



A-475-818

Changed Circumstances Review – La Molisana

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**DATE:** October 21, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**RE:** Certain Pasta from Italy

**SUBJECT:** Issues and Decision Memorandum for Final Results of Changed Circumstances Review

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## I. Summary

We analyzed the comments submitted by interested parties in their case and rebuttal briefs regarding the changed circumstances review (CCR) concerning whether La Molisana S.p.A (La Molisana) is the successor-in-interest to La Molisana Industrie Alimentari, S.p.A (LMI). As a result of our analysis, we made no changes to the *Preliminary Results*.<sup>1</sup> We continue to find that La Molisana is not the successor-in-interest to LMI.

## II. Background

On June 23, 2014, La Molisana requested that the Department conduct a changed circumstances review to show that because of a change in ownership, it was the successor-in-interest to LMI.<sup>2</sup>

La Molisana stated that in 2004 LMI entered into a bankruptcy proceeding, but continued to operate and produce, sell, and export pasta. In 2011, the Ferro Family Group acquired LMI's factory including the employees and sales accounts, and placed the pasta operations in a new legal entity now named La Molisana.

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<sup>1</sup> See *Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 28481 (May 16, 2014) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum). The Preliminary Decision Memorandum is a business proprietary document, of which the public version is on file in ACCESS.

<sup>2</sup> See La Molisana's June 24, 2014, submission (CCR Request).



On June 23, 2015, the Department of Commerce (the Department) published in the *Federal Register* the preliminary results of the changed circumstances review of the antidumping duty order on certain pasta from Italy and preliminarily determined that La Molisana is not the successor-in-interest to LMI, a respondent in the investigation and several administrative reviews.<sup>3</sup> We invited parties to comment on the *Preliminary Results*. On June 26, 2015, La Molisana requested a hearing and submitted its case brief on July 2, 2015. On July 10, 2015, Petitioners submitted a rebuttal brief.<sup>4</sup> The Department held a hearing on July 15, 2015. The Department extended the deadline for the final results until October 14, 2015.<sup>5</sup>

### III. Scope of the Order

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

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union (EU) authorized body and accompanied by a National Organic Program import certificate for organic products.<sup>6</sup> Effective July 1, 2008, gluten free pasta is also excluded from this order.<sup>7</sup>

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

### IV. Discussion of Methodology

In making a successor-in-interest determination, the Department examines several factors, including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.<sup>8</sup> While no single factor or

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<sup>3</sup> See *Preliminary Results*.

<sup>4</sup> Petitioners are the New World Pasta Company and the Dakota Growers Pasta Company.

<sup>5</sup> See the Department's letter to La Molisana, dated September 11, 2015.

<sup>6</sup> On October 10, 2012, the Department revised the "Scope of the Order" to recognize the EU-authorized Italian agents for purposes of the antidumping and countervailing duty orders on pasta from Italy. See Memorandum from Yasmin Nair to Susan Kuhbach, titled "Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy," dated October 10, 2012, which is on file in the Department's Central Records Unit.

<sup>7</sup> See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

<sup>8</sup> See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010); *Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 28481 (May 16, 2014), unchanged in *Certain Pasta From Italy: Notice of Final Results of Antidumping Duty Changed*

combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally the Department will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.<sup>9</sup> Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash-deposit rate of its predecessor.

In the *Preliminary Results*, we examined these four factors and determined that La Molisana is not the successor-in-interest to LMI. Concerning management, we found that there were significant changes in LMI's management after the 2011 change in ownership, which included the formation of a new governance structure and new staff in key managerial positions. We also found that since its inception, La Molisana made significant investments related to its production process. Additionally, we determined that La Molisana's semolina supplier changed from an unaffiliated to an affiliated supplier thereby making La Molisana an integrated pasta producer. We also determined that La Molisana's customer base changed.<sup>10</sup>

## V. Discussion of Interested Party Comments

### Comment 1: Whether the Department's *Preliminary Results* Are In Accordance with Law and Supported By Record Evidence

#### *La Molisana's Arguments*

- The statute and the Department's regulations provide only limited guidance on how the Department is to conduct a CCR.
- In evaluating the evidence of record, the Department misread the evidence, ignored other evidence, and drew incorrect conclusions from the evidence of record.
- The Department's analysis, as it has previously stated, should focus on whether the sales and production of the successor company are similar to that of the predecessor company and should examine the totality of the facts.<sup>11</sup>
- A determination as to the continuation of a business requires a more sophisticated analysis and not simply a mechanical "did something change" analysis.
- Rather, the Department must focus on whether the changes made were the result of the event that triggered the CCR or some other circumstance.<sup>12</sup>

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*Circumstances Review*, 79 FR 56339 (September 19, 2014) (*Delverde*); and *Certain Lined Paper Products From India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 40709 (July 14, 2014), unchanged in *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 18373 (April 6, 2015) (*CLPP*).

<sup>9</sup> See, e.g., *Delverde* and *CLPP*. See also *Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999).

