

DEPARTMENT OF COMMERCE

International Trade Administration
[C-428-812]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Notice of Termination of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: August 16, 1999.

SUMMARY: On April 24, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice (63 FR 20378) announcing the initiation of an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany, covering the period January 1, 1997 through December 31, 1997. Because the sole respondent company did not export any subject merchandise to the United States during the period of administrative review, the Department is now terminating this administrative review.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-4136.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). All citations to the Department's regulations reference 19 CFR Part 351 (April 1998), unless otherwise indicated.

Background

On March 22, 1993, the Department published in the **Federal Register** (58 FR 15325) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany. On March 11, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" (63 FR 11868) of this countervailing duty order. We received a timely request for review from Saarlust AG (Saarlust), the sole respondent company to this proceeding. On April 24, 1998, we initiated the review, covering the period January 1, 1997 through December 31,

1997 (63 FR 20378). In accordance with 19 CFR 351.213(b), this review covered only those producers or exporters for which a review was specifically requested. Accordingly, this review covered Saarlust.

On November 19, 1998, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. See *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Extension of the Time Limit for Preliminary Results of Countervailing Duty Administrative Review* (63 FR 64235). On April 7, 1999, we published our preliminary results of administrative review. See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Preliminary Results of Countervailing Duty Administrative Review* (64 FR 16915). Subsequently, based on a request by Inland Steel Bar Company and USS/KOBE Steel Co. (petitioners), we conducted verification of the questionnaire responses submitted.

Termination of Review

At verification, we discovered that Saarlust misreported that it had exported subject merchandise to the United States during 1997. We verified that the company did not have any exports of subject merchandise to the United States during the period of review. Therefore, pursuant to section 351.213(d)(3) of the Department's regulations, the Department is terminating this administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with section 751(a)(1) of the Act.

Dated: August 3, 1999.

Robert S. LaRossa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration
[C-475-819]

Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 12, 1999, the Department of Commerce published in the **Federal Register** its preliminary results of the second administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, see the Final Results of Review section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Final Results of Review section of this notice.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Sally Hastings or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1780, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-2815, 482-3464 or 482-0176, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (1998).

Background

On July 24, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the producers or exporters of the subject merchandise for which a review was specifically requested. They are:

Audisio Industrie Alimentari S.p.A. ("Audisio"); the affiliated companies Delverde SrL, Industrie Alimentari di Capitanata SrL, Sangralimenti SrL, and Pietro Rotunno SrL ("Delverde/Tamma"); Pastificio Fabianelli S.p.A. ("Fabianelli"); and Pastificio Riscossa F.lli Mastromauro SrL ("Riscossa"). The petitioners in this review are Borden, Inc., Hershey Foods Corp. and Gooch Foods, Inc. This review covers 25 programs.

Since the publication of the preliminary results of the second administrative review of the countervailing duty order on certain pasta from Italy on April 12, 1999 (*See Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review* (64 FR 17618) (*Preliminary Results*), the following events have occurred. On May 4, 1999, we issued supplementary questionnaires to the Government of Italy ("GOI"), the European Union ("EU"), and the Government of the Piedmont Region. We received responses to these questionnaires on May 20, 1999. From May 24 through May 28, 1999, we verified the questionnaire responses of Audisio and Fabianelli. On May 12, 1999, Riscossa submitted its case brief. On June 22, 1999, petitioners and respondents Delverde/Tamma submitted case briefs. Respondents Audisio, Delverde/Tamma, and Fabianelli and petitioners filed rebuttal briefs on May 29, 1999. The Department did not conduct a hearing in this review because none was requested.

Scope of Review

The merchandise under review consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

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

("AMAB"), by Bioagricoop Scrl, or by QC&I International Services.

The merchandise under review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999.

Period of Review

The period of review (POR) for which we are measuring subsidies is from January 1, 1997 through December 31, 1997.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under review were given. Therefore, we used the Bank of

Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate for years prior to 1995. For the years 1995 through 1997, we used the Italian Bankers Association ("ABI") interest rate increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges. For a further discussion of the interest rates used in these final results, see Memorandum to File from Team, "Calculation Memorandum for Final Results—Interest Rates," dated July 31, 1999.

