



C-475-819  
2012 Sunset Review  
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DATE: December 28, 2012

MEMORANDUM TO: Lynn Fischer Fox  
Deputy Assistant Secretary  
for Policy and Negotiations

FROM: Gary Taverman  
Senior Advisor  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Certain Pasta from Italy

### Summary

We are conducting an expedited sunset review of the countervailing duty order covering certain pasta from Italy. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues raised in the substantive responses:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail

### History of the Order

On June 14, 1996, the Department of Commerce (“the Department”) published its final determination in the countervailing duty (“CVD”) investigation of pasta from Italy. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) from Italy*, 61 FR 30288 (June 14, 1996). The Department determined that benefits constituting subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the “Act”), were being provided by the Government of Italy (“GOI”) to Italian manufacturers, producers, and exporters. Specifically, the Department investigated 18 companies and found the following net subsidies for these companies:

<u>Manufacturers/Producers/Exporters</u>	<u>Net subsidy (percent)</u>
Agritalia, S.r.l.	2.55
Arrighi S.p.A. Industrie Alimentari	2.44
Barilla G. e R. F.lli S.p.A (“Barilla”)	Excluded
De Matteis Agroalimentare S.p.A.	2.47
Delverde, S.r.l.	5.90

F.lli De Cecco di Filippo Fara S. Martino S.p.A.	3.37
Gruppo Agricoltura Sana S.r.L.(“Gruppo”)	Excluded
Industria Alimentare Colavita, S.p.A	2.04
Isola del Grano S.r.L.	11.23
Italpast S.p.A.	11.23
Italpasta S.r.L.	2.44
La Molisana Alimentari S.p.A.	4.17
Labor S.r.L.	11.23
Molino e Pastificio De Cecco S.p.A. Pescara	3.37
Pastificio Guido Ferrara	1.21
Pastificio Campano, S.p.A.	2.59
Pastificio Riscossa F.lli Mastromauro S.r.L.	6.91
Tamma Industrie Alimentari di Capitanata	5.90
All Others	3.85

The following ten programs were found to confer countervailable subsidies in the original investigation:

- (1) Local Income Tax (ILOR) Exemptions;
- (2) Industrial Development Grants Under Law 64/86;
- (3) Industrial Development Loans Under Law 64/86;
- (4) Export Marketing Grants Under Law 304/90;
- (5) Social Security Reductions and Exemptions;
  - a. Sgravi Benefits;
  - b. Fiscalizzazione Benefits;
  - c. Law 407/90 Benefits;
  - d. Law 863 Benefits;
- (6) European Regional Development Fund;
- (7) European Social Fund;
- (8) Export Restitution Payments;
- (9) Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy;
- (10) Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77.

Following the International Trade Commission’s (“ITC”) affirmative finding that unfairly traded imports had materially injured the U.S. industry, the Department published an a CVD order on pasta from Italy on July 24, 1996. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) From Italy*, 61 FR 38544 (July 24, 1996) (“CVD Order”), and *Certain Pasta from Italy and Turkey*, Inv. Nos. 701-TA-365-366 and 731-TA-734-735 (Final), USITC Pub. 2977 (July 1996). Since the issuance of the CVD Order, the Department has conducted fifteen administrative reviews. *See Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review*, 63 FR 43905 (August 17, 1998); *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999), as amended in *Amendment to Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 51293 (September 22, 1999); *Certain Pasta From Italy: Final Results of the Third*

*Countervailing Duty Administrative Review*, 66 FR 11269 (February 23, 2001); *Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214, (December 12, 2001), as amended in *Certain Pasta From Italy: Amended Final Results of the Fourth Countervailing Duty Administrative Review*, 67 FR 59 (January 2, 2002); *Certain Pasta from Italy: Final Results of the Fifth Countervailing Duty Administrative Review*, 67 FR 52452 (August 12, 2002); *Certain Pasta from Italy: Final Results of the Sixth Countervailing Duty Administrative Review*, 68 FR 48599 (August 14, 2003); *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004); *Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005), as amended in *Notice of Correction to the Preliminary and Final Results of the Eighth Countervailing Duty Administrative Review: Certain Pasta from Italy*, 70 FR 62097 (October 28, 2005); *Certain Pasta from Italy: Final Results of the Ninth Countervailing Duty Administrative Review and Notice of Revocation of Order, in Part*, 71 FR 36318 (June 26, 2006); *Certain Pasta From Italy: Final Results of the Tenth (2005) Countervailing Duty Administrative Review*, 73 FR 7451 (February 7, 2008); *Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review*, 74 FR 5922 (February 3, 2009); *Certain Pasta from Italy: Final Results of the 12th (2007) Countervailing Duty Administrative Review*, 74 FR 47204 (September 15, 2009) (“*Twelfth Review Final Results*”); *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386 (June 29, 2010); *Certain Pasta From Italy: Final Results of the 2009 Countervailing Duty Administrative Review*, 77 FR 7129 (February 10, 2012) (“*Fourteenth Review Final Results*”); and *Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 69793 (November 21, 2012) (“*Fifteenth Review Final Results*”). The Department initiated the 16<sup>th</sup> administrative review on August 30, 2012, and the review is currently ongoing. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 77 FR 52688 (August 30, 2012).

On June 1, 2001, the Department initiated its first five-year sunset review of the CVD Order pursuant to section 751(c) of the Act. See *Notice of Initiation of Five-Year (“Sunset”) Reviews*, 66 FR 29771 (June 1, 2001). On October 10, 2001, the Department determined that revocation of the CVD Order would be likely to lead to continuation or recurrence of countervailable subsidies. See *Final Results of Sunset Review: Countervailing Duty Order on Certain Pasta From Italy*, 66 FR 51640 (October 10, 2001). The ITC determined that revocation of the CVD order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time, and on November 16, 2001, the Department continued the CVD Order. See *Continuation of Countervailing and Antidumping Duty Orders: Pasta from Italy and Turkey, and Clad Steel Plate from Japan*, 66 FR 57703 (November 16, 2001).

On October 2, 2006, the Department initiated its second five-year sunset review of the CVD Order pursuant to section 751(c) of the Act. See *Notice of Initiation of Five-Year (“Sunset”) Reviews*, 71 FR 57921 (October 2, 2006). On February 5, 2007, the Department determined that revocation of the CVD Order would be likely to lead to continuation or recurrence of countervailable subsidies. See *Certain Pasta From Italy: Final Results of Expedited Five-Year (“Sunset”) Review of the Countervailing Duty Order*, 72 FR 5271 (February 5, 2007). The ITC

determined that revocation of the CVD Order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time, and, therefore, the Department continued the CVD Order on October 12, 2007. *See Certain Pasta from Turkey and Italy: Continuation of Countervailing Duty and Antidumping Duty Orders*, 72 FR 58052 (October 12, 2007).

The Department has issued several scope rulings with respect to this CVD Order. *See Notice of Scope Rulings and Anticircumvention Inquiries*, 63 FR 6722 (February 10, 1998); *Notice of Scope Rulings and Anticircumvention Inquiries*, 63 FR 59544 (November 4, 1998); and *Notice of Scope Rulings and Anticircumvention Inquiries*, 65 FR 41957 (July 7, 2000).

The Department has conducted an anti-circumvention inquiry with respect to this CVD Order. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

On July 14, 2003, the Department published its final results of a changed circumstances review finding that Pasta Lenzi S.r.L. (“Lenzi”) is the successor-in-interest to Italian American Pasta Company Italia S.r.l. (“IAPC”) and that Lenzi should be assigned the countervailing duty deposit rate calculated by the Department for IAPC in the most recently completed administrative review. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta From Italy*, 68 FR 41553 (July 14, 2003). Since the second sunset review, the Department also issued a Changed Circumstances finding in which it revoked the Order with respect to gluten-free pasta. *See Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634 (May 12, 2011).

The Department conducted a new shipper review at the request of C.O.R.E.X., S.r.L. (“Corex”) and determined the net subsidy for Corex to be 0.95 percent *ad valorem*. *See Certain Pasta from Italy: Final Results of New Shipper Countervailing Duty Administrative Review*, 63 FR 66121 (December 1, 1998). On February 27, 2003, the Department initiated a new shipper review of Pastificio Carmine Russo S.p.A. (“Pastificio Russo”), covering the period from January 1, 2002 through December 31, 2002. *See Certain Pasta From Italy: Notice of Initiation of Countervailing Duty New Shipper Review*, 68 FR 10446 (March 5, 2003). However, the seventh administrative review covering the same period of review also included Pastificio Russo. Therefore, because the Department typically does not conduct parallel reviews covering the same period of review, we rescinded this new shipper review. *See Certain Pasta from Italy: Notice of Rescission of Countervailing Duty New Shipper Review*, 68 FR 68034 (December 5, 2003).

In the original investigation, Barrilla was excluded from the order due to a *de minimis* rate and Gruppo was excluded because of a zero rate. The CVD Order was partially revoked with respect to Pasta Lenzi R.r.l. (“Lenzi”) in the ninth administrative review. *See Certain Pasta from Italy: Final Results of the Ninth Countervailing Duty Administrative Review and Notice of Revocation of Order, in Part*, 71 FR 36318 (June 26, 2006). As a result of our findings in the investigation

and the various reviews, the order remains in effect for all Italian pasta producers and exporters except for Barilla, Gruppo, and Lensi.

