DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey

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

SUMMARY: On August 7, 1998, the Department of Commerce published the preliminary results of its first administrative review of the antidumping duty order on certain pasta from Turkey. The review covers three exporters of the subject merchandise. The period of review is January 19, 1996, through June 30, 1997.

For our final results, we have found that, for one exporter, sales of the subject merchandise have been made below normal value. We will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

We find that, for the one company that had shipments during the review period and participated in the review, sales have not been made below normal value. We will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or John Brinkmann, Office of AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3530 and (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Case History

This review covers three manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Turkey: Pastavilla Kartal Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla), Filiz Gida Sanayi ve Ticaret (Filiz), and Nuh Ticaret ve Sanayi A.S. (Nuh Ticaret). Since the publication of the preliminary results of this review on August 7, 1998, (*see Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 63 FR 42373 (*Preliminary Results*)), the following events have occurred. From August 10 through 14, 1998, we verified the cost information submitted by Pastavilla. From August 17 through 21, 1998, we verified the sales information submitted by Pastavilla and its affiliated sales agent Duzey Pazarlama A.S. (Duzey). On September 2 and 3, 1998, we verified Pastavilla's sales information at its affiliated sales agent Vitelli Foods, Inc. (Vitelli Foods), in the United States. On September 24 and 25, 1998, respectively, we received case briefs from Pastavilla and the petitioners (Borden Foods Corp., Hershey Pasta and Grocery Group, Inc., and Gooch Foods, Inc.). We received rebuttal briefs from both parties on October 1, 1998.

Scope of Review

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

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

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

Scope Ruling

On October 26, 1998, we self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On November 18, 1998, the Department received comments from interested parties regarding this scope inquiry. The Department received rebuttal comments on November 30, 1998. In accordance with 19 CFR 351.225(f)(iii)(5), the Department will issue a scope ruling within 120 days of initiation of the inquiry.

Partial Rescission

We originally initiated a review of three companies: Pastavilla, Filiz, and Nuh Ticaret (*see Notice of Initiation of Antidumping Duty Administrative Review*, 62 FR 45621 (August 28, 1997)). However, as noted in the preliminary results, Nuh Ticaret notified us that it had no shipments of subject merchandise during the period of review (POR). We have confirmed this with information from the Customs Service. We received no comments concerning Nuh Ticaret for the final results. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of Nuh Ticaret (*see, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35191 (June 29, 1998) and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997)).

Use of Facts Available

Filiz did not respond to the Department's antidumping questionnaire. We have confirmed that the questionnaire was received by Filiz (*see* Memorandum to the File dated March 4, 1998) and, accordingly, for the reasons described below, we are assigning to Filiz a margin based on adverse facts available for these final results.

Section 776(a) of the Act requires the Department to resort to facts available if necessary information is not available on the record or when 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.'' As provided in section 782(c)(1) of the Act, if an interested 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,'' the Department may modify

the requirements to avoid imposing an unreasonable burden on that party. Since Filiz did not provide any notification or information to the Department, subsections (c)(1) and (e) do not apply in this situation. Accordingly, we find, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Filiz for these final results.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. Filiz's failure to respond to our antidumping questionnaire demonstrates that it has failed to act to the best of its ability to comply with requests for information. Accordingly, we have determined that an adverse inference with respect to Filiz is warranted.

Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the antidumping investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

In this instance, we have no reason to believe that the application of the highest petition margin for Turkish pasta, as revised by Commerce, is inappropriate. Therefore, we have assigned Filiz the rate of 63.29 percent as adverse facts available. This margin is the same margin derived from the petition that was corroborated and assigned to Filiz during the investigation (*see, Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309 (June 14, 1996)). For purposes of these final results, we find that this margin continues to be of probative value. We note that the SAA, at 870, states that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.* * *'' In addition, the SAA at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

Price Comparisons

For Pastavilla, we calculated constructed export price (CEP) and normal value based on the same methodology used in the *Preliminary Results*, with the following exceptions:

1. We applied the domestic inland freight expense, exclusive of value added tax (VAT), to Pastavilla's U.S. sale (*see* Comment 2).
2. We revised Pastavilla's freight expense for home market sales based upon our verification findings (*see* Comment 4).
3. We calculated an inventory carrying cost for the period of time between when the merchandise entered the United States and when it was shipped to the U.S. customer (*see* Comment 5).
4. We have recalculated the free pasta discount (*see* Comment 6).

