

cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value 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 or any previous review, the cash deposit rate will be the all others rate for this proceeding, 2.40 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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

Dated: August 9, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-818]

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

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

**SUMMARY:** In response to requests by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Italy for the period of review ("POR") July 1, 2008, through June 30, 2009. This review covers two producers/exporters of subject

merchandise: Pastificio Attilio Mastromauro—Pasta Granoro S.r.L. ("Granoro") and Pastificio Lucio Garofalo S.p.A. ("Garofalo").<sup>1</sup> We preliminarily determine that during the POR, Granoro and Garofalo sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* August 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** Victoria Cho or Jolanta Lawska AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5075 or (202) 482-8362, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

On July 1, 2009, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 74 FR 31406 (July 1, 2009). We received requests for review from petitioners<sup>2</sup> and individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(1) and (2). On August 26, 2008, the Department published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2008, through June 30, 2009, listing the following companies as respondents: Domenico Paone fu Erasmo, S.p.A. ("Erasmo"), Fasolino Foods Company, Inc. and its affiliate Euro-American Foods Group, Inc.

<sup>1</sup> At the Initiation of the instant review, the Department incorrectly spelled "Garofalo" as "Garafalo." *See Initiation FR of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 42873, 42875. The Department acknowledges that the correct spelling is "Garofalo."

<sup>2</sup> New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company, (collectively, "Petitioners").

("Fasolino/Euro-American Foods"), Garofalo, Granoro, Industria Alimentare Colavita, S.p.A. ("Indalco"), P.A.M. S.p.A. ("PAM"), and Pasta Lensi S.r.L. ("Lensi"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for revocation in Part*, 74 FR 42873 (August 25, 2009) ("*Initiation Notice*").

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now August 9, 2010. *See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,"* dated February 12, 2010.

On September 8, 2009, the Department announced its intention to select mandatory respondents based on CBP Data. *See Memorandum from George McMahon to Melissa Skinner* entitled "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated September 8, 2009. On September 11, 2009, the petitioners withdrew their request for review with respect to Erasmo, Garofalo, Indalco, and PAM. As a result of the petitioner's request to withdraw the aforementioned companies, the Department issued a memorandum on October 21, 2009, which indicated that respondent selection was no longer necessary in the instant review because it was practicable for the Department to review the remaining companies, Lensi, Granoro, Garofalo and Fasolino/Euro-American Foods. On October 30, 2009, Lensi withdrew its request for a review. On February 22, 2010, the petitioners withdrew their request for review with respect to Fasolino/Euro-American Foods.

As a result of withdrawals of request for review, we rescinded this review, in part, with respect to Erasmo, Lensi, Indalco, PAM, and Fasolino/Euro-American Foods. We did not rescind the review with respect to Garofalo because it self-requested a review and that request was not withdrawn. *See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, FR 75 10464 (March 8, 2010)

*(“Partial Rescission and Extension Notice”).*

Between October 2009 and May 2010, the Department issued its initial questionnaire and supplemental questionnaires to each respondent, as applicable. We received responses to the Department’s initial and supplemental questionnaires on December 11, 2009, April 13, 2010, May 19, 2010, and May 25, 2010, from Granoro. Garofalo provided responses to the Department’s initial and supplemental questionnaires on December 11, 2009, December 30, 2009, May 24, 2010, May 27, 2010, May 28, 2010, June 15, 2010, and June 22, 2010.

On December 17, 2009, petitioners alleged that Granoro made home market sales of pasta at prices below the cost of production (“COP”) during the POR. On January 22, 2010, the Department initiated an investigation to determine whether Granoro’s sales of pasta products were made at prices below the COP during the POR.<sup>3</sup>

On March 8, 2010, the Department fully extended the due date for the preliminary results of review from April 9, 2010, to August 9, 2010. See *“Partial Rescission and Extension Notice.”*

The Department conducted the sales verification of Granoro from June 7, 2010, through June 11, 2010, in Corato, Italy. The Department conducted the cost verification of Granoro from June 14, 2010, through June 18, 2010, in Corato, Italy. We verified the information upon which we relied in making our preliminary determination.

