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Sunset Review - 2018

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DATE: November 28, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Final Results of the
Expedited Fourth Sunset Reviews of the Antidumping Duty Orders
on Certain Pasta from Italy and Turkey

I. Summary

We have analyzed the substantive responses of interested parties in the fourth sunset reviews of the antidumping duty (AD) orders¹ covering certain pasta (pasta) from Italy and Turkey. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the margins likely to prevail.

II. Background

On August 1, 2018, the Department of Commerce (Commerce) published the notice of initiation of the fourth sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930,

¹ See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996); See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996) (collectively, the *Orders*).

as amended (the Act).² On August 16, 2018, Commerce received a notice of intent to participate from the following parties: A. Zerega's Sons, Inc.; Dakota Growers Pasta Company, Inc.; Riviana Foods, Inc. (formerly, New World Pasta Company); and TreeHouse Foods, Inc.³ (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).⁴ The domestic interested parties claimed interested party status within the meaning of section 771(9)(C) of the Act, as U.S. producers of certain pasta.⁵

On August 29, 2018, we granted an extension of ten days for the Government of Italy (GOI) to submit its substantive response.⁶ On August 31, 2018, we received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁷ We received no substantive responses from respondent interested parties. Accordingly, we have conducted expedited (120-day) sunset reviews of the *Orders*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). The deadline for the final results of these sunset reviews is November 29, 2018.

III. Scope of the Orders

Italy

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 the scope of the order 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 as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. 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 Order. Pursuant to Commerce's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the Order. Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the Order.

² See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 37463 (August 1, 2018).

³ The domestic interested parties stated that TreeHouse Foods, Inc. acquired the American Italian Pasta Company in February 2016, and that the American Italian Pasta Company is now an indirect wholly owned subsidiary of TreeHouse Foods, Inc.

⁴ See Domestic Interested Parties' August 16, 2018 Intent to Participate for Italy; *see also* Domestic Interested Parties' August 16, 2018 Intent to Participate for Turkey.

⁵ *Id.*

⁶ See Commerce Letter, "Five-Year (Sunset) Review of the Antidumping Duty Order on Certain Pasta from Italy: Request for Extension of Time to File Substantive Responses," dated August 29, 2018.

⁷ See Domestic Interested Parties' August 31, 2018 Substantive Response for Italy (Italy Substantive Response); *see also* Domestic Interested Parties', August 31, 2018 Substantive Response for Turkey (Turkey Substantive Response).

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 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 Order is dispositive.

Turkey

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, 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 order 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.

The merchandise subject to this order is currently classified under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

IV. History of the Orders

1. Final Determination of Sales at Less-Than-Fair-Value and Orders

On June 14, 1996, Commerce published in the *Federal Register* the final determinations of sales at less than fair value (LTFV) in the antidumping duty investigations of pasta from Italy and Turkey.⁸ On July 24, 1996, Commerce published the antidumping duty orders and amended final determinations of sales at LTFV on pasta from Italy and Turkey.⁹ On August 14, 1996, Commerce published the second amendment to the final determination and antidumping duty order on pasta from Italy.¹⁰ In the *Orders*, Commerce established the following weighted-average dumping margins.

⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309 (June 14, 1996).

⁹ See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996); see also *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996).

¹⁰ See *Notice of Second Amendment to the Final Determination and Antidumping Duty Order: Certain Pasta from*

Italy¹¹

<u>Manufacturer/Producer/Exporter</u>	<u>Margin (percent)</u>
Arrighi S.p.A. Industrie Alimentari/ Italtasta S.p.A.	19.09
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	46.67
De Matteis Agroalimentare S.p.A.	0.00 (<i>de minimis</i>)
Delverde S.r.l./ Tamma Industrie Alimentari di Capitanata, SrL	1.68
La Molisana Industrie Alimentari S.p.A.	14.73
Liguori Pastificio Dal 1820 S.p.A.	11.58
Pastificio Fratelli Pagani S.p.A.	17.47
All Others	11.26