## **Background**

On September 4, 2012, the Department published the notice of initiation of the third sunset review of the CVD Order, pursuant to section 751(c) of the Act. *See Initiation of Five-Year (“Sunset”) Review*, 77 FR 53867 (September 4, 2012).

On September 20, 2012, the Department received a notice of intent to participate from A. Zerega’s Sons, Inc., American Italian Pasta Company, Dakota Growers Pasta Company, Inc., New World Pasta Company, and Philadelphia Macaroni Company (collectively, “domestic interested parties”). Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as manufacturers of a domestic like product in the United States.

The Department received adequate substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We also received a substantive response from the Government of Italy (“GOI”). However, we did not receive substantive responses from any other respondent interested parties with respect to the sunset review. According to the Department’s regulations at 19 CFR 351.218(e)(1)(ii)(C)(2), when there are inadequate responses from respondent interested parties, we “{n}ormally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the *Federal Register* of the notice of initiation, issue final results of review based on the facts available in accordance with 19 CFR 351.308(f) (*see* section 751(c)(3)(B) of the Act and 19 CFR 351.221(c)(5)(ii)).” It is the Department’s practice that a government’s response alone is not sufficient to conduct a full sunset review. *See, e.g., Certain Pasta From Turkey: Final Results of Expedited Five-Year (“Sunset”) Review of the Countervailing Duty Order*, 72 FR 5269, 5270 (February 5, 2007), and *Certain Carbon Steel Products From Sweden; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18304 (April 7, 2000), and accompanying Issues and Decision Memorandum at “Background” section. Consistent with our regulations and practice, the Department determines that the GOI’s substantive response, without responses from other respondent interested parties, is inadequate for purposes of conducting a full review and is conducting an expedited (120-day) sunset review of the CVD Order.

## **Discussion of the Issues**

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD Order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination the Department shall consider 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order was revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy described is in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (“ASCM”).

Below we address the substantive responses and rebuttals of the interested parties.

## **1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy**

### Interested Party Comments

Domestic interested parties argue that the Department should determine that revoking the CVD Order would likely lead to continued and increased subsidization of Italian pasta. Domestic interested parties contend that subsidies to Italian pasta producers provided by the GOI show no indication of termination. Moreover, the domestic interested parties argue that Italian pasta producers continue to benefit from such subsidies as evidenced in the Department’s past administrative reviews. Domestic interested parties assert that several new programs have been found countervailable since the original investigation, some as recently as the fourteenth administrative review. Domestic interested parties claim that, although ten programs have been terminated since the original investigation, there are still over forty programs that remain in effect.

The GOI recommends that the Department revoke the CVD Order because there is no likelihood of continuation of benefits or recurrence in the future due to the numerical insignificance of benefits that have been granted to the Italian exporters of pasta in the past five years. The GOI claims that eleven programs investigated during the fourteen CVD administrative reviews have terminated. The GOI makes the following arguments regarding termination of certain programs:

- (1) *Export Restitution Payments and European Agricultural Guidance and Guarantee Fund (“EAGGF”)*: The export restitution payments made by the GOI are made on behalf of the EU through the EAGGF. Thus, although separately investigated, “Export Restitution Payments” and “Refunds under EAGGF” are the same program. Moreover, since July 1, 2000, there has been no restitution quota for pasta and there is no likelihood that it will be reinstated. Thus, the GOI requests that the Department finds these programs terminated.
- (2) *Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)*: This program terminated in December 1993, and the last payments from the GOI were made in December 1996. Because the allocation period for grants given in 1996 ended in 2008, the GOI asks the Department to find this program terminated.
- (3) *Industrial Development Grants Under Law 183/76*: The program was repealed with the passage of Law 64/86 in March 1986. Because it is no longer possible to apply

for grants under this program and, in the absence of likelihood of the recurrence of benefits, the Department should find this program terminated.

- (4) *Industrial Development Grants Under Law 64/86*: The program was repealed with the passage of Law 488/92. Because it is no longer possible to apply for grants under this program and, in the absence of likelihood of the recurrence of benefits, the Department should find this program terminated.
- (5) *Training Grants Under Law 113/86 and Retraining Grants Under Law 675/77*: Since the original investigation, these two programs have never been found to have been used by any Italian pasta exporter. The GOI claims this is because the relevant appropriations terminated. Moreover, Law 113/86 was repealed as of June 25, 2008, by L.D. n. 112 as modified by Law n. 133 of August 6, 2008 (the GOI attached this). Therefore, the Department should find these programs to be terminated.
- (6) *Law 863/84 (as modified by Law 407/90)*: The Department found in the twelfth administrative review that this program was terminated. Therefore, the Department should remove this program from the list of investigated programs for future CVD administrative reviews.
- (7) *Law 289, Article 62, Investments in Disadvantaged Areas; and Law 289, Article 63, Tax Credit for the Increase of the Employment Base*: These programs are no longer operational for investments made after December 31, 2006. Regarding the latter, all benefits were expensed. Therefore, the Department should remove these programs from future CVD reviews.
- (8) *Law 296, Article 280*: This program was repealed on June 22, 2012, and converted to Law No. 134 on August 7, 2012. (The GOI attaches this.) Therefore, the Department should remove this program from future CVD reviews because any outstanding benefits have been expensed.

