighi acknowledges that it incorrectly reported the cost of goods sold figure used in its calculation of G&A and financial expense ratios. Arrighi states that it used the incorrect amount due to a translation error on its part. It concedes that the cost of goods sold calculated by the Department and used in the preliminary determination is more accurate.

DOC Position: We agree with the petitioners and Arrighi. Arrighi and Italpasta did not apply the G&A and financial expense ratios to the same basis in their calculation, resulting in an understatement of each company's per-unit G&A and financial expenses. We calculated a revised cost of goods sold figure by subtracting scrap revenue, packing, selling, and G&A expenses from total production costs reported in each company's financial statement. This resulted in revised G&A and financial expense rates that are computed on a basis consistent with the COM figures to which they were applied.

Comment 11 COP of Affiliated Party: The petitioners argue that Arrighi's affiliated mill understated its unit cost of semolina by including the weight of water in its reported production quantities. They contend that the weight of the output from the mill was greater than the weight of the input into the mill due to water added during the milling process. The petitioners believe that the Department should adjust the mill's unit costs to a dry measure basis by dividing the total costs by the weight of the durum wheat that was used in the milling process.

Arrighi states that it calculated the unit semolina costs by dividing the mill costs by the mill output which resulted in a yielded semolina cost. The semolina which was used as the input into the next step of pasta production reflects the relatively wet semolina input. Arrighi then yielded the pasta production costs to a dry weight by calculating the unit cost of pasta based on packed pasta quantities. It argues that the semolina COP for its affiliated mill appropriately accounted for water added in the production process.

DOC Position: We agree with Arrighi. Assuming all finished goods are identical, dividing the total cost incurred to produce the finished products by the quantity of finished goods produced results in the unit cost of each product. Deriving the unit cost in this manner accounts for yield changes. This is the methodology Arrighi's affiliated mill used to calculate the cost of durum wheat in finished semolina. Therefore, the gain attributable to water added during production was captured by the mill's raw material cost methodology, and, it was not necessary for us to make an adjustment to the affiliate's semolina production costs for the weight gain attributable to water.

Comment 12 Allocation of Cost at Affiliated Mill: The petitioners argue that Arrighi's affiliated mill allocated its costs between soft wheat and durum wheat production using a basis which it was not able to substantiate. They note that the affiliated mill allocated variable costs, variable overhead, fixed overhead, G&A, and financial costs based on the relative cost of soft wheat and durum wheat. The cost verification report, according to the petitioners, stated that soft wheat and durum wheat were processed in the same manner using the same machinery and production process. They argue that quantity of production reflects the resources used and the relative costs incurred by the mill since the processes and the machinery for soft wheat and durum wheat are the same. The petitioners believe that the Department should reallocate the manufacturing costs based on production quantity at the mill.

DOC Position: Arrighi's affiliated mill used an allocation methodology that did not accurately reflect the costs incurred to mill durum wheat. The mill allocated its conversion costs (labor and overheads) between soft wheat and durum wheat based on the relative cost of the raw material purchased. Personnel from the mill stated that the only difference between processing soft wheat and durum wheat was that the soft wheat was bagged while durum wheat was shipped in bulk. This represents a very minor difference in packing costs only. They also stated that the same machinery was used to mill both soft wheat and durum wheat. The cost of converting a raw material to a finished product is dependent on the processes performed and the machinery used and not the cost of the raw material input. Therefore, if the production process and machinery are the same regardless of the type of wheat milled, the conversion costs also would be the same. Since the processes and machinery were the same, we reallocated the mill conversion costs based on total production of the mill, regardless of the type of wheat processed. After we recalculated the cost of semolina from the affiliated mill, we compared this amount to the weighted-average transfer price to Arrighi and Italpasta. We found that the transfer price did not reflect the semolina's full cost of production. Therefore, we relied on the actual cost to value the semolina from the related mill.

Comment 13 Allocation of G&A and Financial Expense at Affiliated Mill: The petitioners argue that Arrighi's affiliated mill calculated a per-unit amount for G&A and financial expenses while the Department's questionnaire instructed the respondents to allocate these costs based on cost of sales. They believe that the Department should recalculate the mill's G&A and financial expenses based on the cost of sales.

DOC Position: We agree with the petitioners. The mill allocated total G&A and financial expenses between soft wheat and durum wheat based on the relative cost of wheat purchased. His methodology is contrary to the Department's normal practice, which is to compute a ratio based on the relationship of these expenses to the cost of sales of the company. *See, e.g., Preliminary Results of Antidumping Administrative Review: Roller Chain (Other than Bicycle) from Japan,* 60 FR 43771 (August 23, 1995), *Final Determination of Sales at Less Than Fair Value: Small Business Telephone Systems from Korea,* 54 FR 53141 (December 27, 1989) and *Final Results of Antidumping Administrative Review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom,* 56 FR 31692, Comment 25, (July 11, 1991). Therefore, we recalculated G&A and financial expense ratios as a percentage of cost of goods sold and multiplied these rates by the product specific cost of manufacture.

Comment 14 Understated Material Costs: The petitioners argue that the Department should increase Arrighi's raw material costs because Arrighi's submitted material costs were based on amounts from its management reports. They state that at verification the Department found that the costs of materials in the management reports

were understated and did not reconcile to the financial accounting system.

Arrighi did not comment on this issue.

DOC Position: We agree with the petitioners. As indicated in the questionnaire, the Department instructed Arrighi that the per-unit COP and CV must reconcile to the actual costs reported in the accounting system used by the company to prepare its financial statements. Arrighi's financial accounting system did not allow for the segregation of material costs. Hence, Arrighi used information from its management reports to segregate the material costs reported to the Department. At verification, we found an unreconciled difference between the management reports and the financial accounting system. Company officials stated that Arrighi's financial accounting system reflected its actual costs. We therefore increased the reported material costs to agree with the actual material costs reported in the company's financial accounting system.

Comment 15 Parent Company G&A: The petitioners propose that the Department increase Arrighi's reported G&A expenses to include G&A expense amounts incurred by its parent company. They argue that the questionnaire instructed Arrighi to include in its reported G&A, an amount for administrative services performed by its parent. Based on the record evidence, the petitioners conclude that Arrighi was the only subsidiary of its parent and argue, therefore, that all of the parent's expenses should be included in Arrighi's G&A expenses.

Arrighi did not comment on this issue.

DOC Position: We agree with the petitioners. As indicated in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada,* 58 FR 37082 (July 9, 1993), all expenses incurred by a parent company without operations, relate to the subsidiaries with operations. Additionally, our standard questionnaire instructs respondent companies to include an amount for administrative services performed by its parent company or other affiliates. Arrighi did not include in its reported G&A any amount for administrative services performed by its parent. Additionally, the evidence on the record shows that Arrighi is the only subsidiary of its parent company and that the parent did not engage in activities other than those relating to Arrighi's pasta operations. Since the only activity of the parent was to act as a holding company for Arrighi, it is reasonable to assume that any expenses it incurred were for the benefit of Arrighi. Therefore, we increased Arrighi's G&A expense to include the net expenses incurred by its parent company.

Comment 17 Financial Expenses: The petitioners argue that Arrighi improperly excluded bank fees from its reported financial expenses. They contend that financial expenses should include all interest expenses and fees incurred to finance the operations of the company.

The petitioners also argue that Italpasta incorrectly included exchange gains and losses generated from sales transactions in its calculation of the financial expense rate. They assert that the Department generally does not consider exchange rate gains and losses from sales transactions in its COP and CV. Therefore, they believe that the Department should revise the financial expenses of Italpasta to exclude the exchange rate gains and losses generated from sales transactions.

Arrighi did not comment on these issues.

DOC Position: We agree with the petitioners. Fees paid to a bank to obtain or maintain a loan are integral parts of financial expenses. Therefore, we increased Arrighi's financial expense to include the bank fees it incurred.

Regarding foreign exchange gains and losses, it is the Department's normal practice to distinguish such gains and losses realized or incurred in connection with sales transactions from those associated with purchases of production inputs. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy,* 60 FR 31981 (June 19, 1995) and *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela* (''Silicomanganese from Venezuela''), 59 FR 55436 (November 7, 1994). The Department does not include in COP and CV exchange gains and losses on accounts receivable because the exchange rate used to convert home market or third-country sales to U.S. dollars is that in effect on the date of the U.S. sale. The Department does include foreign exchange gains and losses on financial assets and liabilities in its COP and CV calculation where they are related to the company's production. Financial assets and liabilities are directly related to a company's need to borrow money, and we include the cost of borrowing in our COP and CV calculations. We therefore adjusted Arrighi's and Italpasta's financial expense rate calculation to exclude exchange gains and losses related to the company's sales transactions.

De Cecco

Comment 1 Use of Facts Available: De Cecco argues that the Department should not have canceled verification of its sales and cost responses. De Cecco argues that its February 2 and February 6 responses were satisfactory responses to the requests for supplemental information to remedy the deficient November 27 response, and should have been accepted by the Department.

The petitioners argue that the Department should continue to use facts available to calculate the final margins. Both De Cecco's and the petitioners' specific arguments are described in the Facts Available section, above.

DOC Position: We agree with the petitioners that facts available should be used to calculate the final dumping margin for De Cecco. Our reasons are set out in the Facts Available section, above.

Comment 2 Use of Adverse Facts Available: De Cecco argues that the Department should not have used adverse facts available in determining De Cecco's margin for the preliminary determination because De Cecco provided complete answers to all requested information in a timely manner and otherwise cooperated to the best of its ability. Both De Cecco's specific arguments and the petitioners' comments are discussed in the Facts Available section, above.

DOC Position: We agree with the petitioners that De Cecco's February 6, 1996, cost submission consisted of new information. The receipt of subsequent, unsolicited submissions left no time for the Department, or the petitioners, to review, reconcile, or comment on the new submissions in time to conduct any meaningful verification of the cost data. We disagree with De Cecco's characterization of its participation as having ''provided complete answers to all requested information in a timely manner and otherwise cooperated to the best of its ability.'' De Cecco submitted a new cost methodology in February, did not attempt to explain the differences between the data submitted in its various February responses, and did not attempt to explain the differences between the data submitted in February and the original data submitted in November 1995. We do not consider these facts as evidence that De Cecco acted to the best of its ability to respond to the questionnaire. Finally,

De Cecco's argument that it failed to understand our questionnaire instructions concerning affiliated persons because it was reading them within the context of Italian law is unpersuasive. Appendix I of the questionnaire contained a glossary that defined, *inter alia*, the term ''Affiliated Persons.'' Moreover, the Department works with all respondents, and their representatives, to clarify any questions they might have about questionnaire requirements.

Comment 3 Corroboration of Secondary Information: De Cecco argues that if the Department uses facts available, it should corroborate such information by using other information readily available and should not rely exclusively on the petition in determining De Cecco's margin rate. It asserts that the Department is obligated to determine the dumping margin as accurately as possible. De Cecco argues that the Department acts unreasonably if it rejects low margin information in favor of high margin information that is demonstrably less probative. *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185,1991 (Fed. Cir. 1990); *Floral Trade Council v. United States,* 822 Fed. Supp. 766, 711 (CIT 1993). De Cecco contends that the Department failed to corroborate the information it relied upon in calculating the facts available margin applied to De Cecco in the preliminary determination. It insists that the Department could have utilized information from other respondents (*e.g.*, Delverde, whose costs, it assumes, are most similar) or averages from the calculated margins of other companies, and should do so for the final determination.

