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DEPARTMENT OF COMMERCE

International Trade Administration

(A-489-805)

Certain Pasta from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review; 2015-2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) determines that Mutlu Makarnacilik Sanayi ve Ticaret A.S. (Mutlu), an exporter of certain pasta (pasta) from Turkey and the sole respondent subject to this administrative review, had no *bona fide* sales during the period of review (POR) July 1, 2015 through June 30, 2016. Therefore, we are rescinding this administrative review.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2924.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2017, Commerce published the *Preliminary Results* of this review in the *Federal Register*.<sup>1</sup> We invited parties to comment on the *Preliminary Results*. On September 6, 2017, we received case briefs from petitioners American Italian Pasta Company, Dakota

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<sup>1</sup> See *Certain Pasta from Turkey: Preliminary Results of Antidumping Duty Administrative Review*, 82 FR 36737 (August 7, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

Growers Pasta Company, and New World Pasta Company (the petitioners) and from the respondent, Mutlu. On September 19, 2017, we received rebuttal briefs from the petitioners and Mutlu. On September 21, 2017, Commerce rejected Mutlu's case brief because it contained new factual information after the deadline for such information.<sup>2</sup> Mutlu subsequently removed the new factual information from its case brief, and resubmitted the case brief on September 23, 2017.

Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now February 6, 2018.<sup>3</sup>

Commerce conducted this review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

#### 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.<sup>4</sup>

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<sup>2</sup> See Commerce Letter dated September 21, 2017.

<sup>3</sup> See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

<sup>4</sup> A full written description of the scope of the order is contained in the memorandum to Gary Taverman, "Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Pasta from Turkey," (Issues and Decision Memorandum), dated concurrently with this notice and incorporated herein by reference.

### Analysis of the Comments Received

All issues raised in the case and rebuttal briefs submitted in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

### Bona Fides Analysis

For the *Preliminary Results*, the Department analyzed the *bona fides* of Mutlu's single sale and preliminarily found it was not a *bona fide* sale.<sup>5</sup> Based on Commerce's complete analysis of all the information and comments on the record of this review, Commerce continues to find that Mutlu's sale is not a *bona fide* sale. Commerce reached this conclusion based on its consideration of the totality of circumstances, including: (a) the atypical nature of both the sales price and quantity; (b) reason to question the arm's-length nature of the transaction; and (c) the atypical sales terms. In addition to the above factors, which Commerce determined are a sufficient basis to find Mutlu's sale to be non-*bona fide*, it determined that additional factors – *i.e.*, the lack of record information normally considered in making a *bona fides* determination due to the importer's failure to respond to the importer questionnaire (*e.g.*, whether a profit was

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<sup>5</sup> See Memorandum, "2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Turkey: Preliminary *Bona Fides* Sales Analysis for Mutlu Makarnacilik Sanayi ve Ticaret A.S.," dated August 1, 2017.

realized on the resale of the subject merchandise, whether there were any unusual expenses), and the limited history from which to infer the respondent's future selling practices due to there being only one sale during the POR – constituted additional support for its non-*bona fides* finding. Because much of the factual information used in our analysis of Mutlu's sale involves business proprietary information, a full discussion of the basis for our final determination is set forth in the *Bona Fides* Analysis Memorandum.<sup>6</sup>

Because we have determined that Mutlu had no *bona fide* sales during the POR, we are rescinding this administrative review.

#### Assessment

As Commerce is rescinding this administrative review, we have not calculated a company-specific dumping margin for Mutlu. Mutlu's entries will be liquidated at the "all-others" rate applicable to Turkish exporters who do not have their own company-specific rate. That rate is 51.49 percent.<sup>7</sup>

#### Cash Deposit Requirements

Because we did not calculate a dumping margin for Mutlu, Mutlu continues to be subject to the "all-others" rate. The all-others cash deposit rate is 51.49 percent.<sup>8</sup> These cash deposit requirements shall remain in effect until further notice.

#### Administrative Protective Order

This notice also serves as a reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information

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<sup>6</sup> See Memorandum, "2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Turkey: Final *Bona Fides* Sales Analysis for Mutlu Makarnacilik Sanayi ve Ticaret A.S.," dated February 5, 2018. See also Issues and Decision Memorandum.

<sup>7</sup> See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996).

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

disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in these segments of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(h) and 351.221(b)(5).

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

Dated: February 6, 2018

## Appendix

### List of Topics Discussed in the Issues and Decision Memorandum

Summary

Background

Scope of the Order

Discussion of the Issues

1. Whether “*Bona Fides*” Testing is Statutorily Limited to New Shipper Reviews, and is Not Applicable in an Administrative Review
2. Whether Record Evidence Confirms that Mutlu’s Sale was a *Bona Fide* Sale
3. Whether Rescinding the Administrative Review Amounts to an Imposition of Adverse Facts Available Based on the Failure to Cooperate of an Unaffiliated Third Party

Recommendation

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