



C-489-806  
2018 (Fourth) Sunset Review  
**Public Document**  
E&C AD/CVD OI: Team

**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 the Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Expedited Fourth Sunset  
Review of the Countervailing Duty Order on Certain Pasta from  
Turkey

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## **I. SUMMARY**

Following issuance of the notice of initiation of the fourth sunset review of the countervailing duty (CVD) order on certain pasta from Turkey,<sup>1</sup> we received a substantive response from A. Zerega's Sons, Inc. (Zerega), Dakota Growers Pasta Company, Inc. (Dakota), Riviana Foods, Inc. (Riviana), and TreeHouse Foods, Inc. (TreeHouse) (collectively, the domestic interested parties).<sup>2</sup> Additionally, we received a substantive response from the Government of Turkey (GOT).<sup>3</sup> However, we received no substantive responses from exporters of pasta from Turkey. As a result, pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department of Commerce (Commerce) conducted this sunset review of the CVD order on pasta from Turkey on an expedited basis. We have analyzed the substantive responses provided by the domestic interested parties and the GOT. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues that we address in this expedited sunset review:

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<sup>1</sup> See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 37463 (August 1, 2018) (Initiation Notice).

<sup>2</sup> See letter from the petitioners, "Certain Pasta from Turkey – Five-Year ("4th Sunset") Review of Countervailing Duty Order," dated August 31, 2018.

<sup>3</sup> See letter from the GOT, "Substantive Response of the Government of Turkey in the Countervailing Duty 4<sup>th</sup> Sunset Review Involving Certain Pasta from Turkey," dated August 31, 2018 (GOT substantive response).

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the Subsidy

## II. HISTORY OF THE ORDER

On June 14, 1996, Commerce published its final affirmative CVD determination in the investigation of pasta from Turkey.<sup>4</sup> Commerce determined that countervailable subsidies within the meaning of section 701 of the Act were being provided by the GOT to Turkish manufacturers, producers, and exporters. Commerce determined the following net subsidy rates for these Turkish companies:

Manufacturers/Producers/Exporters	Countervailable Subsidy Rate (percent)
Filiz Gıda Sanayi ve Ticaret (Filiz)	3.87
Maktas Makarnacilik ve Ticaret (Maktas)	13.12
Oba Makarnacilik Sanayi ve Ticaret (Oba)	15.82
All Others	9.70

In the final determination, we found the following programs provided countervailable subsidies:

1. Pre-Shipment Export Loans;
2. Pasta Export Grants;
3. Free Wheat Program;
4. Payments for Exports on Turkish Ships/State Aid for Exports Program;
5. Incentive Premium on Domestically Obtained Goods;
6. Resource Utilization Support Fund (GIP); and
7. Tax Exemption Based on Export Earnings.<sup>5</sup>

Commerce published the countervailing duty order (the *Order*) on certain pasta from Turkey on July 24, 1996.<sup>6</sup>

In each of the three previously completed sunset reviews of this countervailing duty order, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies.<sup>7</sup> In addition, in each sunset review, the ITC determined that revocation of the *Order* would likely lead to continuation or recurrence of material injury to

<sup>4</sup> See *Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Turkey*, 61 FR 30366 (June 14, 1996) (Final Determination).

<sup>5</sup> *Id.* at 30367-30370.

<sup>6</sup> See *Notice of Countervailing Duty Order: Certain Pasta ("Pasta") From Turkey*, 61 FR 38546 (July 24, 1996) (*Order*).

<sup>7</sup> See *Final Results of Expedited Sunset Reviews: Certain Pasta from Italy and Turkey*, 66 FR 51015 (October 5, 2001); see also *Certain Pasta from Turkey: Final Results of Expedited Five-Year ("Sunset") Review of the Countervailing Duty Order*, 72 FR 5269 (February 5, 2007); see also *Certain Pasta from Turkey: Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order*, 78 FR 692 (January 4, 2013), and accompanying Issues and Decision Memorandum (Third Sunset Review).

the domestic industry within a reasonably foreseeable time,<sup>8</sup> and, thereafter, Commerce continued the *Order*, most recently on September 17, 2013.<sup>9</sup>

On May 24, 1999, Commerce determined in a final scope ruling that pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the *Order*, effective October 26, 1998.<sup>10</sup>

Commerce conducted three changed circumstances reviews since the issuance of the *Order*. On July 14, 2003, Commerce determined that Gidasa Sabanci Gida Sanayi ve Ticaret A.Ş. (Gidasa) is the successor-in-interest to Maktas.<sup>11</sup> On January 8, 2004, Commerce determined that Tat Konserve Sanayi A.Ş. is the successor-in-interest to Pastavilla Makarnacilik Sanayi ve Ticaret A.S (Pastavilla).<sup>12</sup> On October 21, 2009, Commerce determined that Marsan Gida Sanayi ve Ticaret A.Ş. (Marsan Gida) is not the successor to Gidasa for the purposes of cash deposit rates.<sup>13</sup> Marsan appealed to the Court of International Trade (CIT), which upheld Commerce's Changed Circumstances determination.<sup>14</sup>

Since the issuance of the *Order*, Commerce has completed four administrative reviews,<sup>15</sup> and initiated but rescinded in full one administrative review.<sup>16</sup>

On December 28, 2012, Commerce published a notice of the final results of the third sunset review of the *Order*.<sup>17</sup> We found that countervailable subsidies would likely continue to be conferred on Turkish producers and exporters through the following programs: (1) Pre-shipment Export Loans (*Order*); (2) Pasta Export Grants (*Order*); (3) residual benefits under the Value Added Tax (VAT) Support Program (1999 AR); (4) Deduction from Taxable Income for Export

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<sup>8</sup> See *Certain Pasta From Italy and Turkey*, 66 FR 55697 (November 2, 2001); see also *Certain Pasta from Italy and Turkey*, *Certain Pasta From Italy and Turkey*, 72 FR 56382 (October 3, 2007); *Certain Pasta from Italy and Turkey*, 78 FR 55095 (September 9, 2013); *Certain Pasta from Italy and Turkey*, Investigations Nos. 701-TA-365-366 and 731-TA-734-735 (Third Review), USITC Publication 4423, August 2013).

<sup>9</sup> 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); see also *Certain Pasta from Turkey and Italy: Continuation of Countervailing Duty and Antidumping Duty Orders*, 72 FR 58052 (October 12, 2007); see also *Certain Pasta from Italy and Turkey: Continuation of Antidumping and Countervailing Duty Orders*, 78 FR 57129 (September 17, 2013).

<sup>10</sup> See *Notice of Scope Rulings*, 65 FR 41957, 41958 (July 7, 2000).

<sup>11</sup> See *Notice of Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta from Turkey*, 68 FR 41554 (July 14, 2003).

<sup>12</sup> See *Notice of Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta from Turkey*, 69 FR 1280 (January 8, 2004).

<sup>13</sup> See *Certain Pasta from Turkey: Final Results of Countervailing Duty Changed Circumstances Review*, 74 FR 54022 (October 21, 2009).

<sup>14</sup> See *Marsan Gida Sanayi ve Ticaret A.S. v. United States*, No. 09-00483, Slip Op. 11-20 (CIT Feb. 16, 2011).

<sup>15</sup> See *Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*, 66 FR 64398 (December 13, 2001) (1999 AR); *Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*, 71 FR 52774 (September 7, 2006) (2004 AR); *Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 69792 (November 21, 2012) (2010 AR); *Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*, 81 FR 90775 (December 15, 2016) (2014 AR).

<sup>16</sup> See *Certain Pasta from Turkey: Rescission of Countervailing Duty Administrative Review; 2011*, 77 FR 64313 (October 19, 2012) (2011 AR Rescission).

<sup>17</sup> See Third Sunset Review.

