DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Revocation of the Antidumping Duty Order in Part: For the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy

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

ACTION: Notice of preliminary results, partial rescission of antidumping duty administrative review and revocation in part.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain pasta (''pasta'') from Italy for the period of review (''POR'') July 1, 2002, through June 30, 2003.

We preliminarily determine that during the POR, Barilla Alimentare, S.p.A. (''Barilla''), Corticella Molini e Pastifici S.p.A. (''Corticella'') and its affiliate Pasta Combattenti S.p.A. (''Combattenti'') (collectively, ''Corticella/Combattenti''), Industria Alimentare Colavita, S.p.A. (''Indalco'') and its affiliate Fusco S.r.l. (''Fusco'') (collectively, ''Indalco''), Pasta Lensi S.r.l. (''Lensi''), P.A.M. S.p.A. (''PAM''), Pastificio Riscossa F. lli Mastromauro, S.r.l. (''Riscossa''), and Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A. (''Russo''), 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 equal to the difference between the export price (''EP'') or constructed export price (''CEP'') and NV.

We preliminarily determine that during the POR, Pastificio Guido Ferrara S.r.l. (''Ferrara'') did not make sales of the subject merchandise at less than NV (*i.e.*, sales were made at ''zero'' or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. Furthermore, requests for review of the antidumping order for the following eight companies were withdrawn: N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''), Rummo S.p.A. Molino e Pastificio (''Rummo''), Pastificio Antonio Pallante S.r.l. (''Pallante''), Industrie Alimentari Molisane S.r.l. (''IAM''), Pastificio Lucio Garofalo S.p.A. (''Garofalo''), Pastifico Fratelli Pagani S.p.A. (''Pagani''), La Molisana Industrie Alimentari S.p.a. (''La Molisana''), and Molino e Pastificio Tomasello S.r.l. (''Tomasello''). Because the withdrawal requests were timely and there were no other requests for review of the companies, we are rescinding the review for these companies. *See* 19 CFR 351.213(d)(i).

Finally, we preliminarily intend to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Ferrara because Ferrara sold the merchandise at not less than NV for a period of at least three consecutive years. *See* 19 CFR 351.222 (b)(2) and the ''Revocation'' section of this notice.

Interested parties are invited to comment on these preliminary results, partial rescission, and revocation. As a further matter, an analysis of the record evidence indicates that Corticella/Combattenti and its toll producer, Coopertive Lomellina Cerealicoltori S.r.l. (CLC), are affiliated. The Department recognizes that, given the nature of their affiliation, a related issue could arise with respect to whether there is a potential for manipulation of price or production and, if so, whether Corticella/Combattenti and CLC should receive the same antidumping duty rate. Therefore, the Department is also soliciting comments on this issue for consideration in the final results of review.

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

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Young or Carrie Farley, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–0395, 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. On July 2, 2003, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 68 FR 39511.

By July 31, 2003, we had received requests for review from petitioners,[1] and from fifteen individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(2). In addition, on July 31, 2003, Pasta Lensi S.r.l. (''Lensi'') and Ferrara requested that the Department revoke the antidumping duty order with respect to their companies. *See* ''Revocation'' section of this notice.

On August 19, 2003, petitioners withdrew their request for administrative review of the antidumping duty order with respect to Puglisi.

On August 22, 2003, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2002, through June 30, 2003, listing these fifteen companies as respondents: Barilla, Rummo, Pallante, IAM, Pagani, PAM, Ferrara, Garofalo, Indalco, Riscossa, Russo, Corticella, La Molisana, Lensi, and Tomasello.[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 50752 (August 22, 2003) (''*Initiation Notice*'').

On September 2, 2003, La Molisana withdrew its request for administrative review of the antidumping duty order. On September 8, 2003, Tomasello withdrew its request for administrative review of the antidumping duty order.

On September 10, 2003, we sent questionnaires to the twelve remaining companies.

On October 3, 2003, petitioners withdrew their request for administrative review of the antidumping duty order with respect to Pallante/IAM, Pagani, and Rummo. On October 14, 2003, Garofalo withdrew its request for administrative review of the antidumping duty order.

During the most recently completed segments of the proceeding in which Indalco and PAM participated, the Department found and disregarded sales

[1] New World Pasta Company; Dakota Growers Pasta Company; Borden Foods Corporation; and American Italian Pasta Company.

[2] Although the Department initiated this review on fifteen companies, included within that number were companies known to be affiliated, namely, Pallante/IAM.

that failed the cost test.[3] Pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (''COP''). Therefore, we initiated cost investigations of these companies, and instructed the companies to fill out sections A–D[4] upon issuance of the initial questionnaire. The companies submitted their section D responses on October 31, 2003.

In the most recently completed segment of the proceeding involving Barilla,[5] the Department based its final determination on adverse facts available. Because the use of adverse facts available precluded the Department from determining whether sales below the COP would be disregarded from Barilla's home market sales response in that proceeding, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department requested that Barilla respond to section D of the questionnaire. Barilla submitted its section D response on November 3, 2003.

After several extensions, the respondents submitted their responses to the appropriate sections of the questionnaire during the months of October and November 2003. In its initial release of the antidumping questionnaire, the Department did not require Corticella, Ferrara, Lensi, Riscossa, or Russo to respond to section D of the questionnaire.

On September 12, 2003, we informed Ferrara and Russo that though we did not initially require them to complete section D, should the Department disregard sales below cost in the then on-going final results of the sixth review of pasta from Italy (for Ferrara), and the final results of the new shipper review of pasta from Italy (for Russo), they would be required to submit section D of the questionnaire. Ferrara opted to complete section D before the final results of the sixth review were completed, and submitted sections A–D on October 31, 2003. The Department, in the final results of the sixth review, did disregard sales that failed the cost test for Ferrara. *See Sixth Administrative Review of Pasta from Italy.* The Department also disregarded sales that failed the cost test for Russo in the final results of the new shipper review. *See Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy,* 69 FR 18869 (April 9, 2004). On April 20, 2004, we informed Russo that it was required to submit a section D response to the Department's questionnaire. Russo submitted its section D response on May 18, 2004.

In November 2003, petitioners submitted allegations of sales below cost against Corticella and Riscossa. We determined that petitioners' cost allegations provided a reasonable basis to initiate COP investigations, and as a result, we initiated cost investigations of these two companies. *See* the company-specific COP initiation memoranda, dated December 18, 2003, in the case file in the Central Records Unit (''the CRU''), main Commerce building, room B–099. Also on December 18, 2003, we informed these two companies that they were required to respond to section D of the antidumping questionnaire. *See* December 18, 2003, letters from the Department to these respondents requiring section D questionnaire responses, in the CRU. On January 20, 2004, we received responses to the section D questionnaires from Corticella and Riscossa.

On March 17, 2004, the Department published an extension of preliminary results of this review, extending its preliminary results until July 30, 2004.[6] *See Certain Pasta from Italy and Turkey: Extension of Preliminary Results of 2002/2003 Antidumping Duty Administrative Reviews,* 69 FR 12641 (March 17, 2004).

During the months of January, February, March, April, and May of 2004, the Department issued supplemental, second supplemental, and third supplemental questionnaires to each respondent, as applicable.

We conducted verification of the sales information as follows: (1) Barilla from June 7 through June 11, 2004; (2) Corticella from May 24 though June 11, 2004; (3) Ferrara from March 22 through March 26, 2004; (4) Lensi from May 17 though May 21, 2004; (5) PAM from March 15 through March 19, 2004; and (6) Riscossa from June 21 through June 25, 2004. We verified the cost information submitted by: (1) Barilla from June 14 through June 18, 2004; (2) Corticella from May 24 though June 4, 2004; (3) Ferrara from March 29 through April 1, 2004; and (4) Riscossa from June 14 through June 18, 2004. We verified the CEP information submitted by (1) Lensi from March 29 though March 31, 2004; and (2) Barilla from June 30 through July 2, 2004.

Partial Rescission

In September and October 2003, Garofalo, La Molisana, Tomasello, and petitioners with respect to Pallante/IAM, Pagani, and Rummo withdrew their requests for administrative review of the antidumping duty order. Because the requests were timely filed, *i.e.,* with 30 days of publication of the *Initiation Notice,* and because there were no other requests for review of the above-mentioned companies, we are rescinding the review with respect these companies in accordance with 19 CFR 351.213(d)(1).

Scope of Review

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 review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience

[3] The most recently completed review in which Indalco and PAM participated was the sixth administrative review. *See 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) (''*Sixth Administrative Review of Pasta from Italy*'').

[4] Section A: Organization, Accounting Practices, Markets and Merchandise. Section B: Comparison Market Sales. Section C: Sales to the United States. Section D: Cost of Production and Constructed Value.

[5] The most recently completed review in which Barilla participated was the fourth administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Administrative Review, and Revocation of Antidumping Duty Order in Part: Certain Pasta from Italy,* 67 FR 300 (January 3, 2002).

[6] As a result of a typographical error, the Department published the preliminary signature date as July 29, 2004. The actual signature date is July 30, 2004.

and customs purposes, the written description of the merchandise subject to the order is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information provided by Barilla, Corticella, Ferrara, and Riscossa, the sales information provided by Lensi and PAM, and the CEP information provided by Barilla and Lensi. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are detailed in the company-specific verification reports placed in the case file in the CRU. We made minor revisions to certain sales and cost data based on verification findings. *See* the company-specific verification reports and calculation memoranda, in the CRU.

Use of Partial Facts Available

The Department has determined preliminarily that the use of partial facts available is appropriate for purposes of determining the preliminary dumping margin for subject merchandise sold by Barilla. Specifically, the Department has applied partial facts available for various expenses and adjustments with respect to the margin program for Barilla. *See* Barilla's July 30, 2004, Preliminary Calculation Memorandum (''Barilla's Preliminary Calculation Memorandum'').

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

From June 30, through July 2, 2004, the Department conducted a verification of Barilla's questionnaire response at the headquarters of the company's U.S. affiliate in Chicago, Illinois. At verification, the Department's verifiers asked Barilla to present minor changes, if any, to its questionnaire response resulting from the company's preparation for verification. The Department previously notified Barilla of these requirements in its May 26, 2004, verification outline. *See* the May 26, 2004, letter from the Department to Barilla, in which the verification outline is transmitted. In response to the Department's request, Barilla submitted a list of minor corrections as Verification Exhibit 1.

During the verification of Barilla's U.S. discount and rebate fields, however, the verifiers discovered certain errors and omissions that were not among those listed in Barilla's minor correction exhibit. Specifically, in its questionnaire response, Barilla indicated that it offered discounts to its U.S. customers. *See* page C–29 of Barilla's October 31, 2003, section C response. Barilla also explained in its questionnaire response that it offered rebates based on contracts with its individual customers. *See Id.* at page C–31 and C–32. However, during verification, the verifiers discovered that Barilla failed to report a number of cash discounts offered to its CEP customers and failed to report rebates granted to one of its CEP customers during the POR. For a more detailed discussion, *see* Memorandum to Eric Greynolds, from Lyman Armstrong and Joy Zhang, Re: Verification of the Sales Response of Barilla Alimentare and Barilla America (collectively, ''Barilla'') in the 02/03 Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy (''Barilla Verification Report''), available in the CRU.

As long recognized by the Court of International Trade (''CIT''), the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States,* 641 F. Supp. 31, 39–40 (CIT 1987). In its narrative questionnaire response, Barilla indicated that it offered certain discounts and rebates to its U.S. customers during the POR. However, during verification the verifiers discovered that Barilla failed to report certain discounts for a small subset of its U.S. sales and rebates for one of its CEP customers. Therefore, in accordance with section 776(a)(2)(B) of the Act, we are applying partial facts otherwise available in calculating Barilla's dumping margin. As facts available, the Department applied a cash discount to all sales to all of Barilla's CEP customers. Further, for the one customer for which Barilla failed to report a rebate, the verifiers were able to establish the portion of the rebate that Barilla granted the customer during 2002. Therefore, as partial facts available, we applied the rebate in effect for that customer in 2002 to the portion of 2003 covered by the POR. *See* Barilla's Preliminary Calculation Memorandum.

Product Comparisons

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

On page 7 of its April 2, 2004, supplemental questionnaire response (''Russo's supplemental response''), Russo requested separate treatment for pasta produced at the Di Nola production workshop in Gragnano, Italy.[7] The Di Nola facility produces only artisan pasta made and packaged by hand, using traditional techniques. The traditional artisan techniques used to produce pasta at the Gragnano facility imbue the pasta with significant differences in physical characteristics from pasta produced in Russo's industrial Cicciano production facility. Namely, the pasta has an irregular, hand-made appearance, a rougher surface texture, and superior texture and taste when compared to commodity pasta. In addition, the company uses upscale packaging that prominently labels the product as artisan, specialty pasta; the packaging and labeling of the pasta make up over 50 percent of its final value. *See* Russo's supplemental response at 6. The company markets the product separately to high-end boutiques, specialty and gourmet food shops, and to upscale restaurants. *Id.*