<sup>10</sup> See Preliminary Decision Memorandum at 3-5.

<sup>11</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Final Results of Changed Circumstances Review*, 80 FR 19070 (April 9, 2015) (*TRBs from the PRC*) and accompanying Decision Memorandum (*TRBs from the PRC Decision Memorandum*) at 6.

<sup>12</sup> *Id.*, at 12.

### *Petitioners' Arguments*

- In the CCR of *Delverde*,<sup>13</sup> the Department stated that “the successor-in-interest analysis was not explicitly mandated by statute or by regulation, but is an agency practice designed to facilitate the proper administration of the antidumping laws.”
- The Court of Appeals for the Federal Circuit has noted that, where a statute is silent, as with CCRs, the Department’s final results are reasonable if based on a permissible construction of the statute.
- The Department has the authority to apply the “four-factor” analysis in determining whether La Molisana operates as “essentially the same” operation as the bankrupt LMI.
- The changes at La Molisana depict a bankrupt, financially-distressed company that was required to enter the bankruptcy process in order to survive, and emerged only once a suitable purchaser appeared.

**Department’s Position:** Section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) establishes the Department’s authority to conduct a CCR. Under this provision, the Department will conduct a CCR whenever information is received, or a request is submitted, that shows changed circumstances sufficient to warrant initiation of a CCR. Further, 19 CFR 351.216 and 351.221(c)(3) establish general administrative procedures for CCRs. However, neither the Act nor the regulations establish a particular analytical framework for successor-in-interest inquiries.<sup>14</sup> Accordingly, because the successor-in-interest analysis is not explicitly mandated by statute or regulation, the Department has developed a practice designed to facilitate the proper administration of the antidumping laws.<sup>15</sup> The basis of this practice is to determine if a company is eligible for the same antidumping treatment as its predecessor as a result of an event such as a corporate name change, change in ownership, acquisition, merger or other such event (*i.e.*, it is the successor-in-interest, or successor to its predecessor form). To determine successorship, we generally examine changes to the company with respect to several factors, including, but not limited to: management, production facilities, supplier relationships, and customer base.<sup>16</sup> Thus, our practice is to make the successorship determination based upon on the totality of the circumstances of each case.<sup>17</sup>

In this CCR, consistent with our normal practice, the central question before the Department is

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<sup>13</sup> See *Delverde* and accompanying Issues and Decision Memorandum at Comment 1.

<sup>14</sup> As the CIT noted in *Mars an Gida Sanayi Ve Ticaret A.S. v. United States*, Slip Op. 11 -20 (CIT 2011) (*Marsan Gida*), “a CCR may address a broad range of matters and the only limitation in the statute is the requirement that there be ‘changed circumstances sufficient to warrant a review.’ See also *Mittal Canada, Inc. v. United States*, 30 CIT 1565, I572, 461 F. Supp. 2d 1325, 1332 n.7 (2006) (emphasis added). Thus ... Commerce ... has the discretion to construe the breadth of CCRs because statutory silence provides ‘an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation.’ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. at 843-44, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).”

<sup>15</sup> See *East Sea Seafoods v. United States*, 703 F. Supp. 2d 1336 (CIT 2010) at 1352.

<sup>16</sup> See, e.g., *Brake Rotors From the People’s Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (November 18, 2005), and *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass Sheet from Canada*).

<sup>17</sup> See, e.g., *Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan*, 67 FR 39676, 39676-77 (June 10, 2002); see also *Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20461 (May 13, 1992).

whether the “new” company operates in a manner such that it remains essentially the same business entity as the predecessor company with respect to the production and sale of subject merchandise, and thus whether it is entitled to the predecessor’s cash deposit rate.<sup>18</sup> As indicated in the Preliminary Decision Memorandum and as summarized in the “Discussion of Methodology” section above, the Department examined whether La Molisana’s management, production facilities, supplier base, and customer base were materially dissimilar to that of its predecessor, LMI.<sup>19</sup>

We agree with La Molisana that the Department’s CCR analysis should focus only on significant changes that occurred with regard to the company in question. The four factors considered in the *Preliminary Results* are directly relevant to the question of whether the company is the same business entity as the predecessor, and the Department examined the totality of the four factors in conducting its analysis. As discussed in greater detail below, in evaluating the four factors and determining that La Molisana was not the successor-in-interest to LMI, the Department considered all the relevant information on the record including various changes that occurred which are pertinent to the four factors analysis.

As discussed in greater detail below, we do not agree that in making our CCR analysis the Department ignored evidence or otherwise employed a flawed analysis.