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Pastavilla made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP following the same methodology as in the preliminary results, with the following exceptions:

1. We adjusted Pastavilla's monthly per-unit semolina and vitamin costs by dividing the monthly cost of each material by the monthly quantity of ''packed pasta'' (*see* Comment 9).
2. We included Pastavilla's severance reserve in the calculation of COP and constructed value (CV) to reflect the fully absorbed cost of producing the pasta (*see* Comment 11).
3. To calculate the general and administrative (G&A) expense ratio, we have excluded packing costs from the cost of sales figure used in the calculation (*see* Comment 12).
4. We indexed Pastavilla's monthly G&A expenses and cost of sales figures using the wholesale price index, published by the International Monetary Fund, in order to compute a constant currency G&A expense ratio (*see* Comment 13).
5. We have computed Pastavilla's interest expense rate on an unconsolidated basis and included the foreign exchange losses in Pastavilla's interest expense calculation (*see* Comment 15).

Analysis of Comments Received

We gave interested parties an opportunity to comment on these preliminary results. As noted above, we received case briefs and rebuttal comments from the petitioners and Pastavilla.

Sales Comments

Comment 1: Application of Facts Available

The petitioners argue that the Department should apply total adverse facts available because Pastavilla did not report its U.S. sales of 5 lb. 1 oz. packages of pasta. The petitioners contend that Pastavilla's sales of 5 lb. 1 oz. packages of pasta to the United States are subject to this review because: (1) the questionnaire instructed Pastavilla to report products sold that contained between 2251 and 2500 grams of pasta; (2) several of the U.S. sales documents, including the customer's purchase order and Pastavilla's U.S. affiliates invoice to the customer, described the pasta as ''5lb'' pasta; (3) the pasta in 5 pound and 5 lb. 1 oz. packages are identical, except that the label is changed to avoid paying antidumping duties; and (4) the pasta was sold to distributors and retailers for sale in the retail market.

The petitioners further contend that, because it is the industry standard to overfill packages, packages containing slightly over five pounds (*i.e.*, 5 lb. 1 oz.) are within the scope of the order. Finally, the petitioners argue that total adverse facts available is warranted because the Department allowed Pastavilla to truncate its reporting period based on its assertion that Pastavilla made no sales to the United States prior to January 1997, and, at verification, it was revealed that Pastavilla made U.S. sales in 1996. The petitioners contend that Pastavilla should be assigned the adverse facts available rate of 63.29 percent, in accordance with sections 776(a) and 782(d) of the Act.

Alternatively, the petitioners request that the Department use the facts

available margin of 63.29 percent for the U.S. sales that Pastavilla did not report.

Pastavilla argues that the scope of the order includes only pasta in packages of five pounds or less and that the Department's questionnaire did not require Pastavilla to report sales of 5 lb. 1 oz. packages. It states that the Department confirmed at verification that the 5 lb. 1 oz. packages weighed in excess of the 5 lb. 1 oz. weight and that packaging was specifically printed for this production. Pastavilla further asserts that the petitioners erred in their claim that, because Pastavilla's 5 lb. 1 oz. packages may be within the packaging tolerance for five-pound pasta, they are subject merchandise. Pastavilla points out that while the scope has a numerical upper limit of five pounds, it makes no mention of manufacturing tolerances, and asserts that when a numerical measure is stated in a scope notice, that the numerical measure governs (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Notices Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10899, 10958 (February 28, 1995) (*Antifriction Bearings*)).

Pastavilla contends that it imported a negligible quantity of 5 lb. 1 oz. packages, and the importation of these 5 lb. 1 oz. packages does not warrant total facts available. Concerning the petitioners claim that the pasta was sold to distributors and retailers for sale in the retail market, Pastavilla argues that the 5 lb. 1 oz. packages are not ''typically sold in the retail market'' as the scope language states, but rather are sold to distributors and as bulk products in ''price clubs.'' Pastavilla acknowledged that Vitelli Foods' invoice to the customer stated ''five pound'' pasta rather than 5 lb. 1 oz. pasta because the company had not changed its product descriptors in its computer system, but maintains that the sales were of 5 lb. 1 oz. packages and are therefore excluded from the scope of the order. Finally, Pastavilla states that while the pasta in five pound packages can be identical to the pasta in 5 lb. 1 oz. packages, it does not imply that the quantity in the two packages are the same.

DOC Position

We disagree with the petitioners that the Department should apply total adverse facts available to Pastavilla or facts available to Pastavilla's U.S. sales of 5 lb. 1 oz. packages. The scope of the orders states, that ''[i]mports covered by this review are shipments of certain non-egg dry pasta packages of five pounds (or 2.27 kilograms) or less . . .'' In its questionnaire, the Department instructed Pastavilla to report pasta sold in packages of five pounds or less. We broke out the packing size ranges into 250 gram increments for uniformity in reporting, and while the largest range (2,251 to 2,500 grams) would include packages greater than five pounds, those reporting instructions do not constitute a scope ruling.

Our normal basis for determining whether a product is included within the scope of the order is the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission (*see* 19 CFR 351.225(k)(1)). If these descriptions are not dispositive, the Department may conduct a scope inquiry in accordance with 19 CFR 351.225(k)(2), and examine the following criteria: (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; and (iv) the channels of trade in which the product is sold. On October 26, 1998, the Department initiated a scope inquiry to determine whether a package weighing over five pounds may be within the scope of the order (*see* October 26, 1998 memorandum to Richard W. Moreland). It would be inappropriate to conclude that Pastavilla failed to report certain sales until the scope inquiry is finished.

Concerning the petitioners' argument that total adverse facts available is warranted because Pastavilla did not report sales to the United States that were made prior to January 1997, at verification we confirmed that these were sales of 5 lb. 1 oz. packages.

Comment 2: Calculation of Inland Freight Expenses for the U.S. Sale

Pastavilla alleges that the Department erred in adding VAT to its reported domestic inland freight expense when calculating U.S. price. Pastavilla contends that the Department did not adjust its other expenses for VAT and that, if this adjustment is to be applied, to achieve parity, it should be applied on the home market side as well as the U.S. side. Pastavilla cites the SAA concerning tax neutrality in support of its argument (*see* SAA, H.R. Doc. No. 103–316, 103d Cong., 2d Sess. at 157 (1994)).

The petitioners argue that the Department was correct in revising Pastavilla's reported inland freight expenses in the preliminary results to include the taxes shown on the freight invoice. They contend that it is Department practice to exclude taxes from the prices of the merchandise, but that this tax exclusion does not extend to movement charges because adjustments for movement charges should reflect the actual costs incurred to transport the merchandise. Concerning Pastavilla's reference to achieving parity, the petitioners state that notes on the sample home market freight invoice submitted by Pastavilla indicated that taxes were included in Pastavilla's reported home market freight expenses.

DOC Position

We agree with Pastavilla that the VAT should be excluded from the calculation of domestic inland freight expenses for the U.S. sale. However, we must note that our decision is not based on the ''tax neutrality'' argument Pastavilla presents, but is based solely on our requirement to achieve parity in our calculations. In other words, if home market expenses are reported exclusive of the VAT, U.S. expenses should also be reported exclusive of the VAT. As Pastavilla suggests, if this VAT adjustment were to be applied to the inland freight expense on the U.S. side it should be applied to Pastavilla's home market expenses as well. We find no basis for the petitioners' claim that Pastavilla included VAT expenses in its reported home market expenses. Therefore, for these final results we have revised our calculations from the preliminary results by excluding VAT from inland freight expenses.

Comment 3: Elimination of Sales Failing Arm's-Length Test

Pastavilla argues that the Department should include in its calculation of normal value sales by its affiliated reseller, Sok, which failed the Department's arm's-length test. Pastavilla contends that sales to Sok failed the arm's-length test because of Sok's status as a ''hard-discount retailer,'' not because of its affiliation with Pastavilla.

The petitioners assert that the Department was correct in applying its standard arm's-length test to sales to Sok because Pastavilla failed to provide Sok's sales to its unaffiliated customers and, at the same time, has not provided any suggestions concerning an alternate method for determining whether these sales were at arm's-length prices. Furthermore, the petitioners cite the preamble to the Department's regulations stating that the Department will continue to apply the current 99.5 percent test unless, and until, it develops a new method (*see*

Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27355 (May 19, 1998)).

DOC Position

We agree with the petitioners that the Department should continue to apply its standard arm's-length test to Pastavilla's sales to Sok for the final results. We conducted the arm's-length analysis of Pastavilla's sales to Sok, because Pastavilla stated, and we agreed, that it was unable to report Sok's sales to the first unaffiliated customer. The arm's-length test is based on the affiliation between Sok and Pastavilla, irrespective of Sok's status as an alleged ''hard-discount retailer.''

In conducting the arm's-length analysis, we followed our standard practice and compared sales prices to unaffiliated customers to sales prices to affiliated customers at the same level of trade and, where prices to affiliated customers were, on average, less than 99.5 percent of prices to unaffiliated customers, we rejected the sales to affiliated parties as not representing arm's-length prices (*see Certain Pasta from Italy; Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 30326, 30332 (June 14, 1996)).

Comment 4: Overstatement of Home Market Freight Expenses

The petitioners argue that the Department should correct Pastavilla's overstatement of its home market freight expenses noted in the Department's September 16, 1998, *Sales Verification Report (SVR).*

Pastavilla argues that the adjustment is negligible and may be ignored (*see* 19 CFR 351.413).

DOC Position

We agree with the petitioners and have corrected Pastavilla's home market freight expenses to reflect verification findings.

Comment 5: U.S. Inventory Carrying Cost

The petitioners argue that the Department should calculate imputed U.S. inventory carrying costs for the period of time between when the merchandise entered the United States and when it was shipped to the customer. They assert that the Department should calculate these costs based on the cost of manufacturing, the interest rate used to calculate imputed credit expenses, and the inventory period noted by the Department in the *SVR.*

Pastavilla argues that it should not be subjected to U.S. inventory carrying costs for this period of time because: (1) its importer did not take the pasta into inventory, but rather shipped the merchandise to the customer directly from the port of entry; and (2) shipment was not made until 16 days after entry because of delays in Customs.

DOC Position

We agree with the petitioners that U.S. inventory carrying costs should be calculated for Pastavilla. In accordance with section 772(d)(1) of the Act, we made deductions from CEP, where appropriate, for those indirect selling expenses that related to economic activity in the United States, including U.S. inventory carrying costs (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12754 (March 16, 1998)). Pastavilla was instructed specifically to report U.S. inventory carrying costs for the period of time between when the merchandise entered the United States and when it was shipped to the U.S. customer both in the Department's original and supplemental questionnaires. Pastavilla reported that the merchandise was not held in inventory in the United States. However, at verification we noted that Pastavilla's shipment remained at the port of entry for 16 days before being shipped to the customer.

Concerning Pastavilla's argument that we should not apply inventory carrying cost due to the delay in Customs, we maintain that regardless of the cause of the delay, inventory carrying costs are meant to capture the opportunity cost of Pastavilla for having the merchandise in inventory.

For these final results, we calculated Pastavilla's U.S. inventory carrying expenses based on net price, the interest expense used in calculating credit, and the inventory period verified by the Department. We did not base our calculations on cost of manufacturing, as the petitioners suggest, because to do so would have been inconsistent with Pastavilla's other inventory carrying cost calculations. Pastavilla calculated its other inventory carrying expenses based on net price and explained in its questionnaire responses that to have based its calculations on cost of manufacture would have been a significant burden.

Comment 6: Valuation of Discounted Pasta

The petitioners argue that the Department should not accept the free pasta discount claimed by Pastavilla because Pastavilla's method of calculating the discount based on the list price and quantity on the invoice (1) does not reflect the actual cost of the discount to Pastavilla and (2) overstates the actual value of the discount. Alternatively, if the Department does allow the merchandise discount, the petitioners contend that the Department should recalculate the discount based on the cost of manufacture because the discount amounts, as reported by Pastavilla, are overstated.

Pastavilla argues that it was correct in valuing its free pasta discount based on the price of the free goods rather than the cost of the free goods. According to Pastavilla, this methodology is consistent with how the discount is entered into Pastavilla's accounting records and how it is reflected on the invoice. From an opportunity cost perspective, Pastavilla contends that what is given up in providing the free goods is the revenue of the sale, not the cost of production. Finally, Pastavilla claims that the cost data necessary to re-value the discount at cost is not easily available. According to Pastavilla, this task is particularly complex in a case such as this that involves indexing for inflation and averaging of the cost data by the Department.

Pastavilla agrees with the petitioners that the free goods discount should be recalculated using the total quantity on the invoice and a net unit price.

DOC Position

We disagree with the petitioners that Pastavilla's claimed free pasta discount should be denied. We verified that Pastavilla's free merchandise discount is a legitimate discount that must be taken into account in our calculations. However, we agree with the petitioners that Pastavilla's methodology overstated the actual value of the discount. We have recalculated the free pasta discount based on the total quantity of merchandise the customer received, including the free pasta. Additionally, we used the invoice price, net of any other discounts, in our calculation (*See* December 7, 1998, *Final Results Analysis Memorandum*).

We disagree with the petitioners' claim that the free goods discount should be based on the cost of manufacture. To value the free goods discount on the net invoice value of the merchandise is consistent with Pastavilla's normal accounting practices, which are in accordance with Turkish standards and International Accounting Standards (*see* Comment 7 below), and it is a reasonable representation of Pastavilla's costs of providing the free goods discount to its customers.

Comment 7: Valuation of Home Market Warranty Expense

The petitioners claim that Pastavilla overstated its home market warranty expenses because these expenses were calculated based on the sale price of the returned pasta rather than on the cost of manufacture of the returned pasta. In addition, the petitioners allege that Pastavilla should have reduced its claimed warranty expenses by the amount of revenue obtained from any resales of the returned pasta. The petitioners argue that the Department should deny these warranty expenses entirely or, at a minimum, they should be recalculated based on the cost of manufacture.

Pastavilla argues that it properly calculated its home market warranty expenses based on the invoice value of the damaged pasta. It claims that this methodology is consistent with its normal accounting practices, as warranty claims are entered into the accounting system at the invoice value and it has no accounting record of the quantity of goods to which the warranty claim applies. Pastavilla contends that its accounting system does not record information to calculate warranty expenses based on cost, and, since its accounting system is in accordance with Turkish standards and International Accounting Standards, the Department should accept it.

