

accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of review.

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

### Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 30.85 percent, which is the all-others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 40560 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: July 30, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-818]

#### **Certain Pasta From Italy: Notice of Preliminary Results of Eleventh Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to requests by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Italy for the period of review ("POR") July 1, 2006, through June 30, 2007. This review covers four producers/exporters of subject merchandise. We preliminarily determine that during the POR, respondents sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. **EFFECTIVE DATE:** August 6, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Christopher Hargett (Divella) or Stephanie Moore (Zara), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4161 or (202) 482-3692, respectively.

#### **SUPPLEMENTARY INFORMATION:**

### Background

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

On July 3, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). We received requests for review from petitioners<sup>1</sup> and from individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(1) and (2). On August 24, 2007, the Department published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2006, through June 30, 2007, listing the following companies as respondents: Atar S.r.L. ("Atar"), Domenico Paone fu Erasmo S.p.A., F. Divella SpA ("Divella"), Industria Alimentare Colavita S.p.A., and Pasta Zara SpA 1 ("Zara 1") and Pasta Zara SpA 2 ("Zara 2") (collectively, "Zara"), Pastificio Carmine Russo, Pastificio Di Martino Gaetano & F.lli SrL., Pastificio Felicetti SrL., Pastificio Fratelli Pagani S.p.A., Pastificio Russo di Cicciano, Rummo S.p.A. Molino e Pastificio, and Valdigrano Di Flavio Pagani SrL. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 48613 (August 24, 2007) ("Initiation Notice").

On October 15, 2007, due to the significant number of requests received and then current resource constraints, the Department selected the three exporters/producers accounting for the largest volume of exports—Atar, Divella, and Zara, as mandatory respondents.<sup>2</sup>

The following companies self-requested that the Department conduct an administrative review: Atar, Domenico Paone fu Erasmo S.p.A., Industria Alimentare Colavita S.p.A., Pastificio Carmine Russo, Pastificio Fratelli Pagani S.p.A. [sic], Pastificio Russo di Cicciano, Rummo S.p.A. Molino e Pastificio, and Valdigrano Di Flavio Pagani SrL. The companies

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

<sup>2</sup> See Memorandum to Melissa Skinner, Director, Office 3, from Team regarding Selection of Respondents for Individual Review, October 15, 2007.

subsequently timely withdrew their request for review. Therefore, on December 10, 2007, the Department rescinded the review with respect to these companies.<sup>3</sup>

On January 18, 2008, the Department initiated an investigation to determine whether Divella and Zara were selling pasta in Italy at prices below the cost of production ("COP").<sup>4</sup>

Between August 2006 and May 2007, the Department issued its initial questionnaire and supplemental questionnaires to each respondent, as applicable. We received responses to the Department's initial and supplemental questionnaires on December 12, 2007, February 15, 2008, March 31, 2008, April 14, 2008, May 5, 2008, and July 3, 2008, from Divella. Zara provided responses to the Department's initial and supplemental questionnaires on December 12, 2007, April 8, 2008, May 27, 2008, and July 1, 2008. On January 2, 2008, and March 6, 2008, and March 27, 2008, and May 29, 2008, the petitioners filed comments on Divella's responses. On January 14, 2008, March 7, 2008, and on May 21, 2008, petitioners filed comments on Zara's responses. On March 12, 2008, the Department fully extended the due date for the preliminary results of review from April 1, 2008, to July 30, 2008. *See Certain Pasta from Italy: Extension of Time Limits for the Preliminary Results of Eleventh Antidumping Duty Administrative Review*, 73 FR 13208 (March 12, 2008).

### Scope of the Order

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

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Instituto per la Certificazione Etica e Ambientale ("ICEA") are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, "Recognition of Instituto per la Certificazione Etica e Ambientale."