Delverde S.r.l. (Delverde) and F.lli De Cecco di Filippo Fara San Martino S.p.A. (De Cecco) appealed to the Court of International Trade (CIT), challenging aspects of Commerce's final determination for certain pasta from Italy. On December 16, 1998, the CIT affirmed the final remand redetermination with respect to De Cecco.¹² As a result, Commerce amended the dumping margin for De Cecco to 24.31 percent. On November 2, 2001, the CIT affirmed the final remand redetermination with respect to Delverde.¹³ As a result, Commerce amended the dumping margin for Delverde to 1.44 percent (*de minimis*), and on December 21, 2001, Commerce revoked the antidumping duty order on certain pasta from Italy (*Italy Order*) with respect to Delverde.¹⁴

Turkey¹⁵

<u>Manufacturer/Producer/Exporter</u>	<u>Margin (Percent)</u>
Filiz Gıda Sanayi ve Ticaret A.S (Filiz)	63.29
Maktas Makarnicilik ve Ticaret T.A.S. (Maktas)	56.87
All Others	56.87

On July 24, 1996, Commerce published the antidumping duty order and amended final determination of sales at LTFV.¹⁶ Commerce amended its final determination of sales in response to ministerial error allegations, as a result Commerce revised the weighted-average dumping for Maktas Makarnicilik ve Ticaret T.A.S. (Maktas), and "all other" Turkish manufacturers, producers, and exporters to 60.87 percent.¹⁷

Italy, 61 FR 42231 (August 14, 1996).

¹¹ See *Notice of Second Amendment to the Final Determination and Antidumping Duty Order: Certain Pasta from Italy*, 61 FR 42231, 42232 (August 14, 1996).

¹² See *Borden, Inc. v. United States*, 22 CIT 1153 (1998), *aff'd* by *F.lli de Cecco di Filippo Fara S. Martino S.p.A.*, 216 F.3d 1027 (Fed. Cir. 2000).

¹³ See *Borden, Inc. et. al. v. United States*, Consol. Court No. 96-08-01970, Slip. Op. 2001-128 (2001).

¹⁴ See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy*, 66 FR 65889 (December 21, 2001).

¹⁵ See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545, 38546 (July 24, 1996).

¹⁶ See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996).

¹⁷ *Id.*, 61 FR at 38546.

2. Subsequent Administrative Reviews and New Shipper Reviews

Italy

Since the last sunset review, Commerce has conducted six administrative reviews and no new shipper reviews of certain pasta from Italy. In the administrative review covering the period July 1, 2010, through June 30, 2011, Commerce determined weighted-average dumping margins of 5.11 percent for Rummo S.p.A Molino e Pastificio and its affiliates; 0.00 percent for Pastificio Attilio Mastromauro Granoro S.r.L and 5.11 percent for Industria Alimentare Filiberto Bianconi 1947 S.p.A, Pastificio Fratelli Cellino S.r.L and Pastificio Zaffiri.¹⁸

In the administrative review covering the period July 1, 2011, through June 30, 2012, Commerce determined weighted-average dumping margins of 1.31 percent for Pastificio Gallo Natale & F.lli S.r.L.; 14.48 percent for Rummo S.p.A Molino e Pastificio, Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni; 13.09 percent for Alberto Poiatti S.p.A, Delverde Industrie Alimentari S.p.A, Fiamma Vesuviana S.r.L, Pastificio Zaffiri S.r.L, Tandoi Filippo e Adalberto Fratelli S.p.A and Valdigrano di Flavio Pagani S.r.L.¹⁹

In the administrative review covering the period July 1, 2012, through June 30, 2013, Commerce determined weighted-average dumping margins of 4.26 percent for Rummo S.p.A Molino e Pastificio, Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni (collectively the Rummo Group); 1.71 percent for Molino e Pastificio Tomasello S.p.A; 2.36 percent for Dalla Costa Alimentare srl; 2.36 percent for Delverde Industrie Alimentari S.p.A; 2.36 percent for Ghigi Industria Agroalimentare in San Clemente srl; 2.36 percent for Valdigrano di Flavio Pagani S.r.L; 2.36 percent for Pasta Zara S.p.A and 2.36 percent for Pastificio Toscano srl.²⁰

In the administrative review covering the period July 1, 2013, through June 30, 2014, Commerce determined weighted-average dumping margins of 12.90 percent for La Molisana S.p.A; 0.00 percent for Rummo S.p.A., Lenta Lavorazione, Pasta Castiglioni, and Rummo S.p.A Molino e Pastificio (collectively, the Rummo Group); 12.90 percent for Pastificio Andalini S.p.A and 12.90 percent for Delverde Industrie Alimentari S.p.A.²¹