Due to the heavy reliance on manual labor in the production process, the pasta produced at the Gragnano workshop has significantly higher costs of production and selling prices relative

[7] Russo and Di Nola merged into one company effective January 1, 2003.

to the commodity pasta produced at Russo's industrial plant in Cicciano, Italy. *See* Russo's October 31, 2003, response to sections A–C of the Department's questionnaire (''Russo's sections A–C response''); *see also* Russo's May 18, 2004, response to section D of the Department's questionnaire (''Russo's section D response''). For a detailed discussion of the production processes at both facilities, *see* the December 24, 2003, memorandum to Melissa G. Skinner regarding ''Whether to Collapse Pastificio Carmine Russo, S.p.A (''Russo'') and Di Nola S.p.A. (''Di Nola'') in the Preliminary Results'' (''Russo Collapsing Memo''), originally on the record of the recently-completed new shipper review of pasta from Italy, and placed on the record of this review by the Department.

These differences in physical characteristics, in addition to the differences in the packaging and labeling of the products, are so consequential to the purchaser of either product that the two products share virtually no unaffiliated customers; the products do not even compete in the same market. *See* Russo's supplemental response at 2 and 5–6. In the *Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy,* 69 FR 319, 321 (January 5, 2004) (''*Russo New Shipper Prelim''*), the Department determined that Russo and Di Nola, who had not yet merged into one company, should not be collapsed on the basis that either facility would require substantial retooling to produce the merchandise of the other. In the Russo Collapsing Memo at 3, we stated that ''though Russo and (Di Nola) both produce subject merchandise, the process by which each company produces the subject merchandise is completely different, resulting in qualitatively different products'' (italics added). We also stated that the ''differences in the production process * * * of each company are substantial, and create qualitative differences between the products.'' *See* Russo Collapsing Memo at 4 (italics added).

The Department has a wealth of past precedent to support a segregation of products for purposes of calculating NV based on differences in physical characteristics, as well as cost and price differences. In past reviews, the Department has assigned separate product-control numbers to different types of pasta, ''where there has been substantial evidence on the record that demonstrated physical and cost differences. * * *'' *See* page 23 of the February 3, 2003, memorandum to Faryar Shirzad, Assistant Secretary, for Import Administration, ''Issues and Decision Memorandum for the Fifth Antidumping Duty Administrative Review;'' and page 4 of the January 3, 2002, memorandum to Richard W. Moreland, Acting Assistant Secretary, for Import Administration, ''Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review; Final Results of Review,'' both on file in the CRU. *See also Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 64 FR 6615 (February 10, 1999); and *Certain Pasta from Turkey: Final Results of Antidumping Administrative Review,* 65 FR 77857 (December 13, 2000).

Moreover, in a March 1, 2004, decision, the CIT upheld the Department's decision in the fifth review of certain pasta from Italy to classify Ferrara's bronze-die and teflon-die pasta (both industrially produced) as separate for product-matching purposes. *See New World Pasta Company* v. *United States*, 316 F. Supp. 2d 1338, 1356 (CIT 2004). In that decision, the CIT stated that ''generally, Commerce has wide latitude in choosing what physical characteristics to consider'' for product-matching purposes. *Id.* at 1354.

The physical, cost, and price differences in this case are so significant that the Department has found that the products at issue are qualitatively different and that the production facilities for either product would require substantial retooling to produce the other. *See* Russo New Shipper Prelim; and Russo Collasping Memo. In light of such record evidence, the Department has preliminarily determined to assign different product-matching control numbers to pasta produced at Russo's industrial Cicciano facility and the artisan pasta produced at the Di Nola workshop. *See* the July 30, 2004, Memorandum to the File, RE: Preliminary Calculation Memorandum for Russo for the specific calculation methodology.

Proposed Modifications to Wheat Codes

Ferrara, PAM, and Lensi have classified a variety of wheats used in the production of pasta as separate wheat codes, in addition to the two wheat codes outlined in the questionnaire.[8] In the *Pasta Investigation*, we established that differences in wheat quality may be commercially significant, as measured by ash and gluten content[9] and cost. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30346 (June 14, 1996) (''*Pasta Investigation*''). Where respondents have been able to justify differences due to ash and gluten content, as well as cost, the Department has found that these differences result in more appropriate product matches, as contemplated by section 771(16) of the Act. *Id.*

Ferrara reported two wheat codes in its sales database. We preliminarily determine that Ferrara's wheat code 2 has met the standards outlined in the *Pasta Investigation* for classification as a separate wheat code. Specifically, Ferrara's wheat code 2 has commercially significant ash content differences from its wheat code 1. *See* Ferrara's December 17, 2003, Questionnaire Response at 5, and Exhibit 4 at 3. *See also* July 30, 2004, Memorandum Re: Verification of the Sales and Cost Responses of Ferrara in the 02/03 Administrative Review of the Antidumping Order of Certain Pasta from Italy (''Ferrara VR'') at Exhibit 12 at 13, which contains ash content information. Moreover, Ferrara's wheat code 2 is classified differently from its wheat code 1 under Italian law, which sets standards for ash and protein characteristics for pasta manufactured and sold in Italy. *See* Ferrara's March 1, 2004, Questionnaire Response, Exhibit 12 at 5–24. In addition, Ferrara's raw material cost for wheat code 2 is more than thirty percent different than its cost for wheat code 1. *See* Ferrara VR, Exhibit 4 at 1.

We have also preliminarily determined that PAM's wheat code 5 has met the standard outlined in the *Pasta Investigation* to warrant classification as a separate wheat code. Specifically, PAM's wheat code 5 has commercially significant ash and protein content differences from its wheat code 1. *See* PAM's February 24, 2004, Questionnaire Response at 7 and the July 30, 2004, Memorandum Re: Verification of the Sales and Cost Responses of PAM in the 02/03 Administrative Review of the Antidumping Order of Certain Pasta from Italy (''PAM VR''), Exhibit 5 at 3 for the details of the ash and protein content. Moreover, PAM's wheat code 5 is classified differently under Italian law, which sets standards for ash and protein characteristics for pasta manufactured and sold in Italy. *See* PAM VR at 11. In addition, PAM's raw material cost for wheat code 5 is approximately ten percent different than

[8] 100 percent durum semolina and 100 percent whole wheat.

[9] Ash content is a measurement of minerals present in pasta. Gluten is a protein compound and is formed from the proteins in grains. Gluten content is a measurement of gluten found in pasta.

its cost for wheat code 1 and 2. *See* PAM VR, Exhibit 5 at 1.

We have preliminary determined that record evidence pertaining to PAM's wheat code 1 does not warrant a separate wheat code. Although slight cost and ash and protein content differences were presented, we find that these differences are not commercially significant and therefore do not merit a separate wheat code. *See* PAM VR, Exhibit 5 at 1 and 3. Therefore, PAM's wheat codes 1 and 2 will be collapsed for the purposes of these preliminary results.

We have also preliminarily determined that record evidence pertaining to Lensi's wheat codes 2 and 4 do not warrant a separate classification. Although Lensi provided explanations of the types of wheat it uses, and provided the percentages of each type that make up the different wheat mixes used in the production of its pasta, Lensi provided no ash or protein content information, nor did it provide evidence of a cost differential to demonstrate that these wheat mixes differ in a commercially significant way. Therefore, Lensi's wheat codes 2 and 4 will be collapsed for the purposes of these preliminary results.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. *See* the company-specific verification reports and calculation memoranda, available in the CRU.

Export Price and Constructed Export Price

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

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

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

Barilla, Corticella/Combattenti, Ferrara, Indalco, PAM, Riscossa, Russo, and Lensi reported the resale of subject merchandise purchased in Italy from unaffiliated producers. In those situations in which an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the EP would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50876 (September 23, 1998). In the instant review, we determined that it was reasonable to assume that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because virtually all enriched pasta is sold to the United States. *See, e.g., Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 68 FR 47020, 47028 (August 7, 2003). Accordingly, consistent with our methodology in prior reviews (*see id.*), when a respondent purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded these sales of the purchased pasta from the margin calculation for that respondent. Where the purchased pasta was commingled with the respondent's production and the respondent could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales database and the respondent was unable to identify resale transactions, we included the sales of commingled purchased pasta in our margin calculations.

Normal Value

A. Selection of Comparison Markets

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

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

Act, and section 351.404(c)(ii) of the Department's regulations, because Lensi had an aggregate volume of third-country sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the third-country market of the United Kingdom was viable for Lensi.

B. Arm's-Length Test

Barilla and Corticella/Combattenti reported sales of the foreign like product to an affiliated end-user and an affiliated reseller. The Department calculates the NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm's length. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's-length prices. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (Nov. 15, 2002).