The merchandise subject to this order is currently classifiable under subheadings 1901.90.95 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

### Product Comparisons

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

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

### Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the export price ("EP") or constructed export price ("CEP") to the NV, as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly

weighted-average prices for NV and compared these to individual U.S. transactions. *See* the Department's "Calculation Memorandum for F. Divella S.p.A." ("Divella's calculation memo") *see also* "Calculation Memorandum for Pasta Zara S.p.A." ("Zara's calculation memo"), both dated July 30, 2008, available in the Central Records Unit (CRU) in Room 1117 of the Main Commerce Building.

### Export Price/Constructed Export Price

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

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

Zara's U.S. sales are made through Zara USA, an affiliated subsidiary in the United States. Zara argues that its U.S. sales should be treated as EP because the pasta is shipped directly from Italy to the U.S. customer, and that Zara USA's role is minimal as it has no employees and its functions are performed by an accountant/consultant. Zara states that Zara USA is the importer of record, and that Zara USA receives an invoice from the U.S. customs broker, which it then pays. Zara USA invoices the unaffiliated U.S.

<sup>3</sup> *See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 69662 (December 10, 2007).

<sup>4</sup> *See* Memoranda from the Team to Melissa Skinner, "Petitioners' Allegation of Sales Below the Cost of Production for F. Divella SpA" and "Petitioners' Allegation of Sales Below the Cost of Production for Pasta Zara SpA," dated January 18, 2008.

customer in the United States and also receives payment from the unaffiliated U.S. customers and deposits the checks into Zara USA's bank account. Zara states that in terms of document flow, Zara sells to Zara USA, and Zara USA sells to the American customer, who pays Zara USA. *See* Zara's April 8, 2008, questionnaire response at pages 39–41.

The Department finds that the transactions at issue constitute CEP rather than EP sales. First, Zara's argument regarding functions performed by Zara USA is misplaced because the Department no longer employs a function-driven approach known as the "PQ" test in determining whether sales are EP or CEP.

As the U.S. Court of Appeals for the Federal Circuit explained:

The definition of CEP includes sales made by either the producer/exporter or "by a seller affiliated with the producer or exporter." 19 U.S.C. § 1677a(b). EP sales, on the other hand can only be made by the producer or exporter of the merchandise. *See* 19 U.S.C. § 1677a(a). Consequently, while a sale made by a producer or exporter could be either EP or CEP, one made by a U.S. affiliate can only be CEP. Limiting affiliate sales to CEP flows logically from the geographical restriction of the EP definition, as a sale executed in the United States by a U.S. affiliate of the producer or exporter to a U.S. purchaser could not be a sale "outside the United States." The location of the sale and the identity of the seller are critical to distinguishing between the two categories. Congress provided for only two mutually exclusive categories: EP or CEP sales. In distinguishing the two, Congress opted for what can be seen as a structural approach to defining EP and CEP sales, not the function-driven approach of the PQ Test. Congress chose clear and unambiguous words such as "affiliated," "sold," and "in" or "outside" the United States. In no sense did it leave the distinguishing factor to the agency to identify exporter.<sup>5</sup>

Thus, the primary focus in determining whether a sale is properly classified as EP or CEP is: (1) The identity of the seller of subject merchandise to the first unaffiliated U.S. customer; and (2) the location of the sale to the first unaffiliated U.S. customer.<sup>6</sup> Because the Federal Circuit invalidated the "PQ" test in *AK Steel*, the Department will not conduct an analysis of the relative functions or

activities performed by Zara USA in the sales process.

In *AK Steel*, the Court held that the "seller" is the party who contracts to sell.<sup>7</sup> In *Corus Staal*, the Court stated "{a}s the material terms of the sale or agreement to sell were not fixed until the final invoice, Commerce could properly conclude that the final invoices determined when a sale or agreement to sell first occurred."<sup>8</sup> In this case, even though the U.S. customer places the order directly with Zara, the record evidence suggests that the terms of sale are not finalized prior to invoice date. As the invoice issued to the first unaffiliated customer identifies Zara USA as the seller of subject merchandise, and as Zara USA serves as importer of record, thus transferring title to the first unaffiliated purchaser in the United States, we preliminarily find that the subject merchandise is first sold in the United States to an unaffiliated U.S. customer, and thus CEP is warranted. *See e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008). *See also*, Zara's calculation memo.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, banking, slotting fees, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by its affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See* Divella's calculation memo, *see also* Zara's calculation memo.