DOC Position

We agree with Pastavilla and have accepted its calculation of home market warranty expenses. To base the calculations on the invoice value of the merchandise is consistent with Pastavilla's normal accounting practices, which are in accordance with Turkish standards and International Accounting Standards, and it is a reasonable representation of Pastavilla's warranty expenses. Further, Pastavilla is unable to calculate warranty expenses as the petitioners suggest because its warranty claims are entered into the accounting system at the invoice value and Pastavilla has no accounting record of the revenue obtained from resales of the returned pasta or the quantity of goods to which the warranty claim applies.

Comment 8: Direct Warranty Expenses for U.S. Sales

The petitioners contend that Pastavilla's claims are incorrect that it did not incur warranty expenses in connection with its U.S. sale and that the loss from the damaged pasta is reflected in the invoice. They argue that the loss from the damaged pasta was directly related to the U.S. sale and should be treated as a direct warranty expense. The petitioners allege that the Department should calculate direct warranty expenses for the final results based on the cost of manufacture of the damaged pasta. Alternatively, the petitioners contend that the Department should calculate direct warranty expenses for Pastavilla's U.S. sale based on the invoice price of the damaged pasta.

Pastavilla argues that it did not incur warranty expenses on its U.S. sale. Pastavilla explains that of the 1,300 cases of pasta shipped to the United States, only three were damaged. Pastavilla contends that because its U.S. affiliate only invoiced and received payment for 1,297 cases, the damaged cases were already adjusted for in the sales response. Pastavilla argues that it would have been necessary to account for the damaged goods in the sales response only if Pastavilla had received payment for the three cases and had later issued a credit. According to Pastavilla, its sales response reflects the lack of revenue from the damaged cases and to calculate a U.S. warranty expense as the petitioners suggest would double-count the loss to Pastavilla.

DOC Position

We agree with Pastavilla that the loss from the damaged cases is already reflected in the U.S. sales response. The invoice to the customer reflects a quantity net of the damaged cases and, at verification, we confirmed that Pastavilla's U.S. affiliate did not receive payment for the damaged cases. Warranty expenses typically involve replacing the defective merchandise or crediting a customer for the defective merchandise. In this instance, the damaged cases were not part of the sale and, therefore, it would be inappropriate to make an adjustment for warranty expenses.

Cost Comments

Comment 9: Yield Loss

Pastavilla claims that the methodology used to calculate COP and CV fully captures all yield losses. It argues that in its ordinary cost accounting system, a theoretical production amount (*i.e.*, naked pasta), which includes scrap, is used to calculate COM. However, because this was a theoretical amount, Pastavilla used finished goods (*i.e.*, packed pasta) quantities to calculate the per-unit COM for the antidumping review.

The petitioners argue that the Department should revise Pastavilla's reported semolina costs to account for yield losses occurring during the production of pasta. Because the methodology used by Pastavilla does not account for the semolina that was lost during the production of pasta, the petitioners contend that Pastavilla's reported per-unit cost of semolina are understated.

DOC Position

While we agree with Pastavilla that it adequately accounted for yield loss related to its reported conversion costs, we disagree that its methodology used to calculate the monthly materials costs included in COP and CV captures the impact of yield loss associated with the production of pasta. Pastavilla used finished ''packed pasta'' quantities to calculate its per-unit conversion costs (*i.e.*, direct labor, variable overhead, and fixed overhead). By using ''packed pasta'' quantities, Pastavilla's reported conversion costs reasonably capture the yield loss incurred during the manufacturing process (*e.g.*, waste, moisture evaporation). To calculate its reported per-unit material costs (*i.e.*, semolina and vitamins), however, Pastavilla did not rely on its ''packed pasta'' quantities. Instead, the company relied on the monthly quantities of semolina consumed during the production process. Thus, Pastavilla understated its cost of materials because it used the cost per unit of semolina consumed rather than the cost per unit of ''packed pasta.'' In other words, Pastavilla's material costs do not reflect the yield loss associated with the manufacturing process. To capture the cost associated with its material yield losses, Pastavilla should have calculated its per-unit material cost using the same ''packed pasta'' quantities that it used to calculate its per-unit conversion costs. Thus, for the final results, we adjusted Pastavilla's monthly per-unit semolina and vitamin costs by dividing the monthly cost of each material by the monthly quantity of ''packed pasta.''

Comment 10: Vitamin Replacement Costs and First Day Corrections

The petitioners assert that the Department should not accept the minor correction made to the vitamin costs submitted at verification. They state that Pastavilla's revised methodology calculates per-unit vitamin costs by dividing by the quantity of semolina used in the production of pasta, rather than by the quantity of packed pasta. Thus, the petitioners contend that the per-unit cost of vitamins are understated. In addition, according to the petitioners, Pastavilla's vitamin costs are not based on the replacement cost methodology.

Pastavilla states that the Department should use the verified vitamin costs as reported in the clerical error submission. As for making the other corrections asserted by the petitioners, Pastavilla disagrees.

DOC Position

For the final results, we revised Pastavilla's per-unit vitamin costs using the replacement cost methodology. The replacement cost methodology values the vitamins used in production at the vitamins' monthly purchase price within each respective month. Adopting this methodology accounts for the monthly fluctuations in costs for inventories, due to the high inflation experienced during the POR. To calculate Pastavilla's per-unit vitamin cost, we relied on packed pasta quantities and not the quantity of vitamins input into the production process (*see* Comment 9 for more details). As for the concerns about accepting Pastavilla's vitamin costs reported in its clerical error submission, they are moot because we did not rely on the information for the reasons discussed above.

Comment 11: Severance Reserve Benefits

Pastavilla argues that the Department should not adjust its reported COP and CV figures to include its severance reserve. Instead, Pastavilla claims that the reserve should be treated differently than the actual severance expense paid to employees which it included in the calculation of COP and CV. According to the company, the reserve merely represents a possible liability that may never have to be paid. If an employee quits or is fired for cause, there is no severance obligation due to the employee. Thus, the severance reserve is not a reserve for actual expenses incurred, but only for the maximum possible expense that might be incurred. Moreover, the reserve is never actually funded by the company. Therefore, Pastavilla contends that it is inappropriate to classify the reserve as an element of cost, and cites as support for its position the Department's decision in *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) (*DRAMs from Korea*). In that case, the Department found that ''it would not be reasonable to make an adjustment for royalty expenses which were not actually incurred, and may not be incurred.''

The petitioners argue that the Department should include the reserve for severance benefits in the COP and CV calculation. According to the petitioners, the severance expense is a normal operating cost which is recorded on Pastavilla's income statement. Moreover, even if the expense was recorded as a reserve account, the amount still represents a liability that was incurred by Pastavilla as a result of operations during the POR. Therefore, the Department should include the severance reserve in the calculation of COP and CV.

DOC Position

We agree with the petitioners that Pastavilla's reserve for severance benefits should be included in the calculation of COP and CV. Under Turkish law, an employer is required to establish a reserve for severance benefits. The employer then pays these severance benefits to an employee who is terminated after a minimum period of service. In its normal course of business, Pastavilla accrues the monthly cost of this liability in accordance with Turkish GAAP, and the accrual is reflected as an expense on the monthly income statement. Hence, Pastavilla recognizes the accrual as an expense in accordance with Turkish GAAP even though it requires no cash funding. Our established practice is to include this type of cost in the calculation of COP and CV, because this severance reserve represents an expense recognized within the POR and should be reflected in the product cost, in accordance with full absorption costing principle (*see Certain Cut-to-Length Carbon Steel Plate From Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 61 FR 13834, 13838 (March 28, 1996)). As a result, we included Pastavilla's severance reserve in the calculation of COP and CV to reflect the fully absorbed cost of producing the pasta.

We disagree that *DRAMS from Korea* supports Pastavilla's claim that severance expenses should not be included in the calculation of COP and CV. In that proceeding, the Department was asked to include an estimated royalty expense which was not recorded in the company's financial statements, nor was the company under any legal or accounting obligation to pay or record the expense. In the instant review, the reserve for severance benefits is a recognized expense which is regularly accounted for in Pastavilla's books.

Comment 12: Calculation of G&A Expense Ratio

Pastavilla contends that it correctly computed its G&A expense ratio by including packing costs in the denominator. Pastavilla argues that G&A expenses benefit the entire company (including the packing activities of the company) and therefore the cost of the packing must be included in the denominator. To support its position, Pastavilla cites the decision made in *Notice of Final Determination of Sales at Less Than Fair Value: Steel Reinforcing Bars from Turkey*, 62 FR 9737, 9748 (March 4, 1997) (*Steel Reinforcing Bars from Turkey*). In that proceeding, the Department stated that G&A expenses must be allocated over all activities if they support such activities.

The petitioners argue that packing costs should be excluded from the cost of sales (COS) when calculating the G&A and financial expense rates. The petitioners claim that when calculating these rates, COS is used as the denominator. The calculated rates should then be applied to a COM which is on the same basis. According to the petitioners, packing costs should be excluded from the COS because it is not included in the COM.

DOC Position

We disagree with Pastavilla that packing cost should be included in the denominator (*i.e.*, COS figure) used to calculate the G&A expense ratio. If the Department calculated the G&A expense ratio as Pastavilla suggests, the result would be distortive because we would be applying a ratio which includes packing cost in the denominator to a base which does not include packing cost. In order to correctly reflect the G&A expenses incurred by Pastavilla, the G&A ratio must be calculated using a COS figure that excludes packing costs and applied to a COM that excludes packing costs. This is consistent with methodology used in the *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 32833, 32837 (June 16, 1998) and the *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8910, 8933 (February 23, 1998).

As to the respondent's citation to *Steel Reinforcing Bars from Turkey*, we disagree that this case supports the company's claim that packing should be included in the cost of sales figure. In that proceeding, the petitioners argued that the Department should exclude specific non-manufacturing activities

(*i.e.*, cost associated with a port and a cafeteria) from the COS figure. We denied the exclusion because we found these costs related to a separate line of business and, thus, the company should allocate a portion of the G&A expense to those activities. To calculate the G&A expense ratio for the final results, we have excluded packing costs from the cost of sales figure used in the calculation.

Comment 13: Indexing Monthly G&A Expenses and Cost of Sales Figures

The petitioners argue that the Department should index Pastavilla's monthly G&A expenses to account for the high inflation that incurred in Turkey during the POR. According to the petitioners, the Department's practice is to index G&A expenses in cases involving inflationary economies.

Pastavilla contends that G&A should not be indexed and recalculated. Pastavilla states that G&A expenses are period costs, and it is distortive to calculate a monthly G&A and then index it for constant currency. Pastavilla claims that since both the numerator and denominator of the G&A calculation are equally affected by the high inflation, the ratio between them for an annual period is an appropriate measure of G&A expense, without further adjustment. In addition, Pastavilla claims that G&A expenses are not affected by inventory valuation practices which distort costs in an inflationary economy, and a constant-currency restatement is not necessary for the calculation of the G&A expense rate.

DOC Position

We agree with the petitioners that Pastavilla's monthly G&A expenses and cost of sales figures should be indexed when calculating the G&A expense ratio. During Pastavilla's accounting year, the Turkish currency lost its purchasing power at such a rate that comparisons of unadjusted general expenses and cost of sales occurring at different times are not comparable to the same expenses incurred at the beginning of the year. That is, the ratio of G&A to cost of sales is not necessarily constant for each month throughout the year. Without indexation, the calculation of a general expense ratio produces a potentially meaningless result because the ratio is applied to an indexed COM. The two figures have to be on the same basis. To calculate a meaningful general expense ratio, it is necessary to restate each month's general expenses and cost of sales figures in equivalent terms, that is, the currency value at a given point in time. For the final results, we indexed Pastavilla's monthly G&A expenses and cost of sales figures using the wholesale price index, published by the International Monetary Fund, in order to compute a constant currency G&A expense ratio.

Comment 14: Omission of Year-end Adjustments and Production Quantities

The petitioners argue that the Department should include Pastavilla's 1997 year-end adjustments in the COP and CV calculations. The petitioners state that year-end adjustments represent actual costs which were incurred during the POR, and therefore, the adjustments should be included in the calculations of COP and CV.

Further, the petitioners state that the Department should adjust Pastavilla's conversion costs for the final results to correct the error in the per-unit costs resulting from an overstatement of the production quantities of approximately ten tons.

Pastavilla argues that the Department determined at verification that the year-end adjustments had no impact on their costs, and there is no reason to make an adjustment to its reported costs. With respect to the ten ton production quantity discrepancy, Pastavilla states that it has reported the production quantity correctly. In addition, according to Pastavilla, even if the adjustment was reflected in the calculation of COP and CV it would have no impact.

DOC Position

We agree with the petitioners that the year-end adjustments and the corrected production quantities should be included in the calculation of COP and CV. However, we reviewed the information on the record and note that adjusting for the excluded year-end adjustments and the corrected production quantities would have no impact on the margin for the final results (*see Final Results of Antidumping Administrative Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, FR 61 51406, 51408 (October 2, 1996) and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, FR 61 38185, 38166 (July 23, 1996)). Therefore, for the final results we are not revising the reported costs to reflect the year-end adjustments and ten additional tons of pasta produced.

Comment 15: Financial Expense Ratio

Pastavilla argues that the Department should continue to use its parent company's (Koc Group) consolidated financial statements to calculate interest expense. It asserts that the Department's practice has been that where a respondent is a member of a group of companies; use of the parent company's consolidated financial expense ratio is appropriate. Citing *Dupont* v. *United States*, Slip Op. 98–7 at 12 (Ct. Int'l Trade, January 29, 1998), the court stated that where (i) the group controls the held company, (ii) there are consolidated financial statements, and (iii) there are inter-company financing agreements, the consolidated financial statements should be used to calculate the financial expense rate. Pastavilla states that they have met all three of those criteria. Thus, the Department should remain consistent with its normal methodology and use Pastavilla's group-wide interest expense.

Further, Pastavilla contends that the reclassification of the interest expense was due to the capitalization of interest, for an investment project, which is in conformity with Turkish law. Pastavilla states that they did not reclassify interest expense and the foreign exchange loss to depreciation expense as a directive from the parent company.

In addition, Pastavilla argues that there is no reason to assume that any other subsidiary within the Koc Group capitalized interest or foreign expenses. Pastavilla states that capitalization of interest is permitted under International Accounting Standard (IAS) 23, and must be disclosed in the audited financial statements. According to Pastavilla, since the Koc Group's financials are in accordance with the IAS, capitalization would be noted in the financial statements, and the lack of any reference in the audited consolidated financial statements indicates that no company in the Koc Group capitalizes interest to a degree of having a material effect on the financial statements. Therefore, the Department has no reason to assume capitalization of interest is occurring among Koc Group members.

Finally, Pastavilla argues that the reported short-term interest income used to offset the interest expense at the consolidated level is a reasonable estimation. It states that even if half of the Koc Group's financial income were from long-term sources, which is unlikely in Turkey's high inflationary environment, the income from short-term sources would exceed the total interest expense.

The petitioners contend that the Department should use Pastavilla's company-specific financial data to calculate the financial expense rate. According to the petitioners, although the Department's practice is to use consolidated financial statements to calculate financial expenses, when errors are discovered in the consolidated data the Department should deviate from its normal practice.

In addition, the petitioners assert that the interest expense and foreign exchange losses which were reclassified as depreciation expense, and not included in the reported COP and CV, should be included in the financial and G&A expense rate calculation, respectively. According to the petitioners, the interest expense should have been included in Pastavilla's reported financial expenses because the expenses were incurred during the period of review. The foreign exchange losses are normally included in the COP and CV when a respondent realized these losses on the purchases of inputs needed to produce subject merchandise. Pastavilla did not provide information to show that these losses were not incurred for purchases of inputs. Therefore, the interest expense and foreign exchange losses should be included in the calculation of the financial and G&A expense rates.

DOC Position

We agree with Pastavilla that the Department's general practice is to use a company's consolidated financial statements to calculate the financial expense ratio. Pastavilla's reported consolidated interest expense computation, however, is critically flawed, thus making it unusable for the final results. Specifically, Pastavilla did not provide monthly interest expenses and cost of goods sold amounts for the consolidated Koc Group entity. This information was requested in both our supplemental section D questionnaire and in the cost verification agenda in order for us to have the necessary information to calculate an indexed financial expense ratio. In both instances, company officials asserted that the Koc Group's monthly interest expense and cost of goods sold amounts was too difficult to obtain and calculate. Consequently, they did not provide the information. As a result, we do not have the necessary information to calculate an indexed consolidated financial expense ratio. Consequently, we are forced to use facts available, pursuant to section 776(a) of the Act. Pastavilla did, however, submit POR monthly interest expense and cost of sales amounts for the unconsolidated entity, thus, enabling us to compute an indexed interest expense rate. Because it does not appear that Pastavilla's consolidated interest expense rate would be higher than its indexed unconsolidated rate, we used its unconsolidated interest expense rate as facts available for the final results.

The issues concerning Pastavilla's capitalization of interest expense are moot because we have computed Pastavilla's interest expense rate on an unconsolidated basis as facts available.

Finally, we note that because we have calculated Pastavilla's interest expense rate at the unconsolidated level as facts available, it does not matter whether we treat its foreign exchange losses as G&A or interest expense. The same amount of costs related to these items are captured either way. For the final results, we included the foreign exchange losses in Pastavilla's interest expense calculation.

Final Results of Review

As a result of our review, we find that the following margins exist for the period January 19, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Pastavilla Kartal Makarnacilik Sanayi Ticaret A.S.	0.00
Filiz Gida	63.29

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. As determined by the zero margin in these final results, we will instruct the Customs Service not to assess antidumping duties on Pastavilla's entries of the merchandise subject to the review. We will direct the Customs Service to assess antidumping duties on Filiz's entries of the merchandise subject to review by applying the assessment rate listed above to the entered value of the merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) the cash deposit rate for Pastavilla will be zero and the cash deposit rate for Filiz will be 63.29 percent; (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 period; (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 period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 60.87 percent, the ''all others'' rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as final reminder to importers of their responsibility 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

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

Dated: December 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF DEFENSE

Department of the Army

Proposed Revision to MTMC Freight Traffic Rules Publication No. 10, Item 350, ''Mileage Allowances''

AGENCY: Military Traffic management Command, DOD.

ACTION: Notice (Request for comments).

SUMMARY: The Military Traffic Management Command (MTMC) as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (DTR vol. 1, pg. 101–113), intends to replace the entire text of the existing