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July 31, 2017

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  
Senior Director,  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the  
Antidumping Duty Administrative Review of Certain Pasta from  
Turkey

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## SUMMARY

In response to a request from respondent Mutlu Makarnacilik Sanayi ve Ticaret A.S. (Mutlu), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain pasta (pasta) from Turkey. The period of review (POR) is July 1, 2015, through June 30, 2016. As discussed below, the Department preliminarily determines that Mutlu did not make a *bona fide* sale during the POR. As such, the Department is preliminarily rescinding the administrative review of Mutlu.

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 Mutlu, the Department initiated an administrative review of the antidumping duty order on pasta from Turkey covering the period July 1, 2015, through June 30, 2016.<sup>1</sup> The Department issued an antidumping duty questionnaire to Mutlu on September 27,

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).



2016,<sup>2</sup> to which the company responded in a timely manner. In June 2017, the Department issued supplemental questionnaires to Mutlu, to which it also responded in a timely manner. The Department also issued a questionnaire to Mutlu, for which we requested a response in collaboration with its importer.<sup>3</sup> Mutlu responded to the importer questionnaire on June 30, 2017; however, it indicated that it was unable to obtain certain requested information from its importer.<sup>4</sup> We extended the due date for the preliminary results of this review on April 3, 2017, and May 31, 2017.<sup>5</sup> The Department received comments on Mutlu's questionnaire and supplemental questionnaire responses from American Italian Pasta Company, New World Pasta Company, and Dakota Growers Pasta Company (the petitioners) from December 2016 through July 2017.

## SCOPE OF THE ORDER

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 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

On December 8, 2016, the petitioners requested that we investigate the *bona fide* nature of Mutlu's sole U.S. sale during the POR.<sup>6</sup> In evaluating whether a sale is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, the Department considers: (a) the price of the sale, (b) whether the sale was made in commercial quantities; (c) the timing of the sale; (d) the expenses arising from the transaction; (e) whether the goods were resold at a profit; (f) whether the transaction was made on an arm's-length basis; and (g) any other factor that the Department considers to be relevant to whether the sale at issue is "likely to be typical of those the exporter or producer will make after the completion of the review."<sup>7</sup> Accordingly, the

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<sup>2</sup> See Letter to Mutlu, dated September 27, 2016.

<sup>3</sup> See Letter to Mutlu, dated June 19, 2017.

<sup>4</sup> See Mutlu's June 30, 2017 importer questionnaire response.

<sup>5</sup> See Memorandum, "Certain Pasta from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 3, 2017; *see also* Memorandum, "Certain Pasta from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 31, 2017.

<sup>6</sup> See Letter from the Petitioners, "Certain Pasta from Turkey – Petitioners' Comments on Mutlu's Section A-D Questionnaire Responses," dated December 8, 2016.

<sup>7</sup> See section 751(a)(2)(B)(iv) of the Act; *see also Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (*TTPC*).

Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”<sup>8</sup> Finally, where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its dumping margin calculations.<sup>9</sup>

Based on the totality of the circumstances surrounding the sole sale reported by Mutlu in this administrative review, 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 for its sole POR sale, as compared to the sales price of a subsequent U.S. sale that post-dates the POR, as well as compared to the prices for all POR entries, calls into question whether the sale is atypical or reflective of future selling practices. In addition, although the Department requested necessary information from Mutlu’s U.S. importer in order to conduct a *bona fides* sales analysis, such information was not provided to the Department. For a full discussion of our preliminary analysis, see the *Bona Fide Sales Analysis Memorandum*.<sup>10</sup>

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 administrative review. Given the determination that there was no *bona fide* sale during the POR, there is no sale upon which we can base this review. Accordingly, the Department is preliminarily rescinding this review.

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<sup>8</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (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 at New Shipper Review of Clipper Manufacturing Ltd.).

<sup>9</sup> See *TTPC*, 366 F. Supp. 2d at 1249.

<sup>10</sup> See Memorandum “2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Turkey: Preliminary *Bona Fide* Sales Analysis for Mutlu Makarnacilik Sanayi ve Ticaret A.S.,” dated July 31, 2017.

## CONCLUSION

Based on our analysis above, we recommend preliminarily rescinding this administrative review.



Agree



Disagree

7/31/2017

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