



OTTAWA, July 11, 2018

## STATEMENT OF REASONS

Concerning the final determinations with respect to the dumping and subsidizing of  
**CERTAIN DRY WHEAT PASTA ORIGINATING IN OR EXPORTED FROM  
THE REPUBLIC OF TURKEY**

### DECISION

On June 26, 2018, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act* (SIMA), the Canada Border Services Agency made final determinations of dumping and subsidizing respecting certain dry wheat pasta originating in or exported from the Republic of Turkey.

Cet *Énoncé des motifs* est également disponible en français.  
This *Statement of Reasons* is also available in French.

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## SUMMARY OF EVENTS

[1] On November 7, 2017, the Canada Border Services Agency (CBSA) received a written complaint from the Canadian Pasta Manufacturers Association of Ottawa, Ontario, (hereinafter, “the complainant” or “CPMA”),<sup>1</sup> alleging that imports of certain dry wheat pasta originating in or exported from the Republic of Turkey (Turkey) are being dumped and subsidized. The complainant alleged that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[2] On November 28, 2017, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainant that the complaint was properly documented.<sup>2</sup> The CBSA also notified the Government of Turkey (GOT) that a properly documented complaint had been received.<sup>3</sup> The GOT was also provided with the non-confidential version of the subsidy complaint and was invited for consultations pursuant to Article 13.1 of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures, prior to the initiation of the subsidy investigation.

[3] On December 22, 2017, consultations were held between the Government of Canada and the GOT in Ottawa. During the consultations, the GOT made representations with respect to the evidence presented in the non-confidential version of the subsidy complaint. The CBSA considered the representations made by the GOT in its analysis prior to the initiation of the subsidy investigation.

[4] The complainant provided evidence to support the allegations that certain dry wheat pasta from Turkey has been dumped and subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[5] On December 28, 2017, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of certain dry wheat pasta from Turkey.

[6] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (CITT) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the like goods.

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<sup>1</sup> Exhibits 1 (PRO) & 2 (NC), Certain DWP Complaint & Exhibit 3 (NC), Certain DWP Subsidy Complaint.

<sup>2</sup> Exhibit 22 (PRO), Notice of Properly Documented Complaint – CPMA.

<sup>3</sup> Exhibit 23 (PRO), Notice of Properly Documented Complaint – Embassy Notice – Turkey.

[7] On February 26, 2018, pursuant to subsection 37.1(1) of SIMA, the CITT made a preliminary determination that there is evidence that discloses a reasonable indication that the alleged dumping and subsidizing of certain dry wheat pasta from Turkey have caused or are threatening to cause injury to the domestic industry.

[8] On March 28, 2018, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing of certain dry wheat pasta originating in or exported from Turkey.

[9] On March 28, 2018, pursuant to subsection 8(1) of SIMA, provisional duty was imposed on imports of dumped and subsidized goods that are of the same description as any goods to which the preliminary determinations apply, and that are released during the period commencing on the day the preliminary determinations were made and ending on the earlier of the day on which the CBSA causes the investigations in respect of any goods to be terminated pursuant to subsection 41(1) of SIMA or the day the CITT makes an order or finding pursuant to subsection 43(1) of SIMA.

[10] On March 29, 2018, the CITT initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry.

[11] An information session was held in Ottawa on May 3, 2018 to explain Canada's anti-dumping and countervailing process to stakeholders and to respond to questions. Several of the concerns that were raised related to questions of injury or matters of public interest. In these situations, the parties were referred to the CITT.

[12] Based on the available evidence, the CBSA is satisfied that certain dry wheat pasta originating in or exported from Turkey have been dumped and subsidized. Therefore, on June 26, 2018, the CBSA made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA in respect of those goods.

[13] The CITT's inquiry into the question of injury to the Canadian industry is continuing, and it will issue its decision by July 26, 2018. Provisional duties will continue to be imposed on the subject goods from Turkey until the CITT renders its decision.

#### **PERIOD OF INVESTIGATION**

[14] The Period of Investigation (POI) for the dumping investigation is December 1, 2016 to November 30, 2017.

[15] The POI for the subsidy investigation is January 1, 2016 to November 30, 2017.

#### **PROFITABILITY ANALYSIS PERIOD**

[16] The Profitability Analysis Period (PAP) for the dumping investigation is December 1, 2016 to November 30, 2017.

## **INTERESTED PARTIES**

### **Complainant**

[17] The complainant is the CPMA of Ottawa, Ontario. The contact information of the complainant is:

Canadian Pasta Manufacturers Association  
86 Armstrong Street  
Ottawa, Ontario, K1Y 2V7

[18] The CPMA is comprised of three members who produce dry wheat pasta in Canada, namely Italpasta Limited (Italpasta), Primo Foods Inc. (Primo) and Grisspasta Products Ltd. (Grisspasta).

The contact information of the three producers is as follows:

Italpasta  
116 Nuggett Court  
Brampton, Ontario, L6T 5A9

Primo  
56 Huxley Road  
Toronto, Ontario, M9M 1H2

Grisspasta  
805 Boulevard Guimond  
Longueuil, Quebec, J4G 1M1

[19] The complainant members account for the majority of production of like goods in Canada (i.e. greater than 50%).<sup>4</sup>

### **Other Producers**

[20] The complainant identified two additional Canadian producers of like goods in its complaint, namely Catelli Foods Corporation of Etobicoke, Ontario and Prairie Harvest Canada Ltd. of Edmonton, Alberta.<sup>5</sup>

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<sup>4</sup> Exhibit 1 (PRO), Certain DWP Complaint, Appendix 4.

<sup>5</sup> Exhibit 2 (NC), Certain DWP Complaint, paragraphs 74 & 75.

[21] At initiation of the investigations, the CBSA also identified three additional potential Canadian producers of like goods through its own research, namely Pasta Romana Foods Inc. of Montreal, Quebec, Old Fashioned Noodle Products of Winnipeg, Manitoba, and Jared Pacific Inc. of Mississauga, Ontario.<sup>6</sup> On January 3, 2018, Old Fashioned Noodle Products notified the CBSA that it did not produce like goods during the POI and no longer produces like goods.<sup>7</sup>

### **Importers**

[22] At the initiation of the investigations, the CBSA identified 34 potential importers of the subject goods<sup>8</sup> based on both information provided by the complainant and CBSA import entry documentation. All of the potential importers were asked to respond to the CBSA's Importer Request for Information (RFI).<sup>9</sup> The CBSA received five responses to the Importer RFI.<sup>10</sup>

### **Exporters**

[23] At the initiation of the investigations, the CBSA identified 51 potential exporters located in Turkey and three potential exporters/vendors, located outside of Turkey, of the subject goods<sup>11</sup> from CBSA import documentation and from information submitted in the complaint<sup>12</sup>. The potential exporters located in Turkey were asked to respond to the CBSA's Dumping RFI and to the CBSA's Subsidy RFI.<sup>13</sup> All other potential exporters/vendors located outside Turkey were requested to respond to only the Dumping RFI.<sup>14</sup>

[24] One exporter/producer, Durum Gida Sanayi ve Ticaret A.Ş. (Durum Gida), in Turkey provided substantially complete responses to the Dumping and Subsidy RFIs. See "Dumping Investigation" and "Subsidy Investigation" for detailed information regarding this company.

[25] Two exporters/producers in Turkey provided incomplete responses to the Dumping and Subsidy RFIs, which were not used for the purposes of the preliminary or final determinations.

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<sup>6</sup> Dry Pasta Manufacturing – Government of Canada,

<http://www.ic.gc.ca/app/ccc/sld/cmpny.do?lang=eng&profileId=1921&naics=311823>.

<sup>7</sup> Exhibit 94 (NC), Response to Notice of Initiation of Investigation – Old Fashioned Noodle Products.

<sup>8</sup> Exhibit 4 (PRO), Notice of Initiation of Investigations - CITT, Tab 17.

<sup>9</sup> Exhibit 13 (NC), Notice of Initiation of Investigations – Importers.

<sup>10</sup> Exhibits 34 (PRO) & 35 (NC), Response to Importer RFI - AGT Foods Ltd.; Exhibits 39 (PRO) & 40 (NC), Response to Importer RFI - Loblaw Companies Ltd; Exhibits 43 (PRO) & 44 (NC), Response to Importer RFI - Shoppers Drug Mart; Exhibits 47 (PRO) & 48 (NC), Response to Importer RFI – Aliments Medaillon Inc.; Exhibits 53 (PRO) & 54 (NC), Response to Importer RFI – Commerce Apex Trades.

<sup>11</sup> Exhibit 4 (PRO), Notice of Initiation of Investigations - CITT, Tab 17.

<sup>12</sup> Exhibit 2 (NC), Certain DWP Complaint, Appendix 2.

<sup>13</sup> Exhibit 7 (NC), Notice of Initiation of Investigations – Exporters.

<sup>14</sup> Exhibit 7 (NC), Notice of Initiation of Investigations – Exporters.

[26] Deficiencies were communicated to these two companies, however, these two companies did not furnish sufficient information for purposes of the preliminary or final determinations.

## **Government**

[27] For the purposes of these investigations, the GOT refers to all levels of government, i.e., federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

[28] At the initiation of the investigations, the CBSA sent a Government Subsidy RFI to the GOT.<sup>15</sup> A substantially complete response was received from the GOT.<sup>16</sup>

## **PRODUCT INFORMATION**

### **Definition**

[29] For the purposes of these investigations, subject goods are defined as:

*All dry wheat-based pasta, not stuffed or otherwise prepared, and not containing more than two percent eggs, whether or not enriched, fortified, organic, whole wheat or containing milk or other ingredients, originating in or exported from the Republic of Turkey, excluding refrigerated, frozen or canned pasta.*

### **Additional Product Information<sup>17</sup>**

[30] The subject goods broadly includes all white pasta, standard pasta, regular pasta, whole wheat pasta and organic pasta in the durum wheat semolina family of pasta. The subject goods can also be enriched or fortified, and may contain milk or other optional ingredients such as chopped vegetables, vegetable purees, vegetable powders, gluten, diastases, vitamins, coloring and flavorings.

[31] The subject goods include long shapes (generally referred to as vermicelli and including spaghetti, spaghettini, capelli, linguini, vermicelli, angel hair, fettuccini and pasta nests), short lengths (generally referred to as macaroni and including elbow macaroni, penne, rigatoni, rotini, fusilli and ziti) and specialty shapes (including bows, shells, cannelloni, manicotti, lasagna and wagon wheels).

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<sup>15</sup> Exhibit 5 (PRO), Notice of Initiation of Investigations – Embassy.

<sup>16</sup> Exhibit 65 (PRO) and exhibit 66 (NC), Response to Exporter RFI – Government of Turkey.

<sup>17</sup> Exhibit 2 (NC), Certain DWP Complaint, paragraphs 8-10.

[32] The subject goods are imported in various types and sizes of packaging. The packaging can include fiberboard, cardboard cartons, polyethylene bags or polypropylene bags in a wide range of sizes. The most common sizes are 200g, 375g, 400g, 454g, 500g, 750g, 800g, 900g, 1kg, 10lb, 20lb, 30lb, 40lb, 50lb, “Box Specialty” and “Bulk Tote”. In Canada, it is common for dry wheat pasta to be packaged by the producer.

### **Production Process<sup>18</sup>**

[33] Dry wheat pasta is produced world-wide using materially similar production processes.

[34] While technology, particularly the usage of large dry wheat pasta producing machines, does affect production efficiencies, all dry wheat pasta is produced in the same manner by mixing finely ground semolina flour with warm water.

[35] Semolina flour is produced from milling durum wheat. Semolina flour, and by extension durum wheat, is the ingredient that represents the single largest input cost in the production of dry wheat pasta.

[36] After mixing semolina flour with warm water, the dough is kneaded mechanically until it becomes firm and dry. The dough is then passed into a laminator to be flattened into sheets, then compressed by a vacuum mixer machine to clear out air bubbles and excess water from the dough. Next, the dough is processed in a steamer to kill any bacteria it may contain.

[37] The dough is then ready to be shaped into different types of dry wheat pasta. Depending on the type of dry wheat pasta to be made, the dough can either be cut or extruded through dies. The pasta is set in a drying tank under specific conditions of heat (natural gas), moisture, and time depending on the type of pasta. The dry wheat pasta is then packaged.

### **Classification of Imports**

[38] The subject goods are normally imported under the following tariff classification numbers:

1902.19.21.30	1902.19.29.30	1902.19.93.00
1902.19.22.30	1902.19.91.00	1902.19.99.30
1902.19.23.30	1902.19.92.30	

[39] The listing of tariff classification numbers is for convenience of reference only. The tariff classification numbers include non-subject goods. Also, subject goods may fall under tariff classification numbers that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

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<sup>18</sup> Exhibit 2 (NC), Certain DWP Complaint, paragraphs 16-20.



## **LIKE GOODS AND CLASS OF GOODS**

[40] Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as goods that are identical in all respects to the other goods, or in the absence of any identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[41] While dry wheat pasta comes in a variety of sizes and shapes, it is nevertheless a commodity-type product. The complainant submits that the subject goods and domestic dry wheat pasta have the same physical characteristics, are used for the same purpose, are sold through the same channels of distribution, and are used by the same end users. The goods produced in Canada and Turkey are fully interchangeable and subject goods from Turkey compete directly with like goods produced by Canadian producers.<sup>19</sup>

[42] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that domestically produced dry wheat pasta are like goods to the subject goods. Further, the CBSA is of the opinion that subject goods and like goods constitute only one class of goods.

[43] In its preliminary injury inquiry for this investigation, the CITT further reviewed the matter of like goods and classes of goods. On February 26, 2018, it issued its preliminary injury inquiry determination and reasons indicating that “There is no dispute between the parties that the dry wheat pasta produced in Canada that is of the same description as the subject goods is “like goods” in relation to the subject goods. Further, parties do not dispute that there is a single class of goods. As such, and on the basis of the evidence on the record in relation to the above factors, the Tribunal will conduct its analysis on this basis.”<sup>20</sup>

## **THE CANADIAN INDUSTRY**

[44] As previously stated, the member producers of the complainant account for the majority of known domestic production of like goods.

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<sup>19</sup> Exhibit 2 (NC), Certain DWP Complaint, paragraph 104.

<sup>20</sup> [http://www.citt.gc.ca/en/node/8263#\\_Toc511217997](http://www.citt.gc.ca/en/node/8263#_Toc511217997) – paragraphs 16 & 17.

## IMPORTS INTO CANADA

[45] The following table presents the CBSA's analysis of imports of certain dry wheat pasta for purposes of the final determinations:

**Imports of Dry Wheat Pasta  
(% of Volume)**

<b>Country</b>	<b>Dumping POI (December 1, 2016, to November 30, 2017)</b>	<b>Subsidy POI (January 1, 2016, to November 30, 2017)</b>
Turkey	12.9%	12.5%
All Other Countries	87.1%	87.5%
<b>Total Imports</b>	<b>100%</b>	<b>100%</b>

## INVESTIGATION PROCESS

[46] Regarding the dumping investigation, information was requested from all known and potential exporters, producers, vendors and importers, concerning shipments of certain dry wheat pasta released into Canada during the dumping POI.

[47] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from all known and potential exporters and producers in Turkey. Information was also requested from the GOT concerning financial contributions made to exporters or producers of certain dry wheat pasta released into Canada during the subsidy POI. The GOT was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[48] The GOT and the exporters/producers were also notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFIs, failure to permit verification of any information or failure to provide documentation requested during the verification visits may result in the margin of dumping, the amount of subsidy and the assessment of dumping and/or countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favorable to them than if complete, verifiable information was made available.

[49] Several parties (i.e., importer, exporter and government) requested an extension to respond to their respective RFIs. The CBSA reviewed each request; however, extensions were not granted to any of the parties because the reasons for making the requests did not constitute unforeseen circumstances or unusual burdens. When the extension requests were denied, the CBSA informed the parties that it could not guarantee that submissions received after the RFI response deadline would be taken into consideration for purposes of the preliminary or final phases of the investigations.

[50] After reviewing the RFI responses, supplemental RFIs (SRFIs) were sent to several responding parties to clarify information provided in the responses and request any additional information.

[51] On-site verifications were conducted at the premises of an exporter in Turkey and the Government of Turkey in April 2018.

[52] Details pertaining to the information submitted by the exporters in response to the Dumping RFI as well as the results of the CBSA's dumping investigation are provided in the "Dumping Investigation" section of this document. Details pertaining to the information submitted by the exporters and governments in response to the Subsidy RFI as well as the results of CBSA's subsidy investigation are provided in the "Subsidy Investigation" section of this document.

[53] As part of the final phase of the investigations, case briefs and reply submissions were provided by counsel representing the Complainant and an exporter/producer. Details of all representations are provided in **Appendix 3**.

### **DUMPING INVESTIGATION**

[54] The following presents the results of the investigation into the dumping of certain dry wheat pasta originating in or exported from Turkey.

#### **Normal value**

[55] Normal values are generally determined based on the domestic selling prices of like goods in the country of export, in accordance with of section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits, in accordance with paragraph 19(b) of SIMA.

[56] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, normal values are determined pursuant to a Ministerial specification in accordance with subsection 29(1) of SIMA.

#### **Export Price**

[57] The export price of goods sold to importers in Canada is generally determined in accordance with section 24 of SIMA based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

[58] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, export prices are determined pursuant to a Ministerial specification under subsection 29(1) of SIMA.

[59] Where there are sales between associated persons or a compensatory arrangement exists, the export price may be determined based on the importer's resale price of the imported goods in Canada to non-associated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the average industry profit in Canada, pursuant to paragraphs 25(1)(c) and 25(1)(d) of SIMA. In any cases not provided for under paragraphs 25(1)(c) and 25(1)(d) of SIMA, the export price is determined in such a manner as the Minister specifies, pursuant to paragraph 25(1)(e).

### **Margin of Dumping**

[60] The margin of dumping by exporter is equal to the amount by which the total normal value exceeds the total export price of the goods, expressed as a percentage of the total export price. All subject goods imported into Canada during the POI are included in the margins of dumping of the goods. Where the total normal value of the goods does not exceed the total export price of the goods, the margin of dumping is zero.

[61] Details of the results of the investigation by exporter follows. A summary of each exporter's margin of dumping is provided in the table at the end of this section and in **Appendix 1**.

### **Results of the Dumping Investigation**

#### Durum Gida Sanayi ve Ticaret A.Ş.

[62] Durum Gida is a producer and exporter of subject goods to Canada. Durum Gida purchases material inputs from a related supplier, Arbel Bakliyat Hububat Sanayi ve Ticaret A.Ş. (Arbel), located in Turkey. A portion of Durum Gida's exports to Canada were sold to its related importer AGT Clic (AGT).

[63] Durum Gida provided a substantially complete response to the Dumping RFI. Two Supplemental RFIs were sent to gather additional information and seek clarification regarding their original Dumping RFI response. CBSA officials performed an on-site verification at the premises of Durum Gida in April 2018.<sup>21</sup>

[64] Durum Gida provided a database of domestic sales of dry wheat pasta during the PAP. Where there were sufficient profitable sales of like goods, normal values were determined in accordance with section 15 of SIMA, using the exporter's domestic prices of dry wheat pasta in the Turkish market. Where there were insufficient profitable domestic sales of like goods, or where there were no domestic sales of like goods, normal values were determined in accordance with paragraph 19(b) of SIMA, based on the aggregate of the exporter's cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits.

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<sup>21</sup> Exhibit 126 (PRO) and 127 (NC), Verification Exhibits – Durum Gida Sanayi ve ticaret A.S.

[65] The amount for profits was determined in accordance with subparagraph 11(1)(b)(ii) of the Special Import Measures Regulations (SIMR), based on Durum Gida's sales of dry wheat pasta in their domestic market, for each sixty day period during the PAP, within the same general category as the subject goods sold to Canada.

[66] For subject goods exported by Durum Gida to unrelated importers in Canada during the POI, export prices were determined pursuant to section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting therefrom the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[67] Due to the relationship between Durum Gida and AGT, for subject goods exported during the POI by Durum Gida to AGT, a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the export prices determined under section 24 of SIMA, based on the lesser of the exporter's selling prices and the importer's purchase prices, with the export prices determined under section 25 of SIMA. The amount for profit used for the section 25 calculations was determined in accordance with paragraph 22(a) of the SIMR, based on the profit information relating to vendors who are at the same or substantially the same trade level as AGT and that operated at a profit during the POI in Canada, on sales to purchasers in Canada who are not associated with those vendors. The test revealed that the export prices determined in accordance with section 24 of SIMA were reliable for all sales and, therefore, export prices for sales to AGT were determined in accordance with section 24 of SIMA.

[68] For the final determination, the total normal value compared to the total export price results in a margin of dumping of 7.0% for Durum Gida expressed as a percentage of the export price.

#### All Other Exporters

[69] For exporters of subject goods that did not provide a response to the Dumping RFI or did not furnish sufficient information, the normal values and export prices were determined under subsection 29(1) of SIMA pursuant to a Ministerial Specification, on the basis of facts available.

[70] In establishing the methodology for determining the normal values and export prices, the CBSA considered all of the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, information submitted by exporters of dry wheat pasta from Turkey and customs import documentation.

[71] The CBSA decided that the normal values and export prices determined for the exporter, Durum Gida, whose submission was substantially complete for purposes of the final determination, would be used to establish the methodology for determining normal values under the Ministerial Specification, rather than the information provided in the complaint or estimated at initiation, since it reflects a Turkish exporter's trading practices during the POI.

[72] The CBSA examined the difference between the normal value and the export price for each individual transaction from Durum Gida in order to obtain an appropriate amount for the normal value methodology. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. Anomalies were found and removed from the methodology for determining normal values under the Ministerial Specification.

[73] The CBSA considered that the highest amount by which the normal value exceeded the export price on an individual transaction of Durum Gida (expressed as a percentage of the export price), excluding anomalies, was an appropriate basis for determining normal values under the Ministerial Specification. This methodology limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[74] Therefore, the normal values were determined based on the export price, plus an amount equal to 99.9% of that export price.

[75] The CBSA considered that the information submitted on the CBSA customs entry documentation was the best information on which to determine the export price of the goods for all other exporters as it reflects actual import data. This information is more comprehensive than what was available in the complaint.

[76] Based on the above methodologies, the subject goods exported to Canada from Turkey, by all other exporters were found to be dumped by a margin of dumping of 99.9%, expressed as a percentage of the export price.

### Summary of Results - Dumping

[77] A summary of the results of the dumping investigation respecting all subject goods released into Canada during the dumping POI are as follows:

**Summary of Results - Dumping**  
**Period of Investigation (December 1, 2016 to November 30, 2017)**

Country of Origin or Export	Margin of Dumping*
<b>Turkey</b>	
Durum Gida Sanayi ve Ticaret A.Ş.	7.0%
All Other Exporters	99.9%

\* Expressed as a percentage of the export price.

[78] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of the goods of an exporter if it is satisfied that the goods have not been dumped or the margin of dumping of the goods of that exporter is insignificant, meaning a margin of dumping that is less than 2% of the export price of the goods.

[79] As can be seen from the table above, the goods under investigation have been dumped and the margins of dumping determined in respect of the goods of the exporters are greater than the threshold of 2% and are therefore not considered insignificant. As a result, the legislative requirement is satisfied for making a final determination of dumping respecting dry wheat pasta originating in or exported from Turkey.

### **SUBSIDY INVESTIGATION**

[80] In accordance with section 2 of SIMA, a subsidy exists if there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the *General Agreement on Tariffs and Trade*, 1994, being part of Annex 1A to the World Trade Organization (WTO) Agreement that confers a benefit.

[81] Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada where:

- (a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- (b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
- (c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
- (d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

[82] Where subsidies exist they may be subject to countervailing measures if they are specific in nature. According to subsection 2(7.2) of SIMA a subsidy is considered to be specific when it is limited, in a legislative, regulatory or administrative instrument, or other public document, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy.

[83] A “prohibited subsidy” is either an export subsidy or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export. An export subsidy is a subsidy or portion of a subsidy contingent, in whole or in part, on export performance. An “enterprise” is defined as including a group of enterprises, an industry and a group of industries. These terms are all defined in section 2 of SIMA.

[84] Notwithstanding that a subsidy is not specific in law, under subsection 2(7.3) of SIMA a subsidy may also be considered specific having regard as to whether:

- (a) there is exclusive use of the subsidy by a limited number of enterprises;
- (b) there is predominant use of the subsidy by a particular enterprise;
- (c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and
- (d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[85] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an “actionable subsidy,” meaning that it is subject to countervailing measures if the persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods under investigation have benefited from the subsidy.

[86] Financial contributions provided by state-owned enterprises (SOEs) may also be considered to be provided by the government for purposes of this investigation. A SOE may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

### **Results of the Subsidy Investigation**

[87] The following presents the results of the investigation into the subsidizing of certain dry wheat pasta originating in or exported from Turkey.

[88] At the initiation of the investigation, the CBSA sent Subsidy RFIs to the GOT, as well as to all known exporters/producers of certain dry wheat pasta in Turkey. The GOT was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters and the exporters were requested to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as state owned enterprises (SOEs). Information was requested in order to establish whether there had been financial contributions made by any level of government, including SOEs possessing, exercising or vested with government authority and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain dry wheat pasta; and whether any resulting subsidy was specific in nature. Information was also requested from the GOT, concerning financial contributions made to exporters of certain dry wheat pasta released into Canada during the subsidy POI.



[89] The government and the exporters were also notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFI, failure to permit verification of any information or failure to provide documentation requested during the verification visits may result in the amount of subsidy and the assessment of countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favorable to their firm than if complete, verifiable information was made available.

[90] The GOT provided a substantially complete response to the CBSA's Government Subsidy RFI.<sup>22</sup>

[91] The CBSA also received a substantially complete response to the Subsidy RFI from one exporter of subject goods during the POI.

#### Durum Gıda Sanayi ve Ticaret A.Ş.

[92] Durum Gıda is a producer and exporter of subject goods to Canada. It provided a substantially complete joint response, along with its related supplier Arbel, to the Subsidy RFI.<sup>23</sup>

[93] For purposes of the final decision, the CBSA determined that Durum Gıda benefitted from the following subsidy programs during the subsidy POI:

- Program 1: Export Subsidy Program for Agricultural Products
- Program 6: Deduction From Taxable Income for Export Revenue
- Program 9: Input Materials Provided by Government at Less than Fair Market Value

[94] For purposes of the final decision, the above subsidy programs were considered to be specific and therefore actionable. This decision was based on an analysis of the information provided by Durum Gıda/Arbel and the GOT.

[95] The information available also indicates that Programs 1 and 6 are considered specific subsidies under paragraph 2(7.2)(b) of SIMA as they are contingent upon export performance and, therefore, constitute prohibited subsidies as defined in subsection 2(1) of SIMA.

[96] The programs used by the responding exporter are listed in **Appendix 2**.

[97] The amount of subsidy for Durum Gıda is \$0.025 TL/kg or 1.4%, expressed as a percentage of the export price.

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<sup>22</sup> Exhibits 065 (PRO) and 066 (NC) – Response to Government Subsidy RFI - Government of Turkey.

<sup>23</sup> Exhibits 055 (PRO) and 056 (NC) – Response to Exporter Subsidy RFI – Arbel Bakliyat Hububat Sanayi ve Ticaret A.S. and Durum Gıda Sanayi ve Ticaret A.S.

## All Other Exporters

[98] Upon further analysis of the information available during the final phase of the investigation, the CBSA had sufficient information to remove the following three subsidy programs from the dry wheat pasta subsidy investigation. An explanation of these programs can be found in Appendix 2.

