

February 6, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

THROUGH: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Susan Kuhbach
Office Director
AD/CVD Operations, Office 1

Yasmin Nair
Program Manager
AD/CVD Operations, Office 1

FROM: The Team

SUBJECT: Issues and Decision Memorandum for the Final Results in
the 14th Administrative Review of the Countervailing Duty
Order on Certain Pasta from Italy

Background

In this administrative review, we examined subsidies provided to F.lli De Cecco di Filippo Fara San Martino S.p.A. (“De Cecco”), Molino e Pastificio Tomasello (“Tomasello”), Pastificio Antonio Pallante S.r.L. (“Pallante”), and Pastificio Fabianelli S.p.A. (“Fabianelli”) for the period of review (“POR”) January 1, 2009, through December 31, 2009.

On August 8, 2011, the Department of Commerce (“the Department”) published its Preliminary Results in this administrative review.¹ Subsequently, on August 12, 2011, the Department issued its Fourth Supplemental Questionnaire to Tomasello. In order to allow parties time to consider

¹ See Certain Pasta From Italy: Preliminary Results of the 14th (2009) Countervailing Duty Administrative Review, 76 FR 48130 (August 8, 2011) (“Preliminary Results”).

this additional information, we informed parties on August 15, 2011, that we would extend the briefing schedule.² We received Tomasello’s questionnaire response on September 8, 2011. We then established September 19, 2011, as the deadline for filing case briefs.³

Tomasello was the only party to file a case brief. However, it included untimely filed new factual information in its brief. We instructed Tomasello to re-file a copy of its case brief with the new factual information removed.⁴ It did so on September 29, 2011. We have considered Tomasello’s arguments and address the issues it raised below under “Analysis of Comments.” The following is a complete list of the issues in this administrative review for which we received comments from Tomasello:

- Issue 1: Whether the Department impeded the proceeding**
- Issue 2: Whether the Department failed to differentiate between national government programs and regional government programs**
- Issue 3: Whether the Department should have countervailed the entire benefit from Law 46/1982, Article 14 (Fondo Innovazione Tecnologica)**
- Issue 4: Whether the Department should have found Article 280 of Law 296/2006 and Article 23 of Legislative Decree 38/2000 to be specific**

We also describe the subsidy programs and the methodologies used to calculate benefits from the programs being reviewed under “Analysis of Programs” and “Subsidies Valuation Information.” We recommend that you approve the positions in this memorandum.

Use of Facts Otherwise Available and Adverse Facts Available

For this final determination, we continue to rely on facts available regarding certain programs, as described in the Preliminary Results.

On April 13, 2011, Tomasello informed the Department that it received subsidies from the Government of Italy (“GOI”) under seven programs that were not reported in Tomasello’s November 3, 2010 questionnaire response. Except for Law 46/1982, it appeared that the Department had not previously investigated the countervailability of these programs in the Pasta Investigation⁵ or in subsequent reviews. Therefore, on May 12, 2011, we asked the GOI to respond to the full questionnaire for all seven programs. We received the GOI’s response on June 13, 2011, and discovered that it contained numerous deficiencies. The GOI failed to respond to most of our questions for all but one program.⁶ It also failed to provide the applicable laws for four of the programs and did not translate one of the laws it did provide, despite our request to provide translated laws for each program.⁷ In addition, the GOI failed to identify the

² See Memorandum to File from Christopher Siepmann, “Extended Briefing Schedule” (August 15, 2011).

³ See Memorandum to File from Christopher Siepmann, “Briefing Schedule” (September 12, 2011).

⁴ See Letter to Tomasello from the Department, “Certain Pasta from Italy: Return of Tomasello’s Case Brief” (September 27, 2011).

⁵ See Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) From Italy, 61 FR 30288 (June 14, 1996) (“Pasta Investigation”).

⁶ See GOI second supplemental questionnaire response dated June 13, 2011.

⁷ Id. 19 CFR 351.303(e) requires documents submitted in foreign language to be accompanied by an English

industries or enterprises that received benefits under these programs and the corresponding amounts given to them (“usage data” or “usage information”).⁸

Because the GOI’s response did not provide us with the required information to determine whether any of these seven programs are countervailable, we requested this information a second time. This second attempt consisted of two questionnaires issued on June 17, 2011, and June 28, 2011. The GOI filed a timely response to the June 17, 2011 questionnaire, but failed to respond to many of the questions, including questions concerning usage for three programs.⁹ The GOI then failed to provide usage data for the remaining four programs in its August 11, 2011 questionnaire response.¹⁰

The statute identifies specificity as one of three necessary elements of a countervailable subsidy.¹¹ We normally rely on information from the government to determine whether a program is specific.¹² Although it was given multiple opportunities, the GOI’s responses left us without the necessary information to determine whether many of the programs reported by Tomasello in its April 13, 2011 submission are countervailable.

Sections 776(a)(1) and (2) of the the Act provide that the Department shall apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

We determine that the GOI has withheld necessary information that was requested of it for these seven programs. The GOI also failed to provide information requested by the Department by the deadline for the submission of the information. Because the record is incomplete for these programs, the Department must rely on “facts available.”¹³ Moreover, the GOI has failed to cooperate by not acting to the best of its ability to comply with our requests for information, so we are applying an adverse inference in our use of facts available.¹⁴ Due to the GOI’s failure to cooperate, we are finding as adverse facts available (“AFA”) that benefits from six of these seven programs are specific.¹⁵ An analysis of these programs is found in the “Analysis of

translation, unless this requirement was waived by the Department. The Department issued no such waiver in this review.

⁸ See GOI second supplemental questionnaire response dated June 13, 2011.

⁹ See GOI third questionnaire response dated July 1, 2011, at 1, 3, and 4.

¹⁰ See GOI fourth supplemental questionnaire response dated August 11, 2011, at 8, 13, 14, and 16-17.

¹¹ See sections 771(5)(A) and 771(5A) of the Tariff Act of 1930, as amended (“the Act”).

¹² See, e.g., Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 45472 (August 2, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

¹³ See sections 776(a)(1), 776(a)(2)(A) and 776(a)(2)(B) of the Act.

¹⁴ See section 776(b) of the Act.

¹⁵ See section 771(5A) of the Act. We have not resorted to AFA for Regional Law 15/1993 because Tomasello

Programs” section below.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.” Our determinations regarding the specificity of these programs are based on an adverse inference under section 776(b) of the Act arising from the unwillingness of the GOI to provide necessary information pertaining to the access to, or the distribution of, the subsidies. The facts available decisions described above do not rely on secondary information. The corroboration requirement of section 776(c) of the Act is, therefore, not applicable for the use of facts available in this review.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), benefits from non-recurring subsidies are allocated over a period corresponding to the average useful life (“AUL”) of the renewable physical assets used to produce the subject merchandise. The Department’s regulations create a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service’s Class Life Asset Depreciation Range System (“IRS Tables”).¹⁶ For pasta, the most recent IRS Tables prescribe an AUL of 12 years. None of the responding companies or other interested parties objected to this allocation period. Therefore, we have used a 12-year allocation period.

Attribution of Subsidies

The Department’s regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) direct that the Department will attribute subsidies received by certain other companies to the combined sales of the recipient and other companies if: (1) cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department’s regulations states that this standard will normally be met where there is a majority

informed us that it did not receive benefits during the POR for this recurring program. See Tomasello fourth supplemental questionnaire response dated September 9, 2011, at 3-4.

¹⁶ See 19 CFR 351.524(d)(2).

voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the CVD Preamble, relationships captured by the cross-ownership definition include those where

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.¹⁷

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The Court of International Trade (“CIT”) has upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹⁸

Our attribution analysis for each company is below.

De Cecco

In the instant review, De Cecco has responded on behalf of itself and three other members of the De Cecco group of companies: Molino e Pastificio De Cecco S.p.A. (“De Cecco Pescara”), Centrale Elettrica F.lli De Cecco S.r.L. (“Centrale”), and Consorzio Elettrico Imprese De Cecco (“C.E.I.D.”).¹⁹

De Cecco manufactures pasta for sale in Italy, to third-country markets, and to the United States.²⁰ De Cecco Pescara manufactures pasta for sale to De Cecco and to unaffiliated third parties in Italy.²¹ For the reasons explained in the Business Proprietary Memorandum from Mahnaz Khan to Susan Kuhbach, “Information Concerning Respondents’ Attribution,” dated August 1, 2011 (“Respondents’ Attribution Memo”), we find that cross ownership exists between De Cecco Pescara and De Cecco within the meaning of 19 CFR 351.525(b)(6)(vi). Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by De Cecco and De Cecco Pescara to the combined sales of both, excluding inter-company sales.

¹⁷ See Countervailing Duties, 63 FR 65348, 65401 (November 25, 1998) (“CVD Preamble”).

¹⁸ See Fabrique de Fer de Charleroi v. United States, 166 F. Supp. 2d 593, 600-04 (Ct Int’l Trade 2001).

¹⁹ See De Cecco questionnaire response dated November 3, 2010, at 5.

²⁰ Id. at 7.

²¹ Id.

Effective January 1, 1999, Molino F.lli De Cecco di Filippo S.p.A. (“De Cecco Molino”), another member of the De Cecco group on whose behalf De Cecco responded in the fourth administrative review, was merged with De Cecco and ceased to be a separate entity.²² The Department will continue to consider countervailable any benefits received by De Cecco Molino in past administrative review periods and allocated over a period that extends into or beyond the current POR as benefits attributable to De Cecco.²³

Finally, De Cecco has reported it purchased electricity from C.E.I.D. that was produced by Centrale. Centrale is majority owned by members of the De Cecco family.²⁴ C.E.I.D. is a consortium consisting of Centrale and De Cecco. Neither Centrale nor C.E.I.D. received any subsidies during the POR or AUL period.²⁵ Therefore, we do not reach the issue of whether cross-ownership exists or whether subsidies to Centrale or C.E.I.D. would be attributable to the pasta sold by De Cecco under 19 CFR 351.525(b)(6).

Fabianelli

FABFIN S.p.A. (“FABFIN”) is a company that actively produced and sold subject pasta between 2001 and 2006. Although it stopped all production in 2006, it still exists as a legal entity. Fabianelli stated in its response that it owned 95 percent of the shares of FABFIN at the beginning of 2009. On June 19, 2009, Fabianelli purchased the remaining five percent of FABFIN’s shares, making FABFIN a wholly-owned subsidiary of Fabianelli.²⁶ Therefore, we determine that cross ownership exists between FABFIN and Fabianelli as defined by 19 CFR 351.525(b)(6)(vi).

Pallante and Tomasello

Based on their questionnaire responses, we determine that Pallante and Tomasello have no affiliates for which cross-ownership exists.²⁷ Thus, we are attributing any subsidies received by Pallante and Tomasello to their respective sales only.

Changes in Ownership

Fabianelli reported that on March 1, 2001, its subsidiary FABFIN acquired the assets of Pastificio Maltagliati (“Maltagliati”) in a bankruptcy trustee sale.²⁸ We find that prior to entering bankruptcy, Maltagliati was granted reductions to its social security payments under Law 863/84

²² See Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review, 66 FR 64214 (December 12, 2001) (“Fourth Administrative Review Final”) and accompanying Issues and Decision Memorandum at 4.

²³ See Business Proprietary Memorandum to the File, “2009 Preliminary Results Calculation Memorandum for F.lli De Cecco di Filippo Fara San Martino S.p.A.,” dated August 1, 2011 (“De Cecco Preliminary Calc Memo”).

²⁴ See De Cecco questionnaire response dated November 3, 2010, at 6.

²⁵ Id.

²⁶ See Fabianelli questionnaire response dated November 3, 2010, at 3.

²⁷ See Pallante questionnaire response dated November 3, 2010, at 3, and Tomasello questionnaire response dated November 3, 2010 at 3; see also Respondents’ Attribution Memo.

²⁸ See Fabianelli questionnaire response dated March 30, 2011, at 1.

and received export restitution payments within the AUL period. We consider both of these programs to confer recurring benefits, in accordance with 19 CFR 351.524(c) and consistent with our treatment of these programs in the investigation and previous reviews.²⁹ Therefore, subsidies given to Maltagliati did not confer countervailable benefits upon Fabianelli because the subsidies received by Maltagliati were expensed in the years that they were received.

Benchmarks and Discount Rates

Benchmarks for Long-Term Loans and Discount Rates

Pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the government-provided loan in question, has similarities in the structure of the loan (e.g., fixed interest rate versus variable interest rate), the maturity of the loan (e.g., short-term versus long-term), and the currency in which the loan is denominated.

On June 24, 2011, Tomasello informed us that it received several commercial loans within the AUL period. We issued questionnaires to both Tomasello and the GOI to determine, based on the criteria found at 19 CFR 351.505(a)(2), whether these loans could be compared to the loans Tomasello received under programs covered in this review. We received responses from Tomasello on July 20, 2011, and from the GOI on July 25, 2011.

One of the loans Tomasello submitted to us was provided by the Regional Institute for the Financing of Industries in Sicily (“IRFIS”). Based on information on the record, we determine that IRFIS is a government-owned special purpose bank within the meaning of 19 CFR 351.505(a)(2)(ii).³⁰ Therefore, we have not used this loan to calculate a benchmark.

The remainder of the information we have used in our evaluation of these loans is business proprietary.³¹ Based on this information, we determine that none of the loans submitted by Tomasello can serve as a loan benchmark pursuant to 19 CFR 351.505(a)(2) for the loans it received under subsidy programs covered by this review.

Because Fabianelli, De Cecco, and Pallante did not report the receipt of any comparable commercial loans in the years in which the GOI agreed to provide loans under the programs covered in this review, and because we have not found comparable loans among those submitted by Tomasello, we used as our benchmark a national average interest rate for comparable commercial loans, pursuant to 19 CFR 351.505(a)(3)(ii). Consistent with our past practice in this proceeding, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward

²⁹ See, e.g., Pasta Investigation, 61 FR at 30294-95.

³⁰ See Business Proprietary Memorandum to the File from Christopher Siepmann, “2009 Preliminary Results Calculation Memorandum for Molino e Pastificio Tomasello, S.p.A.,” (August 1, 2011) (“Tomasello Preliminary Calc Memo”). See also Memorandum to File from Christopher Siepmann, “Placement of Certain Information Related to IRFIS On the Record” (July 22, 2011), and GOI fifth supplemental questionnaire response dated July 25, 2011, at 1.

³¹ See Tomasello Preliminary Calc Memo.

to reflect the mark-up an Italian commercial bank would charge a corporate customer.³² For benefits received in 1995-2004, we used the Italian Bankers' Association ("ABI") prime interest rate (as reported by the Bank of Italy), increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.³³ The Bank of Italy ceased reporting this rate in 2004.³⁴ Because the ABI prime rate was no longer reported after 2004, for 2005-2009, we have used the "Bank Interest Rates on Euro Loans: Outstanding Amounts, Non-Financial Corporations, Loans With Original Maturity More Than Five Years" published by the Bank of Italy and provided by the GOI in its November 1, 2010, questionnaire response at Exhibits 3, 4, 5 and 6.³⁵ We increased this rate by the mark-up and bank charges described above.

Also, none of the companies reported loan interest rates that could be used as discount rates.³⁶ Therefore, in order to allocate non-recurring benefits over time, we calculated discount rates for these companies by using the national average cost of long-term, fixed-rate loans pursuant to 19 CFR 351.524(d)(3)(B).

Analysis of Programs

Based upon our analysis of the responses to our questionnaires, we determine the following:

I. Programs Determined to be Countervailable

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (see section I.B., below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under

³² See, e.g., Certain Pasta From Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review, 70 FR 17971, 17974 (April 8, 2005), unchanged in Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review, 70 FR 37084 (June 28, 2005).

³³ See Certain Pasta from Italy: Preliminary Results of the 12th (2007) Countervailing Duty Administrative Review, 74 FR 25489, 25491 (May 28, 2009) ("12th (2007) Administrative Review Preliminary Results"), unchanged in Certain Pasta from Italy: Final Results of the 12th (2007) Countervailing Duty Administrative Review, 74 FR 47204 (September 15, 2009).

³⁴ See 12th (2007) Administrative Review Preliminary Results, 74 FR at 25491.

³⁵ Id.

³⁶ See 19 CFR 351.524(d)(3)(A).

Law 64/86 after 1993. De Cecco and Pallante received grants under Law 64/86 that conferred a benefit during the POR.³⁷

In the Pasta Investigation, the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant.³⁸ Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.³⁹

As stated in Live Swine from Canada,⁴⁰ “it is well-established that where the Department has determined that a program is (or is not) countervailable, it is the Department’s policy not to re-examine the issue of that program’s countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration.” Also, this policy is reflected in the Department’s standard questionnaire used in countervailing duty administrative reviews which states that “absent new information or evidence of changed circumstances, we do not intend to reexamine the countervailability of programs previously found to be countervailable.”⁴¹

In this review, neither the GOI nor the respondent companies have provided new information that would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the Pasta Investigation, the Department treated the industrial development grants as non-recurring.⁴² No new information has been placed on the record of this review that would cause us to depart from this treatment. Therefore, we have followed the methodology described in 19 CFR 351.524(b), which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient’s sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient’s sales in the year of authorization, the benefit is countervailed in full (“expensed”) in the year of receipt. We determined that the grants received by De Cecco and Pallante under Law 64/86 exceeded 0.5 percent of their sales in the years in which the grants were approved.

Consequently, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit from those grants. We divided the amounts allocated to the POR by the respective total sales of De Cecco and Pallante.

³⁷ See De Cecco’s questionnaire response dated November 3, 2010, at Exhibit 9, and Pallante’s questionnaire response dated November 3, 2010, at Exhibit 5.

³⁸ See section 771(5)(D)(i) of the Act; see also 19 CFR 351.504(a).

³⁹ See Pasta Investigation, 61 FR at 30292.

⁴⁰ See Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews, 61 FR 52408, 52420 (October 7, 1996) (“Live Swine from Canada”).

⁴¹ See Letter to the Embassy of Italy from the Department, “Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy: January 1, 2009, through December 31, 2009” (November 10, 2009) at enclosure.

⁴² See Pasta Investigation, 61 FR at 30292.