The GOI further asserts that the following programs are not countervailable because they are no longer regionally specific or are not limited to the pasta sector: Interest contributions under Law 1329/65 (formerly Lump-Sum Interest Payments under Sabatini Law); Interest Subsidies Under Law 598/94; European Social Fund; Interministerial Decree 87/02; European Regional Development Fund; Law 181/98, Reindustrialization of Steel Plant Areas in Crisis; and Benefits for Innovative Investments Under Law 317/91. The GOI argues that three programs – Preferential Financing for Export Promotion Under Law 394/81, as amended by Law 304/90, Export Credits under Law 227/77 and Law 10/91 Grants to Fund Energy Conservation – were found to not be used by any Italian pasta exporter during past administrative reviews. The GOI contends that its Duty Free Import Rights program should be considered to operate as a non-excessive duty drawback system that is in compliance with international agreements, including GATT provisions, the World Customs Organization’s Kyoto Convention and the ASCM. Lastly, the GOI contends that one program, Chamber of Commerce Brescia grants, bestowed

insignificant benefits and should be removed from the investigated programs because it has not been used since the seventh administrative review.

The GOI concludes that it does not foresee any negative impact from the termination of the CVD Order. The GOI claims that in recent administrative reviews, there is a history of significantly reduced levels of subsidization to Italian producers and exporters of pasta. The GOI argues that the current level of subsidization is close to or below *de minimis* levels, which is demonstrated by the number of programs that have been terminated, conferred insignificant benefits, or found non-countervailable or not used since the investigation.

Domestic interested parties rebut the GOI's assertion that there would be no negative impact from the termination of the CVD Order because the levels of subsidies have been reduced in recent reviews. Domestic interested parties claim that the GOI's statements on the non-use of countervailed programs in recent years, which has led to "a CVD rate close to or below the *de minimis* threshold" for Italian companies, are not supported by facts on the record. Domestic interested parties point to evidence that, among the sixteen respondents that received an affirmative subsidy margin in the original investigation, the Department has since calculated a *de minimis* margin for only one. Domestic interested parties claim that the Department has calculated CVD rates for respondent companies well above *de minimis* since the tenth administrative review.

Moreover, domestic interested parties state that the GOI's assertion that certain programs were not used is strictly limited to those companies that were reviewed and does not demonstrate "non-use" by all Italian producers and exporters. Domestic interested parties claim that although the CVD Order may cause certain companies to refrain from using certain subsidies during subsequent administrative review periods that does not mean that these subsidies are unlikely to be used if the CVD Order is revoked.

#### Department's Position

According to the Statement of Administrative Action ("SAA"), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated. *See* SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888. The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. *See id.* Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying Issues and Decision Memorandum at Comment 1. Where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization. *See id.*

As the Department has stated in prior sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated. *See, e.g., Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying Issues and Decision Memorandum at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006). The Department has further stated that, in order to determine whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. *See, e.g., Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011), and accompanying Issues and Decision Memorandum at Comment 1. The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment 7. Where a subsidy is not bestowed pursuant to a statute, regulation or decree, the Department may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program. *See, e.g., Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

In this sunset review, the GOI has not provided evidence supporting its claims that the following ten programs have been terminated: (1) Export Restitution Payments; (2) European Agricultural Guidance and Guarantee Fund; (3) Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA); (4) Industrial Development Grants under Law 183/76; (5) Industrial Development Grants under Law 64/86; (6) Training Grants under Law 113/86; (7) Retraining Grants under Law 675/77; (8) Law 289, Article 62, Investments in Disadvantaged Areas; (9) Law 289, Article 63 (Tax Credit for the Increase of the Employment Base); and (10) Law 296, Article 280. As explained above, the Department normally expects a program enacted by statute or regulation to be repealed by statute or regulation. In this case, however, the GOI relied on general statements without supporting documentation in arguing that programs were terminated and that benefits under the programs were fully allocated. Consequently, we disagree that these programs should be treated as terminated for purposes of this sunset analysis.