- Program 2: Inward Processing Regime
- Program 3: Investment Encouragement Program
- Program 5: Small and Medium Enterprises Support for Pasta Producers - General Support Program

[99] Based on information provided by the GOT, the following eight potentially actionable subsidy programs may have benefitted other producers/exporters of dry wheat pasta during the POI who did not cooperate during the investigation:

- Program 8: VAT and Special Consumption Tax (SCT) Exemption on the Delivery of Diesel Fuel to the Vehicles Carrying Exporting Goods.
- Program 10: Rediscount Program
- Program 11: Pre Shipment Export Credit Program
- Program 12: Pre Export Credit Program
- Program 13: The Export Oriented Working Capital Credit Program
- Program 14: Post Shipment Rediscount Credit
- Program 15: Specific Export Credit Program
- Program 16: Short Term Export Credit Insurance Program

[100] The GOT provided information on potentially actionable subsidy programs that conferred benefits to all other exporters of subject goods who did not submit complete responses to the Subsidy RFI. However, the CBSA was unable to reconcile the amounts stated by the GOT with any exporter response other than Durum Gida.

[101] As a result, the amount of subsidy for all exporters of subject goods originating in or exported from Turkey that did not provide a response to the Subsidy RFI or that provided incomplete or unreliable information was determined under a Ministerial Specification pursuant to subsection 30.4(2) of SIMA, on the basis of facts available.

[102] In establishing the methodology for the amount of subsidy, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, the information submitted by Durum Gida and the information provided by the GOT.

[103] The CBSA considered that the information provided by Durum Gida and the GOT was the best information on which to base the methodology for determining amounts of subsidy.

[104] The amounts of subsidy were determined on the basis of the following methodology:

- 1) the amount of subsidy for each of the three programs, as found at the final determination, for the producer/exporter Durum Gıda that provided a substantially complete response to the Subsidy RFI, plus;
- 2) the average of the amount of subsidy for the three programs listed in (1), applied to each of the remaining eight potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[105] The CBSA considers that this is an appropriate basis for determining the amounts of subsidy since the information available supports that the eight potentially actionable subsidy programs may be available to exporters and producers of the dry wheat pasta in Turkey. Furthermore, the amount of subsidy applied to each of these potentially actionable subsidy programs is based on the benefits received by the responding exporter, Durum Gıda. This method of determination of amounts of subsidy is based on information on the record and limits the advantage that an exporter may gain from not providing necessary information requested in a subsidy investigation as compared to an exporter that did provide the necessary information.

[106] Using the above methodology, the amount of subsidy for all other exporters in Turkey is \$0.09 TL/kg or 4.2%, expressed as a percentage of the export price.

#### Summary of Results – Subsidy

[107] A summary of the results of the subsidy investigation respecting all subject goods released into Canada during the subsidy POI follows:

#### Summary of Results - Subsidy Period of Investigation (January 1, 2016 to November 30, 2017)

Country of Origin or Export	Amount of Subsidy*
<b>Turkey</b>	
Durum Gıda Sanayi ve Ticaret A.Ş.	1.4%
All Other Exporters	4.2%

\* Expressed as a percentage of the export price.

[108] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of the goods of an exporter if the CBSA is satisfied that the goods have not been subsidized or the amount of subsidy on the goods of that exporter is insignificant.

[109] Pursuant to subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the export price of the goods is defined as insignificant. The goods under investigation have been subsidized and the amounts of subsidy on the goods are above 1% and are, therefore, not insignificant.

## **DECISIONS**

[110] On June 26, 2018, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made final determinations of dumping and subsidizing respecting certain dry wheat pasta originating in or exported from Turkey.

## **FUTURE ACTION**

[111] The provisional period began on March 28, 2018, and will end on the date the CITT issues its finding. The CITT is expected to issue its decision by July 26, 2018. Provisional anti-dumping and countervailing duties will continue to apply until this date on imports of subject goods from Turkey. For further details on the application of provisional duties, refer to the Statement of Reasons issued for the preliminary determinations, which is available through the CBSA's website at: [www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html).

[112] If the CITT finds that the dumped and subsidized goods have not caused injury and do not threaten to cause injury, all proceedings will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.

[113] If the CITT finds that the dumped and subsidized goods have caused injury, the anti-dumping and/or countervailing duties payable on subject goods released by the CBSA during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released by the CBSA after the date of the CITT's finding will be subject to anti-dumping duty equal to the margin of dumping and countervailing duty equal to the amount of subsidy.

[114] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act* apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[115] Under certain circumstances, anti-dumping and/or countervailing duty can be imposed retroactively on subject goods imported into Canada. When the CITT conducts its inquiry on material injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of the investigations constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the CITT issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determinations could be subject to anti-dumping and/or countervailing duty.

[116] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

### **PUBLICATION**

[117] A notice of these final determinations of dumping and subsidizing will be published in the Canada Gazette pursuant to paragraph 41(3)(a) of SIMA.

### **INFORMATION**

[118] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's website at the address below. For further information, please contact the officers identified as follows:

**Mail:** SIMA Registry and Disclosure Unit  
Trade and Anti-dumping Programs Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11<sup>th</sup> floor  
Ottawa, Ontario K1A 0L8  
Canada

**Telephone:** Kevin Lambertsen 613-954-0689  
Dana Diab 613-960-6096

**E-mail:** [simaregistry@cbsa-asfc.gc.ca](mailto:simaregistry@cbsa-asfc.gc.ca)

**Web site:** [www.cbsa-asfc.gc.ca/sima/lmsi](http://www.cbsa-asfc.gc.ca/sima/lmsi)



Doug Band  
Director General  
Trade and Anti-dumping Programs Directorate

### **ATTACHMENTS**

- Appendix 1: Summary of Margins of Dumping and Amounts of Subsidy**
- Appendix 2: Summary of Findings for Subsidy Programs**
- Appendix 3: Dumping and Subsidy Representations**

**APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING  
AND AMOUNTS OF SUBSIDY**

Country of Origin or Export	Margin of Dumping*	Amount of Subsidy*	Amounts of Subsidy per kilogram
<b>Turkey</b>			
Durum Gıda Sanayi ve Ticaret A.Ş.	7.0%	1.4%	0.025 TL/kg
All Other Exporters	99.9%	4.2%	0.09 TL/kg

\* As a percentage of export price.

Note: The margins of dumping reported in this table were determined by the CBSA for the purposes of the final decisions. These margins may not reflect the amount of anti-dumping duty to be levied on future importations of dumped goods. In the event of an injury finding by CITT, normal values and/or amounts of subsidy for future shipments to Canada have been provided to the exporters who provided sufficient information in their response to the CBSA RFI, as appropriate. These normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods and amounts of subsidy should be obtained from the exporters. Imports from any other exporters will be subject to an anti-dumping duty rate and a countervailing duty rate, as applicable, in accordance with a ministerial specification and in an amount equal to the margin of dumping or the amount of subsidy found for “all other exporters” at the final determination.

Section 10 of SIMA directs that where the whole (or a portion of the) margin of dumping is attributable to an export subsidy, that portion of the margin of dumping shall not be leviable, collectable and payable as anti-dumping duty.

Please consult the [SIMA Self-Assessment Guide](#) for more detailed information explaining how to determine the amount of SIMA duties owing.

Normally, normal values will not be applied retroactively. However, normal values may be applied retroactively in cases where the parties have not advised the CBSA in a timely manner of substantial changes that affect values for SIMA purposes. Therefore, where substantial changes occur in prices, market conditions, costs associated with production and sales of the goods, the onus is on the concerned parties to advise the CBSA.

## **APPENDIX 2 – SUMMARY OF FINDINGS FOR SUBSIDY PROGRAMS**

This Appendix consists of descriptions of the subsidy programs which the responding exporter, Durum Gıda Sanayi ve Ticaret A.Ş. (Durum Gıda), benefited from during the course of the subsidy Period of Investigation (POI), other potentially actionable subsidy programs identified by the Canada Border Services Agency (CBSA) that were not used by the responding exporter in the subsidy POI and programs found not to exist.

The CBSA has used the best information available to describe the potentially actionable subsidy programs that were not used by Durum Gıda in the current investigation. This includes using information obtained from CBSA research on potential subsidy programs in Turkey and information provided by the responding government, exporters and related suppliers and descriptions of programs in the complaint.

At the preliminary determination, the CBSA determined that these two programs initially investigated were not used by any exporters in Turkey and were removed from the investigation:

Program 4: Turk Eximbank Credit Programs  
Program 7: Resource Utilization Support Fund Levy Exemption on Export-Related Loans

Details on these aforementioned programs can be found in the CBSA's preliminary determination *Statement of Reasons*.

### **Subsidy Programs Used by Durum Gıda**

#### **Program 1: Export Subsidy Program for Agricultural Products**

This program is made available pursuant to Decisions 2016/1 and 2016/16 of the Money-Credit and Coordination Council, applied between 2016-01-01 and 2017-12-31. The Ministry of Economy, General Directorate of Exports is responsible for administering and enforcing the provisions of this program as well as determining the application procedures and principles of the Decisions.

The policy objective of this program is to develop Turkey's export potential in processed agricultural products.

Exporters benefit from this program by having taxes, tax penalties, social security premiums, etc. reduced or exempted as the result of export sales of dry wheat pasta. For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

The information available also indicates that this program is considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

**Program 6: Deduction From Taxable Income for Export Revenue**

This program is made available pursuant to Article 40, Clause 1 of Income Tax Law No. 193 dated January 6, 1961, which was amended by Law No. 4108 dated June 2, 1995. The program is administered by the Ministry of Finance.

The objective of this program is to provide taxpayers with an additional deduction of a lump sum amount from their gross income resulting from exports, construction, maintenance, assembly and transportation activities abroad.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

The information available also indicates that this program is considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as is contingent upon export performance and, therefore, constitutes a prohibited subsidy as defined in subsection 2(1) of SIMA.

**Program 9: Input Materials Provided by Government at Less than Fair Market Value**

The nature of the subsidy relates to Durum Gida's purchases of durum wheat, a raw material input used in the production of dry wheat pasta, from the Turkish Grain Board (TMO), an SOE, at prices less than fair market value.

An amount of subsidy for this program for the purposes of the final determination was determined by comparing prices paid to TMO for durum wheat purchased during the POI with prices paid to private non-SOEs in Turkey for durum wheat purchased during the same period.

SOEs may be considered to constitute "government" if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- evidence that an entity is, in fact, exercising governmental functions; or
- evidence that a government exercises meaningful control over an entity.



The following factors are present which indicate that the GOT exercises meaningful control over the TMO:

- Government appointment of directors or chief executives, and/or political influence over choice of appointees;
- The GOT owns 100% of the capital of TMO;
- The government approves the entity's business plans or otherwise exercises oversight over its functions per decree law number 233

The TMO is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, TMO can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(c) of SIMA, i.e., the government provides goods other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods in the territory of the government providing the subsidy, and the price at which the goods were provided by that government.

For the purposes of the final determination, this program is considered to be a specific subsidy under paragraph 2(7.3)(a) of SIMA as there is exclusive use of the subsidy by a limited number of enterprises.

#### **Other Potentially Actionable Subsidy Programs Identified by the CBSA that were Not Used by Durum Gida**

Based on the information available from the GOT and Durum Gida, for purposes of the final determination, the CBSA has found that these programs were not used by Durum Gida. As noted in the body of this document, no other exporters submitted a complete response to the Subsidy RFI, which has limited the CBSA's ability to conduct a proper analysis of additional programs for the final determination.

Based on the information available from the complaint and from the GOT, these programs may constitute financial contributions provided by the GOT, confer benefits to companies, and may be considered to be specific. Therefore, for purposes of the final determination, these programs appear to be countervailable.