The petitioners disagree with De Cecco's argument that its costs are similar to Delverde's simply because they are located in the same town in Italy. Moreover, the petitioners believe that the Department properly followed the statutory requirements for calculating De Cecco's dumping margin based on facts available.

DOC Position: We disagree with De Cecco that corroboration of information used for facts available means determining accurate dumping margins for a specific company. Accurate dumping margins can only be calculated on the basis of reliable information provided by the respondent. De Cecco did not provide such information. We also disagree that we have any basis for accepting De Cecco's assumptions that Delverde's costs of producing pasta should have some bearing on the dumping margin assigned to De Cecco.

In this case, the petition is the only information on the record which could appropriately form the basis for a dumping calculation. Section 776(c) of the Act provides that where the Department relies upon ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably available to the Department. The SAA, at page 870, clarifies that the petition is ''secondary information,'' and that ''corroborate'' means to determine that the information has probative value. *Id*. During our analysis of the petition, we reviewed all of the data submitted and the assumptions that petitioners had made when calculating estimated dumping margins. In addition, we contacted the source of the market research data and confirmed to our satisfaction the reliability of the market research information presented in the petition. As a result of our analysis, we revised the home market prices that petitioners had relied upon in calculating the estimated dumping margins. On the basis of these revisions, we recalculated the estimated dumping margins and found them to range from 21.85 percent to 71.49 percent.

Delverde

Comment 1 Collapsing Delverde and Tamma for Purposes of Calculating the Dumping Margin: In the preliminary determination, the Department concluded that Delverde and Tamma are affiliated companies within the meaning of section 771(33) of the Act based on response information that the common ownership of these companies exceeded five percent. Consistent with Departmental practice, we also concluded that the information on the record required us to collapse Delverde and Tamma into a single entity for purposes of calculating a dumping margin. (*See, Final Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada,* 59 FR 25603 (May 17, 1994); *Final Determination of Sales at Less Than Fair Value: Certain Granite from Italy* (''Italian Granite''), 53 FR 24335 (July 19, 1988).) This decision was based on our finding ties of common ownership, interlocking boards of directors, similar production processes and shared transactions. (*See* letter from Gary Taverman to Delverde of August 22, 1995.)

For the final determination, Delverde argues that the two companies should be treated as separate companies because ''neither company exercises control over the other within the meaning of section 771(33) of the Act''. Specifically, Delverde asserts that neither company is legally or operationally in a position to exercise restraint or direction over the other company based on the following claims: (a) Tamma holds only a minority ownership interest in Delverde; (b) the companies operate as wholly separate commercial entities and do not consolidate financial statements or share cost/financial information; (c) the common board member is not involved in the day-to-day business operations of Delverde; (d) pricing and marketing strategies are conducted independently; (e) the companies have separate letterheads and locations; (f) there are no common employees or managers; (g) production information is not shared; and (i) Tamma sells semolina to Delverde at arm's length prices.

The petitioners state that the ownership relationship between Delverde and Tamma clearly meets the definition of affiliated persons. Whether affiliated companies operate independently or in conjunction is not at issue, and does not alter the fact that Delverde and Tamma are affiliated companies. Accordingly, the petitioners urge the Department to uphold its preliminary determination and collapse the data of Delverde and Tamma into a single entity in the final margin calculations.

DOC Position: In determining whether to collapse related or affiliated companies, the Department must decide whether the affiliated companies are sufficiently intertwined as to permit the possibility of price manipulation. In making this decision, the Department considers factors such as: (1) The level of common ownership; (2) interlocking boards of directors; (3) the existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and (4) whether the operations of the companies are intertwined as evidenced by coordination in pricing decisions, shared employees or transactions between the companies. *See, e.g., Certain Granite Products from Spain,* 53 FR 24335 (1988); *Italian Granite; Cellular Mobile Telephones and Subassemblies from Japan* (43 FR 48011, 1989); *Steel Wheels from Brazil,* 45 FR 8780 (1989); *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Steel Plate from Canada,* 58 FR 37099 (1993). The Department's use of these factors was implicitly accorded deference by the Court of International Trade (CIT) in *Nihon Cement Co., Ltd., et al.* v. *United States,* Slip Op. 93–80 (CIT 1993)(which overturned our determination for a

failure to articulate the evidence which supported the different elements of this test).

While consistent with our practice on this issue, section 351.401(f) of the Department's proposed regulations give a new articulation to the collapsing test. Under this articulation, the Department will treat affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and where there is a significant potential for the manipulation of price or production, as evidenced by common ownership, interlocking boards of directors or shared management, and intertwined operations.

The administrative record establishes a close, intertwined relationship between Delverde and Tamma. At verification of Delverde and Tamma, we confirmed reported information concerning ownership, boards of directors, transactions, and production processes. This information demonstrates that these affiliated producers have similar production processes and exhibit a significant potential for price manipulation as evidenced by interlocking boards of directors and shared transactions. Based on the information on the record, we believe that Delverde and Tamma cannot be considered separate manufacturers under the antidumping law, and that it is appropriate to calculate a single, weighted-average margin for these companies.

Comment 2 Calculation of Constructed Export Price for Delverde: In the preliminary determination, we calculated CEP by deducting from the starting price (*i.e.*, the price to the unaffiliated purchaser) discounts and rebates, international movement expenses, U.S. movement expenses, direct U.S. selling expenses, commissions and CEP profit, as well as indirect selling expenses and inventory carrying costs associated with economic activities occurring in the United States. We did not deduct the indirect selling expenses and inventory carrying costs incurred by the foreign producer in Italy because we did not deem these expenses to be specifically related to commercial activity in the United States.

For the final determination, both petitioners and Delverde argue that the Department is required by the statute to deduct all expenses, including indirect expenses incurred by the foreign producer, in calculating CEP. The parties state that nothing in section 772(d)(1) suggests that the expenses listed in subparagraphs (1)–(D) must be related to activities that take place within the United States, or that such expenses must be incurred within the territory of the United States. They argue that the inclusion of a clause in the statutory definition of CEP (*i.e.*, 772(d)(1)(D)) mandating the deduction of *any* selling expenses from the U.S. starting price) ensures that all indirect selling costs are stripped from the selling price. The parties further argue that the legislative history establishes that Congress intended the new CEP provision to be merely a clarification of prior law which provided for the deduction of all direct and indirect selling expenses, regardless of whether the expenses were attributable to activities in the United States. While the parties acknowledge that the language of the SAA may be unclear or ambiguous, they argue that, as a matter of law, such language cannot be used by the Department to override the clear and unambiguous language of the statute. Accordingly, both the petitioners and Delverde contend that in calculating CEP the Department must deduct all selling expenses, as required by section 772(d), regardless of where the expenses are incurred.

These arguments concerning statutory interpretation notwithstanding, Delverde also contends that the Department made a factual error by not classifying the inventory carrying costs incurred by the foreign producer on U.S. sales as specifically related to commercial activity in the United States. Delverde notes that pasta on which the inventory carrying expense is incurred is enriched pasta that cannot be sold in Italy. Delverde states that this pasta is dedicated to the U.S. market from the point in production that vitamins are added, and is segregated from other pasta while in inventory. Accordingly, Delverde argues that all reported inventory maintenance expenses for enriched pasta are necessarily related to U.S. commercial activity.

DOC Position: Consistent with the SAA and our proposed regulations, the Department reads section 772(d)(1) of the Act to require us to make deductions to CEP only for the expenses associated with economic activity in the United States (*see* SAA at 823 and the Department's proposed Regulations at 7331 and 7381). Our preliminary determination reflected this requirement insofar as our deductions to CEP excluded those expenses we deemed not specifically related to commercial activity in the United States (*i.e.*, Delverde's indirect selling and inventory carrying expenses incurred in Italy).

For the final determination, we reevaluated our treatment of indirect expenses incurred in Italy based on our findings at verification. In the case of indirect selling expenses, the indirect selling accounts reviewed at verification indicated that Delverde accurately identified each of the expenses that specifically related to U.S. commercial activity. With regard to inventory carrying costs, our observations confirmed Delverde's explanation that enriched pasta, other than whole wheat pasta, is virtually all sold to the United States and that any inventory carrying costs incurred on enriched pasta is necessarily attributable to U.S. economic activity. Therefore, we included inventory carrying costs and indirect selling expenses incurred in Italy (*i.e.*, database fields DINVCARU and DINDIRSU) in our deductions from CEP.

Comment 3 Payment Dates of Delverde Sales: At verification, we noted that Delverde had not updated the payment dates reported for U.S. and home market sales that were paid after submission of its September, 1995, sales response. This caused the credit expense for these sales to be incorrectly calculated in the preliminary determination. Following verification, Delverde provided a revised sales tape with updated payment information for its U.S. sales. It did not revise the payment data for its home market sales, although this revision would have decreased the normal value of the affected sales.

According to the petitioners, Delverde should be penalized for not disclosing its error prior to verification. The petitioners contend that all U.S. sales transactions by Delverde, showing a payment date of September 13, 1995, should be reset to a payment date of March 15, 1996 (the date of the sales verification) for purposes of calculating the credit expense on these sales.

DOC Position: For the final determination, we calculated U.S. credit based on the revised and verified payment information provided by Delverde. We believe this approach is appropriate because it is consistent with our practice of promoting accuracy and completeness in the calculation of margins, a practice which forms the basis for our approach to both pre- and post-verification submissions. *See, Murata Mfg. Co.* v. *United States*, 829 F. Supp. 603, 607 (CIT 1993) with *NSK Ltd.* v. *United States*, 798 F. Supp. 721 (CIT 1992), aff'd, 996 F.2d 1236 (Fed. Cir. 1993) (*Cf.* the preamble of the Department's proposed regulations at

7323). We also believe that this approach is conservative because the revised payment information adversely affects the credit calculation of U.S. sales, and does not include revised home market information that would have been beneficial to the respondent.

Comment 4 Revised Sales Tapes: The petitioners assert that the Department should carefully review the revised sales tapes submitted by Delverde and Tamma to ensure that the proper revisions have been made to the proper fields. For any field that has not been properly modified, the petitioners contend that the Department should apply facts available. In the case of CEP sales by FSM and Cavalier, U.S. importers related to Delverde, the petitioners argue that the widespread and fundamental changes submitted by Delverde very late in the investigation call into question the reliability of Delverde's responses. In light of the changes submitted by Delverde, the petitioners argue that if the Department identifies any anomalies in the data contained on the final sales tape, it should apply facts available to Delverde's sales in their entirety.

Delverde insists that all its affiliated entities have cooperated with the Department at every stage of this investigation. According to Delverde, the submission of computer tapes to update their sales databases for revisions occurring after November 27, 1995, and to ensure that the database incorporates verified information clearly serves a useful function, and is intended to reduce the burden on the Department and other parties. Delverde emphasizes that every effort has been made to ensure that the sales tapes reflect exactly those changes previously identified by Delverde and Tamma, or requested by the Department. Delverde contends that there is no basis for the petitioners' unsupported speculation or requests for the use of ''facts available'' with respect to unspecified ''anomalies.''

DOC Position: We agree that Delverde and its affiliated entities have been cooperative throughout this investigation. At our request, Delverde submitted revised computer tapes that updated their sales databases for revisions made subsequent to November 27, 1995, and incorporated changes identified at verification. We have examined these tapes and there is no basis for the petitioners' assertion that the use of facts available is warranted for selected portions of Delverde's databases or for Delverde's sales in their entirety.