Revenue (2010 AR); (5) Law 5084: Incentive for Employers' Share in Insurance Premiums (2010 AR); and (6) Export Subsidy Program for Agricultural Products (2010 AR). We determined that revocation of the *Order* would likely lead to continuation of countervailable subsidies at the following rates:

Manufacturers/Producers/Exporters	Countervailable Subsidy Rate (percent)
Filiz Gıda Sanayi ve Ticaret (Filiz)	1.63
Maktas Makarnacılık ve Ticaret (Maktas)	13.09
Oba Makarnacılık Sanayi ve Ticaret (Oba)	13.08
All Others	8.85

Subsequent to the third sunset review (2012), Commerce completed one administrative review of the *Order*. In particular, on December 15, 2016, Commerce published the final results of the administrative review covering the POR January 1, 2014, through December 31, 2014.<sup>18</sup> In that review, we continued to find that the Export Subsidy Program for Agricultural Products continued to be a countervailable subsidy and conferred measurable benefits to the sole respondent, Bessan Makarna Gıda San. Ve Tic. A.Ş. (Bessan), and Commerce also found that a program, Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions, provided countervailable subsidies that conferred a measurable benefit to Bessan.<sup>19</sup> Commerce determined that this program was previously known as the General Investment Encouragement Program (GIEP), which we found countervailable in the investigation and in the 1999 Administrative Review.<sup>20</sup> We determined that Bessan received a net countervailable subsidy rate of 2.21 percent.<sup>21</sup>

### III. BACKGROUND

On August 1, 2018, Commerce initiated the fourth sunset review of this *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>22</sup> Within the deadline specified in 19 CFR 251.218(d)(1)(i), Commerce received a notice of intent to participate on behalf of the domestic interested parties.<sup>23</sup> The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of certain pasta in the United States.

On August 30, 2018, Commerce received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>24</sup> On August 31, 2018, the GOT submitted its substantive response in which it

<sup>18</sup> See 2014 Administrative Review, 81 FR at 90775.

<sup>19</sup> *Pasta From Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 52825 (August 10, 2016), and accompanying Preliminary Decision Memorandum at 4-8, unchanged in 2014 Administrative Review, 81 FR at 90775.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See Initiation Notice, 83 FR at 37463.

<sup>23</sup> See Letter from Domestic Interested Parties, "Five-Year ("Sunset") Review of the Countervailing Duty Order on Certain Pasta from Turkey – Domestic Interested Parties' Notice of Intent to Participate," dated August 16, 2018.

<sup>24</sup> See Letter from Domestic Interested Parties, "Certain Party from Turkey – Five-Year ("4<sup>th</sup> Sunset") Review of Countervailing Duty Order," dated August 30, 2018.

expressed its intent to participate in this review as the government of the country in which subject merchandise is produced and exported.<sup>25</sup> The GOT noted that it participated in the CVD investigation, as well as the subsequent administrative and sunset reviews.<sup>26</sup> On September 10, 2018, the domestic interested parties submitted rebuttal comments to the GOT Substantive Response.<sup>27</sup> Commerce did not receive any substantive responses from Turkish producers or exporters of the subject merchandise. Based on the fact that a government's response alone, normally, is an insufficient basis for conducting a full sunset review in which the underlying investigation was not done on an aggregate basis, we have conducted this sunset review on an expedited (120-day) basis.<sup>28</sup> This approach is consistent with Commerce's practice, including in prior sunset reviews of this *Order*.<sup>29</sup>

#### **IV. SCOPE OF THE ORDER**

The scope of the order consists of certain non-egg dry pasta in packages of five pounds (or 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 the order is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polyethylene bags, of varying dimensions.

Excluded from the scope of the 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 covered by the order is currently classifiable under subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

#### **V. DISCUSSION OF THE ISSUES**

##### *Legal Framework*

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a

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<sup>25</sup> See Letter from GOT, "Substantive Response of the Government of Turkey in the Countervailing Duty 4<sup>th</sup> Sunset Review Involving Certain Pasta from Turkey," dated August 31, 2018.