In the administrative review covering the period July 1, 2014, through June 30, 2015, Commerce determined weighted-average dumping margins of 1.20 percent for Industria Alimentare Colavita S.p.A (Indalco); 10.79 percent for Liguori Pastificio Dal 1820 (Liguori); 4.00 percent for Agritalia S.r.L (Agritalia); 4.00 percent for Atar S.r.L (Atar); 4.00 percent for Corticella Molini e Pastifici S.p.A (Corticella); 4.00 percent for Delverde Industrie Alimentari S.p.A (Delverde); 4.00 percent for Domenico Paone fu Erasmo S.p.A (Domenico); 4.00 percent for F.

¹⁸ See *Certain Pasta from Italy: Notice of Final Results of 15th Antidumping Duty Administrative Review, Final No Shipment Determination and Revocation of Order, in Part*; 2010-2011, 78 FR 9364, 9365 (February 8, 2013).

¹⁹ See *Certain Pasta from Italy: Notice of Final Results of 16th Antidumping Duty Administrative Review*; 2011-2012, 79 FR 11409, 11410 (February 28, 2014).

²⁰ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 8604, 8605 (February 18, 2015).

²¹ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 8043, 8044 (February 17, 2016).

Divella S.p.A (F. Divella); 4.00 percent for La Fabbrica della Pasta di Gragnano S.a.s. di Antonio Moccia (La Fabbrica); 4.00 percent for Molino e Pastificio Tomasello S.r.L (Tomasello); 4.00 percent for P.A.P SNC DI Paziienza G.B. & C. (P.A.P); 4.00 percent for Pasta Zara S.p.A (Pasta Zara); 4.00 percent for Pastificio Carmine Russo S.p.A (Carmine); 4.00 percent for Pastificio DiMartino Gaetano & F. Ili S.r.L (DiMartino); 4.00 percent for Pastificio Fabianelli S.p.A (Fabianelli); 4.00 percent for Pastificio Felicetti S.r.L (Felicetti); 4.00 percent for Pastificio Labor S.r.L (Labor); 4.00 percent for Pastificio Riscossa F. Ili Mastromauro S.p.A (AKA Pastificio Riscossa F. Ili Mastromauro S.r.L) (Riscossa); 4.00 percent for Poiatti S.p.A (Poiatti); 4.00 percent for Premiato Pastificio Afreltra S.r.L (Premiato) and 4.00 percent for Rustichella d'Abruzzo S.p.A (Rustichella).²²

In the administrative review covering the period July 1, 2015, through June 30, 2016, Commerce determined a weighted-average dumping margin of 0.00 percent for Industria Alimentare Colavita S.p.A., and a weighted-average dumping margin of 5.30 percent for Ghigi 1870 S.p.A., and Pasta Zara S.p.A. (collectively, Ghigi/Zara); GR.A.M.M. S.r.l.; Pastificio Andalini S.p.A.; Pastificio Zaffiri S.r.l.; and Tesa Srl.²³

Turkey

Since the last sunset review, Commerce has completed one administrative review and two new shipper reviews of certain pasta from Turkey.

In the administrative review covering the period July 1, 2015, through June 30, 2016, Commerce determined that Mutlu Makarnacilik Sanayi ve Ticaret A.S. (Mutlu), an exporter of certain pasta from Turkey and sole respondent subject to this administrative review, had no *bona fide* sales during the period of review. Commerce did not calculate a dumping margin for Mutlu; therefore, Mutlu continued to be subject to the “all others” rate of 51.49 percent.²⁴

On March 27, 2015, Commerce published the final results of antidumping duty new shipper review and determined the weighted-average margin was 0.00 percent for Bessan Makarna Gida San. Ve Tic. A.S. (Bessan).²⁵

On December 1, 2016, Commerce published the final rescission of antidumping duty new shipper review and determined that Durum Gida Sanayi ve Ticaret A.S. (Durum) did not qualify for a new shipper review.²⁶

²² See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 91120, 91121 (December 16, 2016).

²³ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57428, 57429 (December 5, 2017).

²⁴ See *Certain Pasta from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 6516, 6517 (February 14, 2018).

²⁵ See *Certain Pasta from Turkey: Final Results of Antidumping Duty New Shipper Review; 2013-2014*, 80 FR 16362 (March 27, 2015).

²⁶ See *Certain Pasta from Turkey: Final Rescission of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 86701 (December 1, 2016).

3. Duty-Absorption Findings, Changed-Circumstances Reviews, and Scope Inquiries

Italy

Since the last sunset review, Commerce has completed no duty-absorption findings, five changed circumstances reviews, and one scope inquiry.

On September 29, 2014, Commerce published the final results of antidumping duty and countervailing duty changed circumstances reviews, in which it revoked the orders, in part, with respect to ravioli and tortellini filled with cheese and/or vegetables.²⁷

On August 14, 2015, Commerce published the final results of changed circumstance review and determined that P.A.P. S.R.L. is the successor-in-interest to P.A.P. SNC Di Pazienza G. B. & C.²⁸

On October 28, 2015, Commerce published the notice of final results of antidumping duty changed circumstances review and determined that La Molisana S.p.A. was not the successor-in-interest to La Molisana Industrie Alimentari, S.p.A..²⁹

On January 13, 2017, Commerce published the final results of antidumping and countervailing duty changed circumstances reviews and determined to: (1) convert the organic pasta certification submission requirement to a record-keeping requirement and to adjust the scope exclusion language to reflect this change; (2) authorize electronic submission of the certification when the certificate is requested by U.S. Customs and Border Protection or Commerce; (3) update the scope language to remove the reference to the National Organic Program certificate; and (4) align the certification language across the antidumping and countervailing duty orders on pasta from Italy to reflect that the same certification authority (or authorities) is acceptable for purposes of both orders..³⁰

On June 9, 2017, Commerce published the notice of final results of antidumping duty changed circumstances review and determined that Franseco Tamma S.p.A. (Tamma) is not the successor-in-interest to Tamma Industrie Alimentare Capitanata S.r.L (TIAC).³¹

On July 18, 2013, Commerce made a final ruling on the scope inquiry request regarding egg white pasta from Valdigrano di Flavio Pagani S.r.L.(Valdigrano) and determined that Valdigrano's pasta product is within the scope of the *Orders*.³²

²⁷ See *Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319 (September 29, 2014).

²⁸ See *Certain Pasta from Italy: Final Results of Changed Circumstances Review*, 80 FR 48807 (August 14, 2015).

²⁹ See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 65985, 65986 (October 28, 2015).

³⁰ See *Certain Pasta from Italy: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 82 FR 4291 (January 13, 2017).

³¹ See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 26777 (June 9, 2017).

³² See Memorandum, "Certain Pasta from Italy: Final Ruling on the Scope Inquiry Request Regarding Egg White Pasta from Valdigrano di Flavio Pagani S.r.L.," dated July 18, 2013.

Turkey

The antidumping duty order remains in effect for all manufacturers, producers, and exporters of pasta from Turkey. Since the last sunset review, Commerce has completed no duty absorption findings, no changed circumstances reviews, and no scope inquiries.

4. Prior Sunset Reviews

First Sunset Reviews³³

On October 5, 2001, Commerce published the final results of the first expedited sunset reviews of the *Orders* and determined that revocation of the antidumping duty orders on pasta from Italy and Turkey would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

<u>Manufacturer/producer/exporter</u>	<u>Weighted-average margins (percent)</u>
<u>Italy</u>	
Arrighi/Italpasta	19.09
De Cecco	Revoked
De Matteis	0.00
Delverde/Tamma	1.68
La Molisana	14.73
Liguori	11.58
Pagani	17.47
All Others	11.26
<u>Manufacturer/producer/exporter</u>	<u>Weighted-average margins (percent)</u>
<u>Turkey</u>	
Filiz	63.29
Maktas	60.87
All Others	60.87

On November 16, 2001, Commerce published the notice of continuation of the *Orders*.³⁴

Second Sunset Reviews³⁵

On February 5, 2007, Commerce published the final results of the second expedited sunset reviews of the *Orders* and determined that revocation of the antidumping duty orders on pasta from Italy and Turkey would likely lead to continuation or recurrence of dumping at the

³³ See *Final Results of Expedited Sunset Reviews: Certain Pasta from Italy and Turkey*, 66 FR 51015, 51017 (October 5, 2001).

³⁴ See *Continuation of Countervailing and Antidumping Duty Orders: Pasta from Italy and Turkey, and Clad Steel Plate from Japan*, 66 FR 57703 (November 16, 2001).