Comment 5 Slotting fees on CEP sales by Delverde USA: The petitioners argue that the Department's verifiers noted certain irregularities with respect to the slotting fees paid to a certain Delverde USA customer. According to the petitioners, the Department reviewed four invoices to the customer at verification that Delverde USA explained were up-front slotting fees on post-POI sales. The petitioners argue that because Delverde did not provide full disclosure of the details of any ''up-front'' slotting fees paid before the POI, the Department must associate the expenses with the POI since that is when they were incurred. The petitioners request that the Department increase the slotting expense reported in field ADVERT2U for this customer, or apply facts available in the absence of available sales information for this customer.

Delverde states that the petitioners' arguments reflect a fundamental misunderstanding of Delverde USA's sales to this customer and of the methodology used to report this customer's slotting expense. Delverde asserts that the petitioners' arguments fail to take into account the fact that sales to this customer by Delverde USA are made pursuant to an agreement which became effective at the end of the POI. Delverde argues that it has never claimed that the referenced invoices are related to post-POI sales. Rather, as reflected in the Department's verification report, Delverde notes that the referenced invoices relate to post-POI shipments which were appropriately included in calculating the slotting expenses reported in ADVERT2U for this customer. Delverde also dismisses the petitioners' suggestion that Delverde did not disclose the details of up-front slotting fees that might have been paid to this customer before the POI. Given that Delverde USA's business with this customer began with the agreement at the end of the POI, Delverde asserts that it is factually incorrect to assume that up-front slotting fees were paid to this customer prior to the POI. Delverde submits that the petitioners' request for an adjustment to field ADVERT2U should be rejected.

DOC Position: At verification, we reviewed Delverde USA's agreement with the customer, dated near the end of the POI. We also reviewed four invoices which represent the totality of sales made pursuant to the agreement, each of which was invoiced and shipped after the POI. The results of this review indicate that, more than a year after the agreement, only a small fraction of the total quantity of pasta specified in the agreement had been sold and delivered to the customer. We also found that another fundamental element of the agreement had only been partially implemented. Consequently, although Delverde USA continues to consider its relationship with this customer to be unchanged, in our judgment the agreement is not in effect. We therefore reclassified the date of sale for these invoices to the invoice date, pursuant to Delverde's date of sale methodology for its other sales and to our findings at verification. Given that this reclassification indicates that the four invoices were dated outside the period of investigation, we did not include these sales in the final margin calculations for Delverde. Therefore, the arguments concerning the ADVERT2U field are moot.

Comment 6 Delverde USA's Indirect Selling Expenses: In its revised calculation of U.S. indirect selling expenses, Delverde USA added a separate line item to POI operating expenses for a slotting fee provided to one U.S. customer. The petitioners contend that this is an improper means of accounting for a slotting fee expense, which is customer-specific in nature. According to the petitioners, proper accounting for this customer-specific expense would be to allocate this additional expense over the POI sales to this customer. The petitioners recommend that if the Department is unable to readily arrive at a total sales figure for this customer, it should use facts available and add the highest slotting fee expense reported in the U.S. sales database (field ADVERT2U) to any existing expenses in this field for this customer.

Delverde maintains that it is appropriate to treat the cost incurred in selling to this customer as an indirect selling expense. As explained by Delverde at verification, Delverde USA actively solicited the business of this customer because of that customer's retail outlets. In order to secure the opportunity to sell to that potential customer, the customer demanded an up-front payment which Delverde USA provided in the form of an initial delivery of pasta free of charge. In providing the up-front payment, Delverde sought to induce that customer to begin placing large volume, follow-up orders on an on-going basis. Delverde notes that its investment was not successful as the customer subsequently purchased and paid for only a very small amount of merchandise. Delverde notes that no other orders were placed by the customer, despite the customer's demand for, and receipt of, the up-front payment.

Based on this explanation, Delverde argues that Delverde USA's investment

is properly recognized as a general cost of doing business. Given that the customer did not subsequently place orders with Delverde USA, Delverde argues that it would not be appropriate to treat the expenses as a slotting cost related solely to this customer. Rather, Delverde argues that it is the lack of follow-up business that distinguishes this situation from other instances where slotting fees were reported in field ADVERT2U.

DOC Position: We agree with Delverde that it is appropriate to treat the up-front slotting fee provided to one Delverde USA customer, as an indirect selling expense for all sales to all customers. Such treatment is warranted in this instance given that no orders were subsequently placed with Delverde USA by this customer. Accordingly, we believe that the lack of follow-up business distinguishes this situation from other instances where slotting fees were reported on a customer-specific basis in field ADVERT2U.

Comment 7 Delverde's Request for a CEP Offset: Delverde did not claim a level of trade adjustment for its EP sales. With respect to its CEP sales, the company argues that the statute directs the Department to deduct all selling expenses from the CEP and that the resulting adjusted CEP is an ex-factory price. Delverde then concludes that the adjusted CEP, or ex-factory price, is at the ex-factory level of trade. In the absence of ex-factory sales in its home market, Delverde further argues that it is impossible to quantify the price effect of selling functions involved in sales at levels of trade more advanced than ex-factory, and, as a consequence, it must be entitled to the CEP offset.

The petitioners argue that Delverde would have had to submit data concerning its selling functions in response to the Department's requests related to the Department's level of trade analysis in order to qualify for a CEP offset. As a consequence of failing to provide the Department with this requested information, the petitioners assert that the SAA prohibits a CEP offset.

DOC Position: The Department requested level of trade information from Delverde on October 23, 1995, and on January 22, 1996. Delverde responded with the argument that it had not claimed a level of trade adjustment for its EP sales and that it was pointless for the Department to compare CEP activities for level-of-trade purposes. As a result of Delverde's refusal to provide the requested information, the Department has had to infer different selling functions from the narrative of Delverde's responses concerning other topics. On the basis of our analysis of its selling functions, described in the ''Level of Trade'' section of this notice, above, we concluded that Delverde's U.S. sales and home market sales are made at the same level of trade. As stated in the SAA, at page 160, ''Only where different functions at different levels of trade are established under Section 773(a)(7)(A)(i) [and a level of trade adjustment is not appropriate] will Commerce make a constructed export price offset adjustment under Section 773(a)(7)(B).'' Accordingly, we did not grant Delverde's request for a CEP offset in our final determination.

Comment 8 Water Gain: Tamma argues that its semolina yield calculation correctly and accurately accounts for water absorbed by the wheat in producing semolina. It states that its submitted quantity of semolina and byproducts produced from a given quantity of durum wheat reflects the water gain. Tamma explains that the higher moisture content of milled semolina and byproducts is an inherent physical characteristic of those products. Tamma argues, therefore, that it would be improper to back out the weight gain attributable to such an inherent physical characteristic and such an adjustment would distort Tamma's semolina yield rates by not fully capturing the actual quantity of milled semolina produced.

The petitioners argue that Tamma's semolina costs should be increased to properly account for the water gain. They state that it is not acceptable to allow Tamma to compare the ''wet'' semolina output to the ''dry'' durum wheat input to calculate yield loss. A ''dry'' input, the petitioners contend, should be compared to a ''dry'' output in deriving yield loss.

DOC Position: We agree with Tamma that its semolina yield calculation properly accounted for the water gain during the milling process. We noted in our verification report a concern that the water weight gain might understate semolina costs by overstating production quantities. However, after further review of information on the record, we note that Tamma allocated its milling cost (*i.e.*, wheat and conversion costs), net of byproduct revenue, based on the actual quantity of semolina produced. Therefore, the weight gain attributable to water has been properly absorbed by allocating milling costs to finished semolina output.

Comment 9 Depreciation Expense: Tamma contends that its reported depreciation expense is accurate and does not distort costs. It argues that the submitted depreciation expense is identical to the amount reported in its audited financial statements and fixed asset ledger. Tamma further argues that its method of calculating the depreciation expense conforms with Italian GAAP and that the actual useful lives of its fixed assets reflect the expanded depreciation period allowed under Italian law. Tamma states that it is the Department's practice to accept home market GAAP when it does not distort production costs and cites *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 6997 (February 6, 1995); *Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981 (June 19, 1995); *Final Results of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from Germany*, 61 FR 13834 (March 28, 1996); and *Final Results of Sales at Less than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553 (June 5, 1995).

The petitioners contend that the Department should increase Tamma's depreciation expense. They argue that Tamma reduced its straight-line depreciation rates from the Italian civil code to rates it employs for income tax purposes which are inappropriate for a dumping analysis.

DOC Position: We disagree with Tamma. To calculate depreciation expense, Tamma relied on industry specific depreciable asset lives authorized by the Italian Civil Code. However, Tamma later modified these depreciable asset lives in calculating depreciation expense for all of its assets, including the manufacturing equipment used to produce pasta. Contrary to Tamma's argument, the change to its assets depreciable lives was not the result of new events, changing conditions, experience, or additional information. Instead, Tamma's change in depreciable life was made only for its effect on the company's profitability.

Generally, the Department relies on a company's home country GAAP; the Department will not do so, however, if the use of a country's GAAP does not accurately recognize a company's actual costs. (*See, e.g.*, *Minivans from Japan; Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15479 (March 23, 1993).) Recording of depreciation expenses provides a systematic, rational method of recognizing the costs of fixed assets. This allocates the one-time expense of purchasing (or constructing) fixed assets over the longer time period

which these assets will benefit. In this case, the Department found that the basis used for the financial statement, even if stated in accordance with Italian GAAP, is contrary to sound accounting principles and the Department's practice. Tamma simply elected to change its depreciation rate (which, in effect, changed the useful lives of the company's production assets) without any change in the underlying economic assumptions and estimates on which its depreciation method was based. Without documentary evidence of such a change in the underlying assumptions, it is inappropriate for the respondent to recognize less than a full year's depreciation expense.

Comment 10 Foreign Exchange Losses Related to Debt: Tamma contends that its capitalization of foreign exchange losses realized in connection with loans used to purchase capital assets conforms to Italian law and Italian GAAP. It further argues that because the loss relates directly to the acquisition of capital assets, and is amortized over a period that is less than the useful lives of those assets, its capitalization of the exchange rate losses is reasonable and does not distort costs. *See, Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7039 (February 6, 1995) (''*Roses from Ecuador*'').

The petitioners contend that it is appropriate to recognize the entire exchange loss because the loss was incurred during the POI and the source of the loss is fungible in nature. They argue that a foreign exchange loss on debt owed is logically recognized at the end of the fiscal period. The petitioners also argue that the exchange loss cannot be related to the acquisition of the asset because it did not occur at the time of acquisition.

DOC Position: We disagree with Tamma. In determining COP for the POI, the Department includes all costs incurred during the POI. If current losses are deferred to some future time, the costs would not appropriately match to the sales of the company during the POI. The Department has recognized this principle in the past in dealing with capitalized foreign exchange gains and losses relating to loans. *See, Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15479 (March 22, 1993).

In this case, the extinguishment of debt caused a foreign exchange loss which represents a cost that provides no future benefit to Tamma. Tamma has argued that the exchange loss relates to the acquisition of assets and should be capitalized and amortized because this method was allowed in *Roses from Ecuador*. However, we note that in *Roses from Ecuador* the capitalized loss reflected an actual increase in the loan amount and the loss was amortized over the remaining life of the loan. The exchange loss in this case is also a cost of Tamma's borrowed funds but it is not an increase in the loan amount because it was incurred to extinguish the debt. Nor is the loss a cost of Tamma's equipment because this loss does not add to the utility of the equipment.

We also note that contrary to Tamma's claims, the company's method of capitalizing this cost is not a recommended method under Italian GAAP. We note that the Italian National Council of Accountants (''NCA'') which issues recommended ''Principles of Accounting'' in Italy states that ''a resulting exchange loss should be recognized immediately'' (See, Larry L. Orsini, John P. Mcallister and Rajeev N. Parikh, ''Italy,'' *World Accounting*'', Volume 2, (Matthew Bender & Co., Inc., New York, New York, 1995) p. ITA.37[1].) Also, Tamma's capitalization and amortization of this loss is not acceptable under U.S. GAAP which states that such losses must be recognized in the period in which they are incurred.

Comment 11 Subsidy Used to Offset G&A: Tamma claims that it properly reduced its G&A expenses by the amount of a grant from the Italian government which it received in 1994. Tamma argues that the grant effectively reduced its cost of producing subject merchandise and notes that the Department has previously allowed government grants as offsets against production costs. *See, e.g., Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands*, 59 FR 22684, 22556 (May 8, 1994); and, *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33546 (June 28, 1995).

The petitioners contend that Tamma should not be allowed to offset G&A expenses by a grant received from the Italian government because it is not clear if the grant was received during the POI. Therefore the Department should view the grant simply as additional income and not an as offset to G&A costs.

DOC Position: We disagree with the petitioners. Tamma's management demonstrated that the purpose of the grant was to assist the company in improving the general operation of its pasta production facilities. Thus, we found that the grant related to the company's pasta operations and have allowed the amount received by Tamma during the POI as an offset to Tamma's G&A expenses.

Comment 12 G&A and Interest Expense Revisions: The petitioners state that the Department should correct Tamma and Delverde's combined G&A expense factor and financing expense factor for certain clerical errors found or reported during verification.

Tamma and Delverde agree with the petitioners.

DOC Position: We agree with both the petitioners and the respondents and have corrected the combined cost of sales figure used by Tamma and Delverde to compute their G&A and financial expense ratios. In computing COP and CV, the Department normally requires respondents to allocate G&A and financing expenses to subject merchandise based on the ratio derived by dividing total G&A and financing expenses by the respondent's cost of sales. Delverde and Tamma derived a combined cost of sales figure based on total production costs (*i.e.,* direct material and conversion costs) that was adjusted for the change in beginning and ending inventory values. However, this combined cost of sales did not include the scrap and byproduct revenue offset that the two companies used to reduce their cost of manufacturing. Nor did it exclude the intercompany transfers between the two companies. These omissions overstated the combined cost of sales figure which in turn understated the interest and financing expense allocated to subject merchandise.

De Matteis

Comment 1 Commission Expenses: The petitioners argue that the Department should adjust De Matteis' claimed home market commission expenses to correct for errors discovered at verification. Specifically, the petitioners argue that the Department should deny the commissions claimed by De Matteis for all sales through selling agents 3 and 4, and for 1994 sales made by selling agent 2.

De Matteis did not comment on this issue.

DOC Position: We agree with the petitioners. These payments were reviewed during verification and found to be salary expenses, not commissions.

Comment 2 Exchange Rates: De Matteis contends that the Department incorrectly used a mixture of weighted-average and daily exchange rates. Specifically, it argues that the Department used daily exchange rates to

convert Lire into dollars in calculating certain values for the foreign unit price in dollars (FUPDOL), normal value, packing, differences in merchandise (DIFMER), and U.S. direct selling expenses, while the Department converted U.S. price using a weighted-average rate.

The petitioners did not comment on this issue.

DOC Position: We agree with De Matteis that we inadvertently used the daily exchange rate in two lines of the computer program used to calculate the margins for the preliminary determination. These two lines of the computer program specifically dealt with matches to CV. Because no U.S. sales were matched to CV for De Matteis for the preliminary determination, there was no effect on the margin for the preliminary determination. We have corrected the computer programming language for the final determination.

Comment 3 G&A and Financial Expense Ratios: The petitioners argue that in calculating its G&A and financing expense ratios, De Matteis failed to reduce the cost of sales denominator by the amount of revenues received from the sale of byproducts. As a result of the miscalculation, petitioners contend that De Matteis understated its reported per-unit G&A and financing expenses.

De Matteis agrees with the petitioners.

DOC Position: We agree with both parties. De Matteis applied its G&A and financing expense ratios to per-unit cost of manufacturing amounts for pasta that were net of revenues received by the company from sales of certain byproducts. In computing these ratios, however, De Matteis did not reduce its cost of sales denominator for the byproduct revenue it received. This resulted in an understatement of G&A and financing expense which we have corrected for the final determination by subtracting byproduct revenues from De Matteis' cost of sales.

La Molisana

Comment 1 Arm's Length Test: La Molisana argues that the arm's length test utilized in the preliminary determination is methodologically unsound because it fails to take into account price differences that result from comparisons of sales to different customer categories. Specifically, La Molisana claims that the test leads to a distortion of price comparability because it compares affiliated distributor sales to unaffiliated sales to all customer categories without taking into account the fact that the prices charged to distributors (both affiliated and unaffiliated) are considerably lower than the prices charged to unaffiliated non-distributors. In addition, La Molisana asserts that the Department verified that the company maintains separate price lists for distributors and non-distributors and that the price lists reflect significantly different prices. In support of this argument La Molisana provided a table in its case brief depicting the weighted-average net prices for each control number, level of trade (based on the LOTCODE assigned by the Department in the preliminary determination), affiliated distributor, unaffiliated distributor and unaffiliated non-distributor. La Molisana asserts that this table clearly demonstrates that the prices charged to affiliated and unaffiliated distributors are considerably lower than the prices charged to non-distributors.

Finally, La Molisana contends that in previous investigations the Department has recognized that there may be other factors that should be taken into account in conducting the arm's length test. *See, e.g., Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Steel Plate from France,* 58 FR 37062, 37077 (July 9, 1993). (The Department agreed that modifying the arm's length test to take differences in quantity into account would ''fine-tune'' the arm's length test.) For all of these reasons La Molisana argues that the Department should revise the arm's length test by basing the test on customer category as well as control number and level of trade.

The petitioners argue that the Department should continue to base the arm's length test solely on control number and level of trade, without regard to customer category. The petitioners contend that La Molisana has failed to show clear and documented evidence of price distinctions between distributors and non-distributors and that the Department should not consider the class of customer in determining whether sales are made at arm's length prices.

DOC Position: We agree with La Molisana that the test used in the preliminary determination may have been distorted because it failed to take into account price differences that result from comparisons of sales to different customer categories. Section 353.403 of the Department's Proposed Regulations states that the Secretary may calculate normal value based on an affiliated party sale only if satisfied that the price is ''comparable'' to the price at which the producer sold the merchandise to an unaffiliated party. As noted in the ''Comparison Methodology'' section of this notice, above, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. In this instance, the record establishes that there are three distinct customer classes in the home market (*i.e.,* wholesalers, retailers and consumers) and that La Molisana offered significantly different prices, depending on the customer category. In addition, La Molisana made sales to both affiliated and unaffiliated customers within the same customer category during the POI. Consequently, in order to make a fair determination regarding the price comparability of the affiliated party sales, we have determined that it is appropriate to use customer categories in our arm's length test. We believe that the inclusion of customer category in the arm's length test conforms with the principle, found in both section 353.45(a) of the Department's existing regulations and section 351.403 of the proposed regulations, that affiliated prices must be comparable to unaffiliated party prices in order for the affiliated party prices to be used by the Department. Therefore, for the above reasons, we have modified the test used in this final determination to account for the customer category.

Comment 2 Home Market Advertising Expenses: A. ''TV Sponsors'': La Molisana argues that certain previously unreported home market advertising expenses discovered at verification should be considered direct advertising expenses in the final determination. Specifically, La Molisana asserts that the Department verified that the expenses discovered at verification related to La Molisana's sponsorship of a television program where, during one segment of the show, La Molisana's pasta and logo were prominently displayed. Therefore, La Molisana contends that the advertising expenses associated with sponsoring this show were directed at its customer's customer and should be considered part of its direct advertising expenses in the final determination.

The petitioners argue that the Department should not include the expenses associated with sponsoring the television show in the final determination because the expenses were not provided until verification.

DOC Position: We agree with La Molisana that the expenses included in the ''TV Sponsors'' account should be considered part of La Molisana's direct advertising expenses in the final margin

calculations. At verification we confirmed that the advertisements were directed at downstream customers (*i.e.*, the ultimate consumers). Therefore, we have treated these expenses as direct advertising expenses in the final determination.

B. Trade Promotion Expenses: La Molisana argues that certain trade promotion expenses (which were treated as indirect expenses in the preliminary determination) are direct advertising expenses and should be treated as such in the final determination. It contends that these expenses are incurred in order to make its pasta more visible to the retail shopper and to encourage retail shoppers to purchase La Molisana's pasta. Therefore, La Molisana argues that trade promotion expenses are directed at its customer's customer.

The petitioners argue that the Department should continue to treat trade promotion expenses as indirect selling expenses in the final determination because these expenses are paid directly to La Molisana's customers and therefore do not represent reimbursements for expenses its customers incurred in advertising La Molisana's products to downstream customers.

DOC Position: We agree with La Molisana. For expenses incurred in advertising to be considered direct expenses there must be an assumption by the seller of the purchaser's advertising costs. In instances where the respondent assumes the total cost of promoting the product to downstream customers, we recognize that it is inherently difficult to tie any form of advertising to a specific sale. Therefore, the Department generally does not make that a requirement before accepting a claimed advertising expense as a direct expense. Nevertheless, the advertising must be proven to be directed towards the customer's customer (*i.e.*, the ultimate consumer) and incurred on products under investigation. At verification we confirmed that trade promotion expenses are aimed at the ultimate consumers of La Molisana's pasta (*i.e.*, the retail shoppers). Therefore, we have treated these expenses as direct advertising expenses in the final margin calculations.

C. Introduction Incentive Fees: La Molisana argues that certain introduction incentive fees (which were initially reported as advertising expenses and were treated as indirect expenses in the preliminary determination) are direct selling expenses and should be treated as such in the final determination. Specifically, La Molisana claims that the Department verified that introduction incentives are paid in order to obtain shelving space in supermarkets. La Molisana claims that it must pay these fees in order to make the sale and that this fee is not paid unless it makes a sale. Therefore, the introduction incentive fees bear a direct relationship to the sales in question and should be treated as direct selling expenses in the final determination.

The petitioners argue that the Department should continue to treat introduction incentive fees as indirect selling expenses in the final determination. The petitioners assert that La Molisana should not be permitted to submit new or revised claims for direct expenses after verification. In addition, the petitioners contend that introduction incentive fees are not directly related to the merchandise under investigation because they are flat fees that are incurred whether or not any actual sale occurs.

DOC Position: We agree with the petitioners that introduction incentive fees should be treated as indirect selling expenses. As we stated in the DOC Position on Comment 5 concerning Arrighi, the Court of International Trade has explained that direct selling expenses ''are expenses which vary with the quantity sold,'' or that are ''related to a particular sale.'' In this instance, La Molisana did not demonstrate that these fees vary with the quantity of pasta sold or that they can be tied directly to particular transactions. Therefore, we have continued to treat this expense as an indirect selling expense in the final margin calculations.

Comment 3 A. U.S. Advertising Expenses: La Molisana argues that its U.S. advertising expenses should be treated as indirect selling expenses in the final determination because the advertisements are not directed at its customer's customer. Specifically La Molisana asserts that it reimburses its U.S. distributor for a portion of the advertising expenses the U.S. distributor incurs promoting La Molisana's products to its customer's customer in the United States. Therefore, La Molisana argues that the advertisements are aimed at La Molisana's customer's customer's customer, not its customer's customer. As such, La Molisana argues that these expenses are not direct selling expenses because it is the Department's practice to treat advertising expenses as direct selling expenses only if those expenses are directed at the customer's customer.