## **Comment 2:** Whether the Department’s Analysis of the Management Factor Is Flawed

### *La Molisana’s Arguments*

- The Department’s preliminary finding that there were significant changes in the management structure of the two companies at issue (*e.g.*, LMI and La Molisana) reflects a superficial review, and appears to place form over substance.
- A review of the functional management structure of the two companies indicates that the same individuals that were making the day-to-day decisions at LMI continued to make the same decisions at La Molisana.
- The establishment of a Board of Directors and the Appointment of a Managing Director at La Molisana are not a major change. The Board of Directors is acting in place of the bankruptcy court and is responsible for the general oversight of the company, primarily serving to review and approve the financial statements and confirm the appointment of the managing director, which was a function served by the Bankruptcy court for the predecessor entity. In a similar fashion, the managing director acts as the overall administrator of the company, which is the same function as served by the bankruptcy trustee.
- While the new owners of La Molisana operate as titular heads of the Departments and assumed supervisory roles, they are not the individuals making the day-to-day management decisions at La Molisana. Rather, the day-to-day individual managers remain unchanged, with limited exceptions.

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<sup>18</sup> See *Certain Welded Stainless Steel Pipe From Taiwan: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 16982, 16984 (April 7, 1998), unchanged in *Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 34147 (June 23, 1998). See also *Brass Sheet from Canada*, 57 FR at 20460.

<sup>19</sup> See Preliminary Decision Memorandum at 3-5.

- The question, therefore, is whether the key managers at LMI remain in their same functions at La Molisana, not whether an additional level of overall monitoring was imposed over the top of the existing structure, and whether the basic operations of the company in terms of sales and production are unchanged.
- The supermajority of the LMI managers continued to work at La Molisana in similar positions. In fact, seven of the ten key management positions at LMI remained with La Molisana.<sup>20</sup> The only changes were either the lack of continuity concerning individuals appointed by the bankruptcy committee or the few individuals that left the company for reasons unrelated to any “restructuring.”
- While a “new” organization structure was imposed, the objectives of the company remained the same (the production and sale of dry pasta), the managers remained in place, and the functional operations of the company did not change.
- The Department’s preliminary finding concerning the management factor is contrary to its practice. In *TRBs from the PRC*, the size of the Board of Directors at Shanghai General Bearing Company, Ltd. (SGBC) changed as did the identity of the entity naming the members of the board of directors. Furthermore, the majority owner was acquired and was owned and controlled by another entity.<sup>21</sup> Notwithstanding this, the Department found that these changes did not weigh against a finding of a successor-in-interest.
- In *Softwood Lumber I*, the Department assigned a rate to a new entity based on the average rate for two companies prior to their merger.<sup>22</sup> A merger of two companies necessarily means that, at best, one of the two management structures must necessarily have 49.9 percent or less of its structure in the new merged entity.

#### *Petitioners’ Arguments*

- La Molisana’s criticism is not supported by record evidence, and simply reflects its subjective characterization of these changes, not commercial realities. Principal shareholders affect substantial change in companies precisely by taking enough control to change the Board of Directors, who in turn appoints new management.
- After the Ferro acquisition, La Molisana did restructure its management. In addition to the establishment of a Managing Director and Board of Directors, La Molisana also hired outside “pasta experts” to help it reorganize.
- La Molisana acknowledges that the Ferro family members occupied the top positions of the company, but claims they operate only as titular heads of their Departments.
- La Molisana claimed that the new owners assumed supervisory roles, but made no day-to-day management decisions. This claim, however, is not supported in the record, and flies in the face of normal commercial practices, as noted by the Department in its *Preliminary Results*.<sup>23</sup>
- Further, in arguing that its management structure remained largely unchanged, La Molisana includes among its “key management positions” managers for security, computers, general services, and maintenance coordinator, while ignoring other positions related to the

<sup>20</sup> See La Molisana’s January 9, 2015, questionnaire response at CCRS-1.

<sup>21</sup> See TRBs from the PRC Decision Memorandum at Comment 12.

<sup>22</sup> See *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 69 FR 75921 (December 20, 2004) (*Softwood Lumber I*), and accompanying Issues and Decision Memorandum (*Softwood Lumber I Decision Memorandum*) at Comment 43.

<sup>23</sup> See Preliminary Decision Memorandum at 3, referencing proprietary information concerning the actions taken by La Molisana’s new management structure.

production and sale of subject merchandise that experience significant change as a result of the formation of La Molisana.

- The record also indicates that La Molisana hired outside pasta experts in 2011 to increase its domestic market share.<sup>24</sup>

**Department’s Position:** We disagree with La Molisana’s argument that the changes to its management were minor. LMI’s organizational structure was comprised of several major departments that reported to a court-appointed curator and judge. Under La Molisana, the court-appointed officials were replaced by a board of directors and while some of the major departments remained, others were added. In addition, for La Molisana, Ferro family members hold key positions and the few other managers who were previously with LMI report directly to Ferro family members. These changes in top management and the type of positions that changed, including the board of directors and managing director, cannot be characterized as “minor.” We also disagree with La Molisana’s argument that seven of the ten key management positions at LMI remained with La Molisana. Some of the positions that La Molisana characterizes as top key positions are listed as level B and C in the organization chart, and not as level A or top positions. Thus, we find the changes to the managers and decision makers of the company to be significant.<sup>25</sup>

