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Investigation
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September 20, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Scot T. Fullerton
Deputy, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Dried Tart Cherries from
the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that dried tart cherries (cherries) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The preliminary estimated dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On April 23, 2019, Commerce received an antidumping duty (AD) petition covering imports of cherries from Turkey, which was filed in proper form by the Dried Tart Cherry Trade Committee (the petitioner), a trade association comprised of domestic producers of cherries.¹ The AD Petition was accompanied by a countervailing duty (CVD) petition concerning imports of cherries from Turkey.² Commerce initiated this investigation on May 20, 2019.³

In the *Initiation Notice*, Commerce indicated that, in the event that we limited the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Dried Tart Cherries from the Republic of Turkey,” dated April 23, 2019 (the Petition).

² See Volume III of the Petition.

³ See *Dried Tart Cherries from the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigation*, 84 FR 22809 (May 20, 2019) (*Initiation Notice*).



Protection (CBP) entry data.⁴ In June 2019, after considering the large number of potential producers/exporters involved in this investigation, and the resources available to Commerce, we determined that it was not practicable to examine all exporters/producers of subject merchandise.⁵ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine the two producers/exporters accounting for the largest volume of imports of cherries from Turkey during the period of investigation (POI). Accordingly, we selected for individual examination Isik Tarim Urunleri Sanayi ve Ticaret A.S. (Isik Tarim) and Yamanlar Tarim Urunleri (Yamanlar), and we issued the AD questionnaire to these companies. Neither company responded to the questionnaire.

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as, on the appropriate physical characteristics of cherries to be reported in response to Commerce's AD questionnaire.⁶ In June 2019, the petitioner submitted comments regarding the appropriate physical characteristics of the subject merchandise under consideration to be used for reporting purposes.⁷ No other parties submitted comments.

On June 12, 2019, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cherries from Turkey.⁸

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is April 1, 2018, through March 31, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2019.⁹

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are dried tart cherries from Turkey. For a full description of the scope of the investigation, *see* the accompanying preliminary determination *Federal Register* notice at Appendix I.

⁴ *See Initiation Notice*, 84 FR at 22812.

⁵ *See* Memorandum, "Less-Than-Fair-Value Investigation of Dried Tart Cherries from the Republic of Turkey: Selection of Respondents for Individual Examination," dated June 7, 2019.

⁶ *See Initiation Notice*, 84 FR at 22810.

⁷ *See* Petitioner's Letter, "Dried Tart Cherries from Turkey: Comments on Product Characteristics," dated June 3, 2019.

⁸ *See Dried Tart Cherries from Turkey*, 84 FR 27359 (June 12, 2019); *see also Dried Tart Cherries from Turkey*, Inv. Nos. 701-TA-622 and 731-TA-1448 (Preliminary), USITC Publication 4902, June 2019.

⁹ *See* 19 CFR 351.204(b)(1).

V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,¹⁰ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope) and encouraged all parties to submit comments within 20 calendar days of publication of that notice.¹¹ During this period, no interested party commented on the scope of the AD investigation of cherries from Turkey. Therefore, we are preliminarily not modifying the scope as it appeared in the *Initiation Notice*.

VI. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics.¹² The petitioner provided comments which we took into consideration in determining the physical characteristics of the cherries subject to this investigation.¹³

VII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, Isik Tarim and Yamanlar were selected as the mandatory respondents in the investigation and received Commerce's AD questionnaire.¹⁴ However, neither Isik Tarim nor Yamanlar responded to Commerce's questionnaire in this investigation. For the reasons stated below, we determine that the use facts otherwise available with an adverse inference is appropriate for this preliminary determination with respect to Isik Tarim and Yamanlar.

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or an interested party withholds information requested by Commerce; fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding, or provides such information but the information cannot be verified as provided in section 782(i) of the Act; Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested

¹⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹¹ See *Initiation Notice*, 84 FR at 22810.

¹² *Id.* at 22810-11.

¹³ See Commerce's Letters, "Product Characteristics for the Antidumping Duty Investigation of Dried Tart Cherries from the Republic of Turkey," dated June 14, 2019.

¹⁴ See Memorandum, "Antidumping Duty Investigation of Dried Tart Cherries from the Republic of Turkey: Confirmation of Delivery of Questionnaire," dated June 13, 2019.

party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Isik Tarim and Yamanlar did not respond to our AD questionnaire or otherwise participate in the investigation. As a result, we preliminarily find that the necessary information is not available on the record of this investigation, pursuant to section 776(a)(1) of the Act; that Isik Tarim and Yamanlar withheld information Commerce requested, pursuant to section 776(a)(2)(A) of that Act; that they failed to provide information by the specified deadlines, pursuant to section 776(a)(2)(B) of the Act; and that they significantly impeded the proceeding, pursuant to section 776(a)(2)(C) of the Act. Moreover, because Isik Tarim and Yamanlar did not submit responses, section 782(e) of the Act is not applicable. Accordingly, pursuant to section 776(a)(1) and (a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine the preliminary estimated dumping margins for Isik Tarim and Yamanlar.

B. Use of Adverse Inference

Section 776(b)(1)(A) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.¹⁵ In doing so, Commerce is not required to determine, or make any adjustments to, a dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁶ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁷ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may use an adverse inference.¹⁸ It is Commerce’s practice to consider, in employing adverse facts available, the extent to which a party may benefit from its own lack of cooperation.¹⁹

¹⁵ See also 19 CFR 351.308(a); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

¹⁶ See section 776(b)(1)(B) of the Act.

¹⁷ See SAA accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. 1 (1994) at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁸ See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Preamble*, 62 FR at 27340.

¹⁹ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

We preliminarily find that Isik Tarim and Yamanlar have failed to cooperate by not acting to the best of their abilities to comply with Commerce’s request for information, pursuant to section 776(b) of the Act. As explained above, Isik Tarim and Yamanlar did not respond to Commerce’s AD questionnaire. The failure of these companies to participate in the investigation and respond to Commerce’s questionnaire has precluded Commerce from performing the necessary analysis to calculate an estimated weighted-average antidumping duty margin for each company based on its own data. Accordingly, Commerce preliminarily finds that Isik Tarim and Yamanlar failed to cooperate to the best of their ability to comply with a request for information by Commerce within the meaning of section 776(b)(1) of the Act. Based on the above, Commerce, therefore, preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.²⁰

C. Preliminary Estimated Dumping Margins Based on AFA

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.²¹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²² Commerce’s practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated rate of any respondent in the investigation.²³

Consistent with our practice, we have selected the highest dumping margin alleged in the Petition, 648.35 percent, as the AFA rate applicable to Isik Tarim and Yamanlar in this investigation of cherries from Turkey.²⁴

²⁰ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying PDM at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total adverse facts available (AFA) when the respondent failed to respond to the antidumping questionnaire).

²¹ See section 776(b)(2) of the Act; and 19 CFR 351.308(c).

²² See SAA at 870.

²³ See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum (IDM).

²⁴ See Petitioner’s Letter, “Dried Tart Cherries from Turkey: Supplemental Response to Antidumping Questionnaire,” dated May 2, 2019 at 2; *Initiation Notice*; AD Investigation Initiation Checklist: Dried Tart Cherries from the Republic of Turkey (May 13, 2019) (Initiation Checklist); see also, e.g., *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016), and accompanying IDM at Comment 14.

D. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁵ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.²⁶ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.²⁷ Further, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²⁸

Because the rate preliminarily determined for Isik Tarim and Yamanlar is derived from the Petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable.

We determine that the Petition margin is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.²⁹

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margin alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculation, and the alleged dumping margin.³⁰ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborate key elements of the EP and NV calculation used to derive the dumping margin alleged in the Petition.³¹

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioner’s EP and NV calculations for Turkey to be reliable. Because we

²⁵ See SAA at 870.

²⁶ *Id.*; see also 19 CFR 351.308(d).

²⁷ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²⁸ See sections 776(d)(3)(A) and (B) of the Act.

²⁹ See Initiation Checklist.

³⁰ *Id.*

³¹ *Id.*

obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the EP and NV calculation provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Moreover, because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margin alleged in the Petition is reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. Because there are no other participating cooperative respondents in this investigation, we relied upon the highest dumping margin alleged in the Petition, which is the only information regarding the cherries industry reasonably at Commerce's disposal. In calculating U.S. price, the petitioner relied on official import statistics from the ITC's Trade DataWeb to calculate an average unit value (AUV) per pound of cherries imported from Turkey during the POI.³² The petitioner found an AUV per pound of cherries using entries from the POI under the U.S. Harmonized Tariff Schedule subheading 0813.40.3000.³³ The petitioner made no adjustments to the AUV.³⁴

In calculating NV, the petitioner relied on price quotes obtained from Turkish producers of cherries.³⁵ The petitioner made no adjustments to NV. Based on this information, we preliminarily determine that the dumping margin alleged in the Petition is relevant for purposes of assigning as the AFA rate.

Accordingly, with respect to Isik Tarim and Yamanlar, Commerce preliminarily determines that the highest dumping margin alleged in the Petition has probative value and has corroborated the AFA rate 648.35 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant.³⁶

VIII. All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount equal to the weighted average of the estimated

³² See Volume II of the Petitions at 1-2 and Exhibits II-1 and II-2.

³³ *Id.* at Exhibit II-1.

³⁴ *Id.* at 2.

³⁵ *Id.* at 2 and Exhibit II-3; see also Petitioner's Letter, "Dried Tart Cherries from Turkey: Response to Antidumping Questionnaire," dated April 29, 2019 at 2-3 and Exhibit 1; and Petitioner's Letter, "Dried Tart Cherries from Turkey: Supplemental Response to Antidumping Questionnaire," dated May 2, 2019 at 2.

³⁶ See section 776(c) of the Act; 19 CFR 351.308(c) and (d); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying IDM at Comment 1; see also Initiation Checklist.

weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

As noted above, Isik Tarim and Yamanlar are the only mandatory respondents, and their estimated dumping margin is determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's practice under these circumstances has been to assign, as the "all-others" rate, a simple average of the petition rates.³⁷ In this investigation, the simple average of the six Petition rates (*i.e.*, 347.24, 471.47, 533.58, 614.14, 632.97, and 648.35 percent) is 541.29 percent. Consequently, consistent with its practice, Commerce is using 541.29 percent as the "all-others" rate applicable to entities not individually examined in the investigation of cherries from Turkey pursuant to sections 733(d)(1)(A)(ii) and 735(c)(5)(B) of the Act.³⁸

IX. VERIFICATION

Because Isik Tarim and Yamanlar did not respond to the AD questionnaire, and their rates are based on total AFA, we will not conduct verification.

³⁷ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying IDM at Comment 2.

³⁸ See *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying PDM, unchanged in *Certain Oil Country Tubular Goods from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 41978, 41979 (July 18, 2014); see also Initiation Checklist.

X. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

9/20/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance