



C-489-806

Administrative Review

POR: 01/01/2019 - 12/31/2019

**Public Document**

E&C/OI: Team

July 27, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of  
Countervailing Duty Administrative Review: Certain Pasta from  
the Republic of Turkey; 2019

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain pasta from the Republic of Turkey (Turkey). The period of review (POR) is January 1, 2019, through December 31, 2019. We preliminarily determine that Bessan Makarna Gida San. Ve Tic. A.S. (Bessan) did not receive countervailable subsidies during the POR.

## II. BACKGROUND

On July 14, 1996, we published in the *Federal Register* a CVD order on certain pasta from Turkey.<sup>1</sup> On September 3, 2020, Commerce published the notice of opportunity to request an administrative review of the *Order* for the POR.<sup>2</sup> On May 6, 2020, we initiated this administrative review.<sup>3</sup> On September 9, 2020, we released the entry data we obtained from U.S. Customs and Border Protection for comment by interested parties.<sup>4</sup> We received no comments. Bessan is the only company for which a review was requested and, consequently, Bessan is the only mandatory respondent.

On March 19, 2021, we extended the deadline for these preliminary results to no later than July 30, 2021.<sup>5</sup>

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<sup>1</sup> See *Countervailing Duty Order; Certain Pasta from Turkey*, 61 FR 38546 (July 14, 1996) (*Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531 (July 1, 2020).

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

<sup>4</sup> See Memorandum, “Countervailing Duty Administrative Review: Certain Pasta from Turkey: Release of Customs Data from U.S. Customs and Border Protection,” dated September 9, 2020 (CBP Query Memorandum).

<sup>5</sup> See



### **III. 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.

### **IV. DIVERSIFICATION OF TURKEY'S ECONOMY**

In evaluating the specificity factors for domestic subsidies, pursuant to section 771(5A)(D)(iii) of the Act, Commerce must take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy. According to the Statement of Administrative Action,<sup>6</sup> the additional criteria of the extent of diversification of economic activities (and length of time during which the subsidy program in question has been in operation) serve to inform the application of, rather than supersede or substitute for, the enumerated specificity factors.

To determine the extent of diversification of economic activities within a given jurisdiction, Commerce will normally consider publicly available data and information from expert third party sources, including such information as provided by interested parties in a proceeding. Available and reliable information sources necessarily vary from case to case. For this proceeding, on October 5, 2021, Commerce placed on the record a memorandum, “The Extent of Diversification of Economic Activities in the Republic of Turkey (Turkey) for the Purpose of Determining Specificity of a Domestic Subsidy for Countervailing Duty (CVD),” which analyzes the diversification of the Turkish economy using Organisation for Economic Co-operation and Development (OECD) and Economist Intelligence Unit (EIU).<sup>7</sup> OECD and EIU data from the Economic Diversification Memorandum shows that there are a total of 2,706,883 establishments operating in the secondary (manufacturing) and tertiary (services) sectors of the Turkish

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<sup>6</sup> See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316 103rd Congress, 2nd Session, Volume I, 911, 931.

<sup>7</sup> See Memorandum, “Countervailing Duty Administrative Review of Pasta from the Republic of Turkey: Economic Diversification Memorandum,” dated October 5, 2020 (Economic Diversification Memorandum).

economy that span 17 industry groupings.<sup>8</sup> This information reflects a wide diversification of economic activities in Turkey.

## **V. SUBSIDIES VALUATION**

### **A. Allocation Period**

Pursuant to 19 CFR 351.524(d)(2)(i), Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The AUL in this proceeding is 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>9</sup> No party in this review disputed the allocation period

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

### **B. Cross-Ownership and Attribution of Subsidies**

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that Commerce will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise; are a holding or parent company of the subject company; produce an input that is primarily dedicated to the production of the downstream product; or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard is met where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through

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<sup>8</sup> *Id.*

<sup>9</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>10</sup>

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>11</sup>

Bessan reported that it is the sole producer and exporter of its subject merchandise during the POR and provided full responses only on its own behalf.<sup>12</sup> In accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Bessan to its own sales. Nonetheless, Bessan also provided information regarding certain affiliated companies.<sup>13</sup> Bessan is part of a group of companies that are affiliated with each other through various family members with common shareholdings of various levels across companies. Commerce previously examined Bessan’s affiliations and business relations with these companies in the prior administrative review and found that cross-ownership did not exist such that we would attribute to Bessan any subsidies received by these affiliates.<sup>14</sup> The information provided in this review shows that Bessan continues to be affiliated and to have business relations with these other companies. However, the levels of common shareholdings across the companies have shifted. While some affiliates may now be cross-owned with Bessan within the meaning of 19 CFR 351.525(b)(6)(vi), we preliminarily find that none of the attribution rules under 19 CFR 351.525(b)(6)(ii) apply. Therefore, we are preliminarily making no subsidy attributions to Bessan with regard to these companies.

## VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record information, we preliminarily find the following:

### A. Programs Preliminarily Determined Not to be Countervailable

#### 1. Unemployment Insurance Law No. 4447

Bessan reported use of this program.<sup>15</sup> In the 2014 administrative review, we found this program not to provide a measurable benefit.<sup>16</sup> However, in recent CVD proceedings, we found this

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<sup>10</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

<sup>11</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>12</sup> See Bessan IQR.

<sup>13</sup> See Bessan Affiliation Response.

<sup>14</sup> See *Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 52825 (August 10, 2016) (*Turkey Pasta 2014*), and accompanying Preliminary Decision Memorandum (PDM) at 4-5, unchanged in *Pasta from Turkey: Final Results of Countervailing Duty Administrative Review; 2014*, 81 FR 90775 (December 15, 2016).

<sup>15</sup> See Bessan IQR at 23.

<sup>16</sup> See *Turkey Pasta 2014 AR PDM* at 9.

program, which was appended by Law No. 6111,<sup>17</sup> not to be countervailable.<sup>18</sup> We have no new information on the record of this proceeding to warrant a reconsideration of Commerce's prior findings. Further, based on information provided Bessan in this administrative review, we preliminarily find that this program is not countervailable.<sup>19</sup>

## **B. Program Preliminarily Determined Not to Provide a Countervailable Benefit**

### **1. Inward Processing Regime (Duty Drawback)**

Bessan reported receiving import duty exemptions under this program during the POR through D-1 certificates.<sup>20</sup> In *Pipe and Tube Turkey 2018 AR* and *Pipe and Tube Turkey 2004 AR*,<sup>21</sup> Commerce found that the import duty and VAT exemptions a company receives through D-1 certificates did not provide countervailable benefits within the meanings of 19 CFR 351.519(a)(1)(ii) and 19 CFR 351.517(a), respectively. Specifically, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. Commerce previously found with regard to this program that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported product, and that the system is reasonable for the purposes intended.<sup>22</sup> With regard to 19 CFR 351.517(a), no benefit from a VAT exemption exists when the amount exempted does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

We have no new information on the record of this proceeding to warrant a reconsideration of Commerce's earlier findings.<sup>23</sup> Consistent with those prior findings, and based on the information supplied by the Bessan regarding this program in this administrative review, we preliminarily find no evidence on the record indicating that Bessan's import duty exemptions under the program, pursuant to D-1 certificates, were excessive within the meaning of the

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<sup>17</sup> See GOTIQR at 14-15.

<sup>18</sup> See *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019), and accompanying PDM at 19-20, unchanged in *Certain Quartz Surface Products from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25400 (May 1, 2020).

<sup>19</sup> In the prior administrative review, we found that social security benefits provided under laws no. 5510 and 4587 were not countervailable. See *Turkey Pasta 2014 PDM* at 8-9.

<sup>20</sup> See Bessan IQR at 24 and Exhibit 18.

<sup>21</sup> See *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission; Calendar Year 2018*, 85 FR 18917 (April 3, 2020), and accompanying Preliminary Decision Memorandum (PDM) at 17-19, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018*, 86 FR 6866 (January 25, 2021) (*Pipe and Tube Turkey 2018 AR*); see also *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006) (*Pipe and Tube Turkey 2004 AR*), and accompanying IDM at 9-12.

<sup>22</sup> See, e.g., *Pipe and Tube Turkey 2004 AR* IDM at 9-12.

<sup>23</sup> See Bessan IQR at 24 and Exhibit 18.

applicable regulations.<sup>24</sup> Therefore, consistent with past cases, we preliminarily find that the import duty exemptions received by Bessan on imported inputs under D-1 certificates of the IPC program during the POR did not confer countervailable benefits.

### **C. Programs Preliminarily Determined to Not be Used**

1. Pre-Shipment Export Credits
2. Deduction from Taxable Income for Export Revenue
3. Law 5084: Incentive for Employers' Share in Insurance Premium
4. Resource Utilization Support Fund (KKDF) Tax Exemption on Export-Related Loans
5. Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions<sup>25</sup>
6. Export Subsidy Program for Agricultural Products<sup>26</sup>
7. Normal Foreign Currency Export Loans
8. Performance Foreign Currency Export Loans
9. Components of the General Incentives Program (GIP) Program:
  - a. Additional Refunds of VAT
  - b. Postponement of VAT on Imported Goods
  - c. Exemption from Certain Taxes, Duties, Fees (Other Tax Exemptions)
  - d. Payment of Certain Obligations of Firms Undertaking Large Investments
  - e. Subsidized Turkish Lira Credit Facilities
  - f. Land Allocation
  - g. Interest Spread Return Program
  - h. Energy Support
10. Exemption from Mass Housing Fund Levy (Duty Exemptions)
11. Direct Payments to Exporters of Wheat Products to Compensate for High Domestic Input Prices
12. Export Credit through Foreign Trade Corporate Companies Rediscount Credit Facility
13. Corporate Tax Deferral
14. Subsidized Credit for Proportion of Fixed Expenditures
15. Subsidized Credit in Foreign Currencies
16. Overseas Exhibits Supports 2009/5 Decree<sup>27</sup>

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<sup>24</sup> *Id.* Bessan did not report receiving VAT exemptions under the program during the POR.

<sup>25</sup> In *Turkey Pasta 2014*, Commerce previously found this program to be non-recurring and to have provided benefits to Bessan that were below 0.5 percent, pursuant to the "0.5 percent test" as provided in 19 CFR 351.524(b)(2). See *Turkey Pasta 2014* PDM at 7-8. Bessan reported no new use of the program. See Bessan IQR at 14-15. Consequently, we preliminarily determine that this program was not used during the POR.

<sup>26</sup> Bessan reported applying for this program. However, due to financial limitations, the GOT ceased funding the program, and Bessan reported receiving no benefits during the POR. See Bessan IQR at 16-21; see also GOTIQR at 9-11. Consequently, we preliminarily determine that this program was not used during the POR.

<sup>27</sup> A company using this program can expect to receive payments in its account on an ongoing basis from year to year. See GOTSQR at 1-15 and Exhibit 1. Consequently, we are preliminarily treating the benefits under this program as recurring, in accordance with 19 CFR 351.524(c). Bessan applied for but did not receive benefits under this program during the POR. See Bessan IQR at 24 and Exhibit 17. Therefore, we preliminarily find this program was not used.

17. Domestic Exhibits Supports 2014/4 Decree<sup>28</sup>
18. Support for Opening Branches, Trademark Registration, and Promotional Activities Abroad 2010/6 Decree<sup>29</sup>
19. Market Research and Entry to Market Support 2011/1 Decree<sup>30</sup>
20. Decision on Supporting Market Access Certification 2014/8 Decree<sup>31</sup>

## VII. RECOMMENDATION

Based on our analysis, we recommend adopting the preliminary results described above. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.



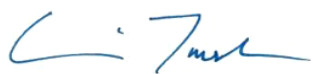
Agree



Disagree

7/27/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>28</sup> A company using this program can expect to receive payments in its account on an ongoing basis from year to year. See GOTSQR at 16-17. Consequently, we are preliminarily treating the benefits under this program as recurring, in accordance with 19 CFR 351.524(c). Bessan applied for but did not receive benefits under this program during the POR. See Bessan IQR at 24 and Exhibit 17. Therefore, we preliminarily find this program was not used.

<sup>29</sup> A company using this program can expect to receive payments in its account on an ongoing basis from year to year. See GOTSQR at 17-29 and Exhibits 3-4. Consequently, we are preliminarily treating the benefits under this program as recurring, in accordance with 19 CFR 351.524(c). Bessan applied for but did not receive benefits under this program during the POR. See Bessan IQR at 24 and Exhibit 17. Therefore, we preliminarily find this program was not used.

<sup>30</sup> A company using this program can expect to receive payments in its account on an ongoing basis from year to year. See GOTSQR at 29-50 and at Exhibit 5. Consequently, we are preliminarily treating the benefits under this program as recurring, in accordance with 19 CFR 351.524(c). Bessan applied for but did not receive benefits under this program during the POR. See Bessan IQR at 24 and Exhibit 17. Therefore, we preliminarily determine this program was not used.

<sup>31</sup> A company using this program can expect to receive payments in its account on an ongoing basis from year to year. See GOTSQR at 51-77 and Exhibits 6-8. Consequently, we are preliminarily treating the benefits under this program as recurring, in accordance with 19 CFR 351.524(c). Bessan applied for but did not receive benefits under this program during the POR. See Bessan IQR at 24 and Exhibit 17. Therefore, we preliminarily determine this program was not used.