With regard to GOI's claim that the Department found Law 863/84 to have been terminated in the twelfth administrative review, we agree. *See Certain Pasta from Italy: Preliminary Results of the 12<sup>th</sup> (2007) Countervailing Duty Administrative Review*, 74 FR 25489, 25496 (May 28, 2009), unchanged in Twelfth Review Final Results. We also found that there would be no subsidy benefits during or after 2006. *Id.* Therefore, subsidies under Law 863/84 are not likely to continue or recur.<sup>1</sup>

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<sup>1</sup> In its substantive response, the GOI identified this program as "Law 863/84 (as modified by Law 407/90)." The Department has not previously found these two laws to be related. *See, e.g., Certain Pasta From Italy: Preliminary*

The Department has also analyzed the GOI’s claims that certain programs are not countervailable, either because they are no longer regionally specific or are no longer operational. Once again, the GOI has not provided any supporting documentation to substantiate its assertions. Furthermore, benefits continued to be received under several programs in this sunset period. For example, as recently as the fifteenth administrative review, which covered calendar year 2010, the Department found that the GOI granted benefits under the European Social Fund to an Italian manufacturer or exporter of pasta. *See Certain Pasta From Italy: Preliminary Results of the 15th (2010) Countervailing Duty Administrative Review and Rescission, In Part*, 77 FR 45582, 45585 (August 1, 2012), unchanged in *Fifteenth Review Final Results*. The Department notes that any decline in the use of these programs over time may reflect the discipline of the CVD order.

In conclusion, we determine that there is a likelihood of recurrence of countervailably subsidies because the Department has found the continued existence of numerous subsidy programs remain in place, and that Italian producers and exporters can continue to benefit from these subsidies.

## 2. Net Countervailable Subsidy Likely to Prevail

### Interested Party Comments

Domestic interested parties cite to the SAA and the Department's *Policy Bulletin* to show that the Department normally selects the subsidy rate established in the original investigation. *See Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (“*Policy Bulletin*”). Domestic interested parties argue, however, that the *Policy Bulletin* allows for adjustments to the original countervailing duty rates under certain circumstances, such as where programs have been terminated, where there have been program-wide changes, or the original investigation rates ignore a program found to be countervailable in a subsequent administrative review. Domestic interested parties state that the Department used this discretion in the second sunset review to adjust the net countervailable subsidy rates from the original investigation. They urge the Department to make adjustments to the original investigation rates to take into account all new subsidy programs that have been identified, and to rely, at minimum, on following net subsidy rates used in the second sunset review:

<b>Producer/Exporter</b>	<b>Net Countervailable Subsidy (Percent)</b>
Agritalia, S.r.l.	3.96
Arrighi S.p.A. Industrie Alimentari	3.85
De Matteis Agroalimentare S.p.A.	3.48
Delverde, S.r.l.	6.76

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*Results of the 15<sup>th</sup> (2010) Countervailing Duty Administrative Review and Rescission, In Part*, 77 FR 45582, 45586 (August 1, 2012) (Law 407/90 is listed under “Programs Preliminarily Determined To Not Be Used” and Law 863/84 is listed under “Previously Terminated Programs”), unchanged in *Fifteenth Review Final Results*. Thus, we are continuing to treat subsidies under Law 407/90 as likely to continue or recur.

F. Ili De Cecco di Filippo Fara S. Martino S.p.A.	3.40
Industria Alimentare Colavita, S.p.A.	3.01
Isola del Grano, S.r.L.	10.70
Italpast S.p.A.	10.70
Italpasta S.r.L.	3.85
La Molisana Alimentari S.p.A.	4.82
Labor, S.r.L.	10.70
Molino e Pastificio De Cecco S.p.A. Pescara	3.40
Pastificio Guido Ferrara	2.34
Pastificio Campano, S.p.A.	3.47
Pastificio Riscossa F.lli Mastromauro S.r.L.	7.81
Tamma Industrie Alimentari di Capitanata	6.76
All Others	4.52

### Department's Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. *See* SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) (“House Report”) at 64. Section 752(b)(1)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

Consistent with the SAA and the *Policy Bulletin*, the Department has started with the rates found in the original investigation in order to determine company-specific, net countervailable subsidy rates likely to prevail, and has added the rates from the subsidy programs subsequently found to be countervailable (during the first through the fifteenth administrative reviews): (1) PRISMA; (2) Industrial Development Grants under Law 488/92; (3) Industrial Development Grants Under Law 183; (4) Law 598/94 Interest Subsidies; (5) Law 236/93 Training Grants; (6) Law 341/95 Interest Contributions on Debt Consolidation Loans; (7) Duty Free Import Rights; (8) Law 30 of 1984; (9) Law 908/55 Revolving Fund for Economic Initiatives Loan; (10) Law 289/02, Article 62, Investment in Disadvantaged Areas; (11) Law 289/02, Article 63, Increase in Employment; (12) Law 662/96; (13) Law 196/97; (14) Article 14 of Law 46/1982; (Fondo Innovazione Tecnologica); (15) Regional Law 34/1988; (16) Measure 3.14 of the POR Sicilia 2000/2006; (17) Tax Credits Under Article 280 of Law 296/2006; and (18) Article 23 of Legislative Decree 38/2000.