On this basis, we determine the countervailable subsidy from the Law 64/86 industrial development grants to be 0.19 percent ad valorem for De Cecco and 0.01 percent ad valorem for Pallante.⁴³

B. Industrial Development Grants Under Law 488/92

In 1986, the European Union (“EU”) 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 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) areas by the EU. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible regions and sectors (manufacturing, mining, and certain business services) could apply for industrial development grants.⁴⁴

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.⁴⁵ De Cecco, Tomasello and Pallante received grants under Law 488/92 that conferred a benefit during the POR.⁴⁶

In the Second Administrative Review, the Department determined that Law 488/92 grants confer a countervailable subsidy within the meaning of section 771(5) of the Act.⁴⁷ They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant.⁴⁸ Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.⁴⁹ In the instant review, neither the GOI nor the respondent companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.⁵⁰

⁴³ See De Cecco Preliminary Calc Memo, and Business Proprietary Memorandum to the File, “2009 Preliminary Results Calculation Memorandum for Pastificio Antonio Pallante S.r.L.,” dated August 1, 2011 (“Pallante Preliminary Calc Memo”).

⁴⁴ See Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review, 64 FR 17618, 17620 (April 12, 1999) (“Second Administrative Review”), unchanged in Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review, 64 FR 44489 (August 16, 1999).

⁴⁵ See, e.g., Certain Pasta From Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review, 75 FR 18806, 18809 (April 13, 2010) (“13th (2008) Administrative Review Preliminary Results”), unchanged in Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review, 75 FR 37386 (June 29, 2010).

⁴⁶ See Tomasello questionnaire response dated November 3, 2010 at 13-14, De Cecco questionnaire response dated November 3, 2010 at 20-22, and Pallante questionnaire response dated November 3, 2010 at 10-12.

⁴⁷ See Second Administrative Review, 64 FR at 17620.

⁴⁸ See section 771(5)(D)(i) of the Act; see also 19 CFR 351.504(a).

⁴⁹ See Second Administrative Review, 64 FR at 17620.

⁵⁰ See Live Swine from Canada, 61 FR at 52420.

In the Second Administrative Review, the Department treated the industrial development grants as non-recurring.⁵¹ No new information has been placed on the record of this review that would cause us to depart from this treatment. Therefore, we have followed the methodology described in 19 CFR 351.524(b) and because the grants received by De Cecco, Tomasello and Pallante under Law 488/92 exceeded 0.5 percent of their sales in the year in which the grants were approved, we allocated the benefits over time using the grant methodology described in 19 CFR 351.524(d). We divided the amounts allocated to the POR by the respective total sales of De Cecco, Pallante and Tomasello in the POR.

On this basis, we determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.15 percent ad valorem for De Cecco, 0.31 percent ad valorem for Pallante, and 3.34 percent ad valorem for Tomasello.⁵²

C. Interest Contributions Under Law 488/92

In the Second Administrative Review, the Department found that “loans are not provided under Law 488/92.”⁵³ However, the GOI later provided documentation that a May 14, 2005 Law at Article 80 and implementing decree changed this practice to permit companies to obtain loans, in addition to grants, for initiatives in the areas eligible for such assistance under Law 488/92.⁵⁴ The preliminary examination of companies’ loan applications by an authorized bank, the ranking by the Ministry of Economic Development, and the award of loans based on the ranking are similar to the process described for Law 488/92 grants (see section I.B., above).⁵⁵ In addition, the bank is responsible for assessing the company’s creditworthiness.⁵⁶

Under this modification to Law 488/92, the loans must have a duration not exceeding 15 years and not less than six years.⁵⁷ The fixed-interest rates on these long-term loans are set at a rate of 0.50 percent with the GOI covering the difference in interest amount between that rate and the market rate.⁵⁸ De Cecco received interest contributions under Law 488/92 during the POR.⁵⁹

We determine that these interest contributions are countervailable subsidies within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies.⁶⁰ Also, these interest contributions are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they are limited to companies located within regions

⁵¹ See Second Administrative Review, 64 FR at 17620.

⁵² See De Cecco Preliminary Calc Memo, Pallante Preliminary Calc Memo, and Tomasello Preliminary Calc Memo.

⁵³ Second Administrative Review, 64 FR at 17620.

⁵⁴ See 13th (2008) Administrative Review Preliminary Results, 75 FR at 18809.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ See De Cecco’s November 3, 2010 questionnaire response at 14, 23-37.

⁶⁰ See section 751(5)(E)(ii) of the Act.

which meet the criteria of Objective 1, Objective 2, and Objective 5(b) areas determined by the EU.⁶¹

In accordance with 19 CFR 351.505(c)(2) and 351.508(c)(2), we calculated the benefit for the POR by computing the difference between the amount of interest paid during the POR by De Cecco on its Law 488/92 loan and the amount of interest De Cecco would have paid at the benchmark interest rate. We divided the benefit received by De Cecco in the POR by its sales in the POR.

On this basis, we determine the countervailable subsidy from the Law 488/92 interest contributions to be 0.05 percent ad valorem for De Cecco.⁶²

D. 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.⁶³ Measure 3.14 of the POR Sicilia 2000/2006 (“Measure 3.14”) 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 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.⁶⁴

In the Preliminary Results, we observed a discrepancy between the total benefit reported in Tomasello’s questionnaire responses and the total benefit reported by the GOI. We said that we would confirm the correct amount before issuing these final results. Tomasello has since informed us that the correct total benefit amount was reported by the GOI.⁶⁵ We have used this amount to calculate the benefit Tomasello received through this program.⁶⁶

Tomasello has argued that subsidies received under Measure 3.14 should not be considered countervailable because the grants are for precompetitive research and development activities. Section 771(5B) of the Act describes research and development subsidies as being non-countervailable. However, in accordance with section 771(5B)(G)(i), this provision regarding noncountervailability expired in 2000. Therefore, we do not consider benefits received under Measure 3.14 to be entitled to treatment as so-called “green-light,” or non-countervailable, subsidies.

⁶¹ See 13th (2008) Preliminary Results.

⁶² See De Cecco Preliminary Calc Memo.

⁶³ See GOI fifth supplemental questionnaire response dated July 25, 2011, at 1.

⁶⁴ Id. at 2.

⁶⁵ See Tomasello fourth supplemental questionnaire response dated September 9, 2011, at 1 and at Exhibit 1. See also the amounts reported by Tomasello at Exhibit 3 of its June 24, 2011 supplemental questionnaire response.

⁶⁶ See Business Proprietary Memorandum to the File from Christopher Siepmann, “Final Results Calculation Memorandum for Tomasello” (February 6, 2012) (“Tomasello Final Calc Memo”).

In the Preliminary Results, we found grants under Measure 3.14 to be specific within the meaning of section 771(5A)(D)(iv) of the Act because the GOI limits benefits under this program to companies in certain regions.⁶⁷ Tomasello challenges the Department’s preliminary regional specificity finding for Measure 3.14, claiming that the Department misinterpreted the GOI’s statement in its fourth supplemental questionnaire response that “{t}he eligibility for {this} subsidy is limited to enterprises or industries located within designated regions.” As discussed below in Issue 2 (“Whether the Department failed to differentiate between national government programs and regional government programs”), because the record is unclear whether benefits under Measure 3.14 are limited to companies located within a designated geographic region within the jurisdiction of the authority granting the subsidy, the Department has revised its specificity analysis for these final results.

The GOI failed to respond to our request for usage information regarding this program. We requested this information twice, in supplemental questionnaires dated May 12, 2011, and June 17, 2011. As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” in cases where there is not enough information on the record for us to determine whether a program is specific (see section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the Department by the deadline for the submission of that information (see section 776(a)(2)(B) of the Act), we use facts otherwise available. We further explained that an adverse inference is warranted under section 776(b) of the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, we determine as AFA that the assistance received by Tomasello under Measure 3.14 is specific.

We further determine that grants under Measure 3.14 confer a countervailable subsidy within the meaning of section 771(5) of the Act. They provide a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. We also determine that Measure 3.14 grants are non-recurring because they are exceptional events. Recipients must file a separate application for each project they seek funding for and cannot expect funding on an ongoing basis.⁶⁸ Therefore, we have followed the methodology described in 19 CFR 351.524(b) to calculate a benefit for these non-recurring grants. Because the grants received by Tomasello under Measure 3.14 exceeded 0.5 percent of its sales in the year in which the grants were approved, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit from these grants. We divided the amount allocated to the POR by Tomasello’s total sales in the POR. On this basis, we determine the countervailable subsidy from the Measure 3.14 grants to be 0.20 percent ad valorem for Tomasello.⁶⁹

E. European Social Fund

The European Social Fund (“ESF”), one of the Structural Funds operated by the EU, was established to improve workers’ opportunities through training and to raise workers’ standards of

⁶⁷ See Preliminary Results, 76 FR at 48135; see also GOI fourth supplemental questionnaire response dated August 11, 2011, at 3.

⁶⁸ See Tomasello questionnaire response dated April 13, 2011, at 4.

⁶⁹ See Tomasello Final Calc Memo.

living throughout the European Community by increasing their employability. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under 25 years of age; Objective 4 funds training for employees in companies undergoing restructuring; Objective 5 pertains to agricultural areas; and Objective 6 pertains to regions with very low population (i.e., the far north).⁷⁰ Tomasello received ESF grants in 2008 and 2009 under Objective 1 (through Measure 3.09 of the POR Sicilia 2000/2006) for the purpose of training its workers in improved quality control techniques.⁷¹

In the Pasta Investigation, the Department determined that ESF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act.⁷² We consider worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred.⁷³ Since companies normally incur the costs of training to enhance the job related skills of their own employees, we determine that this ESF grant relieves Tomasello of obligations it would have otherwise incurred. Consequently, the ESF grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to the recipient in the amount of the grant.