#### Scope of the Order

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

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

the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l’Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Istituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

#### Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (“the Act”), we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) wheat species; (3) milling form; (4) protein content; (5) additives; and (6) enrichment, by quarter. When there were no sales of identical merchandise in the comparison market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

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

#### Comparisons to Normal Value

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

monthly weighted-average prices for NV and compared these to individual U.S. transactions. Regarding Granoro and Garofalo, because we are using a quarterly costing approach, we have not made price-to-price comparisons outside of a quarter to lessen the potential distortion to sales prices which result from significantly changing costs. See Memorandum through James Terpstra from Jolanta Lawska titled “Sales Analysis Memorandum—Attilio Mastromauro-Pasta Granoro S.r.L.” (“Granoro’s Sales Analysis Memo”), dated August 9, 2010, of which the public version is on file in the Central Records Unit (“CRU”) in Room 1117 of the Main Commerce Building.

#### Export Price/Constructed Export Price

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

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. inland freight expenses, warehousing, and U.S. duties. With respect to Granoro, we capped the transportation recovery amounts by the amount of U.S. freight expenses, incurred on the subject merchandise, in accordance with our practice. See *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008), and accompanying Issues and Decision Memorandum (“2005–2007 OJ from Brazil”) at Comment 7.

In addition, when appropriate, we increased EP or CEP as applicable, by an

<sup>3</sup> See the January 22, 2010, Memorandum from the Team to Melissa Skinner, re: *Antidumping Duty Administrative Review of Pasta from Italy*, entitled “Petitioners’ Allegation of Sales Below the Cost of Production for Pastificio Attilio Mastromauro-Pasta Granoro S.r.L.”

amount equal to the countervailing duty (“CVD”) rate attributed to export subsidies in the most recently completed CVD 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, banking, slotting fees, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by its affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. See Memorandum through James Terpstra from Victoria Cho titled “Sales Analysis Memorandum—Pastificio Lucio Garofalo S.p.A.” (“Garofalo’s Sales Analysis Memo”), dated August 9, 2010, of which the public version is on file in the Central Records Unit (“CRU”) in Room 1117 of the Main Commerce Building.

## Normal Value

### A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price of the foreign like product sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price or constructed export price. The statute contemplates that quantities (or value) normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. 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 respondents’ volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Granoro and Garofalo each had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for both Granoro and Garofalo.

### B. Cost Reporting Period

The Department’s normal practice is to calculate an annual weighted-average cost for the POR. See *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department’s practice of computing a single weighted-average cost for the entire period). However, we recognize that possible distortions may result if we use our normal annual-average cost method during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) The change in the COM recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production (“COP”) or constructed value (“CV”) during the same shorter averaging periods. See *Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (“SSSS from Mexico”), and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (“SSPC from Belgium”), and accompanying Issues and Decision Memorandum at Comment 4.

#### 1. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low- quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-cost approach. See *SSPC from Belgium* at Comment 4. In the instant case, record evidence shows that Garofalo and Granoro experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR for the selected highest sales volume pasta products. This change in COM is attributable primarily to the price volatility for semolina used in the manufacture of

pasta. We found that prices for semolina changed significantly throughout the POR and, as a result, directly affected the cost of the material inputs consumed by Garofalo and Granoro. See Memorandum from Ernest Gziryan to Neal M. Halper, Director of Office of Accounting, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Pastificio Attilio Mastromauro-Pasta Granoro” (“*Granoro Cost Calculation Memo*”) and Memorandum from Angie Sepúlveda to Neal M. Halper, Director of Office of Accounting, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Pastificio Lucio Garofalo S.p.A.” (“*Garofalo Cost Calculation Memo*”) dated August 9, 2010.

#### 2. Linkage Between Cost and Sales Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR. See, *e.g.*, *SSSS from Mexico* at Comment 6 and *SSPC from Belgium* at Comment 4. The Department’s definition of “linkage” does not require direct traceability between specific sales and their specific production costs but, rather, relies on whether there are elements that would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. See *SSPC from Belgium* at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry and the overall production and sales processes. To determine whether a reasonable correlation existed between the sales prices and their underlying costs during the POR, for each respondent, we compared weighted-average quarterly prices to the corresponding quarterly COM for the five control numbers with the highest volume of sales in the comparison market and the United States. Our comparison reveals that sales and costs for each of the sample CONNUMs generally trended in the same direction and demonstrated correlation between the sales and cost data. The inventory records for both respondents demonstrate that the raw material and finished goods inventory are relatively low, indicating a minimal time lag between production and sale dates. After reviewing this information and determining that there is a trend of sales and costs for the majority of the POR, we preliminarily determine that there is

linkage between Garofalo and Granoro's changing costs and sales prices during the POR. See Granoro's Cost Calculation Memo. See also Garofalo's Cost Calculation Memo. See, e.g., *SSSS from Mexico* at Comment 6 and *SSPC from Belgium* at Comment 4.