Where the Department has found that a program was terminated with no residual benefits and no likelihood of reinstatement or replacement, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change. In the first through fifteenth administrative reviews of this CVD order, the Department found that the following programs were terminated: (1) Local Income Tax (ILOR); (2) Fiscalizzazione Benefits; (3) Regional Tax Exemptions Under IRAP; (4) VAT Reductions Under Laws 64/86 and 675/55; (5) Corporate Income Tax (IRPEG) Exemptions; (6) Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77; (7) Export Marketing Grants Under Law 304/90 (8) Tremonti Law (9) Social Security Reductions and Exemptions – Sgravi, Article 44 of Law 448/01; (10) Social Security Reductions and Exemptions – Sgravi, Law 337/90; and (11) Social Security Reductions and Exemptions – Sgravi, Law 863/84, and (12) Social Security Reductions and Exemptions – Sgravi, Law 196/97. Therefore, we have subtracted the rates calculated for these programs in this sunset review. *See* Memorandum from Mahnaz Khan, International Trade Compliance Analyst, AD/CVD Operations, Office 1 to the Susan Kuhbach, Office Director, AD/CVD Operations, Office 1 concerning “Calculation of Net Countervailable Subsidy Likely to Prevail for Final Results of Expedited Sunset Review of the Countervailing Duty Order on Certain Pasta from Italy,” dated January 4, 2013.

On this basis, the Department has found that net subsidy levels for Italian producers and exporters of pasta included in this review are all above *de minimis*. Consistent with section 752(b)(3) of the Act, the Department will provide the ITC the net countervailable subsidy rates shown in the section entitled “Final Results of Review.”

### **3. Nature of the Subsidies**

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

#### *Article 3*

In the instant review, there is one program that falls under Article 3.1 of the ASCM, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

#### *1) Export Restitution Payments*

Since 1962, the European Union (“EU”) has operated a subsidy program that provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. Generally, under this program, a restitution payment is available to any EU pasta producer exporting pasta products, regardless of whether the EU pasta producer has purchased

the durum wheat used in its pasta exports from within the EU or has imported it. Additionally, under this program, the EU permits a pasta exporter to purchase a certificate that locks in a restitution payment rate if the pasta exporter promises to export a certain amount of pasta by a certain date.

In 1987, the nature of this program changed with regard to exports to the United States as a result of a settlement reached by the United States and the then-European Communities (“EC”). Under the settlement, the EC agreed to allow the importation of durum wheat from any non-EU country free of any levy under a system described in the settlement as “Inward Processing Relief,” or “IPR.” Under this system, the EU pasta producer would not receive a restitution payment when exporting to the United States pasta products containing durum wheat imported with IPR. Essentially, a restitution payment no longer was necessary because no levy had been paid upon importation in the first place.

As to pasta products containing EU durum wheat or durum wheat that had been imported without IPR, a restitution payment remained available for exports to the United States, except that the restitution rate was reduced, originally by 27.5 percent and later by approximately 35 percent, from the normal level available for exports to all other countries. As a further condition of the settlement, the EC agreed to attempt to balance its exports to the United States equally between pasta products containing durum wheat imported with IPR, and pasta products containing EU durum wheat or durum wheat imported without IPR.

#### *Article 6.1*

In the instant review, there could be programs that fall within the meaning of Article 6.1 of the ASCM if the total *ad valorem* subsidization of a product exceeds five percent, or if they constitute debt forgiveness, grants to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. There is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

##### *1) Export Restitution Payments*

See above.

##### *2) Industrial Development Grants Under Law 64/86*

Law 64/86 provides assistance to promote industrial development in the Mezzogiorno. Grants are awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies are eligible for grants to expand existing plants but not to establish new plants, because the market for pasta has been deemed to be close to saturated. Grants are made only after a private credit institution chosen by the applicant made a positive assessment of the project.

##### *3) Industrial Development Loans Under Law 64/86*

Law 64/86 also provides reduced rate industrial development loans with interest contributions to companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. The interest rates on these loans are set at the reference rate, with the GOI's interest contributions serving to reduce this rate. Pasta companies are eligible for interest contributions to expand existing plants but not to establish new plants.

4) *Social Security Reductions and Exemptions Law 407/90 Benefits*

This program grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years. A 100 percent exemption was allowed for companies in southern Italy. However, companies located in northern Italy received only a 50 percent exemption.

5) *Social Security Reductions and Exemptions Law 863 Benefits*

This law provides companies in northern Italy a 25 percent reduction in social security payments for employees who are participating in a training program. Companies in southern Italy receive a 100 percent reduction in social security payments for such employees.

6) *European Regional Development Fund ("ERDF")*

The ERDF is one of three Structural Funds operated by the European Commission. The ERDF was created pursuant to the authority in Article 130 of the Treaty of Rome in order to reduce regional disparities in socio-economic performance within the Community. The ERDF program provides grants to companies located within regions which meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions) or Objective 5(b) (declining agricultural regions) under the Structural Funds.

7) *European Social Fund ("ESF")*

The ESF is also one of the Structural Funds operated by the European Commission. The ESF was created under Article 123 of the Treaty of Rome in order to improve employment opportunities for workers and to help raise their living standards. The ESF principally provides vocational training and employment aids. ESF aid is generally provided directly to public institutions or non-commercial enterprises. However, it can also be provided directly to a company, provided that it is located in an Objective 1, Objective 2, or Objective 5(b) region. The ESF provides grants to such companies in order to train current employees for new jobs or to hire new employees.

8) *Lump-Sum Interest Payment Under the Sabatini Law*

The Sabatini Law was enacted in 1965 to encourage the purchase of machine tools and production machinery. It provides for a deferral of up to five years of payments due on installment contracts for the purchase of such equipment and for a one-time, lump-sum interest

contribution from Mediocredito Centrale toward the interest owed on these contracts. The amount of the interest contribution is equal to the present value of the difference between the payment stream over the life of the contract based on the reference rate and the payment stream over the life of the contract based on a concessionary rate. The concessionary rate for companies located in the Mezzogiorno is the reference rate less eight percentage points. The concessionary rate for companies located outside the Mezzogiorno is the reference rate less five percentage points.

*9) Industrial Development Grants Under Law 488/92*

In 1986, the EC initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible areas may apply for industrial development grants.

*10) Law 183/76 Industrial Development Grant*

Law 183/76 is known to the Department as a law that authorizes companies located in the Mezzogiorno to take reductions or exemptions in social security contributions for the hiring of new employees. Law 183/76 also allows for the provision of industrial development grants.

*11) Law 598/94 Interest Subsidies*

Under Law 598/94, the GOI pays a portion of the interest on certain loans granted to small- and medium-sized industrial companies. These loans are to be used for investments related to technological innovation and/or environmental protection. The GOI has stated that the general level of subsidies under Law 598/94 is 30 percent of the initial interest payable, but is 45 percent for companies in disadvantaged regions of Italy.

*12) Law 236/93 Training Grants*

Under Law 236/93, which is administered by the regional governments but funded by the GOI, grants are provided to Italian companies for worker training.

*13) Duty Free Import Rights*

Under Italian and EU customs procedures, companies may seek authorization for duty-free importation of certain agricultural input products, on the condition that processed agricultural products are exported. Under the Temporanea Importazione scheme, a processor of agricultural products can apply to import its input duty free and, after processing, to export the processed product. Under the Riesportazione Preventiva scheme, the order is reversed: after exporting the processed product, the agricultural input product can be imported duty free. The authorizations for duty-free importation, granted by the customs authorities, are transferable.

#### *14) Development Grants Under Law 30 of 1984*

Law 30 of 1984 was enacted by the Regional Government of Friuli-Venezia Giulia to provide one-time development grants to companies for investments in industrial projects, including the construction of new plants and modernization or expansion of existing plants. Eligible companies can receive a grant amounting to 20 percent of the cost of the investment, with the grant not to exceed 1,000,000,000 lire. Only companies located in certain parts of the Friuli-Venezia Giulia region are eligible to receive benefits under this program in accordance with article 87, paragraph 3, letter c of the EC Treaty.

#### *15) Law 908/55 (Revolving Fund for Economic Initiatives) Loan*

The GOI created the Fondo di Rotazione Iniziative Economiche (Rotational Fund for Economic Initiatives) (FRIE) through Law 908 of October 18, 1955 in order to promote economic initiatives within the territory of Trieste and the province of Gorizia in the Friuli-Venezia Giulia region. The fund provides reduced-interest loans for the construction, re-activation, transformation, modernization, improvement, and industrial development of industrial plants and handicraft companies in the above-noted areas. Companies that receive long-term, variable rate loans under this program receive an interest rate equal to 50 percent of the 6-month Euro Interbank Offered Rate.