The ESF grant received by Tomasello provided funding from three sources: the EU, the GOI, and the Region of Sicily. Consistent with prior cases, we have examined the specificity of the ESF funding under Objective 1 separately from any funding under other objectives.⁷⁴ Moreover, since funding for this Objective 1 grant was provided through the regional operational program from three sources, we have examined the specificity of the funding for each source of funds, consistent with our treatment of the ESF in the Second Administrative Review.⁷⁵

In the Pasta Investigation, the Department determined that the ESF funds for Objective 1 provided by the EU and the GOI are limited to underdeveloped regions and, hence, regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.⁷⁶ Regarding funding from the regional government, we requested usage information from the GOI on May 12, 2011, and June 17, 2011. The GOI did not provide this information either time.

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” in cases where there is not enough information on the record for us to determine whether a program is specific (see section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the Department by the deadline for the submission of that information (see section 776(a)(2)(B) of the Act), we use facts otherwise available. We further explained that an adverse inference is warranted under section 776(b) of

⁷⁰ See Pasta Investigation, 61 FR at 30294.

⁷¹ See Tomasello questionnaire response dated April 13, 2011, at 5 and Exhibit 4; see also GOI fifth questionnaire response dated July 25, 2011, at Exhibit 2.

⁷² See Pasta Investigation, 61 FR at 30294.

⁷³ Id.

⁷⁴ See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 40474, 40487 (July 29, 1998) (“Wire Rod from Italy”).

⁷⁵ See Second Administrative Review, 64 FR at 44492.

⁷⁶ See Pasta Investigation, 61 FR at 30294.

the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, we determine as AFA that the regional component of Tomasello's ESF grant is also specific.

The Department normally considers the benefits from worker training programs to be recurring.⁷⁷ However, the Department determined in Wire Rod from Italy that these grants relate to specific, individual projects that each require separate government approval. In light of this, we have analyzed the grants Tomasello received as non-recurring subsidies.⁷⁸

We have followed the methodology described in 19 CFR 351.524(b) to calculate the benefit conferred by these grants. Because the grants received by Tomasello under this program exceeded 0.5 percent of its sales in the year in which the grants were approved, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit from these grants. We divided the amount allocated to the POR by Tomasello's total sales in the POR.

On this basis, we determine the countervailable subsidy from the ESF grants to be 0.10 percent ad valorem for Tomasello.⁷⁹

F. Tax Credits Under Article 280 of Law 296/2006

Article 280 of Law 296/2006 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.⁸⁰ Tomasello reported receiving a tax credit under this provision in 2009. It identified the benefits as having been received under Legislative Decree 76/2008, which contains regulations for the implementation of the credit.⁸¹

We determine that tax credits under Article 280 of Law 296/2006 confer a countervailable subsidy within the meaning of section 771(5) of the Act. The credits are a financial contribution in the form of revenue forgone (see section 771(D)(ii) of the Act) and confer a benefit in the amount of the difference between the taxes that Tomasello paid in 2009, and the taxes that Tomasello would have been required to pay if it had not taken advantage of the credit. See 19 CFR 351.509(a).

In its July 1, and July 25, 2011 submissions, the GOI stated that this tax credit is available throughout Italy and is not limited by region or industrial sector. However, the GOI did not respond to either of our requests for program usage data, which we issued on May 12, and June 28, 2011.

⁷⁷ See 19 CFR 351.524(c)(1).

⁷⁸ See Wire Rod From Italy, 63 FR at 40487.

⁷⁹ See Tomasello Preliminary Calc Memo.

⁸⁰ See Tomasello questionnaire response dated April 13, 2011, at Exhibit 6; see also GOI questionnaire response dated June 13, 2011, at Exhibit 4, and GOI fourth questionnaire response dated August 11, 2011, at 6.

⁸¹ See Tomasello questionnaire response dated April 13, 2011, at 11; see also GOI fourth questionnaire response dated August 11, 2011, at 6.

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” in cases where there is not enough information on the record for us to determine whether a program is specific (see section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the Department by the deadline for the submission of that information (see section 776(a)(2)(B) of the Act), we use facts otherwise available. We further explained that an adverse inference is warranted under section 776(b) of the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, we determine as AFA that the tax credits granted under Article 280 of Law 296/2006 are specific.

In accordance with 19 CFR 351.524(c), we generally consider tax credits to confer recurring benefits. In order to calculate the countervailable subsidy that Tomasello received, we divided the amount of the tax credit applied by Tomasello on its 2009 tax return by Tomasello’s total sales in the POR.

On this basis, we determine the countervailable subsidy from Article 280 of Law 296/2006 to be 0.68 percent ad valorem for Tomasello.⁸²

G. 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.⁸³

Tomasello reported receiving both a grant and a loan under Article 14 of Law 46/1982.⁸⁴ In the Preliminary Results, we observed that the amounts of the grant and the loan reported by Tomasello differed from the amounts reported by the GOI. After we issued the Preliminary Results, we asked Tomasello to clarify this discrepancy. Tomasello informed us that the amount reported by the GOI is correct.⁸⁵

⁸² See Tomasello Preliminary Calc Memo.

⁸³ See GOI questionnaire response dated June 13, 2011, at 3; see also GOI fourth questionnaire response dated August 11, 2011, at 5.

⁸⁴ See Tomasello supplemental questionnaire response dated April 13, 2011, at 7-11.

⁸⁵ See Tomasello fourth supplemental questionnaire response dated September 9, 2011, at 3 and Exhibit 3. Because we used the amounts reported by the GOI to calculate Tomasello’s benefit for the Preliminary Results, we have not recalculated the benefit for these final results.

In the Pasta Investigation, the petitioners⁸⁶ asked us to investigate this program as a possible countervailable subsidy. We declined because we had found Law 46/1982 to be non-countervailable in a previous investigation.⁸⁷ As previously explained, we generally will not re-examine the countervailability of a program that has been found to be non-countervailable.⁸⁸ However, information Tomasello submitted in its questionnaire response suggested that although funds may be available across Italy, additional funds are available to companies in specific regions.⁸⁹ Therefore, we included Law 46/1982 among the programs for which we asked the GOI to provide information on May 12, and June 17, 2011.

The GOI failed to provide a timely response to our request for usage information. In its July 25, 2011 supplemental questionnaire response, the GOI provided limited information about this program, but this information was not submitted according to the instructions in our questionnaire. Furthermore, because the deadline for submitting this information was July 1, 2011, we rejected this information as untimely in accordance with 19 CFR 351.302(d) and 19 CFR 351.104(a)(2)(ii)(A).

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” in cases where there is not enough information on the record for us to determine whether a program is specific (see section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the Department by the deadline for the submission of that information (see section 776(a)(2)(B) of the Act), we use facts otherwise available. We further explained that an adverse inference is warranted under section 776(b) of the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, we determine as AFA that the assistance received by Tomasello under Article 14 of Law 46/1982 is specific.

We further determine that the grants and loans provided under Article 14 of Law 46/1982 are financial contributions because they are a direct transfer of funds from the GOI.⁹⁰ In accordance with 19 CFR 351.504(a), the benefit provided by the grant is the amount of the grant. Moreover, because companies must file a separate application and receive the government’s express authorization for each grant, we determine that these subsidies are non-recurring. Accordingly, we have followed the methodology described in 19 CFR 351.524(b) to calculate the benefit for this program. Because the grants received by Tomasello under this program exceeded 0.5 percent of its sales in the year in which the grants were approved, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit from these grants. We divided the amount allocated to the POR by Tomasello’s total sales in the POR.

⁸⁶ During the investigation, the petitioners were Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc. Currently, the petitioners are New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company.

⁸⁷ See Notice of Initiation of Countervailing Duty Investigations: Certain Pasta (“Pasta”) From Italy and Turkey, 60 FR 30280, 30281-82 (June 8, 1995).

⁸⁸ See, e.g., Live Swine from Canada, 61 FR at 52420.

⁸⁹ See Tomasello questionnaire response dated April 13, 2011, at Exhibit 5.

⁹⁰ See section 771(5)(D)(i) of the Act.

On this basis, we determine the countervailable subsidy from the Law 46/1982 research grants to be 0.17 percent ad valorem for Tomasello.⁹¹

We also determine that loans under Article 14 of Law 46/1982 convey a countervailable subsidy within the meaning of section 771(5) of the Act because they provide a benefit from the GOI in the amount of the difference between the interest a company paid on the loan and the interest the company would have paid on a comparable commercial loan. In accordance with 19 CFR 351.505(c)(2), we calculated the countervailable benefit Tomasello received from this loan in the POR as the difference between the payments Tomasello made on the loan during the POR and the payments Tomasello would have made on a benchmark loan.⁹² We divided the benefit received by Tomasello by its total sales in the POR.

On this basis, we determine the countervailable subsidy from Law 46/1982 research loans to be 0.12 percent ad valorem for Tomasello.⁹³

H. 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.⁹⁴

Tomasello initially reported conflicting information regarding the amount of funding it received under this program.⁹⁵ We indicated in the Preliminary Results that we would clarify this discrepancy prior to issuing the final results. Subsequently, in its response to our fourth supplemental questionnaire, Tomasello confirmed the amount it received and provided supporting documentation.⁹⁶ We have used this revised figure to calculate Tomasello’s benefit.⁹⁷

On May 12, 2011, we asked the GOI to provide a full response to the appropriate questionnaire appendices for this program. In particular, we asked it to describe whether benefits under this program are limited to companies in specific sectors or regions, and to provide us with information regarding how benefits under this program are distributed across Sicily. Although the GOI provided some information, it did not answer our questions or provide enough information for us to determine whether the program is specific. We asked the GOI to answer these questions a second time on June 28, 2011. Apart from providing a translation of part of a related law, the GOI did not respond to the questionnaire appendices in its July 25, 2011 response, nor did it provide program usage information.