The petitioners argue that the Department should continue to treat La Molisana's U.S. advertising expenses as direct advertising expenses in the final determination because these expenses represent reimbursements La Molisana paid to its U.S. customer for expenses that the U.S. customer incurred to advertise La Molisana's products to downstream customers in the United States.

DOC Position: We agree with the petitioners. For advertising to be treated as a direct expense it must be assumed on behalf of the respondent's customer and be incurred on the products under investigation. It is the Department's policy to classify advertising expenses directed at the ultimate consumer as direct and to classify advertising directed towards intermediary customers as indirect. *See, e.g., Dynamic Random Access Memory Semiconductor's of One Megabyte or Above From the Republic of Korea, Final Results of Administrative Review*, 61 FR 20216 (May 6, 1996). *Antifriction (other than Tapered Roller Bearings) Bearings from France*, 60 FR 10909 (February 28, 1995). At verification it was confirmed that La Molisana reimburses its unaffiliated U.S. customer for a portion of the advertising expenses this customer incurs promoting La Molisana's products to the ultimate consumers in the United States. Consequently we have treated these expenses as direct advertising expenses in the final determination.

B. Alleged Error in the Treatment of Certain Advertising Expenses in the Preliminary Determination: La Molisana asserts that in its preliminary determination the Department treated trade promotion and introduction incentive fees as indirect expenses in the home market while the same expenses were treated as direct expenses in the U.S. market. La Molisana argues that regardless of whether the Department classifies trade promotion expenses and introduction incentive fees as indirect or direct expenses in the final determination, it should afford the expenses similar treatment in both the U.S. and home markets.

The petitioners did not comment on this issue.

DOC Position: We have reviewed La Molisana's assertion and agree that the preliminary determination failed to treat trade promotion expenses and introduction incentive fees similarly in the U.S. and home markets. This was an inadvertent error on the part of the Department. We have corrected this error by treating introduction incentive fees as indirect expenses and trade promotion expenses as indirect expenses in both the U.S. and home markets in the final margin calculations. (For a discussion of the classification of

these expenses *see,* Comments 2B and 2C, above.)

Comment 4 Home Market Rebate: The petitioners argue that the Department should deny La Molisana's claim for the second type of home market rebate reported in its questionnaire response (*i.e.,* the rebate based on a percentage of pre-determined sales targets) because La Molisana failed to provide support documentation for the reported amounts at verification.

La Molisana did not comment on this issue.

DOC Position: We agree with the petitioners. Section 782(i) of the Act states that: ''The administering authority shall verify all information relied upon in making a final determination in an investigation.'' At verification, company officials were unprepared to provide support documentation for this rebate and, as a result, the reported rebate amount was not verified. Accordingly, we have not made an adjustment for the second rebate in the calculation of normal value.

Comment 5 Cost Reporting Period: La Molisana reported its costs on a calendar year basis. The petitioners argue that the Department should use costs during the POI to calculate La Molisana's cost of production. They note that the Department's antidumping questionnaire provides that COP and CV data should be calculated based on the actual costs incurred during the POI. Moreover, the petitioners claim it is the Department's routine practice to require respondents to report their costs incurred during the POI. *See, Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain,* 59 FR 66931, 66938 (December 28, 1994); *Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy,* 59 FR 66921, 66929 (December 28, 1994).

La Molisana counters that calculating cost on a calendar year basis was appropriate because the company only makes accruals when its accounting records are closed at year-end. It contends that the Department has a clear preference for respondents to use the accrual method of accounting when calculating costs. In this case, where La Molisana did not perform monthly closings, using the calendar year costs was appropriate because such costs included accruals and year-end adjustments.

DOC Position: We agree with petitioners that the Department generally examines the materials, labor, and overhead incurred during the POI. The questionnaire requests COP and CV data calculated based on the actual costs during the POI. *See, Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain,* 59 FR 66931, 66938 (December 28, 1994); *Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy,* 59 FR 66921, 66929 (December 28, 1994). In the instant case, the Department compared significant elements of the cost of manufacturing computed on a calendar year basis and on a POI basis. We adjusted La Molisana's reported wheat, labor, and electricity costs to reflect POI basis costs. Although the Department prefers costs reported on the accrual basis, we have determined, in this case, that cash basis costs for the first four months of 1995 were acceptable since the verification testing indicated these expenses reasonably reflected the costs associated with the production and sale of the merchandise. The eight months of 1994 costs were calculated on the accrual basis.

Comment 6 Total Cost Reconciliation: The petitioners urge the Department to increase La Molisana's reported costs to account for discrepancies between the unit costs in La Molisana's general ledger and the unit costs reported in La Molisana's questionnaire response. They state the Department found that La Molisana's finished goods inventory account showed an average unit cost higher than the average unit cost reported by La Molisana in its questionnaire response. They argue that the inventory value is probative evidence that the reported costs should be higher because the balance of the inventory account agreed to the audited financial statements. The petitioners also refer to the Department's analysis in the verification report that showed that average costs reflected in La Molisana's accounting ledgers for traditional pasta exported to third country markets was higher than the average costs reported by La Molisana in its questionnaire response, even though the average costs in the questionnaire response included traditional pasta and the more expensive nested pasta. These factors, combined with the fact that La Molisana declined to reconcile the total costs reported in the questionnaire response to the total costs in its accounting ledgers, should compel the Department to increase the unit costs reported by La Molisana so that they are consistent with the costs recorded in La Molisana's accounting ledgers which reconcile to its financial statements.

La Molisana argues that the Department's calculation of a higher cost for subject merchandise sold to third country markets has no significance for reported costs and no adjustment to reported costs is warranted. La Molisana does not dispute the fact that a reconciling difference exists but disagrees with the Department's attribution of this difference to third country merchandise. It declares that if the Department allocates the reconciling difference over all production or alternatively over Italian and U.S. production, the result is an insignificant adjustment to the reported costs. It states that the difference could have resulted from incorrect product mix assumptions made by the Department, arithmetic errors by the Department, or assumptions made about production quantities of various products. La Molisana contends that the difference could be explained by a higher proportion of spinach pasta and tomato pasta in the third country mix, as these products have a higher cost than plain pasta. Moreover, La Molisana claims that providing the reconciliation in the limited time available was not possible with a small staff. Finally, La Molisana contends that the reconciliation was not necessary for verification since the Department tied individual cost elements to the cost accounts which subsequently agreed to the income statement for 1994.

DOC Position: We agree with the petitioners that La Molisana's reported costs should be increased to account for the unreconciled difference between La Molisana's total production costs for 1994 and La Molisana's reported per-unit costs. Since La Molisana declined to prepare the reconciliation requested by the Department, the Department prepared a reconciliation of total production costs using information available from the record in this case. The reconciliation is necessary to establish that La Molisana captured and appropriately allocated all costs incurred for the period. Our analysis showed that an unreconciled difference remains.

Although La Molisana takes issue with the format of the reconciliation and the assumptions made, the Department provided La Molisana ample opportunity to provide this reconciliation. Such a reconciliation was specifically requested in the Department's supplemental Section D questionnaire and at verification. We believe that it is unacceptable in this situation to expect the Department to bear the responsibility of attempting to identify and perform the numerous and substantial recalculations necessary for the development of a completely accurate reconciliation. The Department's reconciliation provides a reasonable basis to identify costs that La Molisana may have failed to report, and

we have relied on this reconciliation in order to adjust the company's reported costs.

Comment 7 Difference in System Costs: The petitioners argue that the Department should adjust for differences in costs between La Molisana's cost accounting records and the company's financial accounting records. They suggest that the Department adjust La Molisana's reported costs so that these costs reconcile to the amounts shown in La Molisana's financial accounting system, since these costs are the most reliable and relate directly to La Molisana's financial statements.

La Molisana notes that general expenses reported elsewhere in its response account for much of the absolute difference between the costs recorded under its two accounting systems. La Molisana states that the remaining difference is immaterial and, thus, no adjustment is warranted.

DOC Position: The Department agrees, in part, with both petitioners and with La Molisana. La Molisana is correct in stating that its reported general expenses account for much of the absolute difference between the company's cost and financial accounting systems. Petitioners correctly point out, however, that COP and CV should reflect the actual costs reported under La Molisana's financial accounting system. We have, therefore, adjusted La Molisana's costs to reflect the company's financial accounting records. In this instance the company could not explain the difference between its financial and cost accounting systems.

Comment 8 Financial Expenses: The petitioners urge the Department to revise La Molisana's financial expenses to include the interest expense allocated to the flour mill and to exclude interest income earned on bonds with maturities of longer than one year. They cite the antidumping questionnaire which states that in calculating net interest expenses for COP, the respondent should include interest expense incurred for both long- and short-term borrowing, and that these interest expenses can be offset only by interest income earned on short-term investments of working capital. The petitioners state that short-term investments are investments of less than one year and, therefore, La Molisana should not have included income from bonds with maturities longer than one year in its net interest expense calculations.

In principal, La Molisana does not object to reclassifying the interest expense allocated to the flour mill, provided that the Department allows the corresponding decrease to the semolina costs. It disagrees that the Department should treat long-term interest income in any way different from long-term interest expense. La Molisana claims that, since investment activities receive cash from operations and lending activities use cash to fund operations, all funds generated from investment activities should be netted with interest expense to obtain the net financing expense of the company. La Molisana maintains that it demonstrated at verification its positive cash flow during prior years. This cash was used to invest in bonds. La Molisana cites to the Department's principle of fungible funds as articulated in the *Final Results of an Antidumping Duty Administrative Review: Titanium Sponge from Japan,* 55 FR 42227 (October 18, 1990).

DOC Position: We agree with petitioners. The Department considers interest expense to be the actual interest incurred by the company on both short- and long-term debt, reduced by the interest income earned on short-term assets. The Department has determined that the purchase and holding of long-term assets, such as bonds, that produce interest income represent investment activities that are wholly unrelated to the manufacturing business of the company. *See, Final Determination at Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France,* 59 FR 14136, 14147 (March 25, 1994). Although the source of the funds to purchase these bonds may have been company operations, the purpose of holding long-term investments is not to fund current manufacturing operations. Investing in long-term securities is a separate and distinct activity from manufacturing. (*See, e.g., Final Results of an Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Germany,* 60 FR 65264, 65270 (December 19, 1995) and *Final Determination at Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea*; 55 FR 32659, 32667 (August 10, 1990).)

This approach was affirmed in *NTN Bearing Corp.* v. *United States,* Slip Op. 95–165 (CIT 1995) (''*NTN Bearing*''). Relying on its earlier decision in *Timken Co.* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994) (''*Timken*''), the court clarified that to qualify for an offset, interest income must be related to the ''ordinary operations of a company.'' *NTN Bearing* at 32. While this standard does not require that interest income be tied directly to the production of the subject merchandise, a respondent must show ''a nexus between the reported interest income'' and its ''manufacturing operation.'' Id. at 33; *see also Timken* at 1048. Unlike interest income earned from the short-term investment of working capital, only rarely will interest income earned from a company's investment activities in bonds meet this standard.

Because La Molisana failed to show the necessary nexus between its bond interest income and manufacturing operations, the Department has denied the claimed offset. The Department did allow an offset for short-term interest income where La Molisana demonstrated that short-term assets from funds generated by the pasta manufacturing and selling operations of the company produced the income.

Finally, we reclassified interest expenses allocated to the flour mill to the interest expenses reported for the company as a whole because it is the Department's normal practice to calculate net interest expense based on the actual experience of the company, not each separate division or section. We agree with La Molisana that it is appropriate to reduce semolina costs for the amount of interest expense which was reclassified.

Comment 9 Foreign Exchange Gains and Losses: The petitioners argue that La Molisana incorrectly included foreign exchange gains and losses from sales transactions in its calculation of G&A expenses. They declare that the Department should exclude these foreign exchange gains and losses from the cost of production because La Molisana did not incur these amounts on purchases of raw materials or other inputs needed to produce the subject merchandise.

La Molisana argues that if the foreign exchange gains and losses from sales transactions are not included La Molisana's G&A then the Department should include them in home market indirect selling expenses.

DOC Position: We agree with petitioners. It is the Department's normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchases of production inputs. *See, e.g., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy,* 60 FR 31981 (June 19, 1995) and *Silicomanganese from Venezuela.* Accordingly, the Department does not include in COP and CV exchange gains and losses on accounts receivable because the exchange rate used to convert home market or third-country

sales to U.S. dollars is that in effect on the date of the U.S. sale. The Department typically includes foreign exchange gains and losses in the cost of manufacture when a respondent realized these gains and losses to produce the subject merchandise (*e.g.*, acquisition of raw materials or other inputs needed to produce the subject merchandise). *See, Final Determination of Sales at Less Than Fair Value: Saccharin from Korea*, 59 FR 58826, 58828 (November 15, 1994). La Molisana does not dispute the fact that these foreign exchange gains and losses result from sales of finished products.

With respect to La Molisana's claim that these amounts should be treated as indirect selling expenses, the Department has determined that the gains and losses do not constitute an indirect selling expense. Under section 773A of the Act, the Department converts foreign currencies on the date of sale. Only where a company can demonstrate that a sale of foreign currency on forward markets is directly linked to a particular export sale will the Department use the rate of exchange in the forward currency sale agreement. La Molisana did not demonstrate that they could link any sale of foreign currency on a forward market to any particular export sale.

Comment 10 Calculation of G&A and Financial Expense Ratios: The petitioners argue that La Molisana should have followed the methodology in the antidumping questionnaire and allocated G&A and interest expenses based on cost of sales instead of sales revenue. The petitioners further argue that the company incorrectly applied its calculated ratio to a cost of manufacturing figure instead of a sales price.

La Molisana disagrees with petitioners and states that its total sales revenue was used in calculating the denominator only as the starting point for its calculation of production costs.

DOC Position: The Department has determined that the allocation basis La Molisana used in its calculation of the G&A and interest expense factors was incorrect. The company's calculation, which relied on sales revenue minus certain adjustments as the denominator, results in a ratio that understates the company's G&A and financial expense. We have recalculated these ratios on the basis of La Molisana's 1994 cost of sales.

Comment 11 Sales of Semolina: The petitioners allege that La Molisana understated reported semolina costs by reducing the amounts incurred by the revenue received from semolina sold to outside parties. They argue that revenue from sales of semolina should not be used to offset the cost of production for semolina. Instead, the petitioners advocate computing the per-unit cost of semolina by dividing total semolina costs incurred during the POI by the total semolina produced during the POI. They argue that semolina and water are the primary materials used to produce pasta and, therefore, semolina is a primary ingredient rather than a byproduct of pasta production.

La Molisana argues that semolina is a byproduct because semolina is an intermediate product in the production of pasta and has relatively minor value compared with pasta. Therefore, it was appropriate to offset semolina production costs with sales revenue from semolina. Moreover, La Molisana asserts that its treatment of semolina sales is consistent with its internal accounting.

DOC Position: We agree with petitioners. Contrary to La Molisana's claim, semolina production is not incidental to the production of pasta. In fact, the milling of durum wheat results in semolina, which is the raw material input into pasta production. In this case, La Molisana seeks to reduce its cost of semolina consumed in pasta production by profit earned on sales of finished semolina. The Department's normal practice does not allow respondents to claim revenues earned from other finished products as offsets in calculating the cost of producing subject merchandise, *see, e.g. Final Results of Antidumping Administrative Review: Titanium Sponge from Japan*, 555 FR 42227, (October 18, 1990).

With regard to La Molisana's claim that semolina is a byproduct, as stated above, semolina is an input to pasta production that can also be sold as a finished product. The Department has specific, objective criteria for identifying byproducts (see *Final Results of Antidumping Administrative Review: Elemental Sulphur from Canada*, 61 FR 8239, 8241 (March 4, 1996)). La Molisana has failed to explain how semolina meets this criteria. Therefore, we have recalculated per-unit semolina costs for the final determination by dividing total costs to produce semolina by the quantity of semolina produced.

Comment 12 Semolina Water Weight Gain: The petitioners argue that production yields for semolina should be calculated using the same basis for output and input and should not be inflated merely because water is added during the milling process. They advocate increasing semolina costs to account for the water weight gain.

La Molisana notes that with regard to water weight gain in the milling process, the reported semolina yields do not account for the water weight gain. However, La Molisana does consider the water weight gain in pasta production. Although the process starts with the relatively wet semolina, the cost of these materials correctly account for the yield to arrive at the cost of the finished pasta.

DOC Position: The Department agrees that it is appropriate to consider the change in weight resulting from the addition of water in the milling process. We noted a concern in our verification report that the water weight gain might understate semolina costs by overstating production quantities. However, after further review of this issue, we found that La Molisana's costs correctly accounted for this change by allocating the total input costs over the output tons of finished, dried pasta.

Comment 13 Initiation of the Cost Investigation: La Molisana argues that only those sales identified by petitioners as being below cost in their initial cost allegation are subject to elimination from normal value. Inasmuch as petitioners had failed to identify any control number as having had 20 percent or more of its sales below cost, La Molisana argues that the Department has no basis to eliminate any of the company's sales from normal value.

The petitioners respond that they need only to provide the Department with a reasonable basis to believe or suspect the existence of below-cost sales. They argue that they are not required to demonstrate that such below-cost sales account for more than 20 percent of the respondent's total sales volume. The petitioners state that it is the Department's responsibility after the initiation of a cost investigation to collect cost of production information and to analyze that information to determine whether or not below cost sales were made in substantial quantities.

DOC Position: The Department agrees with the petitioners that they are not required to demonstrate in their cost allegation that more than 20 percent of the home market or third country sales were made at prices below the cost of production. The Tariff Act specifies only that the Department must have ''reasonable grounds to believe or suspect'' that respondents have made sales below cost in their home or third country markets. (*See* section 773(b).) The CIT has affirmed the Department's position in *Huffy Corp.* v. *United States*, 632 F. Supp. 50 (1986) that the Act requires the petitioners to demonstrate only that sales, *not* substantial sales, have been made at below cost prices.

Comment 14 Constructed Value Offset: La Molisana notes that the Department did not apply the accounts

receivable offset to interest expense for purposes of constructed value. It argues it has been Departmental practice to apply such an offset.

The petitioners did not comment on this issue.

DOC Position: The Department has not applied the accounts receivable offset to interest expense in the calculation of constructed value for three reasons. First, the new statute directs Commerce to calculate selling, general and administrative costs, including interest expense, based upon the actual experience of the company. *See* section 773(b)(3)(B) and section 773(e)(2)(A) of the Tariff Act of 1930, as amended. Under our past practice, the accounts receivable offset was allowed as a reduction in interest expense to account for imputed credit expense which the Department included in constructed value. Because we base interest expense for constructed value on the actual amounts incurred by respondent, and do not include imputed credit expenses, it is no longer necessary to reduce the expense by the accounts receivable offset. Second, the Act defines the calculation of general expenses for cost of production and constructed value in the same way. Therefore, it would be inappropriate to calculate interest expense differently for cost of production and constructed value. Third, the Department computes profit under the statute as the ratio of profit earned on home market sales (*i.e.*, net sales price less the cost of production) to the cost of production. Applying this ratio to a constructed value inclusive of imputed offset would be mathematically incorrect when the ratio was based on a cost of production exclusive of imputed expenses.

Liguori

Comment 1 Whether Liguori's Home Market Advertising Expense is Overstated: The petitioners argue that Liguori's post-verification submission overstated its home market advertising expenses. They note that page 2 of the Department's sales verification report found that certain of these expenses had been incurred by an affiliate of Liguori' and urge that the Department disallow this amount of the home market advertising expenses.

The petitioners further assert that another portion of Liguori's reported advertising expenses had not been verified successfully by the Department and urged that this amount be excluded from Liguori's revised home market advertising expenses.

Liguori contends that its home market direct advertising expenses, as corrected, conform with the Department's verification findings. The first of these two amounts was incurred by Liguori's affiliate on behalf of Liguori; it was posted in its affiliate's general ledger account as a direct advertising expense. Liguori cites to page 26 of the sales verification report. With respect to the second aspect of the advertising expense, which petitioners classified as unverified, Liguori argues that the only reason the amount was not verified was because the Department did not devote the time to verify it.

DOC Position: We disagree with the petitioners that Liguori's home market advertising expense is overstated. We verified that the amount mentioned on page 26 of the sales verification report covers the actual expenses that were incurred by Liguori's affiliate on behalf of Liguori to pay for expenses that qualified as direct advertising expenses. The appearance of a conflict between the amounts described on page 2 and on page 26 of the sales verification report is attributable to differences in the time periods under consideration. The amount on page 2 of the verification report covers only the POI months during 1994, while the amount on page 26 covers the entire POI. Both figures refer to the same accounts in the general ledger of Liguori's affiliate and we are satisfied that both are direct advertising expenses. These figures are also consistent with the findings in Liguori's cost verification. *See*, Exhibit 1, at page 19, of the cost verification report. The Department considers this entire amount to qualify as direct advertising expenses.

With regard to the amount that was unverified, the Department does not verify every item reported or presented at verification. The Department exercised its discretion not to examine this amount on the grounds that it is small and that we had verified other aspects of these advertising expenses. Consequently, the Department considers this amount as being verified as a direct advertising expense.

Comment 2 Customer Categories: The petitioners note that the Department was not able to verify the reasons for Liguori's different classifications for its U.S. customers. They urge the Department not to rely on Liguori's reported customer categories or channels of distribution for any reason, including the use of averaging groups and/or level of trade comparisons.

Liguori asserts that its reported customer coding is the same coding that it uses in its internal accounting system, and that this was verified by the Department.

DOC Position: We agree with Liguori, in part. We verified that Liguori's reported customer coding was based on the customer classifications used in its internal accounting system in the ordinary course of business. Nevertheless, as discussed in the Level of Trade Section, above, the Department has reclassified Liguori's reported customer categories for use in our level of trade, arm's length pricing, and averaging group analyses.

Comment 3 Minor Changes Found at Verification: The petitioners state that the Department found, at verification, that Liguori had misidentified certain product codes and urge the Department to reclassify these pasta shapes for the final determination. Liguori contends that these pasta shapes were reclassified in its March 5, 1996, submission.

Liguori also states that certain minor changes to its sales responses are warranted in the final determination as a result of minor errors identified prior to, or in the course of, verification. Liguori notes that these changes were identified in the new sales tape submitted on March 5, 1996.

DOC Position: We agree with Liguori that these pasta shapes have been reclassified correctly in its March 5, 1996, submission. We confirm that most of these minor changes were incorporated in Liguori's March 5, 1996, submission.

Certain minor errors noted at verification were not incorporated in Liguori's March 5, 1996, submission. We have made the necessary revisions to one home market invoice and to one U.S. invoice concerning payment/shipment dates and credit expenses in Liguori's database for the margin calculation.