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of Barilla, Corticella, Ferrara, Indalco, PAM, Riscossa, and Russo, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in instances where we used data with minor revisions based on verification findings. *See* the company-specific calculation memoranda on file in the CRU, for a description of any changes that we made.

2. Test of Comparison Market Prices

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

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product 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 Barilla, Corticella, Ferrara, Indalco, PAM, Riscossa, and Russo, for purposes of this administrative review, 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* the company-specific calculation memoranda on file in the CRU, for our calculation methodology and results.

D. Calculation of Normal Value Based on Comparison Market Prices

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

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of 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 section 351.411 of the Department's regulations. 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 treated in the same manner described above in the ''Export Price and Constructed Export Price'' section of this notice.

E. Calculation of Normal Value Based on Constructed Value

When we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing (''COM'') of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Ferrara and Indalco in connection with the production and sale of the foreign like product in the comparison market.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section

773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. Level of Trade

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

Pursuant to § 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison-market sales 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). Specifically in this review, we did not make an LOT adjustment for any respondent. However, we are preliminarily granting a CEP offset for Barilla and Lensi.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the calculation memoranda, all on file in the CRU.

Currency Conversion

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

Revocation

On July 31, 2003, Lensi and Ferrara submitted requests for revocation of the antidumping duty order with respect to their sales of the subject merchandise as directed under 19 CFR 351.222(b). The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires that one or more exporters and producers covered by the order and desiring revocation submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Both Lensi and Ferrara provided the certifications and agreements required by 19 CFR 351.222(e)(1).

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

Both Lensi and Ferrara had *de minimis* dumping margins in the past two preceding reviews. However, in the current review we preliminarily find that Lensi sold subject merchandise at less than NV. *See* July 30, 2004, Memorandum to the File, RE: Preliminary Calculation Memorandum for Lensi. Because we preliminarily find that Lensi made sales of subject merchandise at less than NV, we preliminarily intend not to revoke the antidumping order with respect to Lensi. Regarding Ferrara, the Department preliminarily finds that Ferrara received a *de minimis* rate for the current review. *See* July 30, 2004, Memorandum to the File, RE: Preliminary Calculation Memorandum for Ferrara. Therefore, we preliminarily find that Ferrara sold subject merchandise at not less than NV for three consecutive reviews as required under § 351.222(b)(2)(i) of the Department's regulations.

In determining whether three years of no dumping establishes a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue, *i.e.*, did the company make sales in commercial quantities. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part,* 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part,* 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands,* 65 FR 742 (January 6, 2000). The Department preliminarily finds that Ferrara sold subject merchandise to the United States in commercial quantities during each of the consecutive three years as directed by 19 CFR 351.222(e)(1)(ii). *See* the Ferrara VR at 31 and Exhibit 35; *see also* Ferrara's March 1, 2004, Questionnaire Response at Exhibit 17. Therefore, we reasonably conclude that the zero or *de minimis* margins calculated for Ferrara in each of the last three administrative reviews are reflective of the company's normal commercial experience.

With respect to 19 CFR 351.222(b)(2)(ii), in considering whether continued application of the order is necessary to offset dumping, ''the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case.'' *Proposed Regulation Concerning the Revocation of Antidumping Duty Orders,* 64 FR 29818, 29820 (June 3, 1999). Thus, based upon three consecutive reviews resulting in zero or

de minimis margins, the Department presumes that the company requesting revocation is not likely to resume selling subject merchandise at less than NV in the near future unless the Department has been presented with evidence to demonstrate that dumping would likely resume if the order were revoked. In this proceeding, we have not received any evidence that demonstrates that Ferrara would likely resume dumping in the future if the order were revoked. Therefore, we preliminarily determine that the order is no longer necessary to offset dumping for Ferrara.

Because all requirements under the regulation have been satisfied, if these preliminary findings are affirmed in our final results, we intend to revoke the antidumping duty order with respect to subject merchandise produced and exported by Ferrara. Also, in accordance with 19 CFR 351.222(f)(3), if these findings are affirmed in our final results, we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct CBP to refund any cash deposit.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Barilla	7.10
Corticella/Combattenti	4.00
Ferrara	0.30
Indalco	5.41
Lensi	6.63
PAM	4.79
Riscossa	1.16
Russo	9.22
All Others	11.26

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in such briefs, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue 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.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

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

Notification to Importers

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

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

Dated: July 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–18037 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to a request by the Petitioner, FMC Corporation. The period