Allocation Period: In *British Steel plc v. United States*, 879 F.Supp. 1254, 1289 (CIT 1995) ("British Steel I"), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) ("GIA"). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies is a company-specific average useful life ("AUL") of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc v. United States*, 929 F.Supp 426, 439 (CIT 1996) ("British Steel II"). Accordingly, the Department has applied this method to those non-recurring subsidies that were not countervailed in the original investigation.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in the investigation, it is neither reasonable nor practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each non-recurring subsidy countervailed in the original investigation on the basis of the allocation period established in the original investigation. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

For non-recurring subsidies not countervailed in the original investigation, each company under review submitted an AUL calculation

based on depreciation and asset values of productive assets reported in its financial statements. Each company's AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past ten years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. We have used these calculated AULs for the allocation period for non-recurring subsidies not countervailed in the original investigation.

Changes in Ownership

One of the companies under review, Delverde, purchased an existing pasta factory from an unrelated party. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership, which took place in 1991.

We have calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *GIA*, 58 FR at 37265. (For further discussion, see Comment 4 below.)

Affiliated Parties

In the present review, we have examined several affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, such companies that produce the subject merchandise or that have engaged in certain financial transactions with the company subject to review are required to respond.

In the *Preliminary Results*, and consistent with our determination in *Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy* 61 FR 30288, 30290 (June 14, 1996) (*Pasta from Italy*) we have treated Delverde SrL, Tamma Industrie Alimentari, SrL, Sangralimenti SrL, and Pietro Rotunno, SrL as a single company with a combined rate. We did not receive any comments on this treatment

from the interested parties, and our review of the record has not led us to change this determination.

Analysis of Programs

I. Programs Previously Determined To Confer Subsidies

A. Industrial Development Grants

1. Law 64/86 Benefits

Delverde/Tamma and Riscossa benefitted from industrial development grants under Law 64/86 during the POR. In the *Preliminary Results* and in *Pasta from Italy*, we found that this program conferred regionally specific, countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by interested parties, summarized below in Comment 5, have not led us to change our findings for Delverde/Tamma and Riscossa. Accordingly, the net subsidies for this program have not changed from the *Preliminary Results* and are as follows: Delverde/Tamma 2.18 percent *ad valorem* and Riscossa 0.74 percent *ad valorem*.

2. Law 488/92 Benefits

Delverde/Tamma also benefitted from industrial development grants under Law 488/92 during the POR. In the *Preliminary Results*, we found that this program conferred regionally specific, countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings for Delverde/Tamma. Accordingly, the net subsidy for this program has not changed from the *Preliminary Results* and is as follows: Delverde/Tamma 0.23 percent *ad valorem*.

B. Industrial Development Loans Under Law 64/86

Delverde/Tamma received industrial development loans with interest contributions from the GOI. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations from the *Preliminary Results*. Accordingly, the net subsidy for this program remains unchanged and is as follows: Delverde/Tamma—0.65 percent *ad valorem*.

C. Export Marketing Grants Under Law 304/90

Delverde/Tamma received a grant under this program for a market development project in the United States. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations for Delverde/Tamma. Accordingly, the net subsidy for this program remain unchanged from the *Preliminary Results* and is as follows: Delverde/Tamma—0.22 percent.

D. Social Security Reductions and Exemptions

1. Sgravi Benefits

Delverde/Tamma and Riscossa received countervailable social security reductions and exemptions during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally-specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.31 percent *ad valorem* and Riscossa—0.37 percent *ad valorem*.

2. Fiscalizzazione Benefits

Delverde/Tamma and Riscossa received the higher levels of fiscalizzazione deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally-specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.07 percent *ad valorem* and Riscossa—0.21 percent *ad valorem*.

3. Law 407/90 Benefits

Delverde/Tamma received the higher level of Law 407 deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally specific countervailable subsidies on the

subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidies for this program remains unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.00 percent *ad valorem*.

4. Law 863 Benefits

Delverde/Tamma received the higher level of Law 863 deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the *Preliminary Results* and is as follows: Delverde/Tamma 0.17 percent *ad valorem*.

E. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77

Fabianelli obtained export credit insurance under this program for its exports to the United States and, therefore, was exempted from the insurance tax. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the *Preliminary Results* and is as follows: Fabianelli—0.03 percent *ad valorem*.

F. 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 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, 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).

During the POI, Audisio received an ESF training grant under Objective 4 for the purpose of training its workers to increase productivity.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. See *Pasta From Italy* 61 FR at 30294. 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 Audisio 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.

Consistent with prior cases, we have examined the specificity of the ESF funding under Objective 4 separately from any funding under other objectives. See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Italy* 63 FR 40474, 40487 (July 29, 1998) (*Wire Rod from Italy*).

In this case, the Objective 4 grant received by Audisio emanated from a regional operational program, which had been set up pursuant to the Single Programming Document for Italy, negotiated by the EU, the GOI and Italian regional authorities. The funding for this regional operational program came from the EU, the GOI and the regional government of Piedmont. For the reasons set forth in *Wire Rod from Italy*, we have examined each level separately to determine specificity.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion of the funding is *de jure* specific because its availability is limited on a regional basis within the EU. In this regard, although Objective 4 funding is available throughout the Member States, the EU negotiates a separate programming document to govern the implementation and administration of the program with each Member State. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). See *Wire Rod from Italy* 63 FR at 40487. The specificity of the regional funding, meanwhile, has been a *de facto* issue.

Audisio argues that all of the Objective 4 agreements negotiated between the EU and Member States should be considered together. If this were done, according to Audisio, the Department by its own admission would arguably be unable to determine that the program is *de jure* specific at the EU

level. See *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy* 64 FR 15508, 15517 (March 31, 1999) (*Plate from Italy*).

While we agree with Audisio that it may be appropriate for the Department to revisit its decision in *Wire Rod from Italy* on this issue, this is not the case to do it in. Given the lack of information on the use of Objective 4 funds by the EU, the GOI or the Piedmont regional government, we must base the specificity determination on facts available. In addition, we determine that it is appropriate to use adverse facts available because, in our view, information on the distribution of benefits by industry and by region could have been provided given a reasonable effort by the GOI and the Piedmont regional government to do so. See 19 U.S.C. 1677e(b). The EU and the GOI stated that they were unable to provide the Department with the industry and region distribution information for each Objective 4 grant in Italy despite requests in our original questionnaire and a supplementary questionnaire. In addition, while the GOI provided a list of grantees that received funds under the multiregional operating programs in non-Objective 1 regions, it did not identify the industry and region of such grantees. Although this information may not have been on file with the GOI, it was, in our view, information that was readily accessible to the GOI and could have been provided to us given a reasonable effort on the part of the GOI. Furthermore, the regional government similarly refused to cooperate to the best of its ability in this investigation despite Department requests. In its supplementary questionnaire response, the Piedmont regional government simply indicated that certain information was on file at its offices and that we could review this information during verification. The regional government made no effort to provide the information as requested.

Therefore, as adverse facts available, we continue to find that the aid received by Audisio is specific. Accordingly, we determine that the ESF grants received by Audisio are countervailable within the meaning of section 771(5) of the Act.

The Department normally considers the benefits from worker training programs to be recurring. See *GIA* 58 FR at 37255. However, consistent with the Department's determination in *Wire Rod from Italy* 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval. Because the amount of funding for

Audisio's project was less than 0.5 percent of Audisio's sales in the year of receipt, which was the POI, we have expensed the grant received in the year of receipt. To calculate the benefit from Audisio's ESF grant, we divided the grant amount by total sales in the POR because the grant benefitted sales of all of the company's products. On this basis, we calculated a benefit of 0.04 percent *ad valorem*.