Comment 4 Resellers vs. End-users: Liguori notes that, in the preliminary determination, the Department stated incorrectly that: ''Liguori reported that {its} sales to {its} * * * affiliated resellers were made at arm's length.'' Liguori argues that the record clearly reflects that Liguori made no sales to, or through, affiliated *resellers*. It asserts that all of its home market sales to affiliates were to end-users that consumed the pasta in the course of their own commercial activities. These affiliated customers did not resell subject merchandise to unaffiliated parties.

DOC Position: We agree with Liguori that all its home market sales to affiliates were to end-users. At verification, we noted that these sales were to affiliated end-users which consumed the pasta in the course of their own commercial activities and that these affiliated customers did not resell subject merchandise to unaffiliated parties.

Comment 5 Allocation of Fuel Costs: The petitioners argue that pasta drying times and the resulting fuel costs are affected by the shape of the pasta. In particular, the wall thickness of pasta has the greatest effect on drying time. For example, thin spaghetti would incur less drying time and fuel costs than jumbo shells. As a consequence, according to the petitioner, Liguori's unsubstantiated method of allocating fuel costs on a short and long product basis is improper. The petitioners urge the Department to allocate fuel costs to production lines equally since Liguori does not maintain records that would enable the Department to base the allocation on line speed.

Liguori does not object to an equal allocation of fuel costs among production lines.

DOC Position: We agree with petitioners that Liguori was not able to provide support for its fuel allocation methodology. We reviewed the company's records to determine if Liguori maintained data that would enable the Department to base the allocation on a more accurate method. We found that Liguori did not maintain the type of detailed information that would allow for a specific allocation of these costs. We therefore allocated the fuel costs equally among pasta production lines.

Pagani

Comment 1 Facts Available: The petitioners contend that both Pagani's sales database and its cost of production database are unreliable and that the Department should assign Pagani a FA rate for the final determination.

Pagani contends that it has diligently reported its sales and cost data in compliance with each of the Department's requests during the investigation. With regard to its sales database, Pagani states that the Department thoroughly tested the accuracy and completeness of its sales data. The company asserts that the Department not only tested and reconciled the sales information used in the calculation of the preliminary margin, but also reconciled the total sales figure in the database into its financial statements. With regard to its cost information, Pagani argues that it properly allocated costs between subject and non-subject merchandise. In addition, Pagani contends that it appropriately valued raw materials and finished goods inventory pursuant to Italian GAAP.

DOC Position: We agree with Pagani. While Pagani has submitted different volume and value figures during the investigation, most of these changes were requested by the Department and verified. Although computer problems delayed the verification process, they did not prevent the Department from fully verifying Pagani's sales database. The differences between the figures submitted in the original home market and U.S. databases and those in the most recently submitted databases are not significant. On the basis of our sales and cost verifications, it is reasonable and appropriate to calculate a margin for the final determination based on information on the record.

Comment 2 Movement Expenses: The petitioners contend that the Department should treat the entire amount of Pagani's inland freight expenses as indirect selling expenses because some of the expenses were pre-sale expenses while others were post-sale expenses. The specific issue involves proprietary information and, therefore, cannot be discussed in any detail. See, petitioners' brief, at pages 126–127.

Pagani contends that the overwhelming majority of its inland freight expenses are direct selling expenses attributable to the post-sale delivery of its product from its factory or warehouse to its customers. At the very least, Pagani states that the Department should deduct from normal value the amount verified as being direct in nature.

DOC Position: Section 773(a)(6)(B)(i) of the Act directs the Department to reduce normal value by ''the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser * * *.'' Accordingly, the Department treats all movement expenses as direct expenses regardless of whether they are pre- or post-sale in nature. Therefore, we have treated Pagani's pre-sale and post-sale inland freight charges as direct expenses.

Comment 3 Sales to Employees: The petitioners state that the heavily discounted price for pasta that Pagani offers to its employees should not be included in normal value. They state that these sales were made at pre-agreed, discounted prices that were considerably lower than Pagani's prices to its regular customers. The petitioners further state that the discounted prices offered to Pagani's employees are a type of fringe benefit, and are made outside of the ordinary course of trade.

Pagani states that its sales of pasta to its employees constitute a regular practice, pursuant to an agreement with the Italian government and provincial trade unions. Pagani further states that these sales are made in ordinary wholesale quantities and in the ordinary course of trade. Pagani states that the ''customer'' can be relied upon to take delivery of a regular quantity on a regular basis, pursuant to an agreement that operates as a requirements contract, subject to a maximum purchase level.

DOC Position: We agree with petitioners. Because these sales are made pursuant to an agreement with the Italian government and provincial trade unions, we do not consider them to have been made in the ordinary course of trade. Rather, these sales are in the nature of an employee benefit.

Comment 4 Disallowing Certain Home Market Expenses: The petitioners contend that the Department should continue to disregard certain home market expenses when calculating weighted-average normal values. Any further discussion of this issue is not possible because of the proprietary nature of the expense. Pagani did not comment on this issue.

DOC Position: We agree with the petitioners. We will not deduct this expense from normal value.

Comment 5 U.S. Interest Rate: The petitioners state that the loan reviewed by the Department at verification is not representative of Pagani's normal financing experience. The petitioners argue several additional points as to why the interest rate from this loan should not be used. Further discussion of this issue is not possible because of the proprietary nature of the loan.

Pagani states that it has revised its U.S. interest rate to reflect the actual dollar borrowing rate incurred on its foreign currency loan.

DOC Position: We disagree with the petitioners. It is standard Department practice to rely upon the respondent's actual experience when this information has been verified. *See, e.g., Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol From the People's Republic of China,* 61 FR 14057, 14061–14062 (March 29, 1996). We used the U.S. dollar borrowing rate for the calculation of Pagani's U.S. credit expense.

Comment 6 Exclusion of Invoice 112: Pagani argues that this particular sale should be excluded from the Department's calculations because it was made at a ''salvage price'' owing to the product's limited remaining shelf-life. Pagani further contends that this transaction is unique in Pagani's experience with selling its product in the U.S. market. Finally, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* (57 FR 42942, September 17, 1992) and *Ipsco, Inc. v. United States,* 714 F. Supp. 1211,1217 (CIT 1989) (''Ipsco''), Pagani stresses the

Department's practice of excluding '* * * sales which are not representative of the seller's behavior * * *' *Id.*

The petitioners state that the sale in question was made through the usual distribution channels and that there was no indication that the goods sold were defective, or otherwise were of inferior quality. Based on these statements and citing to both the *Ipsco* case and to the *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695 (April 17, 1992), the petitioners contend that the Department should use this sale in its margin calculation for the final determination.

DOC Position: We agree with petitioners. The exclusion from the ordinary course of trade only applies to the calculation of normal value. Although the Department has excluded aberrant U.S. sales from price comparisons on occasion, these exclusions have been confined to situations where there were very few U.S. sales in the category excluded. See, *e.g., Preliminary Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 2734, 2737 (January 11, 1995). That is not the case here, where Pagani is requesting the exclusion of a material percentage of the U.S. database.

Comment 7 Exclusion of Certain U.S. Sales: Petitioners argue that the Department should not have excluded certain sales from Pagani's margin calculations for the preliminary determination. Further discussion of this issue is not possible because of the proprietary nature of these sales. See petitioners' brief, at 134–135. Pagani did not address the issue.

DOC Position: The Department used its standard computer programming language at the preliminary determination. Those programming instructions isolated the sales at issue in the calculation of the dumping margin in the preliminary determination. The program did not, however, exclude the sales described by the petitioners. The Department used this standard programming language for the final determination.

Comment 8 Freight-in Costs of Semolina: Petitioners argue that the Department should increase Pagani's reported cost of semolina to include freight-in costs of semolina purchased from unaffiliated suppliers. Petitioners believe that freight-in costs are an integral part of the acquisition cost of semolina.

Pagani did not comment on this issue.

DOC Position: We agree with petitioners. We increased Pagani's reported costs to include the freight-in cost of semolina purchased from certain unaffiliated suppliers. Freight-in costs are part of the acquisition cost of the material.

Comment 9 Depreciation Expense on New Production Line: The petitioners argue that Pagani's submitted depreciation expense was understated because Pagani used 1994 depreciation expense as a surrogate for the POI depreciation expense. They also argue that Pagani's submitted depreciation expense did not include two months of depreciation expense for a new production line which was placed in service during March 1995, and that the Department should increase Pagani's depreciation expense for the two months that this new line was in use. They suggest that the Department should also increase Pagani's 1994 depreciation expense to account for inflation between 1994 and 1995.

Pagani does not disagree with petitioners suggestion to increase depreciation expense for the new line. However, it argues that it is unnecessary to account for the effects of inflation since the petitioners supplied no evidence that inflating the costs would provide a more accurate cost of production.

DOC Position: We agree with both the petitioners and Pagani, in part. We increased Pagani's fixed overhead cost to include two months of depreciation expense for the new production line which began operating in March 1995. However, we did not increase Pagani's depreciation expense to reflect the effects of inflation as the petitioners suggested because it is not the Department's general practice to adjust for inflation at low levels such as those present in Italy during 1994 and 1995.

Comment 10 Subsidy Offset to G&A: The petitioners argue that the Department should disallow Pagani's offset to G&A expenses for European Union Export Restitution payments received for pasta sales made outside the European Union (''EU''). They argue that G&A expenses are part of the cost of production for products sold in Italy and that a reimbursement for sales outside the EU has no relationship to the cost of production in Italy. Further, they contend that it is improper to include these reimbursements as an offset to Pagani's 1994 G&A expense because the reimbursements may be for sales that occurred prior to 1994.

Pagani contends that it should be allowed to offset G&A expenses with the EU Export Restitution payments. It argues that it is the Department's normal practice to consider G&A expenses relating to the activities of the company as a whole and not merely those relating to a specific market. Pagani states that it based its G&A expenses on the full-year amount reported in its 1994 audited financial statements, the fiscal year that most closely corresponded to the POI.

DOC Position: We disagree with the petitioners. The EU Export Restitution payments are paid to pasta exporters who purchase and use EU wheat to produce pasta to compensate for the high price of EU wheat. In the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From India,* 60 FR 66915 (December 28, 1994), the *Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands,* 59 FR 22684, 22556 (May 8, 1995), and the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina,* 60 FR 33539, 33546 (June 28, 1995), the Department found that the receipt of similar governmental reimbursements could be used to offset production costs because they were found to be directly related to the production of subject merchandise. Therefore, in this case, the restitution payments Pagani received from the EU relate directly to the production of subject merchandise and represent an appropriate offset to the company's production costs.

As for the petitioners' concern that the restitution payments may relate to events that occurred prior to 1994, we note that Pagani obtained the amount of the restitution from its 1994 audited financial statements where it was reported as a part of miscellaneous income. It is the Department's normal practice to require respondents to report annual G&A expenses and any corresponding miscellaneous income offsets that are general in nature for the fiscal year that mostly corresponds to the POI.

Comment 11 Exchange Gains: The petitioners believe that the Department should exclude exchange gains from the calculation of G&A expenses because the amount of the exchange gains is related to accounts receivable. Pagani contends that it appropriately included the exchange gains as an offset to G&A expenses.

DOC Position: We agree with the petitioners that the exchange gains should not be used to offset G&A and, accordingly, have excluded this amount from the calculation of G&A expenses. It is the Department's normal practice to distinguish between exchange gains from sales transactions (i.e., accounts receivable) and exchange gains from purchase transactions. The Department

does not normally include exchange gains from sales transactions in G&A expenses. *See Silicomanganese from Venezuela.*

Comment 12 Egg Pasta Cost of Manufacturing: The petitioners argue that Pagani's submission methodology overstates the cost of manufacture for non-subject merchandise, *i.e.*, egg pasta. They argue that the only significant difference between egg pasta and non-egg pasta is the egg additive and that the cost of Pagani's egg additive is not as significant as the difference between the unit cost of egg and non-egg pasta. Additionally, the petitioners state that Pagani's conversion cost of both subject and non-subject merchandise should be the same because the production steps are similar and are performed on the same equipment. Therefore, subject and non-subject merchandise should have a similar cost of manufacturing.