³⁵ See *Notice of Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders: Certain Pasta from Italy and Turkey*, 72 FR 5266 (February 5, 2007).

following weighted-average percentage margins:

<u>Manufacturer/exporter/producer</u>	<u>Weighted-average margins (percent)</u>
Italy	
Arrighi S.p.A. Industrie Alimentari	21.34
La Molisana Industrie Alimentari S.p.A	14.78
Liguori Pastificio Dal 1820 S.p.A	12.41
Pastifico Fratelli Pagani S.p.A	18.30
All Others	12.09
Turkey	
Filiz Gida Sanayi ve Ticaret A.S.	63.29
Gidasa Sabanci Gida Sanayi ve Ticaret A.S.	60.87

On October 12, 2007, Commerce published the notice of continuation of the *Orders*.³⁶

Third Sunset Reviews³⁷

On January 11, 2013, Commerce published the final results of the third expedited sunset reviews of the *Orders* and found that revocation of the antidumping duty orders on certain pasta from Italy and Turkey would likely lead to continuation of dumping at the following percentage weighted-average margins:

<u>Manufacturer/producer/exporter</u>	<u>Weighted-average margin (percent)</u>
Italy	
Arrighi S.p.A. Industrie Alimentari and Affiliate Italtasta S.p.A.	20.84
La Molisana Industrie Alimentari S.p.A.	14.78
Liguori Pastificio Dal S.p.A.	12.14
Pastificio Fratelli Pagani S.p.A	18.23
All Others	16.51
Turkey	
Filiz Gida Sanyı veTicaret A.S.	63.29
Maktas Makarnıcılık ve Ticaret T.A.S (Maktas)	60.87
All Others	60.87

On September 17, 2013, Commerce published the notice of continuation of the *Orders*.³⁸

³⁶ See *Certain Pasta from Turkey and Italy: Continuation of Countervailing Duty and Antidumping Duty Orders*, 72 FR 58052 (October 12, 2007).

³⁷ See *Certain Pasta from Italy and Turkey; Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders*, 78 FR 2368 (January 11, 2013).

³⁸ See *Certain Pasta from Italy and Turkey: Continuation of Antidumping and Countervailing Duty Orders*, 78 FR 57129, 57130 (September 17, 2013).

V. Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting these sunset reviews to determine whether revocation of the antidumping duty *Orders* would be likely to lead to continuation or recurrence of dumping. Sections 751(c)(1)(A)-(B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of subject merchandise for the period before, and after, the issuance of the *Orders*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),³⁹ the House Report,⁴⁰ and the Senate Report,⁴¹ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.⁴² In addition, Commerce normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁴³ Alternatively, Commerce may determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.⁴⁴

Furthermore, as a base period for import volume comparison, it is Commerce's practice to use one-year period immediately preceding the initiation of the investigation, rather than level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.⁴⁵ When analyzing import volumes for second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.⁴⁶

In addition, section 752(c)(3) of the Act states that Commerce shall provide to the International Trade Commission (ITC) the magnitude of the dumping margin likely to prevail if the *Orders* were revoked. Generally, Commerce selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior

³⁹ See HR Doc. 103-316, vol. 1 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

⁴⁰ See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

⁴¹ See S. Rep. No. 103-412 (1994) (Senate Report).

⁴² See SAA at 879; see also House Report at 56.

⁴³ See SAA at 889-890; see also House Report at 63-64; Senate Report at 52; see also *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

⁴⁴ See SAA at 889-890; see also House Report at 63.

⁴⁵ See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), (*Stainless Steel Bar*), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁶ See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying Issues and Decision Memorandum.

of exporters without the discipline of an order in place.⁴⁷ In certain circumstances, however, a more recently calculated rate may be appropriate (e.g., “if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at lower rates found in a more recent review”).⁴⁸ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value (LTFV).⁴⁹

On February 14, 2012, Commerce announced it was modifying its practice sunset reviews, such that it would not rely on weighted-average dumping margins calculated using the “zeroing” methodology found to be inconsistent with World Trade Organization (WTO) obligations.⁵⁰ In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.⁵¹ Commerce further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO inconsistent,” and that it “may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”⁵²

VI. Discussion of the Issues

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments:

Italy⁵³

The domestic interested parties argue that revocation of the AD *Italy Order* would likely lead to continued dumping by the subject producers/exporters of certain pasta from Italy. Since the imposition of the *Italy Order*, respondents have continued to dump into the U.S. market. Commerce’s amended final determination in the LTFV investigation assigned weighted-average dumping margins ranging from 12.14 to 24.31 percent for five respondents, including for “all others.” These margins were recalculated to 0.67 to 24.31 percent in 2007 without the use of zeroing, consistent with Commerce’s *Final Modification*. In addition, Italian producers have

⁴⁷ See SAA at 890; see also *Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁸ See SAA at 890-891.

⁴⁹ See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁰ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

⁵¹ *Id.*

⁵² *Id.*, 77 FR at 8109.

⁵³ See Italy Substantive Response; see also Turkey Substantive Response.

been dumping at above-*de minimis* rates throughout the sunset review period, and many of these margins remained above *de minimis* after Commerce recalculated the dumping margins without zeroing in its Section 129 proceeding.⁵⁴

Imports of certain pasta from Italy have increased since the imposition of the *Italy Order*, which is attributable to circumvention and the exclusion of certain Italian producers/exporters from the *Italy Order*. Imports of all pasta from Italy for 1995, the last full year prior to filing of the petition in this case, were 327.7 million pounds. Imports rose for the next three years, before dropping to below pre-order volumes in 2000. However, the largest Italian exporter, Barilla, was affirmatively found to be circumventing the *Italy Order* in 1998 with large volumes of bulk shipments to the United States. After declining from 1998 to 2000, imports again increased during 2001 to 2003, which is attributable to Pagani, which was also found to be circumventing the *Italy Order* in 2003 by exporting bulk shipments to the United States. Many other Italian producers/exporters continued to ship to the United States under the “all others” rate. Between 2007-2011, imports of pasta remained significant at 261.0 million pounds per year, but below their pre-order peak of 327.7 million pounds in 1995, as well as below the average from prior sunset review periods. During the 2012-2017 sunset review period, import volumes exceeded pre-petition volumes. Specifically, imports increased from 371.1 million pounds in 2012 to 448.6 million pounds in 2017 and averaged 428.1 million pounds per year during the 2012-2017 period. The increase was attributable to the exclusion of several Italian producers that were either revoked or excluded from the *Italy Order*, as well as numerous Italian producers/exporters that continue to target the U.S. market. Italian producers/exporters have continued to dump merchandise in the U.S. market during the current sunset review period.

Turkey⁵⁵

The domestic interested parties argue that revocation of the AD *Turkey Order* would likely lead to continued dumping by the subject producers/exporters of certain pasta from Turkey. Since the imposition of the *Turkey Order*, respondents have continued to dump into the U.S. market and have also dramatically reduced their sales to the United States. Commerce’s amended final determination in the LTFV investigation established dumping margins of 60.87 and 63.29 percent with respect to the Turkish respondents. In addition, Turkish producers have been found to be dumping at above-*de minimis* rates during at least three administrative reviews, and no Turkish producer has received revocation. Finally, Turkish exporters have not shipped in commercial quantities, based on the available data from the official U.S. import statistics.

Imports of certain pasta from Turkey declined immediately after the *Turkey Order* was imposed, indicating that the *Turkey Order* has had a direct effect on the respondents’ behavior. Imports of all dry pasta from Turkey for 1995, the last full year prior to the imposition of the *Turkey Order*, were nearly 61 million pounds. In 1997, the first full year after the imposition of the *Turkey Order*, imports plummeted to less than three million pounds, or less than five percent of pre-order levels. Imports have since remained at insignificant levels. Additionally, during the sunset

⁵⁴ See *Implementation of the Findings of the WTO Panel in US--Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261, 25263 (May 4, 2007) (*Zeroing Determination*).

⁵⁵ See Italy Substantive Response; see also Turkey Substantive Response.

review period, imports remained significantly below pre-order volumes, averaging just 4.8 million pounds per year, compared to 58.2 million pounds per year during the pre-order years. Commerce should find that Turkish producers/exporters cannot sell in commercial quantities at fair value and that revocation of the AD order would lead to renewed and even increased dumping.