⁹¹ See Tomasello Preliminary Calc Memo.

⁹² See the “Benchmarks for Long-Term Loans and Discount Rates” section of this notice above.

⁹³ See Tomasello Preliminary Calc Memo.

⁹⁴ See Tomasello supplemental questionnaire response dated April 13, 2011, at 18; see also GOI questionnaire response dated June 13, 2011, at 2.

⁹⁵ See Tomasello supplemental questionnaire response dated April 13, 2011, at 18; see also Tomasello supplemental questionnaire response dated July 20, 2011, at Exhibit 6.

⁹⁶ See Tomasello fourth supplemental questionnaire response dated September 9, 2011, at 5 and Exhibit 5.

⁹⁷ See Tomasello Final Calc Memo.

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” in cases where there is not enough information on the record for us to determine whether a program is specific (see section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the Department by the deadline for the submission of that information (see section 776(a)(2)(B) of the Act), we use facts otherwise available. We further explained that an adverse inference is warranted under section 776(b) of the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, we determine as AFA that the interest contributions received by Tomasello under Law 34/1988 are specific.

On this basis, we determine that interest contributions under Regional Law 34/1988 confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a financial contribution in the form of a direct transfer of funds (see section 771(5)(D)(i) of the Act) and they confer a benefit within the meaning of section 771(5)(E) of the Act in the amount of the contribution. To calculate the benefit, we divided the amount Tomasello received in the POR by its total sales in the POR.

On this basis, we determine the countervailable subsidy from interest contributions under Regional Law 34/1988 to be 0.39 percent ad valorem for Tomasello.⁹⁸

I. Article 23 of Legislative Decree 38/2000

Article 23 of Legislative Decree 38/2000 (“LD 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).⁹⁹

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.¹⁰⁰ Tomasello and Fabianelli both reported receiving assistance during the POR under LD 38/2000. Tomasello received a loan at zero percent interest for facility improvements, and Fabianelli received grants for expenses related to worker training.¹⁰¹

⁹⁸ See Tomasello Final Calc Memo.

⁹⁹ See GOI questionnaire response dated June 13, 2011, at 10.

¹⁰⁰ See GOI questionnaire response dated June 13, 2011, at 10 and Exhibit 5; see also Tomasello questionnaire response dated April 13, 2011, at Exhibit 13, and Tomasello questionnaire response dated June 24, 2011, at Exhibit 5.

¹⁰¹ See Tomasello questionnaire response dated April 13, 2011, at 21; Tomasello questionnaire response dated June 24, 2011, at Exhibit 5; and Fabianelli questionnaire response dated November 3, 2010, at 19.

The GOI reported that benefits under LD 38/2000 are limited to companies in the agricultural and artisanal industries, but did not provide us with enough information to determine how the companies in this review can be classified.¹⁰² It also did not address our questions as to whether benefits are limited by region, nor did it submit information pertaining to how benefits were distributed across Italy. We requested this information twice, in supplemental questionnaires dated May 12, and June 28, 2011. Pursuant to 19 CFR 351.502(d), we do not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector. However, because the GOI failed to provide us with enough information to determine how benefits are limited by region, and did not provide us with usage information, we are unable to determine whether benefits under this program are specific.

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” in cases where there is not enough information on the record for us to determine whether a program is specific (see section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the Department by the deadline for the submission of that information (see section 776(a)(2)(B) of the Act), we use facts otherwise available. We further explained that an adverse inference is warranted under section 776(b) of the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, we determine as AFA that benefits received by Tomasello and Fabianelli under LD 38/2000 are specific.

We further determine that the grants and loans provided under LD 38/2000 are financial contributions because they are a direct transfer of funds from the GOI.¹⁰³ In accordance with 19 CFR 351.504(a), the benefit provided by the grant is the amount of the grant. Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense nonrecurring benefits provided under a particular subsidy program to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Because the GOI approved Fabianelli for amounts equaling less than 0.5 percent of Fabianelli’s sales in the year in which the grant was approved, we have treated this grant as having been expensed prior to the POR in accordance with 19 CFR 351.524(b)(2). Thus, no countervailable benefit was provided to Fabianelli during the POR as a result of this program.¹⁰⁴

We also determine that loans under LD 38/2000 provide a countervailable subsidy within the meaning of section 771(5) of the Act because they provide a benefit from the GOI in the amount of the difference between the interest a company paid on the loan and the interest the company would have paid on a comparable commercial loan. In accordance with 19 CFR 351.505(c)(2), we calculated the countervailable benefit Tomasello received in the POR by computing the difference between the payments Tomasello made on the loan during the POR and the payments

¹⁰² See GOI questionnaire response dated June 13, 2011, at 10.

¹⁰³ See section 771(5)(D)(i) of the Act.

¹⁰⁴ See Business Proprietary Memorandum to the File, “2009 Preliminary Results Calculation Memorandum for Pastificio Fabianelli S.p.A.” (August 1, 2011).

Tomasello would have made on a benchmark loan.¹⁰⁵ We divided the benefit received by Tomasello by its total sales in the POR.

On this basis, we determine the countervailable subsidy from loans under Article 23 of LD 38/2000 to be 0.10 percent ad valorem for Tomasello.¹⁰⁶

J. 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. Pallante reported receiving benefits under this program.¹⁰⁷

We have previously determined that Article 62 of Law 289/02 confers a countervailable subsidy.¹⁰⁸ The credit against taxes is a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because it represents revenue foregone by the GOI and a benefit is conferred in the amount of the tax savings received by the companies per section 771(5)(E)(iv) of the Act. Also, the program is specific within the meaning of 751(5A)(D)(iv) of the Act because it is limited to certain geographical regions in Italy, specifically, the regions of Calabria, Campania, Basilicata, Puglia, Sicilia, and Sardegna, and certain municipalities in the Abruzzo and Molise region, and certain municipalities in central and northern Italy.¹⁰⁹

In the instant review, neither the GOI nor the respondent companies have provided new information which would warrant reconsideration of our determination that this program confers countervailable subsidies.¹¹⁰

In accordance with 19 CFR 351.524(c), we generally consider tax credits to confer recurring benefits. However, pursuant to 19 CFR 351.524(c)(2)(iii), when a subsidy is tied to the capital structure or capital assets of the firm, the Department treats the subsidy as non-recurring. Thus, in accordance with 19 CFR 351.524(b)(2), we determined that the tax credit received by Pallante exceeded 0.5 percent of its sales in the year in which the credit was approved. Therefore, we used the methodology described in 19 CFR 351.524(d) to allocate the benefit over time, and we divided the amount allocated to the POR by Pallante's total sales in the POR.

On this basis, we determine the countervailable subsidy from Law 289/02 Article 62 to be 0.68 percent ad valorem for Pallante.¹¹¹

¹⁰⁵ See the "Benchmarks for Long-Term Loans and Discount Rates" section of this notice above.

¹⁰⁶ See Tomasello Preliminary Calc Memo.

¹⁰⁷ See Pallante questionnaire response dated November 3, 2010, at 10 and Exhibit 5; see also Pallante questionnaire response dated March 31, 2011, at 3.

¹⁰⁸ See Certain Pasta from Italy: Preliminary Results of the Tenth Countervailing Duty Administrative Review, 72 FR 43616, 43620 (August 6, 2007), unchanged in Certain Pasta From Italy: Final Results of the Tenth (2005) Countervailing Duty Administrative Review, 73 FR 7251 (February 7, 2008).

¹⁰⁹ Id.

¹¹⁰ See Live Swine from Canada, 61 FR at 52420.

¹¹¹ See Pallante Preliminary Calc Memo.

K. Social Security Reductions and Exemptions – Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions from and reductions of payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. These social security reductions and exemptions, also known as sgravi benefits, are regulated by a complex set of laws and regulations, and are sometimes linked to conditions such as creating more jobs. We have found in past segments of this proceeding that benefits under some of these laws (e.g., Law 1089) are available only to companies located in the Mezzogiorno and other disadvantaged regions.¹¹² Certain other laws (e.g., Law 407/90) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the Mezzogiorno and other disadvantaged regions than for companies in other parts of the country.¹¹³ Still other laws provide benefits that are not linked to any region.

In the Pasta Investigation and subsequent reviews, the Department determined that certain types of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies.¹¹⁴ Also, they were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they were limited to companies in the Mezzogiorno or because the higher levels of benefits were limited to companies in the Mezzogiorno.

In the instant review, no party in this proceeding challenged our past determinations in the Pasta Investigation and subsequent reviews that sgravi benefits, generally, were countervailable for companies located within the Mezzogiorno.¹¹⁵ Sgravi benefits were provided during the POR under Law 407/90 to Tomasello.¹¹⁶

1) Law 407/90

Law 407/90 grants an exemption from social security taxes for three years when a company hires a worker who (1) has received wage supplementation for a period of at least two years, or (2) has been previously unemployed for a period of two years. A 100-percent exemption is allowed for companies in the Mezzogiorno, while companies located in the rest of Italy receive a 50-percent reduction.¹¹⁷

In the Pasta Investigation, we determined that Law 407/90 confers a countervailable subsidy within the meaning of section 771(5) of the Act.¹¹⁸ The reduction or exemption of taxes is revenue foregone that is otherwise due and is, therefore, a financial contribution within the

¹¹² See Pasta Investigation, 61 FR at 30293.

¹¹³ Id. at 30294.

¹¹⁴ See section 771(5)(D)(ii) of the Act.

¹¹⁵ See Live Swine from Canada, 61 FR at 52420.

¹¹⁶ See Tomasello questionnaire response dated November 3, 2011, at 16.

¹¹⁷ See 12th (2007) Administrative Review Preliminary Results, 74 FR at 25493.

¹¹⁸ See Pasta Investigation, 61 FR at 30294.

meaning of section 771(5)(D)(ii) of the Act. The benefit is the difference in the amount of the tax savings between companies located in the Mezzogiorno and companies located in the rest of Italy, in accordance with 19 CFR 351.509(a). Additionally, the program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because higher levels of benefits are limited to companies in the Mezzogiorno.¹¹⁹

In accordance with 19 CFR 351.524(c), and consistent with our methodology in the Pasta Investigation and in subsequent administrative reviews, we have treated social security reductions and exemptions as recurring benefits.¹²⁰ To calculate the countervailable subsidy for Tomasello, we divided the difference during the POR between the savings for the respondent company located in the Mezzogiorno and the savings a company located in the rest of Italy would have received. This amount was divided by Tomasello's total sales in the POR.

On this basis, we determine the countervailable subsidy from Law 407/90 to be 0.01 percent ad valorem for Tomasello.¹²¹

II. *Programs Determined to Not Confer Any Measurable Benefit During the POR*

A. Law 317/91 Benefits for Innovative Investments

In the seventh administrative review, the Department found that Law 317/91 allows for a capital contribution or a tax credit up to a maximum amount of Euro 232,405.60 to small- and medium-sized industrial, commercial, and service companies for innovative investments. However, no respondents in that review received benefits during the POR and the program was not analyzed further.¹²² Fabianelli reported that its subsidiary FABFIN received a grant under Law 317/91 in 2002.¹²³

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits provided under a particular subsidy program to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Because the GOI approved Fabianelli for an amount equaling less than 0.5 percent of Fabianelli's sales in the year in which the grant was approved,¹²⁴ we have treated this grant as having been expensed prior to the POR in accordance with 19 CFR

¹¹⁹ Id.

¹²⁰ See, e.g., Pasta Investigation, 61 FR at 30294.

¹²¹ See Tomasello Preliminary Calc Memo.

¹²² See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review, 69 FR 45676, 45684 (July 30, 2004), unchanged in Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review, 69 FR 70657 (December 7, 2004).

¹²³ See Fabianelli questionnaire response dated November 3, 2010, at 19.

¹²⁴ Generally, when two companies are cross-owned, the Department uses the combined sales of both companies to calculate the countervailable subsidy. In this case, benefits received by both Fabianelli and FABFIN were so small that they were de minimis based on the total sales of the recipient company alone. Therefore, we consider it unnecessary to use the combined sales of both companies because doing so would have no impact on Fabianelli's subsidy rate.

351.524(b)(2). Thus, no countervailable benefit was provided to Fabianelli during the POR under this program.

In situations where any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability, it may not be necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable.¹²⁵ In this instance, since any benefit conferred upon Fabianelli was expensed prior to the POR, a determination of countervailability would have no impact on the overall subsidy rate. Thus, consistent with our past practice, we do not consider it necessary to determine whether benefits conferred under this provision of Law 341/95 are countervailable.

B. Law 341/95 Industrial Development Grants

Fabianelli informed the Department that it received a grant in 2004 under Law 341/95 for the purchase of a computerized management system.¹²⁶ It noted that these funds were received under a different provision than the one examined by the Department in the fourth administrative review.¹²⁷

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits provided under a particular subsidy program to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Because the GOI approved Fabianelli for an amount equaling less than 0.5 percent of Fabianelli's sales in the year in which the grant was approved, we have treated this grant as having been expensed prior to the POR in accordance with 19 CFR 351.524(b)(2).

In situations where any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability, it may not be necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable.¹²⁸ In this instance, since any benefit conferred upon Fabianelli was expensed prior to the POR, a determination of countervailability would have no impact on the overall subsidy rate. Thus, consistent with our past practice, we do not consider it necessary to determine whether benefits conferred under this provision of Law 341/95 to the subject merchandise are countervailable.

¹²⁵ See, e.g., Final Negative Countervailing Duty Determination: Live Cattle From Canada, 64 FR 57040, 57055 (October 22, 1999) ("Cattle From Canada Final Determination").

¹²⁶ See Fabianelli questionnaire response dated November 3, 2011, at 20.

¹²⁷ "Law 341/95 Interest Contributions on Debt Consolidation Loans." See Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 66 FR 40987, 40991 (August 6, 2001), unchanged in Fourth Administrative Review Final.

¹²⁸ See, e.g., Cattle From Canada Final Determination, 64 FR at 57055.

III. *Programs Determined to Not be Used*

We examined the following programs and determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

A. Regional Law 15/1993, as amended by Regional Law 66/1995

Regional Law 15/1993 authorizes interest contributions for companies that agree to consolidate their short-term debt. These contributions are equal to 40 percent of the reference interest rate in effect on the date that the consolidated loan is opened. Participating companies may receive interest contributions for up to ten years, following a grace period of one year.¹²⁹ According to the GOI, benefits under this program are limited to enterprises or industries within certain regions.¹³⁰

In its April 13, 2011 supplemental questionnaire response, Tomasello reported receiving funds under this program in 2009. Shortly before we issued the Preliminary Results, Tomasello informed us that its earlier response regarding this program was in error, and it actually had not received any funding during the POR.¹³¹ Because there was insufficient time to confirm Tomasello's claim prior to the deadline to issue our preliminary findings, we preliminarily determined that this program was countervailable for the Preliminary Results.¹³² After publishing the Preliminary Results, we issued a fourth supplemental questionnaire to Tomasello. Tomasello again stated that it did not receive funds under this program during the POR and provided supporting documentation.¹³³ Because this is a recurring program, we determine that Tomasello consequently did not receive a benefit under this program during the POR. Since Tomasello did not receive a benefit, we do not reach the question of whether this program is specific, and thereby countervailable, in these final results.

- B. Industrial Development Loans Under Law 64/86
- C. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
- D. European Regional Development Fund ("ERDF") Programma Operativo Plurifondo ("P.O.P.") Grant
- E. European Regional Development Fund ("ERDF") Programma Operativo Multiregionale ("P.O.M.") Grant
- F. Certain Social Security Reductions and Exemptions – Sgravi (including Law 223/91, Article 8, Paragraph 4 and Article 25, Paragraph 9; and Law 196/97)
- G. Law 236/93 Training Grants
- H. Law 1329/65 Interest Contributions ("Sabatini Law") (Formerly Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)

¹²⁹ See Tomasello questionnaire response dated April 13, 2011, at Exhibit 9.

¹³⁰ See GOI fourth questionnaire response dated August 11, 2011, at 13.

¹³¹ See Tomasello supplemental questionnaire response dated July 20, 2011, at 3-4 and at Exhibit 5.

¹³² See Preliminary Results, 76 FR at 48137-38.

¹³³ See Tomasello supplemental questionnaire response dated September 9, 2011, at 3-5 and Exhibit 4.

- I. Development Grants Under Law 30 of 1984
- J. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans
- K. Brescia Chamber of Commerce Training Grants
- L. Ministerial Decree 87/02
- M. Law 10/91 Grants to Fund Energy Conservation
- N. Export Restitution Payments
- O. Export Credits Under Law 227/77
- P. Capital Grants Under Law 675/77
- Q. Retraining Grants Under Law 675/77
- R. Interest Contributions on Bank Loans Under Law 675/77
- S. Preferential Financing for Export Promotion Under Law 394/81
- T. Urban Redevelopment Under Law 181
- U. Industrial Development Grants Under Law 183/76
- V. Interest Subsidies Under Law 598/94
- W. Duty-Free Import Rights
- X. Law 113/86 Training Grants
- Y. European Agricultural Guidance and Guarantee Fund
- Z. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)
- AA. Interest Grants Financed by IRI Bonds
- BB. Article 44 of Law 448/01
- CC. Law 289/02
 - 1) Article 63 - Increase in Employment
- DD. Law 662/96 – Patti Territoriali
- EE. Law 662/96 – Contratto di Programma

IV. Previously Terminated Programs

- A. Regional Tax Exemptions Under IRAP
- B. VAT Reductions Under Laws 64/86 and 675/55
- C. Corporate Income Tax (“IRPEG”) Exemptions
- D. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
- E. Export Marketing Grants Under Law 304/90
- F. Tremonti Law 383/01
- G. Social Security Reductions and Exemptions - Sgravi
 - 1) Article 44 of Law 448/01
 - 2) Law 337/90
 - 3) Law 863/84
 - 4) Law 196/97

Analysis of Comments

Comment 1: Whether the Department impeded the proceeding

Tomasello alleges that the Department impeded the progress of the instant proceeding by failing to adhere to a reasonable schedule. As a result, Tomasello believes that the GOI had insufficient time to obtain complete information from the Regional Government of Sicily, particularly with regard to program usage. Therefore, according to Tomasello, the application of AFA to the GOI responses is inappropriate.