G. Export Restitution Payments

Delverde/Tamma, Fabianelli, Audisio and Riscossa received export restitution payments during the POR on shipments of subject merchandise to the United States. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma 0.22 percent *ad valorem*, Audisio—1.03 percent *ad valorem*, Riscossa—0.81 percent *ad valorem* and Fabianelli—0.42 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Used

In the *Preliminary Results*, we determined that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs during the POR:

- A. Local Income Tax ("ILOR")
 - Exemptions
- B. VAT Reductions
- C. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
- D. Export Credits Under Law 227/77
- E. Capital Grants Under Law 675/77
- F. Retraining Grants Under Law 675/77
- G. Interest Contributions on Bank Loans Under Law 675/77
- H. Interest Grants Financed by IRI Bonds
- I. Preferential Financing for Export Promotion Under Law 394/81
- J. Corporate Income Tax ("IRPEG") Exemptions
- K. Urban Redevelopment Under Law 181
- L. Debt Consolidation Law 341/95
- M. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
- N. European Agricultural Guidance and Guarantee Fund ("EAGGF")
- O. European Regional Development Fund ("ERDF")

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the *Preliminary Results*.

Analysis of Comments

Comment 1

Petitioners claim that ESF aid provided to Audisio is *de jure* specific within the meaning of section 771(5A)(D)(iv) because it is limited to enterprises in certain regions. In *Wire Rod from Italy* at 40474 the Department determined that ESF aid was *de jure* specific because the European Union ("EU") negotiates a separate program document with each Member State and because GOI funding of Objective 4 projects is available only in central and northern Italy.

Further, petitioners claim that Objective 4 aid is *de facto* specific because the GOI and the EU have failed to provide information on the distribution of Objective 4 benefits by industry and by region.

Audisio claims that the Department indicated in *Plate from Italy* at 15517 that it is appropriate to consider all the Member States of the European Union together and that, therefore, the Department is "unable to determine that the program is *de jure* specific." Additionally, Audisio, the EU and the GOI have provided sufficient evidence for the Department to determine that the ESF funding received by Audisio during this review was not *de facto* specific.

DOC Position

We agree with Audisio that it may be appropriate for the Department to revisit its previous decision in *Wire Rod from Italy* regarding the *de jure* specificity of assistance distributed under the ESF Objective 4 Single Programming Document in Italy, as explained in *Plate from Italy*. However the EU, the GOI and the Piedmont Regional Government failed to provide a breakdown of the number of companies by industry and by region, which received ESF Objective 4 benefits in 1996 and each of the previous three years. In addition, they failed to provide information on the amount of benefits received by industry and by region in 1996 and each of the previous three years. The three governments stated that this information was not maintained by the administering agencies because region of the country and type of industry were not taken into consideration in awarding ESF Objective 4 grants. As explained above, however, in our view the information was readily accessible and could have been provided to the

Department given a reasonable effort on the part of the administering agencies. For these reasons, we have found that the three governments did not act to the best of their ability to comply with our information requests and, on the basis of adverse facts available, have determined that the ESF Objective 4 aid is *de facto* specific.

Comment 2

Petitioners claim that the "separately incorporated" test used by the Department in *Pasta from Italy* to determine whether subsidies to the mills should be attributed to the production of pasta elevates form over substance. In *Pasta from Italy*, the Department attributed subsidies received by semolina mills not only to semolina but also to pasta in those instances where the mills and the pasta factories were owned and operated by a single corporation. Where the mills and pasta factories were owned by affiliated but separately incorporated companies, however, the Department determined that it would not consider subsidies to mills absent the filing of an upstream subsidy allegation.

Petitioners further claim that the recently published substantive countervailing duty regulations reflect a change in the Department's policy in this regard. Petitioners quote from the preamble to section 351.525(b) of the new regulations which states that "where the input and downstream production takes place in separately incorporated companies with cross-ownership * * * and the production of the input product is primarily dedicated to the production of the downstream product, paragraph (b)(6)(iv) requires the Department to attribute the subsidies received by the input producer to the combined sales of the input and downstream products (excluding the sales between the two corporations)." (*See Countervailing Duties: Final Rule*, 63 FR 65,401.)

Petitioners claim that Tamma/Delverde meet the cross-ownership provision and that subsidies to Tamma's mill should be attributed to both Tamma and Delverde.

Delverde claims that the Department has consistently included Law 64 grants benefitting Tamma's semolina mill in its calculation of the Delverde/Tamma subsidy rate. The Department has "collapsed" the two companies since the original investigation. *See Pasta from Italy*. Consequently, the Department has in each of the previous proceedings attributed to Delverde subsidies that benefitted Tamma's semolina mill. The Department has done so on the basis of the fact that

Tamma's semolina mill is not separately incorporated. It is simply an operating unit of the Tamma corporation.

