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November 25, 2016

MEMORANDUM TO: Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Erin Begnal *EB*
Director, Office III
Antidumping and Countervailing Duty Operations

SUBJECT: Certain Pasta from the Republic of Turkey:
Issues and Decision Memorandum for the Final Rescission

I. SUMMARY

The Department of Commerce (the Department) has analyzed the comments submitted by the Petitioners¹ and respondent Durum Gida Sanyı ve Ticaret A.S. (Durum), in the new shipper review of certain pasta from the Republic of Turkey (Turkey). Following issuance of the *Preliminary Rescission*² and the analysis of the comments received, we have determined to rescind this new shipper review. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

The period of review (POR) is July 1, 2014, through June 30, 2015. The Department published the *Preliminary Rescission* on July 15, 2016, in which it preliminarily determined that Durum’s

¹ Petitioners are the American Italian Pasta Company, New World Pasta Company, and Dakota Growers Pasta Company.

² See *Certain Pasta From Turkey: Preliminary Rescission of Antidumping Duty New Shipper Review*, 81 FR 46050 (July 15, 2016) (*Preliminary Rescission*), and accompanying Issues and Decision Memorandum.

POR sale was not *bona fide*.³

In accordance with 19 CFR 351.309(c)(1)(i), we invited parties to comment on our *Preliminary Rescission*.

On July 19, 2016, the Department placed on the record entry documents obtained from Customs and Border Protection (CBP) in response to a CBP data query.⁴ On August 23, 2016, Petitioners filed their case brief.⁵ On August 29, 2016, Durum filed its case brief.⁶ On September 9, 2016, we became aware that the Department had not established a date for parties to submit new factual information to rebut, clarify, or correct the information placed on the record by the Department in its July 19, 2016, memorandum, as required by 19 CFR 351.301(c)(4). Accordingly, we established a deadline of September 13, 2016, for the submission of any such new factual information,⁷ and Durum submitted new factual information on September 12, 2016,⁸ and September 13, 2016.⁹ Petitioners submitted a rebuttal brief on September 14, 2016.¹⁰ Petitioners and Durum then timely submitted comments on the new factual information on September 20, 2016,¹¹ and rebuttal comments on October 3, 2016.¹²

³ See *Preliminary Rescission*; see also Memorandum from Fred Baker to Scot Fullerton, Re: 2014-2015 Antidumping Duty New Shipper Review of Certain Pasta from Turkey: Preliminary *Bona Fide* Sales Analysis for Durum Gida Sanayi ve Ticaret A.S., dated June 28, 2016 (*Bona Fides* Memorandum).

⁴ See Memorandum from Fred Baker to the File, “U.S. Entry Documents – Certain Pasta from Turkey,” dated July 19, 2016.

⁵ See Petitioners’ Case Brief for Durum Gida, dated August 23, 2016 (Petitioners’ Case Brief).

⁶ See Case Brief of Durum Gida Sanayi ve Ticaret A.S., dated August 29, 2016 (Durum’s Case Brief).

⁷ See Memorandum from Fred Baker to the File, Re: Submission of Factual Information, dated September 9 2016.

⁸ See Letter from Durum to the Honorable Penny Pritzker, Re: Pasta from Turkey (New Shipper Review): Case (sic) Brief, dated September 12, 2016 (Durum’s Rebuttal Brief).

⁹ See Letter from Durum to the Honorable Penny Pritzker, Pasta from Turkey (New Shipper Review): Additional Factual Information, dated September 13, 2016.

¹⁰ See Petitioners’ Rebuttal Brief for Durum Gida Sanayi ve Ticaret A.S., dated September 14, 2016 (Petitioners’ Rebuttal Brief).

¹¹ See Letter from Petitioners to Secretary of Commerce, Re: New Shipper Review of Certain Pasta from Turkey – Petitioners’ Comments on New Factual Information for Durum Gida Sanayi ve Ticaret A.S., dated September 20, 2016; Letter from Durum to the Honorable Penny Pritzker, Re: Pasta from Turkey (New Shipper Review): Comments on Factual Information, dated September 20, 2016.

¹² See Letter from Petitioners to the Secretary of Commerce, Re: New Shipper Review of Certain Pasta from Turkey – Petitioners’ Rebuttal Comments on New Factual Information for Durum Gida Sanayi ve Ticaret A.S., dated October 3, 2016; Letter from Durum to the Honorable Penny Pritzker, Pasta from Turkey (New Shipper Review): Rebuttal Comments on Factual Information, dated October 3, 2016.

III. DISCUSSION OF THE ISSUES

Comment 1: Whether Durum Qualifies for a New Shipper Review

Petitioners' Comments

Petitioners claim that new information obtained from CBP after the *Preliminary Rescission* provides additional grounds, independent of the *Preliminary Rescission*, to determine that Durum does not qualify for a new shipper review.¹³ Petitioners state that, in accordance with 19 CFR 351.214(b)(2), Durum certified that (a) it was the exporter and producer of the subject merchandise sold to the United States during the POR, and (b) it did not export subject merchandise to the United States during the period of investigation nor was it ever affiliated with an exporter of the subject merchandise during the investigation.¹⁴ Petitioners assert the Department's regulations additionally require a company requesting a new shipper review to identify and certify to the date of its first U.S. entry or shipment and its first U.S. sale, and require that new shipper reviews be requested within one year of the company's first entry or shipment.¹⁵ Petitioners argue that information obtained from CBP and placed on the record by the Department on July 19, 2016 shows that Durum does not qualify as a new shipper.¹⁶ Therefore, Petitioners contend the Department should rescind this new shipper review.

Durum's Rebuttal Comments

Durum claims that its rebuttal factual information confirms that the information in the July 19, 2016 CBP documents does not disqualify Durum as a new shipper, and also confirms Durum's certification that it is a new shipper.¹⁷

Department's Position: We agree with Petitioners that Durum does not qualify as a new shipper.

In order for the Department to conduct a new shipper review, the Department's regulations require a company requesting a new shipper review to identify and certify to the date of its first U.S. entry or shipment and its first U.S. sale, and require that new shipper reviews be requested within one year of the company's first entry or shipment.¹⁸

¹³ See Petitioners' Case Brief at 2.

¹⁴ *Id.*, at 3, citing Letter from Durum Gida to the Department, "Request for New Shipper Review; Antidumping Duty Order Involving Certain Pasta from Turkey," dated August 11, 2015 at 2 and Exhibit 1.

¹⁵ *Id.*, at 5, citing 19 CFR 351.214(b)(2)(iv)(A) and (C) and 19 CFR 351.214(c).

¹⁶ *Id.*, at 2-5 and Attachment 1 (duplicating Memorandum from Fred Baker to the File, "U.S. Entry Documents - Certain Pasta from Turkey," dated July 19, 2016 (July 19, 2016 CBP Documents), at Attachment 1).

¹⁷ See Durum's Rebuttal Brief at 2.

¹⁸ See 19 CFR 351.214(b)(2)(iv)(A) and (C) and 19 CFR 351.214(c).

The documents upon which all arguments by both parties are based are business proprietary in their entirety. Therefore, the specific arguments, as well as our analysis of those arguments, are not susceptible to public summary. For a full discussion of this issue, *see* the separate business proprietary memorandum in which we summarize and address all arguments.¹⁹

Based on our analysis of the information on the record of this review, we determine that Durum does not qualify as a new shipper. Accordingly, we are rescinding this new shipper review.

Comment 2: Whether Durum Had a *Bona Fide* Sale During the Period of Review

Durum's Comment

Durum argues that the Department erred in its *Preliminary Rescission*, and that Durum's sale was *bona fide*. Specifically, Durum argues:

- The Department's *Bona Fides* Memorandum incorrectly portrays Durum and its importer as fly-by-night operations that engage in sham negotiations.²⁰
- The pricing of the sale was carefully considered for purposes of both obtaining profitable sales and conducting business in harmony with the disciplines of the U.S. antidumping law.²¹
- The pricing figures the Department cited in its *Bona Fides* Memorandum superficially address the data. Proper analysis demonstrates that the sale was actually mainstream.²²
- The importer's presently unresolved issues regarding proof of payment should not affect Durum's standing as a new shipper.²³
- The importer's presently unresolved issues about whether the importer resold the pasta at a profit should not adversely affect Durum.²⁴
- Other relevant factors establish that Durum's sale was *bona fide*.²⁵

Petitioners' Rebuttal

Petitioners argue:

- The Department applied the proper legal standard in the *Preliminary Rescission* to determine that Durum's U.S. sale was not *bona fide*.
- The Department properly considered all relevant information in its price analysis of Durum's lone U.S. sale.

¹⁹ See Memorandum from Fred Baker through Erin Kearney to Scot Fullerton, Re: Certain Pasta from the Republic of Turkey: Final Rescission of New Shipper Review, dated November 25, 2016.

²⁰ See Durum's Case Brief at 1.

²¹ *Id.*

²² *Id.*

²³ *Id.*, at 17.

²⁴ *Id.*, at 23.

²⁵ *Id.*, at 25.

- Lack of proof of payment is not a neutral issue, as Durum has argued.
- The Department properly questioned the legitimacy of the U.S. importer/reseller.
- Whether the importer resold the pasta at a profit is an important issue related to the *bona fides* of Durum's sale.²⁶

Department's Position: In light of our determination to rescind this new shipper review due to Durum's ineligibility for a new shipper review, as explained above in regard to Comment 1, we find that the arguments regarding the *bona fides* of Durum's sale are moot and, therefore, have not addressed them.

IV. RECOMMENDATION

Based on our analysis of the comments received, we recommend rescinding the new shipper review with respect to Durum, and publishing the final rescission in the *Federal Register*.

Agree

Disagree

11/25/2016

X 

Signed by: RONALD LORENTZEN
Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

²⁶ See Petitioners' Rebuttal Brief at i.