



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-835]

Dried Tart Cherries from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value

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

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). The period of investigation (POI) is April 1, 2018 through March 31, 2019. Interested parties are invited to comment on this preliminary determination.

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

FOR FURTHER INFORMATION CONTACT: Alex Wood or Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-1959 or (202) 482-4682, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this

investigation on May 20, 2019.<sup>1</sup> For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.<sup>2</sup> A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

#### Scope of the Investigation

The products covered by this investigation are dried tart cherries from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

#### Scope Comments

In accordance with the preamble to Commerce's regulations,<sup>3</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>4</sup> No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Therefore, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice.

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<sup>1</sup> *See Dried Tart Cherries from the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigation*, 84 FR 22809 (May 20, 2019) (*Initiation Notice*).

<sup>2</sup> *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Dried Tart Cherries from the Republic of Turkey," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>3</sup> *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>4</sup> *See Initiation Notice*, 84 FR at 22810.

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available with adverse inferences for Isik Tarim Urunleri Sanayi ve Ticaret A.S. (Isik Tarim) and Yamanlar Tarim Urunleri (Yamanlar). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

## 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. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. We cannot apply the methodology described in section 735(c)(5)(A) of the Act to calculate the all-others rate, as the margins in this preliminary determination were calculated 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 based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. In cases where dumping margins are determined entirely under section 776 of the Act for individually examined entities, Commerce's normal practice under these circumstances is to calculate the all-others rate as a simple average of the alleged dumping margin(s) from the

petition.<sup>5</sup> Therefore, as the all-others rate, we are assigning the simple average of the dumping margins alleged in the Petition, which is 541.29 percent. For a full description of the methodology underlying Commerce’s analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated dumping margins exist during the period April 1, 2018 through March 31, 2019:

<b>Producer/Exporter</b>	<b>Margin (percent)</b>
Isik Tarim Urunleri Sanayi ve Ticaret A.S.	**648.35
Yamanlar Tarim Urunleri	**648.35
All Others	541.29

\*\*Adverse Facts Available (AFA)

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated dumping margin or the

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<sup>5</sup> *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 Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008); and *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), 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, 14477 (March 14, 2014).

estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated simple-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. However, in this investigation, we made no adjustments to the all-others antidumping cash deposit rates because Commerce made no findings in the companion CVD investigation that any of the subsidies in question are export subsidies.<sup>6</sup>

#### Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b).

However, because Commerce preliminarily applied AFA to the individually examined companies, Isik Tarim and Yamanlar, in this investigation, in accordance with section 776 of the

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<sup>6</sup> See *Dried Tart Cherries from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination* (signed on July 31, 2019); see also *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016) and accompanying Preliminary Decision Memorandum at page 13, unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016).

Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

### Verification

Because the examined respondents in this investigation did not respond to the antidumping questionnaire, we will not conduct verification.

### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>7</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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<sup>7</sup> See 19 CFR 351.309; *see also*, 19 CFR 351.303 (for general filing requirements).

### Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

### International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

### Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 20, 2019.

Jeffrey I. Kessler,  
Assistant Secretary  
for Enforcement and Compliance.

## Appendix I

### Scope of the Investigation

The scope of this investigation covers dried tart cherries, which may also be referred to as, *e.g.*, dried sour cherries or dried red tart cherries. Dried tart cherries may be processed from any variety of tart cherries. Tart cherries are generally classified as *Prunus cerasus*. Types of tart cherries include, but are not limited to, Amarelle, Kutahya, Lutowka, Montmorency, Morello, and Oblacinska. Dried tart cherries are covered by the scope of this investigation regardless of the horticulture method through which the cherries were produced (*e.g.*, organic or not), whether or not they contain any added sugar or other sweetening matter, whether or not they are coated in oil or rice flour, whether infused or not infused, and regardless of the infusion ingredients, including sugar, sucrose, fruit juice, and any other infusion ingredients. The scope includes partially rehydrated dried tart cherries that retain the character of dried fruit. The subject merchandise covers all shapes, sizes, and colors of dried tart cherries, whether pitted or unpitted, and whether whole, chopped, minced, crumbled, broken, or otherwise reduced in size. The scope covers dried tart cherries in all types of packaging, regardless of the size or packaging material.

Included in the scope of this investigation are dried tart cherries that otherwise meet the definition above that are packaged with non-subject products, including, but not limited to, mixtures of dried fruits and mixtures of dried fruits and nuts, where the smallest individual packaging unit of any such product contains a majority (*i.e.*, 50 percent or more) of dried tart cherries by dry net weight. Only the dried tart cherry components of such products are covered by this investigation; the scope does not include the non-subject components of such products.

Included in the scope of this investigation are dried tart cherries that have been further processed in a third country, including but not limited to processing by stabilizing, preserving, sweetening, adding oil or syrup, coating, chopping, mincing, crumbling, packaging with non-subject products, or other packaging, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the dried tart cherries.

Excluded from the scope of this investigation are dried tart cherries that have been incorporated as an ingredient in finished bakery and confectionary items (cakes, cookies, candy, granola bars, *etc.*).

The subject merchandise is currently classifiable under 0813.40.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also enter under subheadings 0813.40.9000, 0813.50.0020, 0813.50.0060, 2006.00.2000, 2006.00.5000, and 2008.60.0060. The HTSUS subheadings set forth above are provided for convenience and U.S. customs purposes only. The written description of the scope is dispositive.

## **Appendix II**

### **List of Topics Discussed in the Preliminary Decision Memorandum**

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Scope Comments
- VI. Product Characteristics
- VII. Application of Facts Available and Use of Adverse Inference
- VIII. All Others Rate
  
- IX. Verification
- X. Recommendation

[FR Doc. 2019-21003 Filed: 9/26/2019 8:45 am; Publication Date: 9/27/2019]