La Molisana contends that the new board members and the top management officials appointed by the Ferro Family only operated as titular heads of their respective Departments, and did not engage in the day-to-day operations of the company. However, La Molisana did not reference any record evidence to substantiate this assertion. Accordingly, we find Molisana’s assertions that its new owners play no role in the company aside from holding top management titles, thereby leaving the management and supervision of the company unchanged, to be unsubstantiated. Therefore, we continue to find that La Molisana’s business structure and management fundamentally changed as a result of its 2011 change in ownership.<sup>26</sup>

La Molisana argues that the Department’s preliminary findings regarding the management factor do not follow its approach in prior CCRs. We disagree because the facts at issue in the cases cited by La Molisana are distinct from the facts of the instant proceeding. For example, in *TRBs from the PRC*, the Department stated that the role of SGBC’s Board in managing the company remained the same between the time of SGBC’s revocation and 2005.<sup>27</sup> In addition, the Department found that while changes occurred with regard to certain members of senior management, including the General Manager, there was no evidence on the record to indicate that these changes resulted from the purchasing entities’ increase in ownership.<sup>28</sup> In contrast, as noted above, the Ferro family significantly changed the management structure of La Molisana soon after its acquisition of the company.

With respect to *Softwood Lumber I*, there is no discussion in that case as to how the merger

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<sup>24</sup> See La Molisana’s January 9, 2015, questionnaire response at CCRS-4.

<sup>25</sup> See Preliminary Decision Memorandum at 3 – 4, which references proprietary information in La Molisana’s January 28, 2015, submission at CCRS-1.

<sup>26</sup> *Id.*

<sup>27</sup> See *TRBs from the PRC Decision Memorandum* at 15.

<sup>28</sup> *Id.*, at 4, unchanged in the *Final Results*.

affected the management structure of the two companies under examination. The issue in *Softwood Lumber I* was whether the Department should assign to Canfor Corporation (Canfor) a cash deposit rate reflecting a weighted average of Canfor's and Slocan Forest Products Ltd.'s respective cash deposit rates prior to the merger or assign a weighted average based on the total U.S. values that constitute the denominators in the individual company deposit rate calculations in the first administrative review.<sup>29</sup> However, in the current case, there is no issue of a merger or weight-averaging cash deposit rates. Therefore, we find that the Department's decision in the instant CCR with regard to the management factor is consistent with its practice.<sup>30</sup>

La Molisana claims that the roles of a Board of Directors and Managing Director are analogous to the roles performed by a bankruptcy court and bankruptcy trustee. Thus, La Molisana argues that its move from receivership to one in which it was led by a Board of Directors does not constitute a significant change its management. We disagree. While some of the responsibilities of a bankruptcy court and its trustee might resemble the duties performed by a Board of Directors and its Managing Director, it does not overcome the fact that in the case of La Molisana, the individuals that owned and, moreover, oversaw the direction of the company changed dramatically.<sup>31</sup> Additionally, as a result of the change in ownership, the few remaining managers who were previously with LMI now report directly to Ferro family members.

### **Comment 3:** Whether the Department's Analysis of Production Facilities Is Flawed

#### *La Molisana's Arguments*

- In the *Preliminary Results*, the Department determined that La Molisana made substantial changes to its production facilities. In support, the Department cited to certain investments made since the acquisition of La Molisana and to certain improved technology.
- The Department's preliminary conclusion concerning this criterion is flawed.
- The amount of the investment referenced in the *Preliminary Results* is overstated, because it includes charges for maintenance of the production lines, and leasing. In addition, the amounts cover payments made over a four year period, and not over a single year.
- Including the 2013 and 2014 investments in the analysis is not appropriate as they do not reflect the position of LMI and La Molisana at the time of the change, nor immediately after the change, but rather represent changes made well after the acquisition.
- The amount of the investments whether taken either on a yearly basis or taken as a yearly average of the four years is not large.
- Further, the fact remains that the production equipment at the factory did not change. The same pasta production lines that were in place before the transition continued to operate after the transition. The capacity of these lines has not changed. La Molisana has the same capacity to produce product that it did prior to the transition. Just as importantly, the range of product produced has not changed.

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<sup>29</sup> See *Softwood Lumber I* Decision Memorandum at 147.

<sup>30</sup> See, e.g., *Delverde Pasta* Decision Memorandum, where the Department analyzed a successor firm that emerged from bankruptcy and determined that "the top management was replaced after the bankruptcy, which we find to be significant."

<sup>31</sup> See *Preliminary Decision* Memorandum at 3-4, where the Department, citing to business proprietary information, describes the managerial changes that La Molisana underwent after its change in ownership.

