

initial release of the antidumping questionnaire, the Department did not require Ferrar, Garofalo, IAPC, Tomasello, or Zaffiri to respond to section D of the questionnaire.

As stated in its questionnaire response, IAPC filed a Section D response because some of its U.S. sales had no contemporaneous comparison market matches during the appropriate window period. *See* IAPC's response to the Section D questionnaire (November 4, 2002). Although IAPC had a viable comparison market, for those sales which did not have a comparison market match, we used constructed value ("CV").

In November 2002, petitioners submitted cost allegations against Ferrara, Garofalo, Tomasello, and Zaffiri. We determined that petitioners' cost allegations provided a reasonable basis to initiate a COP investigation, and as a result, we initiated cost investigations of these four companies. *See* the company-specific COP initiation memoranda, dated December 13, 2002, in the case file in the Central Records Unit, main Commerce building, room B-099 ("the CRU"). Also on December 13, 2002, we informed these four companies that they were required to respond to the section D of the antidumping questionnaire. *See* December 13, 2002, letters from the Department to these respondents requiring section D questionnaire responses, in the CRU. On January 27, 2003, we received responses to the section D questionnaires from the above-mentioned companies.

On March 27, 2003, the Department published an extension of preliminary results of this review, extending its preliminary results until July 31, 2003. *See Certain Pasta from Italy: Extension of Preliminary Results of Antidumping Duty Administrative Reviews*, 68 FR 14945 (March 27, 2003).

During the months of February, March, April, and May of 2003, the Department issued supplemental, second supplemental, and third supplemental questionnaires to each respondent, as applicable.

We conducted verification of the sales information as follows: (1) Indalco/Fusco from June 12 through June 25, 2003; (2) PAM from May 12 through May 16, 2003; (3) Rummo and Rummo USA from June 3 through June 11, 2003; (4) Tomasello from June 2 through June 6, 2003; and (5) Zaffiri from June 9 through June 13, 2003. We verified the cost information submitted by: (1) Indalco/Fusco from May 5 through May 9, 2003; (2) Rummo from May 26 through May 30; (3) Tomasello from May 19 through May 23, 2003; and (4)

Zaffiri from May 12 through May 16, 2003. The Department did not verify PAM's cost information. However, on May 21, 2003, the Department sent PAM a second supplemental section D questionnaire. PAM's response was originally due on June 4, 2003. At PAM's request, the Department granted PAM an extension until June 18, 2003, to submit its response to the second supplemental section D questionnaire. On June 18, 2003, PAM submitted its response. The Department, in reviewing PAM's response, discovered that PAM had included untimely filed new factual information in the response.

On July 1, 2003, the Department rejected PAM's second supplemental section D questionnaire response because it contained untimely filed new factual information. PAM was requested to re-submit the response without this information. *See* The Department's Letter to David Craven, counsel for PAM, dated July 1, 2003, in the CRU. On July 2, 2003, PAM asked for an extension to re-submit its June 18, 2003, response to the second supplemental section D questionnaire and requested that the Department reconsider its rejection of the untimely filed new factual information. The Department granted PAM's request for an extension and subsequently further extended PAM's time to re-submit the response upon being informed by PAM that it was experiencing difficulties delivering the submission. *See* July 9, 2003, Memorandum to the File from Lyman Armstrong to Eric B. Greynolds, Program Manager, regarding an additional extension for the removal of untimely filed new factual information, in the CRU. On July 21, 2003, the Department informed PAM that at PAM's request, it had reconsidered its July 1, 2003, rejection of PAM's untimely new factual information, and that it continued to determine not to accept PAM's untimely filed new factual information. *See* July 21, 2003 letter to PAM; *see also* July 21, 2003, Memorandum to the File from Nancy Decker, Senior Accountant, through Michael Martin, Program Manager, available in the CRU.

Affiliations

Petitioners have alleged that because Garofalo and Pastificio Antonio Amato & C. S.p.A. ("Amato"), a pasta company, were found to be affiliated pursuant to section 771(33) of the Act in the fifth review, they should be determined to be affiliated for this review and collapsed, in accordance with 19 CFR 351.401(f).

Section 771(33) of the Act considers the following persons to be affiliated: members of a family; any officer or

director of an organization and the organization; partners; employer and employee; persons directly or indirectly owning, controlling, or holding with the power to vote five percent or more of outstanding stock or shares of an organization and the organization; two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and any person who controls any other person and that person. As further provided in section 771(33) of the Act, "A person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." Section 351.401(f)(1) of the Department's regulations states that in an antidumping proceeding, the Department "will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production." Paragraph two of that section goes on to state that in identifying a significant potential for manipulation, the Department may consider:

- The level of common ownership;
- The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers.

In the previous review, we found that Garofalo and Amato were affiliated pursuant to 771(33) of the Act, but that there was no common control, and consequently, a significant potential to manipulate products or prices did not exist to justify collapsing the two companies. *See* Petitioners' November 5, 2002 Submission, Attachment 1, July 31, 2002 Memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, "Whether to Collapse Garofalo and Amato in the Preliminary Results" ("Garofalo Collapsing Memo"), the public and proprietary versions of which are on file in the CRU. *See also Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy*, 68 FR 6882 (February 11, 2003).