#### *16) Article 14 of Law 46/1982 (Fondo Innovazione Tecnologica)*

Article 14 of Law 46/1982 authorized the creation of a revolving fund for technology innovation, also known as the “FIT Program.” Through the fund, the Ministry of Economic Development provides aid for experimental and industrial research projects in the form of soft loans, grants against interest, and capital grants. After an application is submitted to one of the banks approved by the Ministry to administer the program, the application is evaluated on a number of scientific, technological and economic criteria. Subject matter experts in relevant fields may be asked to help evaluate the technical merits of the proposal. Within 90 days from the submission of an application, the bank is required to report to the Ministry of Economic Development whether it believes the project is feasible. Projects that pass this examination are funded in order of highest to lowest score, until all the resources appropriated for the program have been exhausted.

#### *17) Regional Law 34/1988*

Under Regional Law 34/1988, the Regional Department of Industry in Sicily may provide interest contributions to companies that belong to “Consorti di Garanzia Fidi,” which are consortia made up of a number of companies. The GOI’s contributions are made against interest paid by consortium members on lines of credit taken out through the consortium.

#### *18) Law 341/95 Interest Contribution to Debt*

Law 85/95 created the Fondo di Garanzia aimed at improving the financial structure of small- and medium-sized companies located in EU Objective 1 areas. Under Article 2 of Law 341/95, monies from the Fondo di Garanzia are used to make interest contributions on debt consolidation loans obtained by eligible companies. The company first enters into a loan contract with a commercial bank. Then, the contract is submitted to the approving authority. After approval, the loan is made.

*19) Measure 3.14 of the POR Sicilia 2000/2006*

The POR Sicilia 2000/2006 is a regional development program designed to encourage stable economic growth in southern Italy. Measure 3.14 of the POR Sicilia 2000/2006 provides assistance in the form of grants to companies that undertake approved industrial research projects. Companies may apply for funding under two provisions. The first provision provides support to companies for developing best practices in a number of fields. Most grants are given under the second provision, which funds industrial research projects, particularly those that are undertaken in partnership with other companies or with research institutions such as universities.

*20) Tax Credits Under Article 280 of Law 296/2006*

Under Article 280 of Law 296/2006, the GOI authorizes a tax credit to companies of up to ten percent of the costs associated with eligible research activities, or a tax credit of up to 15 percent for research expenses associated with contracts between companies and research institutions.

*21) Article 23 of Legislative Decree 38/2000*

Article 23 of Legislative Decree 38/2000 helps certain companies comply with the workplace safety regulations contained in Legislative Decree 626/94 by providing assistance to those companies. The program is administered by the National Institute for Insurance Against Injuries in the Workplace, or INAIL, which is an agency of the Italian government. In order to be eligible for assistance, firms must be operating in the agricultural or artisanal sectors and qualify as small- to medium-sized companies (*i.e.*, they must have fewer than 250 employees, and their total annual turnover must be less than 40 million Euros, or they must have total assets of less than 27 million Euros). INAIL is authorized to award funds in the form of grants or loans. It pays all interest and fees on the loans directly to the issuing bank, effectively making the loans interest-free to the recipient.

*22) Law 289/02, Article 62, Investments in Disadvantaged Areas*

Article 62 of Law 289/02 provides a credit towards taxes payable. The law was established to promote investment in disadvantaged areas by providing assistance to companies making investments such as the purchase of new equipment for existing structures or building new structures.

## Final Results of Review

As a result of this sunset review, the Department finds that revocation of the CVD Order on pasta from Italy would likely lead to a continuation or recurrence of a countervailable subsidy at the rates listed below:

<b>Producer/Exporter</b>	<b>Net Countervailable Subsidy (Percent)</b>
Agritalia, S.r.l.	6.84
Arrighi S.p.A. Industrie Alimentari	6.73
De Matteis Agroalimentare S.p.A.	6.01
Delverde, S.r.l.	9.64
F. Ili De Cecco di Filippo Fara S. Martino S.p.A.	6.28
Industria Alimentare Colavita, S.p.A.	5.89
Isola del Grano, S.r.L.	13.58
Italpast S.p.A.	13.58
Italpasta S.r.L.	6.73
La Molisana Alimentari S.p.A.	7.70
Labor, S.r.L.	13.58
Molino e Pastificio De Cecco S.p.A. Pescara	6.28
Pastificio Guido Ferrara	5.22
Pastificio Campano, S.p.A.	6.35
Pastificio Riscossa F.Ili Mastromauro S.r.L.	10.69
Tamma Industrie Alimentari di Capitanata	9.64
All Others	7.39

## **Recommendation**

We recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register* and notify the ITC of our findings.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
Lynn Fischer Fox  
Deputy Assistant Secretary  
for Policy and Negotiations

\_\_\_\_\_  
Date