



A-489-805
POR 7/1/10 - 6/30/11
Public Document
08: SM, VC

DATE: February 4, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review: Certain Pasta from
Turkey; 2010 - 2011

Summary

We have analyzed the case briefs filed on October 19, 2012, by Marsan Gida Sanayi ve Ticaret A.S. (Marsan) and by the petitioners¹ with respect to Tat Makarnacilik San Ve Tic. A.S. (TAT), and the petitioners' rebuttal brief filed on October 24, 2012. On December 21, 2012, the Department of Commerce (the Department) issued its post-preliminary analysis of the targeting dumping allegation with respect to Marsan. The Department did not receive any comments on its post-preliminary decision memorandum. We recommend that you approve the positions provided below in the "Discussion of Comments" section of this Issues and Decision Memorandum.

Background

On August 6, 2012, the Department published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey for the period of review (POR) July 1, 2010, to June 30, 2011.² We invited interested parties to comment on the Preliminary Results. On October 19, 2012, Marsan and the petitioners filed case briefs, and on October 24, 2012, the petitioners filed their rebuttal brief.

On December 21, 2012, the Department issued a post-preliminary analysis decision memorandum of the targeting dumping allegation with respect to Marsan.⁴ At that time, we

¹ New World Pasta Company, Dakota Growers Pasta Company & American Italian Pasta Company (petitioners).

² See Certain Pasta From Turkey: Notice of Preliminary Results of the 2010-2011 Antidumping Duty Administrative Review, 77 FR 46694 (August 6, 2012) (Preliminary Results).

⁴ See Memorandum to Lynn Fischer Fox, Acting Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled "2010/2011 Review of the Antidumping Duty Order on Certain Pasta (pasta) from Turkey: Post-Preliminary Analysis Memorandum," dated December 21, 2012 (Post-Preliminary Analysis).



invited parties to comment on the Department's analysis in addressing the petitioners' targeted dumping allegation in this review. The Department did not receive any comments on its post-preliminary decision memorandum.

List of Comments

Marsan

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Discussion of Comments

Marsan

- Comment 1: Whether Marsan was affiliated with Ulker/Bellini/Birlik throughout the POR

Marsan asserts that although 19 CFR 351.102(b) of the Department's regulations requires it to consider family groupings with respect to affiliation, the Department overlooked the family relations between the Ulker Group and Marsan in its preliminary decision until the Ulker Group acquired Marsan in June 2011. Marsan argues that it is affiliated with the Ulker Group, including Birlik/Bellini, in accordance with section 771(33)(A) of the Tariff Act of 1930, as amended (the Act). In particular, Marsan claims that the following affiliations exist: (1) Mr. Latif Topbaş, owner of Marsan, is affiliated with his daughter, Fatma Betul Ulker, who is a substantial shareholder of Yildiz Holding, the ultimate holding company of the Ulker Group, and a member of the board of directors of Yildiz Holding;⁵ and (2) Fatma Betul Ulker is married to Mr. Ali Ulker, who is the nephew of Murat Ulker. Mr. Ali Ulker, who owns shares in Yildiz Holding, is also the vice chairman of Yildiz Holding and a director of Ulker Biskuvi, Bellini, Birlik, Merkez, Pasifik, Istanbul Gida and Eksper Gida.⁶ Thus, the spousal relationship between Fatma Betul Ulker and Mr. Ali Ulker creates a per se affiliation between Marsan and the Ulker Group companies.

⁵ See Initial Questionnaire Response (IQR) section A, dated November 4, 2011, at 8 and Exhibit 4 (chart of family relationships at PDF-67; chart of shareholders at PDF-68).

⁶ Id. Exhibit 4 at PDF-66 (shareholders) and PDF-67 (directors).

In support of its contention, Marsan cites to New World Pasta,⁷ where two pasta companies were held to be affiliated because the shareholder of one company was the sibling of shareholders of the other company; thus, the family relationship between shareholders created an affiliation per se between the respective companies. Marsan asserts that the fact pattern in New World Pasta parallels those in the instant case because the Topbaş family and the Ulker family constitute a single family grouping by virtue of the spousal relationship.⁸ Marsan states that in determining whether “control” exists, under section 771(33)(F) of the Act and 19 CFR 351.102(b), the Department must consider “family groupings.” Marsan asserts that such control exists in the instant case because the single family grouping owns and controls Marsan and all of the Yildiz/Ulker companies.

Further, Marsan argues that the companies involved in pasta production and marketing within the Ulker Group are affiliated by reason of the family groupings as well as by corporate groupings, and such affiliation had the potential to influence decisions as to production, cost and price. Marsan contends that, if the Department had taken these relationships into account, it would have found that Marsan was affiliated with Birlik/Bellini throughout the entire POR.

The petitioners state that, for the majority of the POR, the facts remain fundamentally the same as in the prior review in which the Department found no affiliation between Marsan and Birlik/Bellini. The petitioners point out that Marsan acknowledges the one material change pertinent to this review that, “{d}uring the present POR, the ownership of MGS Marmara Gıda San. ve Tic. A.Ş. (MGS), the holding company that owns Marsan, was transferred from Mr. M. Latif Topbaş to Mr. Murat Ulker, the chairman of Yildiz Holding and of Ulker Bisküvi.”⁹

The petitioners argue that Marsan has not demonstrated Fatma Betül Ulker and Mr. Ali Ulker’s ability to exercise control or restraint over Marsan or Birlik/Bellini, and the alleged affiliation is insufficient to confer joint control over either company by means of their marriage. The petitioners assert that Mr. Ali Ulker was not in a position to exercise restraint or control over Birlik or Bellini, and is in no position to confer such control to Marsan through his wife. Moreover, the petitioners argue that Fatma Betül Ulker has no ownership in Marsan and has no board or management position at Marsan or its parent company MGS. Thus, the petitioners contend that Fatma Betül Ulker had no means to exercise restraint or control over Marsan or to confer such control to Birlik or Bellini via her husband, Mr. Ali Ulker.

The petitioners contend that the facts of this case do not support treating Marsan, Birlik and Bellini as affiliated parties under joint control during the majority of the POR. However, the petitioners assert that if the Department reverses its Preliminary Results finding that Marsan, Birlik and Bellini were not affiliated prior to June 2, 2011, the Department would also need to find that the reason to believe or suspect that sales were made below the cost of production applied to all such affiliated and collapsed parties home market sales for the entire POR, rather than only to home market sales by the collapsed entity on or after June 2, 2011.

⁷ See New World Pasta Co. v. United States, 28 CIT 290, 316 F. Supp. 2d 1338, 1341 (2004) (New World Pasta).

⁸ See IQR Exhibit 4 at PDF-67.

⁹ See Petitioners Rebuttal Brief, dated October 24, 2012, at 3.

Department's Position:

We disagree with Marsan's assertion that the Department neglected to review the family relationship between the Ulker Group and Marsan until the Ulker Group acquired Marsan in June 2011. In the prior review, Marsan argued that it was affiliated with Birlik and Bellini by reason of intertwining ownership, family relationships, common officers and directors, sole supplier relationship, and control-in-fact of Marsan by the Ulker group. Marsan specifically claimed that a "combined economic community of interests" between MGS, Marsan's parent company, and the Ulker Group, coupled with the potential for mutual influence inherent in the relationship between Marsan and Birlik, compelled the conclusion that the parties were affiliated for antidumping purposes. The Department determined in that review that Marsan did not establish a direct or indirect affiliation between itself and Birlik/Bellini under any of the subsections of 771(33) of the Act. Accordingly, the Department found that the corporate structure and operations of Marsan and the Ulker Group did not give rise to overall affiliation, cross-ownership or control of one party over another.¹⁰

Pursuant to section 771(33) of the Act, an affiliated person may be: (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person.

To determine affiliation between companies, the Department must find at least one of the criteria above is applicable to the respondent. Section 771(33) of the Act explains that 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 351.102(b)(3) of the Department's regulations provides that, in finding affiliation based on control, the Department will, among other factors, consider (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing; and (iv) close supplier relationships. In determining whether control exists, the Department does not require evidence of the actual exercise of control by one party over another party. Rather, we focus upon one party's ability to control the other.¹¹

In this review, Marsan has once again failed to establish a direct or indirect affiliation between itself and Birlik/Bellini under any of the subsections of 771(33) of the Act prior to June 2011. In the current POR, the only relevant change between Marsan and Birlik/Bellini and the Ulker Group occurred in June 2011, when the ownership of MGS was transferred from Mr. M. Latif Topbas to Mr. Murat Ulker. As discussed in more detail in the Affiliation/Collapsing Memo, the Department determines that effective June 2, 2011, Marsan and Bellini became affiliated persons

¹⁰ See Certain Pasta From Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review, 76 FR 68399 (November 4, 2011) (14th Review Final Results), and accompanying Issues and Decision Memorandum at Comments 1 and 2.

¹¹ See Antidumping Duties; Countervailing Duties; Final rule, Part II, 62 FR 27296, 27297-98 (May 19, 1997).

within the meaning of section 771(33)(F) of the Act.¹² Nothing else, however, establishes any basis for affiliation between Marsan and Birlik/Bellini. As in the previous administrative review, an analysis of the corporate structure does not show that there is a corporate grouping involving the Ulker Group that includes Marsan either vertically or horizontally prior to June 2, 2011.¹³ Although these companies may share a common interest in the food and beverage industry in Turkey, none of the Ulker group companies were affiliated with Marsan under the definition set forth by the Act prior to the transfer of ownership.

Nor does the spousal relationship between Fatma Betul Ulker and Mr. Ali Ulker establish affiliation. We disagree with Marsan that the fact pattern in the instant case parallels that in New World Pasta. In New World Pasta, the Department determined that because Amato's major shareholders include a sister and a sister-in-law of Garofalo's majority shareholder, the Department found that the two companies were affiliated under subsection of 771(33)(A) of the Act. The Department also found that a group of related individuals exercised common control over both Garofalo and Amato. Hence, the Department found the two companies affiliated under both subsections of 771(33)(A) and subsection of 771(33)(F) of the Act.¹⁴ In the instant case, the only ownership Marsan and Birlik/Bellini have in common prior to June 2, 2011, is that the majority owner of MGS and Birlik's parent company each own shares in BIM Birlesik Magazalar A.S., a third party.¹⁵ Neither Fatma Betal Ulker nor Mr. Ali Ulker own shares in Marsan or MGS, and they are not major shareholders in Birlik or Bellini.¹⁶ Thus, neither Fatma Betal Ulker nor Mr. Ali Ulker had any means to exercise restraint or control over Marsan or Birlik/Bellini. Thus, consistent with our findings in the prior review, the Department continues to find that Marsan was not affiliated with Birlik or Bellini, prior to June 2, 2011.

Comment 2: Whether the Department Should Assign A Deposit Rate To Eksper Gida

Marsan states that in the Department's draft cash deposit instructions, the Department assigned zero rates to Marsan, Marsa Yag, and Birlik, but not to Eksper Gida. Marsan claims that Eksper Gida is also an export-trading company that purchases subject merchandise from the Ulker Group manufacturer, Bellini, and sells the merchandise to one or more customers in the United States. Therefore, Marsan argues that Eksper Gida should also be included in the cash deposit instructions.

The petitioners state that Marsan filed a review request for itself, Birlik, Bellini and Marsa Yag as affiliates, and that Marsan never filed a review request, or company certifications, for the Department to conduct a review of Eksper Gida. Therefore, the petitioners argue that the

¹² See Memorandum To Melissa Skinner, Office Director, Office 3, AD/CVD Operations through James Terpstra, Program Manager, AD/CVD Operations, Office 3, From Stephanie Moore, Case Analyst, AD/CVD Operations, Office 3, titled "Whether to Treat Marsan and its Claimed Affiliates as a Single Entity for Margin Calculation Purposes," dated July 30, 2012 (Affiliation/Collapsing Memo).

¹³ See id.

¹⁴ See New World Pasta, 28 CIT at 295-96.

¹⁵ See Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, Vol. 76 FR 23974, 23976 (April 29, 2011) (Preliminary Results of the 14th Administrative Review), unchanged in the 14th Review Final Results.

¹⁶ See IQR Exhibit 4 at PDF-68.

Department should not assign a separate rate to Eksper Gida.

Department's Position:

The Department only issues instructions for companies for which a review was requested. In the instant case, a review was not requested for Eksper Gida. However, the Department determined that Eksper Gida, Istanbul Gida Dis Ticaret A.S. (Istanbul Gida), and Birlik/Bellini are affiliated under section 771(33)(E) and (F) of the Act,¹⁷ and a review was requested for Birlik and Bellini. Both Eksper Gida and Istanbul Gida are Ulker group companies that exported subject merchandise produced by Birlik/Bellini to the United States during the POR.¹⁸ The Department has determined to treat Eksper Gida, Istanbul Gida, and Birlik as a single entity for margin calculation purposes until October 2010, when Birlik ceased production of subject merchandise. The Department has also determined to treat Eksper Gida, Istanbul Gida, and Bellini as a single entity for margin calculation purposes subsequent to October 2010, when production of subject merchandise was transferred to Bellini.¹⁹ Therefore, we are establishing a cash deposit rate and assessment rate for the single entity comprised of Birlik/Eksper Gida/Istanbul Gida and Bellini/Eksper Gida/Istanbul Gida.²⁰

Comment 3: Whether the Department Should Assign a Deposit Rate to Bellini

Marsan states that in the draft cash deposit instructions, the Department assigns a zero cash deposit rate to Birlik, but not to Bellini. Marsan argues that a zero cash deposit rate should also be applied to Bellini because as of October 2010, all pasta production had been transferred to Bellini.²¹

Marsan points out that the Department's statement in its preliminary results that "neither Birlik nor Bellini continue to exist as independent pasta producers" as the justification for "not establishing a cash deposit rate for these entities" is in error because the draft cash deposit instructions establish a cash deposit rate for Birlik. Moreover, Marsan argues that the antidumping law does not recognize the concept "independent producer" as a criterion for assigning a cash deposit rate. Marsan claims that a producer is a producer, regardless of its "independence," a term that is not defined in the antidumping law or precedents. Marsan further claims that the Department's reseller policy envisions that a producer will have its own rate regardless of whether sales are made directly or through a reseller and, in the latter case,

¹⁷ See Affiliation/Collapsing Memo, at footnote 22.

¹⁸ See Marsan's Initial Questionnaire Response (IQR) dated November 4, 2011, at 11.

¹⁹ See Memorandum to Richard Weible, Office Director, Office 7, AD/CVD Operations through Robert James, Program Manager, AD/CVD Operations, Office 7 from Stephanie Moore, Case Analyst, AD/CVD Operations, Office 3, titled "Whether to Treat Eksper Gida Pazarlama Sanayi ve Ticaret A.S. (Eksper Gida), Istanbul Gida Dis Ticaret A.S. (Istanbul Gida), and Birlik Pazarlama Sanayi ve Ticaret A.S. (Birlik) as a Single Entity for Margin Calculation Purposes," dated February 4, 2013. See also Memorandum to Richard Weible, Office Director, Office 7, AD/CVD Operations through Robert James, Program Manager, AD/CVD Operations, Office 7 from Stephanie Moore, Case Analyst, AD/CVD Operations, Office 3, titled "Whether to Treat Eksper Gida Pazarlama Sanayi ve Ticaret A.S. (Eksper Gida), Istanbul Gida Dis Ticaret A.S. (Istanbul Gida), and Bellini Gida Sanayi A.S. (Bellini) as a Single Entity for Margin Calculation Purposes," dated February 4, 2013.

²⁰ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

²¹ See IQR at 7.

regardless of whether the reseller is affiliated.

The petitioners did not comment on this issue.

Department's Position:

In the draft cash deposit instructions, the Department inadvertently included Birlik, instead of Bellini. We agree that the Department's statement in the Preliminary Results that, "neither Birlik nor Bellini continue to exist as independent pasta producers," as pointed out by Marsan, is incorrect. We also agree that record evidence indicates that Birlik ceased production of subject merchandise in October 2010, and transferred all pasta production to Bellini.²² Therefore, there is no need to issue cash deposit instructions for Birlik, and thus it will be removed from the final cash deposit instructions. Accordingly, a cash deposit rate will be assigned for Bellini.

Comment 4: Whether the Department Should Have Calculated a Weighted-Average Cost for Birlik and Bellini

Birlik and Bellini argue that the Department should have collapsed Birlik and Bellini and calculated a single POR weighted-average cost of production at the preliminary results. Birlik and Bellini contend that there was significant overlap between their activities during the POR and that their operations were substantially intertwined. For instance, Birlik and Bellini assert, Birlik sold wheat to Bellini and Bellini also performed tolling services on Birlik-owned wheat.²³ Further, Birlik and Bellini add, during the period when Birlik operated the production facility many of the employees were actually on Bellini's payroll, who then charged their cost to Birlik.²⁴

According to Birlik and Bellini, the Department's separation of each company's costs conflicts with the essential continuity of all parties involved. Birlik and Bellini assert that when Bellini took the production facility over from Birlik, the accounting module was essentially transferred as a bloc into Bellini's books.²⁵ Further, Birlik and Bellini add, the two companies sold to the same customers across their relative periods of activity and the inventory movement is a single movement across the POR. Birlik and Bellini argue that the separation of a continuous operation into discrete time periods is inconsistent with a long-standing preference for the POR averaging of costs across affiliated producers.

Birlik and Bellini maintain that the Department's decision not to calculate a weighted-average cost also violates the instructions of the questionnaire. According to Birlik and Bellini, the questionnaire requires each respondent to report a single weighted-average cost of production if it produced the merchandise under consideration at more than one facility. Birlik and Bellini hypothesize that, if both companies had simultaneously produced the merchandise at different facilities during the POR, the Department would surely have calculated a single weighted-average cost.

²² Id.

²³ See February 21, 2012 section D supplemental response at 9.

²⁴ See id. at 9.

²⁵ See id. at 8.

The petitioners argue that the Department should not weight-average Birlik and Bellini's costs as long as it considers these entities to be separate respondents. According to the petitioners, as long as the Department views each respondent separately for distinct parts of the POR, it must calculate separate costs for each period.

Department's Position:

We disagree with Birlik and Bellini and have not calculated a single weighted-average cost for these final results. We have not collapsed Birlik and Bellini and therefore have not treated these companies as a single entity.

According to 19 CFR 351.401(f)(1), the Department will collapse two companies when: (1) the companies are affiliated; (2) they have production facilities for identical or similar products; and (3) there is a significant potential for the manipulation of price and production. As we noted at the preliminary results, we find that Birlik and Bellini are affiliated in accordance with sections 771(33)(E) and (F) of the Act based on ownership structure and major shareholder controlling interest.²⁶ However, Birlik and Bellini were not simultaneously engaged in the production of the merchandise under consideration. At the outset of the POR through September 2010, Birlik operated the pasta production facility at Hendek. The record indicates that Bellini took over pasta production from Birlik at the Hendek plant in October 2010.²⁷ Thus, at no time during the POR did Birlik and Bellini have production facilities for identical or similar products since each company operated the pasta production facility during different periods. For this reason, the standard for collapsing is not met and we have continued to calculate separate weighted-average costs for each company at the final results.

With regard to Birlik and Bellini's argument that the Department's decision not to calculate a weighted-average cost also violates the instructions of the questionnaire, we disagree. The questionnaire instructs each respondent to calculate a single weighted-average cost for each CONNUM regardless of the market in which it was sold.²⁸ Because we consider Birlik and Bellini to be separate and distinct respondents in this review, the calculation of a separate weighted-average CONNUM-specific cost for each company is entirely appropriate and does not conflict with the Department's questionnaire.

Comment 5: Whether the Department erred in increasing Bellini's Cost of Manufacture

Bellini argues that the Department erred in its preliminary results by increasing the reported total cost of manufacturing (TOTCOM) of each CONNUM to account for an unreconciled difference between the extended total cost of manufacturing and the cost of goods sold in Bellini's financial statements. According to Bellini, the Department's accountants neglected to take into account the fiscal year 2010 cost of services. Bellini alleges that the starting point for the calculation of the POR TOTCOM per its cost center reports is therefore overstated, and that there is nothing in the subsequent calculations to offset this overstatement.

²⁶ See Affiliation/Collapsing Memo.

²⁷ See IQR at 7.

²⁸ See November 18, 2011 section D response at 1.

Bellini contends that the Department begins its reconciliation with cost of sales and wants to reach cost of goods sold. In order to reach cost of goods sold, Bellini opines, the cost of services must be subtracted. Thus, Bellini maintains, because the Department did not subtract this amount, its reconciliation calculation is incorrect. Accordingly, Bellini argues, the Department must reverse its reconciliation adjustment for the final results.

The petitioners disagree with Bellini, and argue that the Department properly increased Bellini's cost of manufacturing at the preliminary results. According to the petitioners, the Department's benchmark is not the cost of sales in the financial statements, but rather the cost of manufacturing from the cost center reports. The petitioners assert that the costs in the cost center reports are not dependent on what portion were classified manufacturing costs in the financial statements and what portion was classified as cost of services. The petitioners contend that the total value of the merchandise under consideration that is compared to the extended POR TOTCOM must correctly account for the total value of the materials and services as recorded in the cost center reports.

Department's Position:

We disagree with Bellini that the Department should reverse its reconciliation adjustment for the final results. The Department requests, in its section D questionnaire, that the respondent prepare a reconciliation between the cost of goods sold in its financial statements that most closely match the POR and the extended total cost of manufacturing submitted to the Department in its cost database. The objective of this reconciliation is to tie the reported costs in an overall manner to what the company reports in its financial statements. When a respondent cannot account for some un-reconciled amount, our general practice is to include the amount if the difference indicates a possible under-reporting of costs.²⁹ Our general practice is reasonable because it recognizes that the respondent is the sole party who has full knowledge of its reporting methodology, has knowledge of its normal records and has access to the documents that are necessary to explain or clarify the un-reconciled difference. Through the course of an investigation or review a respondent is encouraged to identify and explain all of its costs. Therefore, if a respondent has not identified the nature of the under-reported costs, the unidentified additional costs could relate to the merchandise under consideration.

In the instant proceeding, Bellini attempts to explain its unreconciled difference away by claiming that, if the Department deducts the fiscal year cost of services from the POR cost of manufacturing in its cost center reports, its total costs will reconcile. While we agree that the POR cost of services is included in the POR TOTCOM per Bellini's cost center reports, Bellini provides no rationale as to why this amount should be deducted. Further, based on the record evidence we disagree that any amount related to these costs should be deducted. Bellini explained in its questionnaire responses that the amounts classified as cost of services in Bellini's financial accounts and cost center reports relate to labor and overhead costs incurred through the

²⁹ See, e.g., Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review, 75 FR 6352 (February 9, 2010), and accompanying Issues and Decision Memorandum at Comment 11 and Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 8.

toll processing of wheat that was owned by its affiliate Birlik,³⁰ and that these amounts are captured in its reported costs.³¹ Further, Bellini included the total raw material cost associated with the Birlik-owned wheat that was toll processed during the portion of the POR in which it was the operator of the Hendek plant as part of the total cost of manufacturing in its reported cost file.³² Thus, all of the costs associated with the finished pasta produced through Bellini's tolling arrangement with Birlik are captured in Bellini's reported costs. In reconciling Bellini's costs, if we were to deduct the labor and overhead costs associated with these products as Bellini suggests, the cost of manufacturing derived from this calculation would not be reflective of the total costs that are captured in Bellini's cost file. In order to capture the full cost of producing pasta during the POR, the cost of services should be included in the POR TOTCOM. Accordingly, we find that no deduction for cost of services should be made from the POR costs captured in Bellini's cost center reports.

Based on the above, we find that the Department's reconciliation does not need to be revised, and we continue to find the same unreconciled difference that we found at the preliminary results.³³ Therefore, as these still unidentified additional costs could relate to the merchandise under consideration, we have continued to make an upward adjustment to Bellini's reported costs to account for the unreconciled difference between the extended total cost of manufacturing and the cost of goods sold in Bellini's financial statements for these final results.

TAT

Comment 6: The Commercial Reasonableness of TAT's U.S. Sales

Petitioners argue that the Department has no reviewable entry for TAT during the POR and the Department has the burden to prove otherwise. The petitioners claim that TAT's U.S. sales are not commercially reasonable and not usable for calculating a dumping margin; thus the Department should rescind this review. The petitioners argue that, in previous cases, the Department has excluded U.S. sales in administrative reviews where those U.S. sales were unrepresentative, extremely distortive, and atypical³⁴ because it would undermine the fairness of comparisons. Petitioners also aver that rescission is a guard against fraud.

Citing Garlic from the PRC,³⁵ the petitioners also assert that the Department's preliminary results failed to adequately investigate TAT's U.S. sales and failed to apply the Department's test for measuring the commercial reasonableness of the sales. The petitioners cite to the New Donghua³⁶ case, where the Department excluded a respondent's U.S. sales because they involved

³⁰ See June 8, 2012, section D supplemental questionnaire response at 1.

³¹ Id. at 2.

³² See March 26, 2012 section D supplemental questionnaire response at exhibit 11. We note that Bellini was the operator of the Hendek plant during the portion of the POR from October 2010 through June 2011.

³³ See Memorandum to Neal M. Halper from Robert B. Greger, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Bellini Gıda Sanayi A.Ş." dated July 30, 2012.

³⁴ See Windmill International PTE v. United States, 193 F.Supp. 2d 1303, 1312 (CIT 2002).

³⁵ See Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews, 73 FR 56550 (September 29, 2008), and accompanying Decision and Issues Memorandum at Comment 1 (Garlic from the PRC).

³⁶ See Hebei New Donghua Amino Acid v. United States, 374 F.Supp. 2d 1333, 1341-43 (CIT 2005) ("New

aberrantly high U.S. prices paid by the U.S. importers with very low import volumes. Here, the petitioners argue that TAT's U.S. sales should be excluded as well and that TAT's U.S. customers had no previous experience importing the product, paid far above the prevailing imported prices, and the sales were not commercially reasonable. Petitioners contend the only purpose of the sales was to secure an advantageous cash deposit rate.

The petitioners state that TAT's three sales do not pass the Department's "totality of the circumstances" test. The petitioners claims that one of TAT's two reported sales was actually made through an unrelated Turkish exporter and record evidence demonstrates that TAT had knowledge of the United States as the destination for the sale. The petitioners also argue that TAT's U.S. customers were small, local retailers, as opposed to the large distributors or trading companies normally seen in the export pasta trade. The petitioners insist that TAT provided inadequate and selective information regarding the sales negotiation process with its U.S. customers.

Moreover, the petitioners contend that TAT's U.S. sales were sales with no prior or subsequent sales transactions made to two U.S. customers and that TAT failed to pay any duty deposits, incorrectly identified the Turkish exporter, and listed the incorrect HTSUS classification for subject pasta. According to the petitioners, these customers paid duties nine months later at the request of TAT's representative and submitted amended 7501 Entry Forms. On February 23, 2012, petitioners notified the Department that the CF 7501 Customs forms submitted by TAT showed that TAT's U.S. customers had mis-classified the pasta as non-subject on entry, mis-identified the Turkish producer, or both, and that no duty deposits were made on these entries. On March 14, 2012, the Department notified TAT that information the Department obtained from U.S. Customs and Border Protection (CBP) revealed that there were no "Type 3" reviewable entries for TAT during the POR. Subsequently, TAT's representative in this review sent a letter to each of TAT's three U.S. customers that instructed the customers to amend their U.S. customs entry forms. The petitioners argue that TAT's third customer in the U.S. had been stated to be an established customer by TAT, but TAT provided no evidence of previous sales of pasta to that customer and even failed to identify the customer. However, this customer is out of business and the single sale to that customer is not a reviewable entry.

Thus, the petitioners maintain that these sales are patently atypical; indeed, it is highly unusual for unrelated U.S. companies to agree to pay an additional 60.87 percent for products paid for, and imported, several months earlier, particularly where the U.S. customer has likely long since re-sold the subject pasta. The petitioners states that this is evidence that TAT set its prices reported to the Department, and to its U.S. customers, without any regard for the 60.87 percent price premium to which TAT knew its subject merchandise was subject. Under such circumstances, the petitioners claim that these sales were not *bona fide* in nature and commercially unreasonable.

TAT did not submit a case or rebuttal brief.

Donghua”).

The Department's Position:

The Department disagrees with the petitioners. As an initial matter, the Department reiterates its finding from the Preliminary Results that record evidence indicates that TAT has at least one reviewable entry, allowing the Department to conduct a review of TAT's sales.³⁷ To the extent there were questions about the status of TAT's entries, the Department finds that TAT made necessary efforts to remedy any deficiencies for all of its shipments during the POR.³⁸ Moreover, the Department finds that TAT adequately provided its sales negotiation process with its U.S. customers on the record.³⁹

The petitioners argue, in conducting a review, particularly where a company's margin would be based on a single sale, the Department examines the price associated with the sale under review. According to the petitioners, the Department may exclude a respondent's U.S. sales because they involved aberrantly high U.S. prices paid by the U.S. importers with very low import volumes.⁴⁰ To the contrary, TAT has provided sufficient evidence on the record that its sales were *bona fide* and its shipments were commercially comparable by quantity and value to other Turkish pasta producers during the POR.⁴¹ Based on an analysis of TAT's business proprietary information, the Department maintains that TAT's prices do reflect true market prices and TAT's sales to the U.S. are *bona fide*.⁴²

Also, the petitioners argue that the Department must determine if TAT's prices were determined based on normal commercial considerations and whether they represent the company's normal business practices. Here, TAT provided reliable reviewable entries during this administrative review under normal business practices. Because TAT's third customer went out of business, the Department finds that TAT's other two sales are commercially reasonable. TAT provided on the record a detailed trail of paperwork including, but not limited to purchase orders, commercial invoices, packing details, customs documents, bills of lading, freight invoices, payment details, and entry forms with proof of payment for AD/CVD duties paid.⁴³

Furthermore, for one of TAT's entries, the Department concludes that TAT knew at the time of the sale that it was destined to the United States and that TAT made back-to-back transactions⁴⁴

³⁷ See Preliminary Results, 77 FR at 46696 and e.g., TAT's January 11, 2012, submission at Exhibit 6; TAT's March 29, 2012, submission at Attachments 1 and 4; and also see TAT's April 17, 2012, submission at 2.

³⁸ On March 14, 2012, the Department notified TAT that CBP data showed no "Type 3" entries of subject merchandise to the United States by TAT. The Department requested TAT to submit entry documentation of pasta exported by TAT. On March 15, 2012, TAT submitted a copy of the letter it sent to its customers asking them to amend Entry Forms 7501 and to re-classify the entries as subject merchandise. On March 29, 2012, TAT responded to the Department's March 14, 2012, letter showing the correction made by its customers and asking the Department to take the correction into consideration, and to continue on with its review of TAT.

³⁹ See TAT's January 11, 2012, submission at Exhibit 6. TAT provides email correspondence from TAT to its U.S. customers.

⁴⁰ See New Donghua.

⁴¹ See the Department's February 4, 2013, Memorandum from Victoria Cho to Richard Weible, entitled "Pasta from Turkey: Administrative Review of TAT Makarnacilik SANAYI VE TICARET A.S." (*Bona Fide* Memo) at 3-5; see also TAT's January 11, 2012, supplemental response at Exhibit 6 and TAT's April 17, 2012, submission at 2.

⁴² See Bona Fide Memo.

⁴³ See TAT's January 11, 2012, submission at Exhibit 6; and see also TAT's April 17, 2012, submission at 2.

⁴⁴ Id.

with the unaffiliated Turkish exporter. The Department's general practice is that if a company knew or should have known that, at the time of a specific sale, the product was destined for the United States, the sale should be reported as a U.S. sale.⁴⁵ In light of other record evidence⁴⁶ demonstrating that TAT's sales are commercially reasonable, we find this sale to be *bona fide*. The Department maintains that TAT's sales to the U.S. were commercially reasonable.⁴⁷

Comment 7: Alleged SAS Errors in the Preliminary Results

The petitioners argue that, in the Preliminary Results, the total value of U.S. sales in the calculation memorandum was incorrect and the Department's program inflated the number of U.S. sales observations. Lastly, the petitioners claim that the Department incorrectly merged the home market sales to the cost database.

The Department's Position:

We agree with the petitioners, in part. The Department has eliminated a line in the SAS program that inflated the U.S. sales. However, the Department correctly merged TAT's home market database as part of the Preliminary Results. The Department did not require a section D questionnaire response from TAT and the Department correctly calculated the variable cost of manufacture and total cost of manufacture for TAT in the Preliminary Results.

The Department will amend the total value of TAT's U.S. sales for the final results.

Comment 8: TAT's Liquidation Instructions

The petitioners allege that TAT's liquidation instructions need to name all the importers listed in the Department's margin output.

The Department's Position:

We agree with the petitioners. For the final results, we will list all the importers in TAT's liquidation instructions from the Department's margin program output.

⁴⁵ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

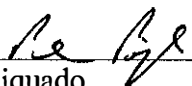
⁴⁶ See TAT's January 11, 2012, submission at Exhibit 6. TAT's invoice date to its unaffiliated Turkish customer is within couple of days from when TAT's unaffiliated customer issued its invoice to the U.S. customer.

⁴⁷ See *Bona Fide* Memo.

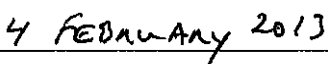
Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the *Federal Register*.

Agree ☒ Disagree ☐



Paul Piquado
Assistant Secretary
for Import Administration



Date