DOC Position

We agree with Delverde. In *Pasta from Italy*, we did not countervail subsidies to affiliated mills that were separately incorporated, indicating that we would not consider such subsidies absent an upstream allegation. However, in Delverde's case, the Department collapsed Delverde and Tamma treating the two as one company because of stock ownership between the companies and common board members. Moreover, because Tamma's mill was not separately incorporated from Tamma's pasta production operation, subsidies to Tamma's mill were included as subsidies to Tamma's pasta. As a result, subsidies to Tamma's mill were viewed as benefitting both Tamma and Delverde and were allocated over the combined sales of both companies excluding intercompany sales. In both the preliminary and final results of this review, we have done the same.

Comment 3

Petitioners claim that there is no evidence on the record of this review regarding the countervailability or non-countervailability of Sabatini benefits to companies in northern Italy. In *Pasta from Italy*, the Department found that Sabatini benefits to companies in the North were widely distributed by industry and by region and, therefore, were not specific. Petitioners argue, however, that the finding in the original investigation that Sabatini benefits in northern Italy were not specific is insufficient to support such a finding in later periods. In addition, petitioners claim that it is unfair for the Department to require them to provide information indicating that Sabatini benefits in the North may no longer be provided on a non-specific basis before the Department will again examine the question of specificity. Petitioners maintain that the GOI is in the best position to provide the relevant information and because it has not done so, the Department should countervail Sabatini benefits received by companies in the North.

Fabianelli claims that it does not qualify for the special concessionary rate available to companies in southern Italy because its only production facilities are located in Castiglione Fiorentino, which is not in the southern Italy. Further, Fabianelli claims that the Department did not refer to the Sabatini Law in its *Preliminary Results* because benefits to companies in the North are no longer an issue.

DOC Position

In the original investigation, Sabatini Law benefits were found to be widely distributed and to benefit many companies representing a broad cross section of industries throughout Italy. In the original investigation, we found that during the years 1988 through 1993, assistance under the program was distributed over 19 sectors and that benefits to the food producing industry amounted to only 4.9 percent of all benefits granted, which did not represent a disproportionately large share of benefits. Given this compelling evidence of non-specificity of benefits to pasta production, the Department sees no reason to re-open the question of specificity absent information that changes have occurred. The Department has consistently followed this practice regarding programs previously found not countervailable. See, e.g., *Preliminary Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Belgium*, 57 FR 57750, 57758 (December 7, 1992) and *Preliminary Affirmative Countervailing Duty Determination: Extruded Rubber Thread from Malaysia*, 56 FR 67276, 67280 (December 30, 1991).

Comment 4

Delverde maintains that the change of ownership provision contained in the Uruguay Round Agreements Act requires the Department to analyze the facts in each change of ownership situation in order to determine whether and to what extent subsidies received by the original owner are passed through to the new owner. The change of ownership provision recognizes that an arm's length sale of an enterprise or an asset does not require a determination by the Department that a past countervailable subsidy received by the enterprise no longer continues to be countervailable. However, the change in ownership provision plainly does not preclude such a conclusion. For this reason, the Department must carefully analyze the facts of each change of ownership situation.

According to Delverde, the Department's "privatization/restructuring" methodology as described in the GIA does not provide for an analysis of the facts of each change of ownership separately and on its own merits. Rather, this methodology presumes as a matter of law that subsidies travel from the seller to the buyer in all circumstances. Only the amount of the subsidies that passes

through varies as determined by the gamma calculation depending on the facts in each case.

In Delverde's view careful analysis of the facts in this case will show that the preliminary results in this administrative review fail to meet the post-URAA requirement that the Department find both a financial contribution to and a benefit conferred on current production. Delverde purchased M.I.B.I in an arm's length transaction at a purchase price established by an independent, court-ordered appraiser. Consequently, prior subsidies received by M.I.B.A did not benefit Delverde; they simply increased the profit realized by M.I.B.A upon the sale of its pasta factory.

Petitioners claim that the change in ownership provision contained in section 251(a) of the URAA, amending section 771(5) of the Tariff Act of 1930, reiterated and formally codified the Department's practice, affirmed by the CAFC on no less than five occasions, that an arm's length sale of a firm or asset does not automatically extinguish previously bestowed countervailable subsidies. (See, e.g., *Saarstahl AG v. United States*, 78 F. 3d 1539, 1544 (Fed. Cir. 1996)).

In addition, according to petitioners, the URAA statutory definitions of "benefit" and "financial contribution" do not require any different agency scrutiny or lead to any different conclusions in examining the countervailability of subsidies following a change of ownership than was true under pre-URAA law. This is clear from the SAA's plain statement that this benefit standard merely reflects the longstanding Commerce standard and does not inject a new requirement into the law. (See SAA at 925-928.) Petitioners claim that Delverde is seeking to superimpose on the statute the requirement that there be a beneficial competitive effect on the acquiring company's operations when the change in ownership occurred as a result of the original subsidy. This "effect" requirement, however, has been rejected by the Court in pre-URAA cases and the new statute expressly states that no beneficial "effect" of a subsidy is required. (See 19 U.S.C. 1677(5)(C)).

DOC Position

We agree with petitioners. The arguments which Delverde raises in this comment are addressed fully in the remand determination which the Department filed with the CIT on April 2, 1998 in *Delverde, Srl. v. United States*, Consol. Ct. No. 96-08-01997. The CIT later sustained that remand determination and upheld the

Department's methodology in *Delverde, Srl. v. United States*, 24 F. Supp. 2d 314 (CIT 1998).

Comment 5

Riscossa claims that in calculating the benefit from two Law 64 grants received by the company, the Department incorrectly countervailed the full amount of the benefit received under Law 64 including both the grant amount and the reduction in interest according to the terms of the lease. Riscossa claims that the benefit from the interest rate reduction has expired because the leases in question are no longer outstanding.

Petitioners claim that in both the original investigation and the *Preliminary Results*, the Department correctly treated the Law 64 lump-sum contributions to the leasing companies as grants to Riscossa. In its November 9, 1998 questionnaire response, Riscossa describes the contributions as grants to the leasing companies, which had the effect of lowering Riscossa's lease payments. Riscossa had no repayment obligation as a result of these grants as would be the case for a Law 64 loan. Therefore, the Department should not treat these grants as reduced rate loans.

DOC Position

We agree with petitioners. The GOI made lump-sum payments to leasing companies on Riscossa's behalf. We view these payments as grants. Since 1984, the Department has allocated non-recurring grants such as these over a period corresponding to the average useful life of the recipient firm's or the industry's fixed assets. (See *Subsidies Appendix* appended to *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina* 49 FR 18006, 18018). We do not, as Riscossa suggests, look to how the recipient uses the funds received from the government. Therefore, the fact that Riscossa used its grants to reduce its payments under two lease agreements, which have since expired, is not relevant to our calculations. Therefore, as in the original investigation, the Department has allocated the grants over 12 years.

Comment 6

Petitioners claim the Department should use the ABI rate as a benchmark rate for long-term loans. They claim that in the *Preliminary Results*, the Department used an average interest rate reported by the Bank of Italy based on a survey of 114 Italian banks. In addition, petitioners claim that a spread of 2.275 percent should be added to the ABI rate because this has been

Department practice in the last three investigations of Italian products. See *Wire Rod from Italy* 63 FR at 40476–40477; *Plate from Italy* 64 FR at 15510–15511; and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from Italy* 64 FR 30624, 30626–30627 (June 8, 1999).

DOC Position

In the *Preliminary Results*, in the section on *Benchmarks for Long-term Loans and Discount Rates*, we explained that we used the average interest rate on medium-and long-term loans as reported by the Bank of Italy based on a survey of 114 banks for our benchmark interest rate. This explanation was not correct. In our calculations, we actually used the ABI rate plus a spread of 2.275 percent as the benchmark interest rate following the practice in the three earlier cases cited above by petitioners. In these final results, we have also used this benchmark in our subsidy calculations and have correctly described it in the *Subsidies Valuation* section of this notice. We also used this benchmark in the first administrative review of the *Pasta from Italy* order because in *Wire Rod from Italy*, based on information obtained during verification, the Department determined that the ABI rate is the most suitable benchmark for long-term financing to Italian companies.

We note that during verification in this review, we obtained information from a commercial bank confirming the fact that the ABI rate was appropriate for establishing a benchmark interest rate. (See June 16, 1999 Memorandum to the File: Meeting with Commercial Bank Officers.) In addition, information from the bank officers regarding the typical spread plus charges which are added to the ABI rate served to confirm the spread which was added in calculating a benchmark in the earlier investigations.

The ABI rate for 1997, as reported in our discussion with officers of the commercial bank, was lower than that reported in the Bank of Italy's February 1998 *Economic Bulletin*. The ABI rate in the *Economic Bulletin*, however, corresponded closely with the 1997 lending rates published for Italy in the International Monetary Fund's June 1999 *International Financial Statistics*. Therefore, we used the ABI rate as published in the *Economic Bulletin* plus a spread as the appropriate benchmark interest rate for this review.

Comment 7

Petitioners claim that in its subsidy calculation, the Department has used a

longer, company-specific AUL of 15 years to allocate non-recurring subsidies received well before the current period of review. They claim that the 12-year period used in the original investigation should apply to these earlier subsidies.

DOC Response

We have continued to use 12 years as the allocation period for those non-recurring subsidies countervailed in the original investigation. As we explained in the first *Pasta from Italy* review, it is neither reasonable nor practicable to reallocate these subsidies over a different time period. 63 FR 43905, 43906 (August 17, 1998) For all other non-recurring subsidies, however, whether received during the current POR or prior to the current POR, we have used a company-specific AUL for allocation purposes.

As indicated in the section entitled "Allocation Period," the Department is applying the Court's decision in *British Steel II* and calculating company-specific allocation periods based on the average useful life of each respondent's physical assets. Thus, for subsidies not previously allocated over a particular allocation period, we are using company-specific AULs. (See *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France* 64 FR 30774, 30778 (June 8, 1999).)

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

AD VALOREM RATES

Producer/exporter	01/01/97 through 12/31/97
Delverde/Tamma	4.05
Audisio Industrie Alimentari di Capitanata S.p.A	1.03
Pastificio Fabianelli S.p.A	0.49
Pastificio Riscossa F.lii	
Mastromauro Srl	2.13

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all

shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate in effect at the time of entry of the subject merchandise and cash deposits must continue to be collected at the previously ordered rate. Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. ("Barilla") and Gruppo Agricoltura Sana S.r.L. ("Gruppo") (which were excluded from the order during the investigation), at the most recent rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy* (61 FR 38544, July 24, 1996), or those established in *Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review* (63 FR 43905, August 17, 1998), whichever notice provides the most recently published countervailing duty rates for companies not reviewed in this administrative review. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is completed. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo (which were excluded from the order during the original investigation).

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-21201 Filed 8-13-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews

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

SUMMARY: On April 7, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on certain welded carbon steel pipes and tubes (pipe and tube) and welded carbon steel line pipe (line pipe) from Turkey for the period January 1, 1997 through December 31, 1997 (64 FR 16924). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3692 or (202) 482-6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, the review on pipe and tube covers Yucel Boru ve Profil Endustrisi A.S., and its affiliated companies, Cayirova Boru Sanayi ve

Ticaret A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucel Boru Group), and the review on line pipe covers Mannesmann—Sumerbank Boru Endustrisi T.A.S. (Mannesmann). These reviews also cover 21 programs during the period January 1, 1997 through December 31, 1997.

Since the publication of the preliminary results on April 7, 1999 (64 FR 16924), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 7, 1999, case briefs were submitted by the Yucel Boru Group, which exported pipe and tube, and Mannesmann, which exported line pipe, to the United States during the review period (respondents). On May 12, 1999, a rebuttal brief was submitted by Maverick Tube Corporation and Wheatland Tube Company (petitioners).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Because these administrative reviews were initiated in April 1998, 19 CFR part 355 is applicable.

Scope of the Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise: (1) Certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A-53, A-120, A-135, A-500, or A-501; and (2) certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not more than 16 inches, and with a wall thickness of not less than .065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API-L or API-LX. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.