## Normal Value

### A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject

merchandise. Pursuant to sections 773(a)(1)(B) of the Act, because Divella and Zara each had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for both Divella and Zara.

### B. Cost of Production Analysis

With respect to Divella, we made the following COP and CV adjustments for the preliminary results. First, we revised the yielded per-unit cost of semolina reported in the cost database to include the transportation costs related to the sales of by-products, costs incurred to transport semolina from the wheat mill to the pasta plant, property taxes, and an adjustment made to the June 30, 2007, durum wheat inventory. Second, we revised the fixed overhead costs of the pasta plant to include property taxes and other operating costs. Third, we revised the general and administrative ("G&A") expense rate to include property taxes, other operating costs, and various litigation and settlement losses. In addition, the G&A expense ratio denominator was revised to exclude the fixed overhead costs related to packing and include transportation costs related to the sales of by-products. Finally, we revised Divella's net financial expenses to exclude dividend income. For further discussion of these adjustments for Divella, *see* the Memorandum from Sheikh Hannan to Neal Halper entitled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results—F. Divella SpA," dated July 30, 2008.

With respect to Zara, we revised Zara 1 and Zara 2's reported database to reflect differences in the originally submitted trial balance and the finalized trial balance used to prepare the audited financial statements. Additionally, we included credit notes for purchases of semolina for both companies and for Zara 2, we included water costs and purchases of semolina from Zara 1 in the cost of manufacturing ("COM"). We also included certain non-operating expenses in the G&A expenses. Further, we adjusted Zara 1's financial expenses to exclude certain income items generated from long-term assets and losses related to investment activity. Last, we weight-averaged Zara 1 and Zara 2's respective cost databases to calculate one weighted-average COP for the POR. For further discussion of these adjustments for Zara, *see* the Memorandum from Christopher Zimpo to Neal Halper entitled, "Cost of Production and Constructed Value

<sup>5</sup> *See AK Steel Corporation v. United States*, 226 F.3d 1361, 1370–1371 (Fed. Cir. 2000) ("*AK Steel*").

<sup>6</sup> *See AK Steel*, 226 F.3d at 1370: "the critical difference between EP and CEP sales is whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate." *See also id* at 1371: "The location of the sale and the identity of the seller are critical to distinguishing between {EP and CEP}."

<sup>7</sup> *See AK Steel*, 226 F.3d at 1371.

<sup>8</sup> *Corus Staal BV et al. v. United States*, 2006 Ct. Intl. Trade LEXIS 113, at 20, Slip Op. 2006–112 (CIT July 25, 2006) ("*Corus Staal*").

Adjustments for the Preliminary Results—Pasta Zara SpA,” dated July 30, 2008.

### 1. Calculation of COP

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

### 2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. See Divella's calculation memo, *see also* Zara's calculation memo.

### 3. Results of COP Test

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

the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Divella's calculation memo, *see also* Zara's calculation memo.

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

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance-of-sale adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments for Divella and Zara, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the “commission offset.” Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

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

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were disregarded. *See* Divella's calculation memo, *see also* Zara's calculation memo.

### E. Level of Trade

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

which we derive SG&A expenses and profit.

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

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

Both respondents claim two LOTs in the home market. Divella reported that it sold through three channels of distribution to seven customer categories. Divella reported that two of the seven customer categories constituted a separate LOT because these two customer categories had a greater intensity of selling activities. Zara reported that it sold through three channels of distribution to 14 customer categories. Zara claimed that six of the customer categories were at a different LOT because of a greater intensity of selling activities.

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

Our analysis of the selling activities for Divella shows that there is overlap in these activities for channels of distribution and customer categories. In other words, Divella performs similar selling activities for all customer categories and channels of distribution.

Although there is greater intensity of these activities for some of the claimed customer categories, this, in and of itself, does not show a substantial difference in selling activities that would form the basis for finding a different LOT. *See e.g., Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4. Due to the proprietary nature of this issue, please refer to Divella's calculation memo for further discussion.

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

While Divella and Zara attempted to further support their LOT claims by submitting an analysis comparing the average volume per invoice sold to these different customer categories, the Department does not normally consider average quantities as part of our LOT analysis. *See e.g., Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004).

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

#### Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve

Bank. *See* Divella's calculation memo, *see also* Zara's calculation memo.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margins exist for the period July 1, 2006, through June 30, 2007, for the mandatory respondents:

Manufacturer/exporter	Margin (percent)
Divella .....	2.83
Zara .....	10.34

For those companies not selected as mandatory respondents, we preliminarily determine that the following simple average percentage margin (based on the two reviewed companies) exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/exporter	Margin (percent)
Pastificio Di Martino Gaetano & F.lli Srl .....	6.59
Pastificio Felicetti Srl .....	6.59

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

Pursuant to 19 CFR 351.213(h), the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

#### Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise.

For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value. For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review.

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

#### Cash Deposit Requirements

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

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that

manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 15.45 percent, the all-others rate established in the LTFV investigation. *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

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

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

Dated: July 30, 2008.

**David M. Spooner,**  
Assistant Secretary for Import  
Administration.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-475-819]

#### Certain Pasta from Italy: Preliminary Results of the 11th (2006) Countervailing Duty Administrative Review

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

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the

countervailing duty order on certain pasta from Italy for the period January 1, 2006, through December 31, 2006. We preliminarily find that De Matteis Agroalimentare S.p.A. ("De Matteis"), Pastificio Lucio Garofalo S.p.A. ("Garofalo"), and F.lli De Cecco di Filippo Fara San Martino S.p.A. ("De Cecco") received countervailable subsidies, and that Pastificio Felicetti SrL ("Felicetti") did not receive any countervailable subsidies. *See the "Preliminary Results of Review" section, below.* Interested parties are invited to comment on these preliminary results. *See the "Public Comment" section of this notice.*

**EFFECTIVE DATE:** August 6, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1174 and (202) 482-0182, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 24, 1996, the Department published a countervailing duty order on certain pasta ("pasta" or "subject merchandise") from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996) ("Pasta Order"). On July 3, 2007, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2006, the period of review ("POR"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). On July 31, 2007, we received requests for review from Garofalo, Valdigrano Di Flavio Pagani SrL ("Valdigrano"), Felicetti, and Prodotti Mediterranei, Inc. on behalf of De Cecco. On July 31, 2007, we received a request for review from New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company ("petitioners") for De Matteis. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 24, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (August 24, 2007).

On September 11, 2007, we issued countervailing duty questionnaires to the Commission of the European Union

("EU"), the Government of Italy ("GOI"), Garofalo, Valdigrano, Felicetti, De Cecco, and De Matteis. On October 16, 2007, Valdigrano withdrew its request for review. On November 5, 2007, we rescinded the review with respect to Valdigrano. *See Certain Pasta from Italy: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 72 FR 62437 (November 5, 2007).

We received responses to our questionnaires in November 2007. We issued supplemental questionnaires to the respondents and GOI in February, March, April, May, June, and July 2008, and we received responses to our supplemental questionnaires in March, April, May, June, and July 2008.

#### Period of Review

The POR for which we are measuring subsidies is January 1, 2006, through December 31, 2006.

#### Scope of the Order

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

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See Memorandum from Eric B. Greynolds to Melissa G. Skinner*, dated August 4, 2004, which is on file in the Department's Central Records Unit ("CRU") in Room B-099 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic