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June 28, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Certain Pasta from Turkey:
Preliminary Results of New Shipper Review

SUMMARY

In response to a request from respondent Durum Gida Sanayi ve Ticaret A.S. (Durum), the Department of Commerce (the Department) is conducting a new shipper review (NSR) of the antidumping duty (AD) order on certain pasta (pasta) from Turkey. The period of review (POR) is July 1, 2014, through June 30, 2015. As discussed below, the Department preliminarily determines that Durum did not make a *bona fide* sale during the POR. As such, the Department is preliminarily rescinding the NSR of Durum.

Interested parties are invited to comment on the preliminary rescission of this review. We intend to issue the final results or final rescission of the review no later than 90 days from the date the preliminary results are issued, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act).

BACKGROUND

In response to a request from Durum, the Department initiated an NSR of the antidumping duty order on pasta from Turkey covering the period July 1, 2014, through June 30, 2015.¹ The Department issued an antidumping duty questionnaire to Durum on August 28, 2015, to which the company responded in a timely manner. Between October 2015 and May 2016, the Department issued supplemental questionnaires to Durum, to which it also responded in a timely manner. The Department also issued a questionnaire and supplemental questionnaires to Roya Foods, LLC (Roya) and Yamach Foods LLC (Yamach)² between March 2016 and May 2016.

¹ See *Certain Pasta From Turkey: Notice of Initiation of Antidumping Duty New Shipper Review*, 80 FR 53112 (September 2, 2015) (*Initiation Notice*).

² Roya is Durum's unaffiliated U.S. importer. Yamach is affiliated with Roya, and is Durum's unaffiliated reseller.



The Department received comments on Durum's questionnaire and supplemental questionnaire responses from American Italian Pasta Company, New World Pasta Company and Dakota Growers Pasta Company (petitioners) from October 2015 through May 2016.

The Department exercised its discretion to toll all administrative deadlines due to the closure of the federal government because of Snowstorm "Jonas." Thus, all of the deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review, after the four business-day extension, was February 29, 2016.³ However, on February 29, 2016, the Department extended the time period for issuing the preliminary results of this NSR by a further 106 days, until June 14, 2016.⁴ We extended it again by 14 days on June 8, 2016, until June 28, 2016.⁵

SCOPE OF THE ORDER

The merchandise covered by this order is certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions. Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

DISCUSSION OF THE METHODOLOGY

Bona Fide Sale Analysis

The Department examines the *bona fides* of sales in NSRs.⁶ This practice was affirmed by the CIT in order to ensure a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the respondent's usual commercial practice would dictate.⁷ When examining the *bona fides* of sales in NSRs, the Department considers a number of factors, "all of

³ See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas," dated January 27, 2016.

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Pasta from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review," dated February 29, 2016.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Pasta from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review," dated June 8, 2016.

⁶ See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

⁷ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (CIT 2005) (*New Donghua*).

which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”⁸ In *TTPC*, the CIT affirmed the Department’s decision that “any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,”⁹ and found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”¹⁰ In evaluating whether a sale in a NSR is commercially reasonable or typical of normal business practices, and therefore a *bona fide* sale, the Department often considers, *inter alia*, such factors as: (a) the timing of the sale, (b) the price and quantity of the sale, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm’s length basis.¹¹ Where the Department finds that a sale is not a *bona fide* sale, the Department will exclude the sale from its calculations.¹² When the NSR is based on only one sale and the Department finds that sale is atypical, “exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of {the Department’s} antidumping duty calculation.”¹³

Based on the totality of the circumstances surrounding the sole sale reported by Durum in its NSR request, we preliminarily determine that the sale at issue is not a *bona fide* sale and should not be used to calculate an assessment rate or a cash deposit rate. Namely, the sales price, in conjunction with the timing of the sale and the facts surrounding the establishment and operations of Roya and Yamach, call into question whether the sale is indicative of normal business practices. For a full discussion of our preliminary analysis *see* the *Bona Fide Sales Analysis Memorandum*.¹⁴ Because we preliminarily find that the single POR sale is not a *bona fide* sale, we cannot rely on this sale to calculate a dumping margin in this NSR. Given the determination that there was no *bona fide* sale during the POR, there is no sale upon which we can base this review and, therefore, the Department is preliminarily rescinding this review.

⁸ See *New Donghua*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

⁹ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246,1250 (CIT 2005) (*TTPC*).

¹⁰ *Id.*, at 1263.

¹¹ *Id.*, at 1249-1250.

¹² *Id.*, at 1249.

¹³ *Id.*

¹⁴ See Memorandum to Scot Fullerton, Director, Office VI, AD/CVD Operations, from Fred Baker, International Trade Analysts, Office VI, AD/CVD Operations, entitled “2014-2015 Antidumping Duty New Shipper Review of Certain Pasta from Turkey: Preliminary *Bona Fide* Sales Analysis for Durum Gıda Sanayi ve Ticaret A.Ş.,” dated concurrently with and hereby adopted by this memorandum.


CONCLUSION

We recommend applying the above methodology for these preliminary results of review.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 JUNE 2016
(Date)