Commerce's Position: As explained in the Legal Framework section, above, Commerce's determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide basis.⁵⁶ When determining whether revocation of the *Orders* would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct Commerce to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of subject merchandise for the period before, and after, the issuance of the *Orders*.⁵⁷

In addition, Commerce normally will determine that revocation of an AD order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the AD order; (b) imports of the subject merchandise ceased after the issuance of the AD order; or (c) dumping was eliminated after the issuance of the AD order and import volumes for the subject merchandise declined significantly.⁵⁸ Pursuant to section 752(c)(1)(B) of the Act, Commerce considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

Thus, one consideration is whether Commerce has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of an antidumping duty order.⁵⁹ According to the SAA and the House Report, "if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed."⁶⁰ In addition, "declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, in the absent of an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes."⁶¹

Alternatively, the legislative history provides that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States, and that dumping is less likely to continue or recur if the order were revoked.⁶²

Italy

Following the notice of continuation of the *Orders*, imports of subject merchandise from Italy during the sunset period have continued to increase as compared to the year preceding initiation

⁵⁶ See SAA at 879 and House Report at 56.

⁵⁷ See *Sunset Policy Bulletin*.

⁵⁸ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

⁵⁹ See SAA at 879.

⁶⁰ See SAA at 890; see also House Report at 63-64.

⁶¹ See SAA at 889, the House Report at 63, and the Senate Report at 52.

⁶² *Id.*

of the underlying investigation (*i.e.*, 1994).⁶³ Additionally, we find that import volumes of subject merchandise from Italy have increased in the period between 2012 and 2017.⁶⁴ However, in the absence of respondent participation, we are not able to attribute the increased imports to any particular party.

We also examined the weighted-average dumping margins in effect to determine whether dumping continued above *de minimis* levels during the sunset review period. Specifically, in the administrative reviews completed since the last sunset review, Commerce determined weighted-average dumping margins ranging from 0.00 percent to 14.48 percent.⁶⁵

The SAA provides that if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed.⁶⁶ In this case, Commerce found dumping above *de minimis* levels in the LTFV investigation and in multiple subsequent administrative review segments of this proceeding, including administrative reviews completed since the last sunset review. Additionally, we find that imports of certain pasta from Italy have increased in volume during the period of this sunset review. Thus, given the existence of dumping margins above *de minimis* levels, accompanied by increased imports, we determine that dumping would be likely to continue or recur if the *Italy Order* were revoked.

Turkey

Following the notice of continuation of the *Orders*, imports of subject merchandise from Turkey during the sunset period have decreased significantly as compared to the year preceding initiation of the underlying investigation (*i.e.*, 1994).⁶⁷ While we find that import volumes of subject merchandise from Turkey have increased in the period between 2012 and 2017, we find that imports during the sunset period are still at significantly lower levels than the pre-initiation volumes.⁶⁸

We also examined the weighted-average dumping margins in effect to determine whether dumping continued above *de minimis* levels during the sunset review period. Commerce completed only one administrative review during the sunset review period, in which it found that the respondent had no bona fide sales during the POR, and that it continued to be subject to the “all others” rate of 51.49 percent.⁶⁹

The SAA provides that if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed.⁷⁰ In this case,

⁶³ See Attachment 1, U. S. Imports of Pasta from Italy, HTSUS # 1902.19.20 and 1901.90.90.95, 2012-2017.

⁶⁴ *Id.*

⁶⁵ See, e.g., *Certain Pasta from Italy: Notice of Final Results of the 16th Antidumping Duty Administrative Review*; 2011-2012, 79 FR 11409 (February 28, 2014); see also, e.g., *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 8043 (February 17, 2016).

⁶⁶ See SAA at 890.

⁶⁷ See Attachment 2, U.S. Imports of Pasta from Turkey, HTSUS # 1902.19.20, 2012-2017.

⁶⁸ *Id.*

⁶⁹ See *Certain Pasta from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review*; 2015-2016, 83 FR 6516, 6517 (February 14, 2018).

⁷⁰ See SAA at 890.

Commerce found dumping above *de minimis* levels in the LTFV investigation and in multiple subsequent administrative reviews and new shipper review segments of this proceeding, including the administrative review completed since the last sunset review. Additionally, we find that imports of certain pasta from Turkey have increased in volume during the period of this sunset review. The continued existence of above-*de minimis* dumping margins and increased volumes of imports, including commercial quantities, supports a conclusion that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Domestic Interested Parties' Comments

Italy⁷¹

Application of the principles set forth in the SAA and the *Sunset Policy Bulletin* to the facts of this proceeding calls for Commerce to rely upon the revised dumping margins from the original investigation, as amended by the Section 129 proceedings, consistent with its prior sunset determinations. These revised dumping margins for certain pasta from Italy are:

<u>Company</u>	<u>Margin</u> (percent)
Arrighi S.p.A. Industrie Alimentari/ Italpasta S.p.A.	20.84
La Molisana Industrie Alimentar S.p.A.	14.78
Liguori Pastificio Dal S.p.A.	12.14
Pastificio Fratelli Pagani S.p.A	18.23
All Others	16.51

Turkey⁷²

Application of the principles set forth in the SAA and the *Sunset Policy Bulletin* to the facts of this segment calls for Commerce to rely on the dumping margins from the original investigation, consistent with its prior sunset determinations. These dumping margins for certain pasta from Turkey are:

<u>Company</u>	<u>Margin</u> (percent)
Filiz Gıda Sanyı ve Ticaret A.S	63.29
Gidasa Sabancı Gıda Sanayi ve Ticaret A.S.	60.87
All Others	60.87

Commerce Position: Pursuant to section 752(c)(3) of the Act, the administering authority shall provide to the ITC the magnitude of the margins of dumping that are likely to prevail if the *Orders* were revoked. Generally, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.⁷³ Commerce's preference is to select a weighted-

⁷¹ See SAA at 890; *see also* Italy Substantive Response, at 55.

⁷² See SAA at 890; *see also* Turkey Substantive Response, at 24.

⁷³ See SAA at 890.

average dumping margin from the LTFV investigation because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.⁷⁴ Under certain circumstances, however, Commerce may select a more recent margin to report to the ITC.⁷⁵ Finally, as explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted-average dumping margins that it calculated using the zeroing methodology.⁷⁶

For Italy, we agree with the domestic interested parties that the margins likely to prevail if the *Italy Order* was revoked are the investigation rates recalculated in the *Zeroing Determination* represent the behavior of companies without the discipline of the order.⁷⁷ In the original investigation involving Turkey, the final dumping margins were based upon the use of adverse facts available and, therefore, were not affected by zeroing. Accordingly, we agree with the domestic interested parties that it is appropriate to report to the ITC the margins for Turkey from the original investigation as the margins likely to prevail if the *Turkey Order* was revoked.

For the reasons provided above, we determine that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be up to the following weighted-average dumping margins listed below:

<u>Country</u>	<u>Margins (up to)</u>
Italy	20.84
Turkey	63.29

VII. Final Results of Reviews

Consistent with section 752(c) of the Act, Commerce will report to the ITC that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be above *de minimis*.

⁷⁴ See *Final Modification for Reviews*.

⁷⁵ See, e.g., *Potassium Permanganate from The People's Republic of China; Five Year (Sunset) Review of Antidumping Duty Order*, 70 FR 24520 (May 10, 2005).

⁷⁶ See *Final Modification for Reviews*.

⁷⁷ See *Zeroing Determination*, 72 FR at 25263.

VIII. Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these sunset reviews in the *Federal Register* and notify the ITC of our determination.



Agree



Disagree

11/28/2018

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Attachment 1

U.S. Imports of Pasta from Italy
HTSUS # 1902.19.20 and 1901.90.90.95
2012-2017

Year	Quantity (kg)
2012	134,453,082.00
2013	133,509,317.00
2014	147,157,952.00
2015	147,849,583.00
2016	159,675,741.00
2017	158,222,819.00

U.S. Import of Pasta from Italy
Pre-Order Levels of Imports
HTSUS# 1902.19.20 and 1901.90.90.95
1993-1996

Year	Quantity (kg)
1993	97,745,905
1994	133,489,487
1995	148,611,920
1996	155,598,288

Attachment 2

U.S. Imports of Pasta from Turkey
HTSUS # 1902.19.20
2012-2017

Year	Quantity (kg)
2012	1,351,986
2013	2,512,566
2014	2,819,630
2015	3,246,304
2016	7,301,697
2017	8,315,071

U.S. Import of Pasta from Turkey
Pre-Order Levels of Imports
HTSUS# 1902.19.20
1993-1996

Year	Quantity (kg)
1993	21,704,269
1994	29,899,336
1995	27,582,237
1996	3,739,710