Because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices, we have preliminarily determined that a quarterly costing approach leads to more appropriate comparisons in our antidumping duty calculation for Garofalo and Granoro.

#### C. Cost of Production Analysis

The Department disregarded sales below the COP in the last completed review in which Grafolo participated. See *Amended 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 22761 (April 27, 2004) ("Pasta Six"). For Granoro, as discussed above, we initiated a COP investigation based on petitioners' allegation. We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether sales from Granoro and Garofalo in the home market were made at prices below the COP.

We compared sales of the foreign like product in the home market with model-specific COP figures. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative ("SG&A") expenses, financial expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we relied on home market sales and COP information provided by Granoro and Garofalo in its questionnaire responses, except where noted below.

#### Granoro

We increased Granoro's per-unit cost of manufacturing to include certain production expenses which were excluded from the reported costs. For additional details, see Memorandum from Ernest Gziryan to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the

Preliminary Results—Pastificio Attilio Mastromauro-Pasta Granoro," dated August 9, 2010.

#### Garofalo

a. We increased Garofalo's COM to account for the unreconciled difference between the COM from its normal books and records and the reported COM.

b. We adjusted Garofalo's reported quarterly tolled quantities and re-calculated the weighted-average total COM.

c. We used the reported allocation methodology to distribute other losses between fixed overhead and general and administrative expenses which Garofalo excluded from the reported costs.

For additional details, see Memorandum from Angie Sepúlveda to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Pastificio Lucio Garofalo S.p.A.," dated August 9, 2010.

#### D. CV Section

We made the same adjustments to CV that we made for COP.

#### 1. Calculation of COP

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

#### 2. Test of Comparison Market Prices

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

#### 3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for Granoro and Garofalo, 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 Granoro's Sales Analysis Memo; see also Garofalo's Sales Analysis Memo.

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

We calculated NV based on ex-works, free on board ("FOB") or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance-of-sale adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act. We also made adjustments for Granoro and Garofalo, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the "commission offset." Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but

not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacture ("VCOM") for the foreign like product and subject merchandise, using weighted-average costs.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were disregarded. See Granoro's Sales Analysis Memo; see also Garofalo's Sales Analysis Memo.

#### 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.

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

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

In the home market, Granoro reported that it sold through two channels of distribution (direct sales and sales through unaffiliated agents) to eleven customer categories. Granoro reported that this constituted a single LOT. Our analysis of the selling activities for Granoro shows that Granoro performed similar selling activities for all customer categories and channels of distribution.

Although there are differences in intensity of these activities for some of the claimed customer categories, this, in and of itself, does not show a substantial difference in selling activities that would form the basis for finding a different LOT. See, e.g., *Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4. Therefore, we agree with Granoro that there is one LOT in the home market.

In the U.S. market, Granoro reported that its sales were made through two channels of distribution to one customer category. Granoro claims that its U.S. sales are at one LOT.

We compared the EP LOT to the home market LOT and concluded that the selling functions of the customers in the home market LOT are sufficiently similar to those of the U.S. to warrant considering them the same LOT. Thus, we find that the U.S. LOT is comparable to the HM LOT. Consequently, we are matching the EP sales to sales at the same LOT in the home market. Due to the proprietary nature of this issue, please refer to Granoro's Sales Analysis Memo for further discussion.

Garofalo claimed two LOTs in the home market. Garofalo reported that it sold through three channels of distribution to three customer categories. We disagree with Garofalo that there are two LOTs in the home market. Section 351.412 (c)(2) of the Department's regulations provide that the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

Our analysis of the selling activities for Garofalo shows that there is overlap in these activities for channels of distribution and customer categories. In other words, Garofalo performs similar selling activities for all customer categories and channels of distribution. Although there are differences in intensity of these activities for some of the claimed customer categories, this, in and of itself, does not show a substantial difference in selling activities that would form the basis for finding a different LOT. See, e.g., *Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070

(September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4. Due to the proprietary nature of this issue, please refer to Garofalo's Sales Analysis Memo for further discussion.