In support of this argument, Tomasello observes that the Department ordinarily issues supplemental questionnaires 30 days after the receipt of the original questionnaire responses. However, in this proceeding, Tomasello's submitted its response to the Department's original questionnaire on November 3, 2010, but the Department did not issue its first supplemental questionnaire to Tomasello until March 2, 2011. The timing of the GOI's submission of its initial questionnaire response and the Department's issuance of the first supplemental questionnaire to the GOI was similar. Consequently, Tomasello argues that the GOI was left with "a scant four months" to obtain complete information on programs administered by the Regional Government of Sicily.

According to Tomasello, following this delay, the Department issued "a barrage of overlapping supplemental questionnaires with repetitious questions and overlapping deadlines." Tomasello asserts that, as a result of the Department's timing in issuing questionnaires, the application of AFA in this review is inappropriate. Thus, says Tomasello, these programs should be analyzed based on information on the record.

Department's Position

We disagree with Tomasello's assertion that the Department is somehow at fault for the GOI's failure to provide requested information.

Although Tomasello is correct that approximately four months elapsed between when the Department received initial questionnaires from parties and when it issued supplemental questionnaires, Tomasello neglects to mention the extraordinary steps the Department took throughout this proceeding to ensure that all parties had ample time to submit responses. Tomasello and the GOI were the chief beneficiaries of these efforts. Specifically, the Department granted both Tomasello and the GOI extensions for every questionnaire issued. For example, Tomasello submitted two separate extension requests for its first supplemental questionnaire response, with the acknowledgement that "Tomasello understands that this is an extraordinary request."¹³⁴ We granted both in full, effectively providing Tomasello with a month and a half to submit its response to the Department's first supplemental questionnaire.¹³⁵

¹³⁴ See Letter to the Department from Tomasello, "Pasta from Italy; Tomasello second extension request" (March 29, 2011) at 1.

¹³⁵ See Letter to Tomasello from the Department, "Countervailing Duty Administrative Review for Certain Pasta from Italy: Extension Request for Molino e Pastificio Tomasello, S.p.A." (March 16, 2011); see also Letter to Tomasello from the Department, "Countervailing Duty Administrative Review for Certain Pasta from Italy:

We were similarly accommodating of the GOI's requests. First, we granted in full the GOI's request for a three week extension of the deadline for submitting its initial questionnaire response.¹³⁶ As a result, the GOI had almost two months to submit this filing. Next, for the first supplemental questionnaire response cited by Tomasello in its brief, we granted the GOI's extension request in full, giving it over a month to submit the information.¹³⁷ For the second supplemental questionnaire, we also granted the GOI's extension request in full.¹³⁸ Again, the GOI had over four weeks to gather and provide the requested information. We also allowed the GOI additional time to complete the third, fourth, and fifth supplemental questionnaires.¹³⁹

The primary question raised by Tomasello, though, is whether the Department "significantly impeded the present administrative review... {with the result that} the GOI had insufficient time to obtain complete information, particularly in regard to program usage, from the Regional Government of Sicily."¹⁴⁰ As described in the Preliminary Results, we resorted to the use of AFA for several programs because the GOI failed to submit program usage information. This information would have allowed us to determine whether these programs are specific as a matter of fact, within the meaning of section 771(5A)(D)(iii) of the Act.

According to the instructions in the appendices to the Department's initial questionnaire, this information should have been submitted for programs not otherwise specific within the meaning of section 771(5A)(D)(i) (limited to an enterprise or industry) of the Act or within the meaning of section 771(5A)(iv) (limited to enterprises in a specific region) of the Act. We first asked the GOI to respond to these appendices for the programs in dispute on May 12, 2011, when we issued the second supplemental questionnaire. As described above, we granted the GOI's request for additional time to complete this questionnaire in full, giving it over a month to respond. Not only did the GOI not provide program usage information in its response, but, for all but one program, it did not respond to most of our other questions, either.¹⁴¹

We made a second attempt to obtain this information. We requested this information for two programs in a supplemental questionnaire dated June 17, 2011 ("third supplemental questionnaire"). We requested this information for the remaining programs in a supplemental questionnaire dated June 28, 2011 ("fourth supplemental questionnaire"). The GOI requested extensions for both questionnaires. We granted it an additional week to submit the third supplemental questionnaire, and an additional two weeks to submit the fourth supplemental questionnaire. The GOI failed to respond to both of these requests for program usage

Extension Request for Molino e Pastificio Tomasello, S.p.A." (March 29, 2011).

¹³⁶ See Letter to the Embassy of Italy from the Department, "Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy: January 1, 2009 through December 31, 2009" (October 4, 2010).

¹³⁷ See Letter to the Embassy of Italy from the Department, "Countervailing Duty Administrative Review for Certain Pasta from Italy; Extension Request for the Government of Italy" (March 24, 2011).

¹³⁸ See Letter to the Embassy of Italy from the Department, "Countervailing Duty Administrative Review for Certain Pasta from Italy; Extension Request for the Government of Italy" (May 17, 2011).

¹³⁹ See Letters to the Embassy of Italy from the Department, "Countervailing Duty Administrative Review for Certain Pasta from Italy; Extension Request for the Government of Italy" (respectively dated June 21, 2011, June 30, 2011, and July 15, 2011).

¹⁴⁰ See Tomasello case brief dated September 29, 2011, at 5. Only some of the programs for which we applied AFA appear to be administered by the Regional Government of Sicily.

¹⁴¹ See GOI second supplemental questionnaire response dated June 13, 2011.

information.¹⁴² In other words, we provided the GOI with multiple opportunities and as much as two months to provide information related to de facto specificity for certain programs.

For all these reasons, we do not agree that the Department has in any way “impeded” this proceeding, and we we have continued to apply AFA with respect to certain programs (as described above under “Use of Facts Otherwise Available and Adverse Facts Available”) for these final results.

Comment 2: Whether the Department failed to differentiate between national government programs and regional government programs

According to Tomasello, the Department inappropriately presumed that the word “regional” in the names and/or descriptions of certain programs refers to programs administered at the national level that are targeted at specific regions. Because of this, Tomasello alleges that Department incorrectly determined that certain programs administered by the Regional Government of Sicily (“RGOS”) are specific.

To support this point, Tomasello cites to Table Wine from Italy to show that the Department has previously acknowledged the RGOS as an entity distinct from the GOI that is also capable of providing grants and other subsidies separately from the programs of the European Community and from the GOI.¹⁴³ Additionally, Tomasello observes that the GOI’s questionnaire responses list the “Regione Sicilia” as providing the responses for these “regional” programs. Since, in Tomasello’s view, the Department did not undertake an analysis of whether the programs are specific to areas within Sicily itself, Tomasello argues that the Department should find the benefits received by Tomasello under these “regional” laws to be non-countervailable.

Department’s Position

Tomasello appears to assume that, because the Preliminary Results did not explicitly separate each program by granting authority as in Table Wine from Italy, the Department did not examine whether the benefit from each program under review was conferred by the national government or a regional authority. This is not correct. For example, in our analysis of the benefit received by Tomasello through the European Social Fund,¹⁴⁴ we stated the following:

“The ESF grant received by Tomasello provided funding from three sources: the EU, the GOI, and the Region of Sicily... since funding for this Objective 1 grant was provided through the regional operational program from three sources, we have examined the specificity of the funding for each source of funds, consistent with our treatment of the ESF in the Second Administrative Review.”¹⁴⁵

¹⁴² See GOI third supplemental questionnaire response dated July 1, 2011, at 1 and 3-4; see also GOI fourth supplemental questionnaire response dated August 11, 2011, at 8, 13, 14, and 16-17.

¹⁴³ See Certain Table Wine From Italy: Initiation of Countervailing Duty Investigation, 49 FR 6778 (February 23, 1984) (“Table Wine from Italy”).

¹⁴⁴ Initially, Tomasello presented this program as “Measure 3.09.”

¹⁴⁵ Preliminary Results, 76 FR at 48136 (emphasis added).

Later in our analysis, we found that the ESF funds provided by the EU and the national GOI were regionally specific, but we resorted to AFA for the funds provided by the RGOS because the GOI did not provide program usage information.¹⁴⁶ As reflected throughout our preliminary analysis, we made a concerted effort based on the imperfect information available to us to determine the granting authority for the all programs under consideration in this review.

Tomasello also appears to assume that, by referring to the “Government of Italy,” the Department is discussing only the national government. However, we have used this term in both the Preliminary Results and in this memorandum to refer to the Republic of Italy as an interested party to this proceeding and to the governing authorities within Italy as a whole. For additional clarity in responding to Tomasello’s arguments, we sometimes refer specifically to the RGOS in this memorandum.

Tomasello’s arguments regarding this issue do not specifically list which programs it believes the Department has inappropriately categorized. As such, it is difficult to address precisely Tomasello’s objections. However, later in its case brief, Tomasello separately addresses several programs and describes three as being “program{s} of the Regional Government of Sicily.” These programs are: 1) Measure 3.14 of the POR Sicilia 2000/2006; 2) Regional Law 15/1993; and 3) Regional Law 34/1988. We therefore address Tomasello’s argument in reference to these programs.

Tomasello’s arguments do not distinguish between the different reasons the Department cited in the Preliminary Results for the specificity findings for these three programs. For example, the Department found Measure 3.14 of the POR Sicilia 2000/2006 and Regional Law 15/1993 to be regionally specific based on information from the GOI, but found Regional Law 34/1988 to be specific based on AFA. We address Tomasello’s objections to the application of AFA above in Issue 1 (“Whether the Department impeded the proceeding”).

Regarding Regional Law 15/1993, Tomasello indicated in its third and fourth supplemental questionnaire responses that, contrary to its earlier submissions, it did not receive a benefit under this recurring program during the POR. Since Tomasello did not receive a benefit from Regional Law 15/1993 during the POR, we no longer need reach the question of whether this program is specific.¹⁴⁷

With respect to Measure 3.14, Tomasello claims that the Department misinterpreted the GOI’s meaning behind its statement that “{t}he eligibility for {this} subsidy is limited to enterprises or industries located within designated regions.”¹⁴⁸ Although we disagree with Tomasello’s interpretation of the GOI’s answer, as acknowledged below, the GOI’s statement lacks clarity. However, we also find that usage data for this program was not provided and, hence, have relied on AFA to find the program specific for these final results.

¹⁴⁶ Id.

¹⁴⁷ See “Analysis of Programs” above at “III.A. Regional Law 15/1993, as amended by Regional Law 66/1995.”

¹⁴⁸ See GOI fourth supplemental questionnaire response dated August 11, 2011, at 3.

First, we note that Tomasello's allegation concerning the meaning of the GOI's statement is speculative. Tomasello cannot speak for the GOI, and the GOI did not file a case brief or otherwise object to our understanding of its response. Second, the GOI did not provide a copy of Measure 3.14, even though we gave it several opportunities to do so. Despite Tomasello's argument that "it is clear from the text of the law that it is generally available to small and medium-size firms in Sicily across virtually the entire economic spectrum,"¹⁴⁹ the legislation provided by the GOI is for Article 38 of Regional Law 32/2000 and appears to appropriate funding for the larger Regional Operational Program ("ROP"). It says that aid may be granted for "industrial research projects in the fields covered by the ROP from 2000/2006" but does not further clarify those fields. Since the GOI did not provide a copy of Measure 3.14 (or indeed, any portion of the ROP), Tomasello's claim is not supported by the record.¹⁵⁰

Third, the GOI did not answer our question regarding whether the POR Sicilia 2000/2006 is a program of the regional government, the national government, or the EU. The Department has previously found that some programs in Italy, such as the European Social fund described above, are administered and funded at multiple levels. Consequently, although there is some information from the RGOS for this program, we cannot confirm Tomasello's claim that the POR Sicilia 2000/2006 is "a program of the Regional Government of Sicily available to all companies in Sicily."¹⁵¹

Due to the GOI's failure to provide the necessary information, the record is incomplete and therefore unclear whether Measure 3.14 is a program of the regional Sicilian government and not the national government. Thus, the Department has reevaluated the criteria at section 771(5A)(D)(iii) of the Act to determine whether the program is specific as a matter of fact. In particular, we asked the GOI to provide program usage data for Measure 3.14 twice: in the second supplemental questionnaire and in the third supplemental questionnaire. The GOI did not provide program usage information in response to either request.¹⁵²

As described above under "Use of Facts Otherwise Available and Adverse Facts Available," when necessary information is not on the record (section 776(a)(1) of the Act), or a party has withheld necessary information requested of it (section 776(a)(2)(A) of the Act), we may rely on "facts available." Moreover, when a party fails to cooperate by not acting to the best of its ability to comply with our request for information, we may apply an adverse inference under section 776(b) in our use of facts available. As a result of the GOI's failure to cooperate, we have relied on facts available with an adverse inference in finding this program to be specific for these Final Results, as described above under "Analysis of Programs" and "Use of Facts Otherwise Available and Adverse Facts Available."

¹⁴⁹ See Tomasello case brief dated September 29, 2011, at 6-7.

¹⁵⁰ In its April 13, 2011 submission, Tomasello presented what it claims is "a copy of the relevant portions of this legislation." There is no indication that the document it provided is in fact a law, or that it even originated from the Italian government. See Tomasello supplemental questionnaire response dated April 13, 2011, at Exhibit 3.

¹⁵¹ See Tomasello case brief dated September 29, 2011, at 6.

¹⁵² See GOI second supplemental questionnaire response dated June 13, 2011, at 1; see also GOI third supplemental questionnaire response dated July 1, 2011, at 1.

Comment 3: Whether the Department should have countervailed the entire benefit from Law 46/1982, Article 14 (Fondo Innovazione Tecnologica)

This program was alleged by the petitioners in the Pasta Investigation. However, the Department did not evaluate it at the time because we had found it to be non-countervailable in a previous investigation.¹⁵³

Tomasello alleges that the Department’s basis for reinvestigating Law 46/1982 in this review is faulty. To the extent that the Department decided to reinvestigate this program because Tomasello’s address appears in the decree, Tomasello argues that its address only appears in the decree as an identifying characteristic, and not as a criterion for granting benefits. Likewise, if the Department opted to reinvestigate this program because the decree states that Tomasello received an increase in aid of ten percent because “part of the costs for the development of the program will be carried out in areas admitted to dispensation as per art. 87.3 of the Rome Treaty,” Tomasello argues that the countervailable benefit should be limited to ten percent of the total benefit. In Tomasello’s view, the Department had no reason to alter its previous decision that the remaining 90 percent of the program was generally available and, hence, non-countervailable.

Department’s Position

We reinvestigated this program because the decree supplied by Tomasello seemed to indicate that some portion of the benefit conferred upon Tomasello was limited to companies in designated regions.¹⁵⁴ Given that record evidence indicated that the program may have changed over time, we found it appropriate to seek further information from the GOI.¹⁵⁵ Although it was given two opportunities, the GOI did not provide program usage information that would have allowed us to fully analyze changes to this program. Therefore, as discussed in the Preliminary Results and above under “Analysis of Programs” and “Use of Facts Available and Adverse Facts Available,” we found the entire benefit conferred upon Tomasello to be specific through application of AFA, and continue to do so now.

Comment 4: Whether the Department should have found Article 280 of Law 296/2006 and Article 23 of Legislative Decree 38/2000 to be specific

For Article 280 of Law 296/2006, Tomasello alleges that the Department, by applying AFA, found these tax credits to be regionally specific and not nationally available in the Preliminary Results. However, it observes that the relevant decree does not specify any conditions limiting the receipt of benefits to certain regions or sectors. In fact, the only criteria named by the decree are that the tax credits must be given in support of research and development projects. Since the

¹⁵³ See “Analysis of Programs” section above at “I.G. Article 14 of Law 46/1982 (Fondo Innovazione Tecnologica)”; see also Preliminary Results, 76 FR at 48137.

¹⁵⁴ We did not discuss our reasoning in more detail in the Preliminary Results because Tomasello designated the entire granting decree as business proprietary and not amenable to summarization. Because Tomasello mentions parts of this exhibit in its public case brief, we consider Tomasello to have consented to the public release of the information discussed in its case brief.

¹⁵⁵ See, e.g., Live Swine from Canada, 61 FR at 52420.

Department has the text of the law, and since neither the law nor the decree contains any evidence of regional or sectoral specificity, Tomasello argues that there is no legal or evidentiary basis for the Department to conclude, even through AFA, that this program is specific.

Similarly, for Article 23 of Legislative Decree 38/2000, Tomasello alleges that the Department found this program to be “ostensibly non-countervailable as an agricultural benefit,” but applied AFA and found the program countervailable because the GOI failed to provide program usage information. According to Tomasello, the GOI has provided “abundant information” showing that benefits under this program are available to all small- and medium-sized companies in the agricultural sector. Accordingly, Tomasello argues that this program is not countervailable.

Department’s Position

Tomasello mischaracterizes the Department’s preliminary findings. Nowhere in the Preliminary Results did we state that we found Article 280 of Law 296/2006 to be regionally specific. Likewise, we did not find Article 23 of Legislative Decree 38/2000 to be non-countervailable, “ostensibly” or otherwise. Regarding this latter program, we stated:

“Pursuant to 19 CFR 351.502(d), we do not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector. However, because the GOI failed to provide us with enough information to determine how benefits are limited by region, and did not provide us with usage information, we are unable to determine whether benefits under this program are otherwise specific.”¹⁵⁶

When the text of the relevant laws, implementing decrees, etc. do not indicate that a program is specific to certain industries or regions, we further examine whether a program is limited “as a matter of fact.”¹⁵⁷ Our decision to apply AFA was based upon the GOI’s failure to provide requested program usage information that would allow the Department to analyze these programs based upon the criteria found at section 771(5A)(D)(iii)(I-IV) of the Act.¹⁵⁸

Tomasello’s arguments disregard the plain language of the Act; namely, that a subsidy can be specific within the meaning of section 771(5A)(D)(iii) without a preference for certain regions or industries being explicitly written into the relevant laws or regulations. We have continued to apply AFA for these Final Results to find these programs specific.

¹⁵⁶ Preliminary Results, 76 FR at 48139 (emphasis added).

¹⁵⁷ Section 771(5A)(D)(iii) of the Act.

¹⁵⁸ See “Analysis of Programs” section above at “I.F. Tax Credits Under Article 280 of Law 296/2006” and “I.I. Article 23 of Legislative Decree 38/2000.”

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final net subsidy rates in the Federal Register.

AGREE_____ DISAGREE_____

Paul Piquado
Assistant Secretary
for Import Administration

Date