<sup>26</sup> *Id.*

<sup>27</sup> See Letter from Domestic Interested Parties, "Certain Pasta from Turkey: Five-Year ("Sunset") Review of Countervailing Duty Order – Petitioners' Rebuttal Comments, dated September 10, 2018.

<sup>28</sup> See section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

<sup>29</sup> See, e.g., *Fourth Sunset Review*, 82 FR 46768, *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Expedited Fourth Sunset Review of Countervailing Duty Order* (October 6, 2017); *Third Sunset Review*, 76 FR 64900; *Certain Pasta from Turkey: Final Results of Expedited Five-Year ("Sunset") Review of the Countervailing Duty Order*, 72 FR 5269 (February 5, 2007), and accompanying Issues and Decision Memorandum; and *Certain Carbon Steel Products from Sweden: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18304 (April 7, 2000).

countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy, as determined in the investigation and any subsequent reviews; and (2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Below we address the substantive responses and rebuttals of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

*Interested Parties' Comments*

The domestic interested parties argue in their substantive response that Commerce should find that revocation of the *Order* would likely lead to the continuation or recurrence of countervailable subsidies to Turkish pasta producers or exporters. The domestic interested parties contend that the GOT concedes in its letter that there continue to be subsidy programs available to the Turkish pasta industry.<sup>30</sup> The domestic interested parties claim that although Commerce has found numerous subsidy programs to be “not used,” there is no evidence that these programs have been terminated.<sup>31</sup>

The domestic interested parties state that because there have been few administrative reviews, there is no evidence to suggest that Turkish producers did not benefit from subsidy programs during the non-reviewed periods and do not continue to benefit from the same countervailable subsidy programs that they did prior to the imposition of the *Order*. Thus, the domestic interested parties argue that the subsidy programs remain available to Turkish producers and exporters, and Commerce should determine that there is a strong likelihood that subsidies will continue if the *Order* is revoked.

The GOT disagrees with domestic parties' position and recommends that Commerce revoke the *Order* because there is no likelihood of continuation or recurrence of a countervailable subsidy if the *Order* is revoked.<sup>32</sup> According to the GOT, Commerce recognized in its third sunset review of the *Order* that the following programs have been eliminated: (1) Free Wheat Program; (2) Payments for Export Earnings Program; (3) Incentive Premium on Domestically Obtained Goods; (4) Resource Utilization Support Fund (GIP); and (5) Advanced Refund of Tax Savings Program.

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<sup>30</sup> See Petitioners' Rebuttal Comments at 2; see also GOT's Substantive Response at 6.

<sup>31</sup> See *Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review: 2014*, 81 FR 52825 (August 10, 2016) and accompanying Preliminary Decision Memorandum unchanged in 2014 Administrative Review, 81 FR at 90775 (December 15, 2016).

<sup>32</sup> See GOT Substantive Response at 6.

The GOT states that in the third sunset review, Commerce found that five programs fall under Article 3 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement) and added the rates of these subsidies to the calculation. These programs include: (1) Pre-shipment Export Loans; (2) Pasta Export Grants; (3) Deduction from Taxable Income for Export Revenue; (4) Export Subsidy Program for Agricultural Products; (5) VAT Support Program.<sup>33</sup> However, the GOT states that because no Turkish producer or exporter has used the Pre-shipment Export Loans program since the 1999 administrative review Commerce should consider whether this program continues to be countervailable.<sup>34</sup> The GOT cites to the results of the third sunset review claiming that “where a company has a long track record of not using a program, including during the Investigation, the Department normally will determine that the mere availability of the program does not, by itself, indicate the likelihood of continuation or recurrence of a countervailable subsidy.”<sup>35</sup> Additionally, the GOT contends that the program under Law 5084: Incentive for Employer’s Share in Insurance Premiums was terminated on December 31, 2012.<sup>36</sup> Finally, the GOT claims that the Pasta Export Grants program has been terminated and that the GOT submitted evidence in its response during the 2010 administrative review.<sup>37</sup>

The domestic interested parties rebut the GOT’s assertion that there would be no continuation or recurrence of countervailable subsidies if the *Order* were revoked because there continue to be subsidy programs available to the Turkish pasta industry.<sup>38</sup> According to the domestic interested parties, Commerce has not found that the Pasta Export Grants and Pre-shipment Export Loans programs that the GOT identifies as “terminated” have actually been terminated; in the most recent administrative review of the *Order*, Commerce only found that these programs were “not used.”<sup>39</sup>

The domestic interested parties posit that it is misleading to claim that the Turkish pasta industry has not benefited from the Pre-shipment Export Loans because there have been few administrative reviews.<sup>40</sup> Moreover, the domestic interested parties state there is no evidence that programs that were not used in the most recent administrative review have been terminated or replaced with non-countervailable programs. Citing to the GOT’s Substantive Response at 4, claiming that Law 5084: Incentive for Employers’ Share in Insurance Premiums was terminated, the domestic interested parties note that the GOT provided no evidence of the claimed termination.<sup>41</sup>

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<sup>33</sup> See GOT Substantive Response at 4

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See letter from petitioners, “Certain Pasta from Turkey: Five-Year (“Sunset”) Review of Countervailing Duty Order – Petitioners’ Rebuttal Comments,” dated September 10, 2018 (Petitioners’ Rebuttal Comments).

<sup>39</sup> See Petitioners’ Rebuttal Comments at 3.

<sup>40</sup> *Id.*

<sup>41</sup> See Petitioners’ Substantive Response at 4.

## *Commerce's Position*

As stated above, in determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>42</sup> The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>43</sup> The presence of programs that have not been used, but have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>44</sup> Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.<sup>45</sup>

Consistent with prior determinations, two conditions must be met for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated, and (2) any benefit stream must be fully allocated.<sup>46</sup> Commerce has also stated that in order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.<sup>47</sup> Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.<sup>48</sup> Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.<sup>49</sup>

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<sup>42</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994), at 888.

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>45</sup> *Id.*

<sup>46</sup> See, e.g., *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006), and accompanying Preliminary Decision Memorandum at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

<sup>47</sup> See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>48</sup> See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>49</sup> See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011), and accompanying Issues and Decision Memorandum at Comment 1.



In this instance, subsidies to Turkish producers and exporters of pasta continue to exist. These include subsidy programs from the investigation that have not been terminated and newly identified subsidies in the 1999, 2010, and 2014 administrative reviews. Specifically, the subsidy programs that have been found to benefit Turkish producers and exporters of pasta that remain in place are: 1) Pre-Shipment Export Loans; 2) Pasta Export Grants; 3) residual benefits under the VAT Support Program; 4) Deduction from Taxable Income for Export Revenue; 5) Law 5084: Incentive for Employers' Share in Insurance Premiums; 6) Export Subsidy Program for Agricultural products; and 7) Investment Encouragement Program: Customs and Vat Exemptions. Additionally, other programs were found to be "Not Used," in the 2014 Administrative Review,<sup>50</sup> which could be used if the *Order* were sunset. There has not been any evidence that any of those programs have been terminated. Therefore, various subsidy programs may continue to provide benefits.

Specifically, Commerce has not found that the Pasta Export Grants and Law 5084: Incentive for Employers' Share in Insurance Premium programs to have been terminated. Finally, the GOT states that the Pre-Shipment Export Loans program has not been used since the 1999 administrative review. As stated in the SAA, where a company has a long track record of not using a program, the mere availability of the program should not, by itself, indicate likelihood of continuation or recurrence of countervailable subsidies.<sup>51</sup> In regard to the Pre-Shipment Export Loans program, we found the program to have been used in the investigation and in the 1999 administrative review. However, we are not basing our likelihood of the continuation or recurrence of countervailable subsidies determination based solely on this program, rather, that we have found other countervailable subsidies to be used that confer measurable benefits to Turkish producers and exporters of pasta.

On the basis of the above facts, it is reasonable to determine that countervailable subsidy programs continue to exist and are being utilized by producers and exporters of pasta in Turkey. Because the continuation of programs is highly probative of the likelihood of the continuation or recurrence of countervailable subsidies, we determine that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies for Turkish producers and exporters of the subject merchandise.

## 2. Net Countervailable Subsidy Likely to Prevail

### *Interested Parties' Comments*

The domestic interested parties contend that, according to the principles set forth in the SAA and Commerce's *Policy Bulletin*,<sup>52</sup> revocation of the *Order* would lead to countervailable subsidies prevailing at the countervailable subsidy rates established in the original investigation, taking into account all new subsidy programs that have been identified since the investigation and any programs that have been terminated. Therefore, the domestic interested parties claim that

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<sup>50</sup> *Id.*

<sup>51</sup> See SAA at 888-889.

<sup>52</sup> See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18871-18875 (April 16, 1998).

revocation of the *Order* would lead to the follow net subsidy rates, as established by the third sunset review:

<b><u>Producer/Exporter</u></b>	<b><u>Net Countervailable Subsidy (Percent)</u></b>
Filliz	1.63
Maktas	13.09
Oba	13.08
All Others	8.85

According to the GOT, subsidy programs that contributed to the net countervailing subsidy rate have been eliminated.<sup>53</sup> The GOT claimed that the following programs have been eliminated: (1) Free Wheat Program, (2) Pasta Export Grants Program, (3) Payment for Exports on Turkish Ships/State Aid for Export Program, (4) Tax Exemption Based on Export Earnings Program, (5) Advanced Refunds of Tax Savings Program, and (6) Law 5084: Incentive for Employer's Share in Insurance Premiums. Moreover, the GOT claims that the only remaining programs are: (1) Export Subsidy Program for Agricultural Products, and (2) Investment Encouragement Program (Investment Encouragement Program): Customs Duty and VAT Exemptions. The GOT also notes that the Export Subsidy Program for Agricultural Products is administered in conformity with Turkey's WTO Commitments and is notified to the WTO annually.<sup>54</sup> The GOT cites these claimed program eliminations for Commerce to take into consideration in determining the net countervailable subsidy likely to prevail.

#### *Commerce's Position*

Consistent with the SAA and legislative history, Commerce will normally provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked because, as noted by the domestic interested parties it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.<sup>55</sup> Section 752(b)(1)(B) of the Act, however, provides that Commerce will consider whether any change in the programs which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, a rate calculated in the investigation may not be the most appropriate if, for example, the rate was derived, in whole or part, from subsidy programs subsequently found to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.<sup>56</sup>

In this sunset review, Commerce determined the company-specific countervailable subsidy rates likely to prevail based on the rates assigned in the investigation, adjusted to reflect the programs that Commerce found to be countervailable in the subsequent administrative reviews. Therefore,

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<sup>53</sup> See GOT Substantive Response at 6.

<sup>54</sup> *Id.*

<sup>55</sup> See SAA at 890; see also H.R. Rep. No. 103-826 (1994) at 64.

<sup>56</sup> See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

consistent with Commerce's established practice for adjusting the company-specific rates in sunset reviews when warranted by findings in the intervening administrative reviews,<sup>57</sup> we added the appropriate rate from the one additional subsidy program, Investment Encouragement Program: Customs and VAT Exemptions, found countervailable in the 2014 administrative review to the net countervailable subsidy rates determined in the investigation.<sup>58</sup> The adjusted countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the order, are provided in the "Final Results of Review" section of this memorandum.

As noted in the "History of the Order" section above, the subsidy programs found in the original investigation include: (1) Pre-Shipment Export Loans; (2) Pasta Export Grants; (3) Free Wheat Program; (4) Payments for Exports on Turkish Ships/State Aid for Exports Program; (5) Incentive Premium on Domestically Obtained Goods; (6) Resource Utilization Support Fund (GIP); and (7) Tax Exemption Based on Export Earnings.

In determining company-specific, net countervailable subsidy rates likely to prevail, we have started with the rates found in the original investigation. To those rates found in the original investigation we have added the rates from the subsidy programs subsequently found to be countervailable (during the subsequent administrative reviews since the publishing of the *Order*). Those subsequent programs include the following: (1) VAT Support Program; (2) Deduction from Taxable Income for Export Revenue; (3) Law 5084: Incentive for Employer's Share in Insurance Premiums; (4) Export Subsidy Program for Agricultural Products; (5) Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions.

Where Commerce has found that a program was terminated with no residual benefits and no likelihood of reinstatement or replacement, Commerce normally will adjust the net countervailable subsidy rate to exclude the rate arising from that program. As noted in the third sunset review of the *Order*, the GOT had terminated the following programs: (1) Free Wheat Program; (2) Payments for Exports on Turkish Ships/State Aid for Exports Program; (3) Tax Exemption Based on Export Earnings; (4) Advanced Refunds of Tax Savings; (5) Incentive Premium on Domestically Obtained Goods; and (6) Resource Utilization Support Fund (GIP).<sup>59</sup> Therefore, we have subtracted the rates calculated for these programs for each company in this sunset review.<sup>60</sup> The adjusted countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the Order, are provided in the "Final Results of Review" section of this memorandum. With regard to the GOT's statement that the Export Subsidy Program for Agricultural Products is notified to the WTO annually, this fact has no bearing on our evaluation of this program for the purposes of this sunset review.

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<sup>57</sup> See e.g., *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order*, 83 FR 35212 (July 25, 2018) and accompanying IDM at "Net Countervailable Subsidy Likely to Prevail."

<sup>58</sup> See Memorandum to the File, "Countervailing Duty Order on Certain Pasta from Turkey: Calculation Memorandum for the Final Results of the Expedited Fourth Sunset Review," dated concurrently with this memorandum (Fourth Sunset Calculation Memorandum).

<sup>59</sup> See Third Sunset Review, 78 FR at 692, and accompanying Issues and Decision Memorandum at Issue 2.

<sup>60</sup> See Fourth Sunset Calculation Memorandum.

### 3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired effective January 1, 2000.

Commerce received no comments from the domestic interested parties or the GOT regarding the nature of the subsidy programs determined to be countervailable in the investigation or in subsequent administrative reviews.

#### *Article 3*

Article 3.1 of the SCM Agreement states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. As discussed above, Commerce received no comments from the GOT or other interested parties regarding the nature of the subsidy programs determined to be countervailable in the investigation or administrative review. Therefore, consistent with Commerce's findings in the Final Determination and subsequent administrative reviews, we find that the following programs are prohibited subsidies within the meaning of Article 3.1 of the SCM Agreement:

##### *1) Pre-Shipment Export Loans*

The Export Credit Bank of Turkey (Turk Eximbank) provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program was commenced in March 1989 in order to meet the financing needs of exporters and overseas contractors. Loans are made available to certified exporters who commit to a certain value of exports within a specified time period. Generally, loans are extended for a period of three to nine months, covering between 10 and 100 percent of the FOB value of the committed export value.

##### *2) Pasta Export Grants*

During 1994, the Central Bank of Turkey provided cash grants and government promissory notes or bonds to exporters of pasta. According to the GOT, the purpose of the program was to develop Turkey's export potential. In order to receive the grants, exporters were required to submit applications (including proof of exportation and payment from the customer) to the local office of the Central Bank. The exporter received a specified percentage of the FOB U.S. dollar price, subject to a cap.

##### *3) Deduction from Taxable Income for Export Revenue*

Pursuant to Article 40 of Income Tax Law 193, dated January 6, 1961, which was amended by Law 4108 on June 2, 1995, the GOT allows taxpayers engaged in overseas activities related to exports, construction, maintenance, assembly and transportation to claim a lump sum deduction from gross income in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings. There is no application or approval process for this program. Instead, a company claiming the deduction records an expense in its marketing, selling and distribution expense

account equal to the amount of the deduction for which it is eligible. When submitting its tax return, the company reports its total sales less the amount of the expense it recorded in its accounting records.

4) *Export Subsidy Program for Agricultural Products*

Under this program, the GOT issues payments to companies exporting certain agricultural products, such as flowers, vegetables, fruit, olive oil, meats and chocolates. The eligible products, terms of the rebates and other regulations for this program for January 1, 2010, through December 31, 2010, are specified by Article 5 and Article 7 of Communiqué 2010/5, issued by the Money-Credit and Coordination Council. According to the GOT, this Communiqué has its legal basis in Council of Minister's Decree No. 94/6401. The program is administered by the Ministry of Economy, General Directorate of Export.

5) *VAT Support Program*

Companies engaging in a wide variety of investment projects such as expanding or modernizing their production facilities, improving infrastructure, undertaking research and development, etc., can obtain an Investment Incentive Certificate for the project from the GOT. This certificate makes the company eligible for certain benefit programs as specified on each certificate. In order to receive a certificate, the company must commit to a certain level of investment and deposit a certain amount of money with the GOT, and smaller investments and deposits are required for companies in areas designated as "priority development regions." The VAT Support Program allows a company to rebate the full VAT on domestically produced machinery and equipment, if the Investment Incentive Certificate was issued before August 1, 1998.

*Article 6.1*

The following subsidy programs do not fall within the meaning of Article 3.1 of the SCM Agreement, but may be subsidies described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex I of the SCM Agreement. The subsidies may also fall within the meaning of Article 6.1 if they constitute debt forgiveness, a grant to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record for Commerce to make such a determination. We are, in any case, providing the ITC with the following program descriptions:

1) *Pre-Shipment Export Loans* (see above)

2) *Pasta Export Grants* (see above)

3) *Deduction from Taxable Income for Export Revenue* (see above)

4) *Export Subsidy Program for Agricultural Products* (see above)

5) *Law 5084: Incentive for Employers' Share in Insurance Premiums*

The Social Security Institution of the GOT administers the Incentive for the Employer's Share in Insurance Premiums Program (Insurance Premiums Program) pursuant to Article 2 and Article 4

of Law 5084. According to the GOT, this program provides an incentive for companies to invest in any of 49 disadvantaged provinces. For companies that establish their facilities in a disadvantaged province, the GOT will cover up to 80 percent of the employer's share of social security premiums for employees working in the province. If the company's facility is located in an industrial zone within a disadvantaged province, the GOT will pay 100 percent of the employer's share.

*6) Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions*

Under this program, Turkish provinces are divided into six regions, with varying investment thresholds and program benefits. These thresholds and benefits apply to applicants based on the location of individual applicants (*i.e.* in one of the six regions). Once an applicant meets the investment requirement applicable to its location, it may apply for an Investment Incentive Certificate. If such a certificate is obtained by the applicant, it may be entitled to a full rebate of VAT and import duties on machinery and equipment, among other potential benefits.

## **VI. FINAL RESULTS OF REVIEW**

Commerce determines that revocations of the countervailing duty order on certain pasta from Turkey would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

<b>Producer/Exporter</b>	<b>Net Countervailable Subsidy Rate</b>
Filiz Gıda Sanayi ve Ticaret (Filiz)	1.73 percent
Maktas Makarnacılık ve Ticaret (Maktas)	13.19 percent
Oba Makarnacılık Sanayi ve Ticaret (Oba)	13.18 percent
All Others	8.95 percent

## VII. RECOMMENDATION

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

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Agree

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\_\_\_\_\_  
Disagree

11/28/2018

X



Signed by: GARY TAVERMAN

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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