- The sole difference in the combined production/packing line is that La Molisana is now able to pack product in a fashion necessary to meet the changing demands of the market, which is something that LMI would have been required to do as well.
- A change in the packing lines is a minor change that the Department has traditionally separated from the production of merchandise in antidumping duty reviews.
- The Department’s preliminary finding concerning the production facility factor is contrary to its practice. In *Cased Pencils from the PRC*,<sup>32</sup> the Department found that the building of a new facility and the transfer of the equipment from the old facility to the new facility was “not a material change.” This change in *Cased Pencils from the PRC* is more significant than in the present case because the production machinery has not moved and the production facility has not relocated.
- In *Softwood Lumber I*, the Department stated that it was assigning a rate to a new entity based on the average rate for two companies prior to their merger. A merger of two companies means that the production facilities necessarily must be very different from each of the individual companies.
- In *Softwood Lumber II*,<sup>33</sup> the Department further stated that, although the production capacity increase is the most significant change to West Fraser’s operations, the significance of this fact in the Department’s analysis is reduced by the absence of any substantial change to its product line.
- In *TRBs from the PRC*, the successor company operated two facilities that were not integrated and certain operations previously performed in-house were sent out to a toller. The capacity of the successor entity expanded production by 130 percent, and the types of products also increased.<sup>34</sup> Nonetheless, the Department found the company in question to be a successor-in-interest to the predecessor company.

#### *Petitioners’ Arguments*

- Leasing is one of the common ways companies invest in capital investment, and results in no less a change to operations than outright capital purchases.
- La Molisana acknowledges changes to its packing equipment, but postulates that LMI would also “have been required” to upgrade the packing lines.
- Changes in La Molisana’s packing lines were the direct result of La Molisana’s purchase of LMI. Furthermore, because of the nature of the subject pasta, packing for retail sales is an integral part of the production process.<sup>35</sup>
- Additionally, information placed on the record by La Molisana indicates that it upgraded and improved its production facilities.<sup>36</sup>

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<sup>32</sup> See *Certain Cased Pencils from the People’s Republic of China: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 80 FR 10457 (February 26, 2015) (*Cased Pencils from the PRC*), and accompanying memorandum (Case Pencils from the PRC Decision Memorandum), at 6, unchanged in *Certain Cased Pencils From the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 19073 (April 9, 2015).

<sup>33</sup> See *Final Results of the Antidumping Duty Changed Circumstances Review of Certain Softwood Lumber Products from Canada: West Fraser Mills Ltd./Weldwood of Canada Limited*, 71 FR 13811 (March 17, 2006) (*Softwood Lumber II*), and accompanying Issues and Decision Memorandum (Softwood Lumber II Decision Memorandum), at Comment 10.

<sup>34</sup> See TRBs from the PRC Decision Memorandum at Comment 3.

<sup>35</sup> See *Delverde*, 79 FR 56339 - 56340 (September 19, 2014); see also Petitioners’ April 10, 2015 Comments at 8-9.

<sup>36</sup> See La Molisana’s March 24, 2015, submission at CCRSS-4 and CCRSS-6.

- La Molisana’s interpretation of the restructuring changes is at odds with evidence on the record. The change in ownership permitted pasta producing facilities of the bankrupt LMI to become “operational” again. Moreover, the Ferro Group’s acquisition of LMI’s assets became profitable as well, as a result the “optimization of mill performance,” which itself is a result of “cost-effective” supplier-relationship between the parent company’s semolina mill and the subsidiaries’ (La Molisana) pasta production operation.
- The Department’s test for significant changes in production facilities only requires significant changes to production equipment, not increased production capacity or volume.

**Department’s Position:** As noted in the Preliminary Decision Memorandum, La Molisana made significant investments and expenditures with regard to its production facilities since the 2011 change in ownership that gave rise to La Molisana (*i.e.*, during the 2011 through 2014 period).<sup>37</sup>

We disagree with La Molisana’s argument that the amount of the investment referenced in the *Preliminary Results* is overstated. For example, in our preliminary analysis of La Molisana’s investments in its production facilities we did not include maintenance expenditures that were outside of our analysis window.. We also disagree with La Molisana’s claim that its leasing expenditures on its production line should not be included with its purchases of capital equipment. As Petitioners note above, leasing manufacturing equipment changes a company’s ability to produce its merchandise in the same way as capital equipment that is purchased outright. Concerning La Molisana, record evidence indicates that it upgraded and improved its pasta making and packaging equipment and installed new software on one of its production lines.<sup>38</sup> Thus, we continue to find that changes in the production facilities are significant, in terms of the invested amount, and the improved technology that would make La Molisana’s factory more efficient.

La Molisana argues that the Department’s preliminary findings regarding the production facility factor do not follow its approach in prior CCRs. We disagree because the facts at issue in the cases cited by La Molisana are distinct from the facts of the instant proceeding. For example, in *Softwood Lumber I*, there is no discussion of production facilities. Accordingly, *Softwood Lumber I* does not provide guidance on the issue of production facilities. La Molisana’s citation to *TRBs from the PRC* is also off point and misleading. La Molisana cites to an argument raised by Petitioner, and not the Department’s position. In *TRBs from the PRC*, the Department determined that Petitioner based its claims concerning changes to the respondent’s production facilities by comparing respondent’s operations in 1994 and 2012, without properly accounting for the changes which occurred in the intervening period.<sup>39</sup> The facts of the instant proceeding are distinct because we based our analysis on the years immediately after the event that triggered the CCR request, as opposed to comparing the first and last year of a 20-year time period.

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<sup>37</sup> See Preliminary Decision Memorandum at 4, which cites to business proprietary information contained in La Molisana’s January 9, 2015, submission at Exhibit CCRS-8 at 1-2 and La Molisana’s March 24, 2015, submission at Exhibit CCRSS-4 at 1 and 2.

<sup>38</sup> See La Molisana’s March 24, 2015, submission at 8 and at Exhibit CCRSS-4 at 1-2.

<sup>39</sup> See *TRBs from the PRC* Decision Memorandum at 14.

La Molisana also cites to *Softwood Lumber II* where the Department found that although a production capacity increase was the most significant change to the respondent's operations, the significance of this fact in the Department's analysis was reduced by the absence of any substantial change to its product line.<sup>40</sup> According to La Molisana, the Department's approach in *Softwood Lumber II*, where it found no significant changes in production, should compel it to find that La Molisana's production did not change as a result of its 2011 change in ownership. We disagree. The situation in the instant CCR differs from the one examined in *Softwood Lumber II*. In addition to the expenditures made to its production facilities, La Molisana, as a result of its change in ownership, transformed from a non-integrated pasta producer that purchased its semolina from an unaffiliated party to a vertically integrated pasta producer. More specifically, unlike LMI, La Molisana owns and controls its supplier. We find that La Molisana's transformation into a vertically integrated pasta producer is not only relevant to the supplier base prong of the Department's analysis (as discussed further below), it also relevant to issue of whether its production changed. The vertical integration of a company's production process enables the producer to have extensive control over its supply chain which, in turn, facilitates its production process. Information placed on the record by La Molisana reflects the advantages of such an arrangement. For example, the financial statements submitted by La Molisana indicate that the potential for "vertical integration" was one of the reasons the Ferro family decided to purchase LMI:

The reasons for which the Group decided to purchase the business unit were the following ones: . . . vertical integration between the mill owned by the majority shareholder (F.lli Ferro – Semolerie Molisane Ltd.) and the pasta factory...*allowing the former to increase plant exploitation, and the latter to supply provisions of raw materials at competitive prices.*<sup>41</sup>

Moreover, the Department found, and the Court of International Trade affirmed that a degree of vertical integration could lead to significant differences between companies.<sup>42</sup>

Regarding La Molisana's cite to *Cased Pencils from the PRC*, the Department stated that the changes involved in the relocation of the production facility at issue did not constitute the formation of a new entity. In that case, the Department further determined that there were no material changes in the production line or the products produced. However, in *Cased Pencils from the PRC*, aside from expenses to build a new building and move the existing equipment, there is no discussion of investments or any upgrades to existing production lines.<sup>43</sup> In contrast, in the instant case, record evidence indicates that there were additional investments for upgrades to the operating software and packing machinery.<sup>44</sup> Therefore, we continue to find that the changes in the production facilities are significant, in terms of the invested amount, and the improved technology that would make the factory more efficient.

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<sup>40</sup> See *Softwood Lumber II* Decision Memorandum at 10.

<sup>41</sup> See La Molisana's January 9, 2015, submission at CCRS-4 at 3 of the 2011 consolidated financial statement of F.LLI Ferro Semolerie Molisana S.r.l., emphasis added.

<sup>42</sup> See, e.g., *Downhole Pipe and Equipment L.P. v. United States*, 887 F. Supp. 2d 1311, 1322-33 (Ct. Int'l Trade 2012) (sustaining the Department's decision not to use financial statements of a producer with a high level of vertical integration as a financial surrogate for a producer that did not possess a high level of vertical integration).

<sup>43</sup> See *Cased Pencils from the PRC* Decision Memorandum at 7.

<sup>44</sup> See La Molisana's March 24, 2015, submission at 36 and Exhibit CCRSS-4.

#### **Comment 4:** Whether the Department’s Analysis of Supplier Relationships Is Flawed

##### *La Molisana’s Arguments*

- Although the primary supplier of La Molisana’s primary input did not change, the relationship of the supplier to La Molisana changed. The Department relied upon this change in La Molisana’s supplier relationship when determining that La Molisana is not the successor-in-interest to LMI.
- The Department’s analysis is incomplete as it does not address the fact that, prior to the transition, the primary supplier was in a dominant position of supply. Thus, the change in status had no impact on the supplier relationship.
- The Department referenced the fact that the number of packing and pallet suppliers increased. However, the Department’s analysis fails to take into account the magnitude of each entity.
- Specifically, the Department did not take into account the number of transportation suppliers and the magnitude of the suppliers.
- The primary suppliers remained comparatively constant before and after the transition and the changes simply reflect the normal ebb and flow of suppliers in an open market.
- The Department’s preliminary finding concerning the suppliers factor is contrary to its practice. In *TRBs from the PRC*,<sup>45</sup> the predecessor company purchased its inputs from market economy suppliers, but the successor company purchased inputs from non-market economy suppliers. Further, the nature of the production process changed, and certain items that were produced in house were now produced by tolling, which represents a change in suppliers as the inputs changed. Thus, a change in the nature of the input and the method of valuation used by the Department in *TRBs from the PRC* was more significant than in the instant case. Yet, in *TRBs from the PRC*, the Department found that the firm in question was the successor-in-interest to its predecessor company.