Pagani argues that the different costs of manufacturing of subject and non-subject merchandise is reasonable. Egg pasta is more costly to produce because the egg additive is expensive and this type of pasta requires higher conversion costs to produce. Pagani explains that the egg pasta it produces is either a nested or soupette product that is manufactured on the production line with the highest operating costs. On the other hand, subject merchandise is mostly short and long cut pasta manufactured on production lines with lower operating cost.

DOC Position: We disagree with petitioners. We did not find Pagani's cost of egg pasta to be overstated. As noted in our verification report, Pagani's egg pasta had higher production costs than subject merchandise. (*See* Memorandum to Christian B. Marsh from Stan T. Bowen, April 17, 1996, at 15.) Our verification report also notes that we reviewed the cost of manufacturing of non-subject merchandise. We found that the egg additive, which is not used in subject merchandise, comprised a significant portion of the raw material weight of egg pasta. The egg additive had a higher per kilogram cost than the semolina used by Pagani. Additionally, we found that Pagani's egg pasta production consisted primarily of nested and soupette products, which incur the highest conversion costs of all of Pagani's product lines. We also note that Pagani's finished egg pasta was valued at a higher cost than non-egg merchandise in the company's finished goods inventory ledgers for the past several years. Therefore, Pagani's reported cost of manufacturing of egg pasta did not appear to deviate from the valuation method used by the company in its normal accounting records.

Comment 13 Inventory Valuation: The petitioners contend that Pagani's inventory valuation method (*i.e.*, higher of cost of acquisition or market price) overstates the value of Pagani's beginning and ending inventory. This in turn, distorts Pagani's current cost of production. The petitioners also contend that Pagani did not account for all of the semolina consumed in production. They argue that the impact on the cost of manufacturing of Pagani's flawed inventory valuation is significant.

Pagani states that its method of valuing inventory is authorized under Italian law and that it is the Department's well-documented practice to employ home market GAAP in calculating COP and CV. Additionally, Pagani argues that the petitioners give no reason why Pagani's inventory valuation method is inappropriate. Pagani argues that the difference in semolina consumption quantities is immaterial.

DOC Position: We agree with Pagani. We found that the company's method of valuing inventory has no significant affect on the production costs of subject merchandise. Pagani valued ending inventories of finished pasta based on the weighted-average cost of production for the period. The ending inventory of raw materials, other materials, and packing materials were valued based on the higher of acquisition cost or market price. (*See* Memorandum to Christian B. Marsh from Stan T. Bowen, April 17, 1996, at 9.) Although Pagani's ending inventory quantities and value changed between year-end 1993 and 1994, we noted that the per-unit inventory values of raw materials and finished merchandise did not fluctuate significantly between periods. Furthermore, we compared the value of finished goods reported in Pagani's inventory ledgers to the company's actual cost of manufacturing for the POI and noted no significant difference between the values. We also compared the value of the raw materials reported in Pagani's year-end inventory ledgers to Pagani's acquisition costs during the month of December 1994 and noted no significant difference between the values.

As for the petitioners' concern that Pagani understated its POI semolina consumption quantities, we note that the petitioners relied on a reconciliation schedule of semolina quantities which had several typographical errors. The dates reported on this schedule suggested that the reconciliation was for the POI but, in fact, the reconciliation covered the 1994 calendar year. Thus, the POI consumption quantities provided on the schedule of monthly semolina purchases and consumption quantities in the verification exhibit will not agree to the total quantities consumed during 1994 calendar years. In our judgement, the petitioners concern that Pagani understated its POI semolina consumption quantity is not supported by the record.

Industria Alimentare Colavita S.p.A. (Indalco)

Comment 1 Requirements for Voluntary Respondents are Unreasonable and Contrary to Law: Indalco asserts that the Department's policy toward accepting voluntary respondents is both unreasonable and fails to comply with the requirements of the Antidumping Agreement *(Agreement on Implementation of Article VI of GATT 1994).* Indalco had requested voluntary status and responded to section A of our questionnaire. When the Department informed Indalco that it would only accept voluntary respondents in this investigation if a mandatory respondent failed to participate and if the voluntary respondent complied with the same deadlines that the Department established for the mandatory respondents, Indalco requested both a commitment from the Department to be accepted as a respondent and a four-week extension for its responses to sections B and C of our questionnaire. When the Department denied these requests, Indalco withdrew its request to be a voluntary respondent. Now, Indalco insists that the Department either exclude it from the final antidumping determination and from the coverage of any antidumping duty order, should one be issued in this investigation. In the alternative, Indalco requests a sufficient period of time to submit responses to sections B and C of the questionnaire and that the Department calculate an individual margin for the company.

The petitioners argue that the Department properly denied the request of Indalco to participate as a voluntary respondent in this investigation because the number of respondents already involved was burdensome to the Department.

DOC Position: The Department communicated its policy toward voluntary respondents participating in this investigation and provided specific written guidance on the Department's criteria for including a voluntary respondent in the investigation. (*See* July 12, 1995, letter from Gary Taverman to Indalco.) Additionally, the

Department responded to Indalco's request that the Department make a formal decision to include Indalco in the investigation by explaining that it would make the decision after Saral had submitted certain documentation necessary to the Department for determining whether to exclude Saral from the investigation. The submission from Saral was due August 31, 1995, before Indalco's responses to sections B and C of the Department's questionnaire were due. The Department also stated in that letter that it ''{i}f Saral is not required to participate as a mandatory respondent * * * *the Department will include Indalco as a respondent* if it has met all filing deadlines.'' [Emphasis added.] As for its request for a four-week extension *from the time the decision is made* (not from the September 6, 1995, due date) to submit responses to sections B and C of the questionnaire on August 28, 1995, the Department granted a one-week extension of the B and C deadline to correspond with the latest response due date for any mandatory respondent. On August 29, 1995, Indalco withdrew its request to be included as a voluntary respondent in the investigation and did not state any reason for its withdrawal.

Neither the statute nor the Antidumping Agreement conflict with the Department's selection of mandatory or voluntary respondents in this investigation. Section 782(a) of the Act implements the obligations of the United States under Article 6.10.2 of the Antidumping Agreement. This section authorizes the Department to limit voluntary respondents where the number of respondents is so large that the calculation of individual dumping margins would be unduly burdensome and would prevent the timely completion of the investigation. Our determination as to which voluntary respondents to select is not limited to our consideration of the number of voluntary responses. The SAA, at page 873, explicitly permits the Department, under certain circumstances, to decline to accept any voluntary respondents.

Under Article 6.10.2 of the Antidumping Agreement, the antidumping authorities may take into account the total number of exporters and producers in determining whether to restrict the consideration of the number of voluntary responses; we are not limited in our consideration to the number of *voluntary* responses. (''Where the number of exporters and producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation.'')

Had the Department acquiesced in granting Indalco a one-month extension to complete its questionnaire response as a precondition for its further participation in the investigation, Indalco's participation would have prevented the timely completion of the investigation. Moreover, the Department has no authority now to delay its final determination so that Indalco can complete the questionnaire and no reason to excuse Indalco's failure to present the Department with its reasons for withdrawing its participation earlier in the investigation. Finally, Indalco has not provided the Department with any rationale for excluding the company from the coverage of the final determination or from an antidumping duty order, should one be issued as a result of this investigation. Should an antidumping order be issued in this investigation, Indalco can request that its sales be examined in an administrative review under section 751 of the Act.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pasta from Italy, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after January 19, 1996, the date of publication of our preliminary determination in the Federal Register. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' The Department has determined in its *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty (CVD) investigation, we would instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as shown below, minus the amount determined to constitute an export subsidy. (*See, Antidumping Order and Amendment of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 46150 (October 7, 1992).) For Arrighi, Delverde, and La Molisana, we are subtracting for deposit purposes the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation. The ''all others'' deposit rate is based on subtracting the rate attributable to the export subsidies found in the CVD investigation for those companies that are respondents in the antidumping duty investigation and are found to have dumping margins.

In this investigation, De Cecco has not cooperated with the Department and has not acted to the best of its ability in providing the Department with necessary information. This has prevented the Department from making its normal determination of whether the subsidies in question may have affected the calculation of the dumping margin. Thus, as indicated above, De Cecco's margin is based on facts available, taken from the petition. Insofar as the dumping margin for De Cecco is not a calculated margin, there is no way to determine the portion of the antidumping duty which is attributable to the export subsidy. For that reason, and to prevent De Cecco from benefitting from its non-cooperation in this investigation, we have not subtracted the amount of any export subsidy from that margin.

This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Bonding percentage
Arrighi	20.24	17.99
De Cecco*	46.67	46.67
Delverde	2.80	1.68
De Matteis	0.67 (de minimis)	0.00
La Molisana	14.78	14.73
Liguori	12.41	12.41
Pagani	12.90	12.90
All Others	11.21	10.38

* Facts Available Rate.

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by the respondents listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If

the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14736 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–489–806]

Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey

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

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Kristin Mowry, 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) 482–4105 and 482–3798, respectively.

Final Determination

The Department determines that countervailable subsidies are being provided to manufacturers, producers, or exporters of pasta in Turkey. For information on the countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the preliminary affirmative determination in the Federal Register (60 FR 53747, October 17, 1995), 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 Turkey (60 FR 54847, October 26, 1995). Subsequently, the final determinations in the antidumping and countervailing duty determinations were postponed until June 3, 1996 (61 FR 1351, January 13, 1996).

Verification of the responses of the Government of Turkey (GOT), Filiz Gida Sanayi ve Ticaret (Filiz), Maktas Makarnacilik ve Ticaret (Maktas), Andas Gida Dagitim ve Ticaret A.S. (Andas), Dogus Holding A.S. (Dogus), and Aytac Dis Ticaret Yatirim Sanayi A.S. (Aytac) was conducted between October 30, 1995, and November 10, 1995. We verified that Aytac did act as the exporter of record for certain of Maktas'' sales of pasta to the United States during 1994 and that Aytac had transferred its rights to benefits with respect to those exports to Maktas. Furthermore, we verified that Aytac received no benefits during the POI. Based on this information, we have not calculated an individual countervailing duty rate for Aytac. If this company exports to the United States, it will be subject to the all others rate.

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 and rebuttal briefs on April 17, 1996 and April 22, 1996. The hearing in this case was held on April 25, 1996.

Scope of Investigation

The product covered by this investigation is 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 investigation 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. In the companion countervailing and antidumping duty investigations involving pasta from Italy, we have excluded imports of organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB). The Department has determined that AMAB is legally authorized to certify foodstuffs as organic for the Government of Italy (GOI). If certification procedures similar to those implemented by the GOI are established by the GOT for exports of organic pasta to the United States, we would consider an exclusion for organic pasta at that time.

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

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 the *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 CVD practice.

Petitioners

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

Period of Investigation

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

Facts Available

Section 776(a)(2)(A) of the Act requires the Department to use the 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.'' One of the companies included in this investigation, Oba, did not respond to our questionnaire. Section 776(b) of the Act provides that the administering authority may use an inference that is adverse to the interests of such a 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, or (4) any other information placed on the record. Because the petition did not provide 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 Oba 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 as the facts available for Oba the sum of the highest