In the U.S. market, Garofalo reported that their sales were made through one channel of distribution to one customer category, and therefore, at one LOT. The Department has determined that Garofalo's home market sales were made at the same stage of marketing as the U.S. sales LOT. We are matching the EP sales which are at a single LOT to the same LOT in the home market, and will not make an LOT adjustment for Garofalo's sales to the United States.

#### Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank. See Granoro's Sales Analysis Memo; see also Garofalo's Sales Analysis Memo.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margins exist for the period July 1, 2008, through June 30, 2009, for the mandatory respondents:

Manufacturer/exporter	Margin (percent)
Granoro .....	0.80
Garofalo .....	6.29

The Department intends to disclose the calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding, in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c).

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

#### Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above

*de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisalment 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.

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

#### Cash Deposit Requirements

To calculate the cash deposit rate for Granoro and Garofalo, we divided its total dumping margin by the total net value of its 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 pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final

results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 15.45 percent, the all-others rate established in the LTFV investigation. See *Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

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

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

Dated: August 9, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

#### Foreign-Trade Zone 40—Cleveland, OH; Site Renumbering Notice

Foreign-Trade Zone 40 was approved by the FTZ Board on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78), and expanded on June 18, 1992 (Board Order 194, 47 FR 27579, 6/25/82), April 10, 1992 (Board Order 574, 57 FR 13694, 4/17/92), February 10, 1997 (Board Order 870, 62 FR 7750, 2/20/97), June 11, 1999 (Board Order 1040, 64 FR 33242-33243, 6/22/99), April 15, 2002 (Board Order 1224, 67 FR 20087, 4/2/2002), August 21, 2003 (Board Order 1289, 68 FR 52384, 9/3/03), August 21, 2003 (Board Order 1290, 68 FR 52384, 9/3/03), August 21, 2003 (Board Order 1295, 68 FR 52383-52384,

9/3/03), March 11, 2004 (Board Order 1320, 69 FR 13283, 3/22/04), March 24, 2004 (Board Order 1322, 69 FR 17642, 4/5/04), September 10, 2004 (Board Order 1351, 69 FR 56038, 9/17/04), April 15, 2005 (Board Order 1384, 70 FR 21736, 4/27/05), April 15, 2005 (Board Order 1386, 70 FR 21736, 4/27/05), December 9, 2005 (Board Order 1425, 70 FR 76023-76024, 12/22/05), December 21, 2005 (Board Order 1428, 70 FR 77376, 12/30/05), December 21, 2005 (Board Order 1429, 70 FR 77376, 12/30/05) and December 21, 2005 (Board Order 1430, 70 FR 77376, 12/30/05).

FTZ 40 currently consists of 10 "sites" totaling 5,853 acres in the Cleveland area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 40 will be as follows: Site 1 (94 acres)—Port of Cleveland complex on Lake Erie at the mouth of the Cuyahoga River; Site 2 (172 acres)—Cleveland Business Park, Cleveland; Site 3 (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; Site 4 (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; Site 5 (17 acres)—within the Collinwood Industrial Park, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; Site 6 (174 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Foltz Industrial Parkway and Lunn Road; Site 7 (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; Site 8 (15 acres)—within the Frane Properties Industrial Park, 2399 Forman Road, Morgan Township; Site 9 (170 acres)—within the 800-acre Harbour Point Business Park, Baumhart Road, at the intersections of U.S. Route 6 and Ohio Route 2, Vermilion; Site 10 (42 acres)—Broad Oak Business Park located at the intersection of Broadway Avenue and Golden Parkway Avenue (near Interstate 271); Site 11 (29 acres)—Ashtabula Distribution Center, LLC, 1527 Cook Road, Ashtabula Township, Ashtabula; Site 12 (448 acres)—Taylor Woods Commerce Park, bounded by Cleveland Street to the north, Taylor Parkway to the south, Race Road to the east and State Route 57 to the west, Lorain County; Site 13 (118 acres)—within the Solon Business Park, Solon; Site 14 (45 acres)—Cleveland Bulk Terminal, 5500 Whiskey Island Drive; Site 15 (1,200 acres)—Tow Path Valley Business Park located on both the east and west banks of the Cuyahoga River bordered by