##### *Petitioners’ Arguments*

- La Molisana’s claim that F. Ili Ferro Semolerie Molisane Srl’s (Ferro Semolerie) change in status had no impact on the supplier relationship is not supported by the record, and is directly contradicted by the company’s financial statements.
- The change in supplier relationship from unaffiliated to affiliated for a large percentage of La Molisana’s “costs of goods and services” is significant. Because of the new affiliation with the parent mill, La Molisana was able to gain cost effective access to semolina and working capital infusions from the parent company, as it could use the accounts receivable due from its pasta customers against its own payments due to Ferro Semolerie for the purchase of semolina.
- The favorable financial arrangements between the affiliated semolina supplier and downstream pasta customers represent one of the fundamental dissimilarities between the post-acquisition La Molisana and the pre-acquisition LMI.

**Department’s Position:** As stated in the Preliminary Decision Memorandum, information on the record indicates that in 2010, Ferro Semolerie, a supplier of the major input, was unaffiliated with LMI.<sup>46</sup> As a result of the change in ownership, La Molisana became vertically integrated

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<sup>45</sup> See *TRBs from the PRC* Decision Memorandum at 12.

<sup>46</sup> See the Preliminary Decision Memorandum at CCRS-9(a). See also SSCR at 4.

with the Ferro family group of which Ferro Semolerie belongs.<sup>47</sup> This is a significant different relationship between the two formerly independent food producers prior to the change in ownership. We continue to find this arrangement between La Molisana and its semolina supplier constitutes a significant change compared to the supplier relationship maintained by LMI.

First, La Molisana does not provide any supporting evidence indicating that, prior to the transition from LMI to La Molisana, the primary supplier was the company's dominant supplier, and as a result we find this unsubstantiated argument unpersuasive. Second, we disagree with La Molisana that *TRBs from the PRC* should lead the Department to reverse its preliminary finding that La Molisana's supplier base underwent a significant change. In *TRBs from the PRC*, the Department stated that the changes with respect to the tollers happened gradually over time and did not seem to happen as a part of, or in response to, an ownership change.<sup>48</sup> In contrast, the change in La Molisana's relationship with its supplier was a direct and immediate result of the Ferro family's purchase of La Molisana, which resulted in the pasta producer being in the same corporate family as its semolina supplier.<sup>49</sup> Additionally, the facts of *TRBs from the PRC* did not involve a situation in which the supplier of the major input changed from an unaffiliated to an affiliated party. Thus, we do not find La Molisana's argument that the Department is inconsistent with its CCR findings to be persuasive.

With respect to La Molisana's argument that the Department failed to take into account the magnitude of each packing, pallet, and transportation supplier, we note that some of the same suppliers were used in 2010 and 2012. However, La Molisana did not provide any explanation regarding the size of the suppliers or why the increase or decrease in the use of a particular supplier. Thus, there was no information to conduct a meaningful analysis of the magnitude of every supplier. Moreover, a determination on the Department's part that such increases or changes in supplier use is a result of normal ebb and flow in an open market would be speculative.

**Comment 5:** Whether the Department's Analysis of Customer Base Is Flawed

*La Molisana's Argument*

- The Department's claim that La Molisana's domestic customer base changed is factually correct; however, this change was not caused by the transition from LMI to La Molisana, but rather by external market factors. Furthermore, the Department's analysis ignores the size of the customers.
- The purpose of the Department's analysis is to examine the changes which result from the event which triggered the changed circumstances, not to ascribe every change without considering the reasons for such change.
- The general shape of the traditional market, the relatively small size of the customers which is the basis for their variability, and the growth of other market sectors at the expense of the traditional market supports a finding of continuation.

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<sup>47</sup> See La Molisana's submission dated January 28, 2015 at Exhibit CCRS-3.

<sup>48</sup> See the Preliminary Decision Memorandum at 15.

<sup>49</sup> See La Molisana's submission dated January 28, 2015 at Exhibit CCRS-3.

- The significant value in the export market, both before and after the transition, and the incremental growth of this market support a finding that La Molisana is a continuation of LMI and is simply continuing along the same path.
- The Department’s preliminary findings concerning customer base is at odds with its practice.
- *Softwood Lumber I* deals with the merger of two companies. Therefore, the sales must be very different for each of the company. Yet, the Department did not find this to be significant.
- In *TRBs from the PRC*, the customer base increased in size and it was alleged that the sales were no longer controlled by the successor company, but rather were controlled by the parent company. Thus, the changes in customer base examined by the Department in *TRBs from the PRC* were more significant than the change in the customer base in the instant CCR.<sup>50</sup> Nonetheless, in *TRBs from the PRC*, the Department concluded that the firm at issue was the successor-in-interest to the predecessor company.

*Petitioners’ Argument*

- It is up to the Department to determine if the noted changes in the customer base are of such significance as to support a finding of successorship. However, even if the changes in “customer base” are less significant than in the changes in the other three factors, the “totality of the circumstances,” including the finding of significant changes in management, production facilities and suppliers, all support the Department’s preliminary finding of no successorship.

**Department’s Position:** There was a change with regard to the customer base. La Molisana does not dispute that this finding is factually correct. Rather, La Molisana contends that its most important customers in Italy, in terms of sales value, remained largely unchanged after La Molisana’s 2011 change in ownership. Concerning the home market, La Molisana, citing to information in its supplemental questionnaire, further argues that the changes in its home market customer base were caused by external factors, namely changes in the Italian market with regard to certain channels of distribution.<sup>51</sup> We do not dispute that a number of La Molisana’s largest home market customers remained with the company after its 2011 change in ownership. We also acknowledge that information submitted by La Molisana indicates that changes in its home market channels of distribution may have contributed to changes in its Italian customer base. However, we disagree with La Molisana that the article included in its supplemental response demonstrates conclusively that all of the changes to La Molisana’s home market customer base were attributable to external factors because of overall growth in a particular segment of the pasta market.<sup>52</sup> Furthermore, we continue to find that La Molisana’s export base changed after the 2011 change in ownership, particularly with regard to the value of pasta sold to the United States.<sup>53</sup>

Moreover, the Department’s successor-in-interest analysis does not rely merely on this customer base factor but, rather, based on the totality of the evidence on the record of significant changes in ownership and a replacement of corporate management, significant changes to supplier

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<sup>50</sup> See *TRBs from the PRC Issues and Decision Memorandum* at 12.

<sup>51</sup> See La Molisana’s January 9, 2015, submission at CCRS-12, which contains an academic article discussing Italian market conditions.

<sup>52</sup> *Id.*

<sup>53</sup> See La Molisana’s January 9, 2015, questionnaire response at CCRS-11.

relationships, and changes in the production facilities, we continue to find that La Molisana is not the successor-in-interest to LMI.

**Comment 6:** Whether the Department Failed to Reject Petitioners’ Improperly Filed Submission

*La Molisana’s Arguments*

- The Department has improperly allowed certain factual submissions from Petitioners to remain on the record.
- Petitioners placed on the record numerous Italian language newspaper articles about La Molisana and the transition from LMI to La Molisana as well as numerous pages of untranslated Italian documents. With respect to the newspaper articles, Petitioners did not place such articles (and the translations thereof) on the record, but rather, simply made web citations to articles in Italian accompanied by brief English language summaries prepared by counsel for Petitioners.
- The Department must correct this by removing these submissions from the record, and not consider any of the “facts” presented therein.
- The Department should expressly state whether a party can place on the record documentary facts by simply referencing the webpage and providing a brief English language summary of the webpage. The Department must find that citations to web links do not constitute proper evidence of record.

*Petitioners’ Arguments*

- The Department properly did not reject Petitioners’ January 30, 2015 letter, which contained Italian language newspaper articles about La Molisana and the change in ownership from LMI to La Molisana.
- La Molisana’s arguments should be dismissed. La Molisana complains about partial translations and citations to websites, as opposed to the original Italian language article in full.
- The Department never cites to Petitioners’ January 30, 2015 letter, and does not base any of its factual conclusions on the Italian language news articles included therein. Second, La Molisana never challenges the authenticity of the sources themselves, but suggests that Petitioners’ translations amount to “speculation.”

**Department’s Position:** In their February 6, 2015, deficiency submission concerning La Molisana’s January 9, 2015 questionnaire response, Petitioners cited to their January 30, 2015 submission. On February 11, 2015, La Molisana requested that the Department reject Petitioners’ February 6, 2015, submission on the grounds that it constituted an untimely submission of new factual information. On February 20, 2015, the Department responded that Petitioners’ February 6, 2015, submission was not new factual information, but rather constituted arguments based on information on the record. On February 27, 2015, La Molisana submitted a letter providing “legal comment on Petitioners February 6, 2015 submission,” and referenced Petitioners’ January 30, 2015, submission stating that the summary of Italian articles that Petitioners provided in that submission constitutes new factual information.

We have determined that Petitioners did not submit new factual information in its February 6, 2015 submission by its citing to its January 30, 2015 submission that was on the record. Moreover, the Department has based its finding that La Molisana is not the successor-in-interest to LMI solely on the information provided by La Molisana. Thus, we did not base our analysis or factual conclusions on Petitioners' January 30, 2015, submission or their February 6, 2015 submission.

**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 changed circumstances review in the *Federal Register*.

✓                      \_\_\_\_\_  
Agree                      Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 OCTOBER 2015  
(Date)