#### **Program 8: VAT and Special Consumption Tax (SCT) Exemption on the Delivery of Diesel Fuel to the Vehicles Carrying Exporting Goods**

Exemption of VAT is regulated in Article 14.3 of the Value Added Tax Law No. 3065 and SCT Exemption is regulated in Article 7/A of the Special Consumption Tax Law No. 4760. The program was established on June 1, 2006 and is administered by the Ministry of Finance.

According to VAT Law No.3065, overseas transport activities are exempt from VAT on condition of reciprocity. The main purpose of SCT exemption is to mitigate the negative effects of high levels of indirect taxes that prevail in Turkey on international and transit transportation.

This program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

#### **Program 10: Rediscount Program**

This program is made available through the Turk Eximbank's Law, Principles and Articles of Association. The program was established on October 12, 1992 and is administered by the Turk Eximbank.

The purpose of the program is to provide financial support to exporters, manufacturer-exporters and export – oriented manufacturers in the preparatory stage of their exports. The program aims at increasing the competitiveness of Turkish exporters in foreign markets.

SOEs may be considered to constitute "government" if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- evidence that an entity is, in fact, exercising governmental functions; or
- evidence that a government exercises meaningful control over an entity.

The following factors are present which indicate that the GOT exercises meaningful control over the Turk Eximbank:

- Government appointment of directors or chief executives, and/or political influence over choice of appointees;
- The company's ability to transfer ownership rights is restricted or its equity is in some other way "locked-in";
- The government approves the entity's business plans or otherwise exercises oversight over its functions per decree law number 233

Decree law number 3332 outlines the GOT's regulation of the Turk Eximbank.

The Turk Eximbank is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, the Turk Eximbank can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

### **Program 11: Pre-Shipment Export Credit Program**

This program is made available through the Turk Eximbank's Law, Principles and Articles of Association. The program was established in 1989 and is administered by the Turk Eximbank.

The purpose of PSEC is to provide financial support, starting from the early stages of production, to exporters, manufacturer-exporters and export – oriented manufacturers, except Foreign Trade Companies, in return for the export commitment of Turkish origin goods. The facilities aim at increasing the competitiveness of Turkish exporters in foreign markets.

PSEC-Priority Investment Areas Pre-Shipment Export Credit Program is a sub-program of PSEC extended in Turkish Lira to exporters, manufacturer-exporters and export – oriented manufacturers, except Foreign Trade Companies, located in Turkey's priority investment areas. The program aims at eliminating the social and economic gaps that exist between these regions and Turkey's more developed regions.

PSEC-Free Trade Zone Pre-Shipment Foreign Currency Export Credit Program is another subprogram of PSEC extended in foreign currency to companies having operating license for manufacturing and located in Turkey's free trade zone areas. The program aims at providing financial support to pertinent companies as well as increasing their sales to foreign markets.

As discussed in Program 10, the Turk Eximbank is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, the Turk Eximbank can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

#### **Program 12: Pre-Export Credit Program**

This program is made available through the Turk Eximbank's Law, Principles and Articles of Association. The program was established in 1994 and is administered by the Turk Eximbank.

The purpose of PEC Program is to provide financial support to exporters, manufacturer-exporters and export – oriented manufacturers, except Foreign Trade Corporate Companies (FTCC) and Sectoral Foreign Trade Companies (SFTC), in return for the export commitment of Turkish origin goods. The facilities aim at increasing the competitiveness of Turkish exporters in foreign markets.

As discussed in Program 10, the Turk Eximbank is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, the Turk Eximbank can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

#### **Program 13: The Export Oriented Working Capital Credit Program**

This program is made available through the Turk Eximbank's Law, Principles and Articles of Association. The program was established in January 1, 2012 and is administered by the Turk Eximbank.

This program was established with the aim of financing raw materials, intermediate goods, machinery and equipment purchases and other financial needs of companies. Manufacturers and manufacturer-exporter firms which are established in Turkey and which produce export oriented Turkish products are eligible to apply for this credit program. Purchasing of raw materials and intermediate goods are financed based on completed procurement within the framework of invoices. The maturity for this program is three years with one year grace period.

As discussed in Program 10, the Turk Eximbank is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, the Turk Eximbank can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

#### **Program 14: Post-Shipment Rediscount Credit**

This program is made available through the Turk Eximbank's Law, Principles and Articles of Association. The program was established in 1997 and is administered by the Turk Eximbank.

The program aims at increasing the competitiveness of Turkish exporters in international markets by enabling them to sell Turkish goods on deferred payment terms and eliminating overseas risks; thereby encouraging them to enter into new and target markets.

As discussed in Program 10, the Turk Eximbank is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, the Turk Eximbank can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

### **Program 15: Specific Export Credit Program**

This program is made available through the Turk Eximbank's Law, Principles and Articles of Association. The program was established in 1997 and is administered by the Turk Eximbank.

Specific Export Credit Programme is medium-term pre-shipment financing provided to contractors that have overseas activities, exporters, exporter-manufacturers' foreign currency generating projects which cannot be financed via existing TE credits. It aims to meet the specific requirements of Turkish exporters, manufacturers/exporters and contractors that have overseas activities through medium-term financing funded by international financing organizations such as World Bank, Multilateral Investment Guarantee Agency (MIGA), Council of Europe Development Bank (CEB) and thus, encouraging the contractors that have overseas activities, exporters, exporter-manufacturers' projects.

As discussed in Program 10, the Turk Eximbank is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, the Turk Eximbank can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

### **Program 16: Short-Term Export Credit Insurance Program**

This program is made available through the Turk Eximbank's Law, Principles and Articles of Association. The program was established in 1987 and is administered by the Turk Eximbank.

The Short Term Export Credit Insurance Program (ST – ECIP) is a non-cash program of the Turk Eximbank offered to the manufacturer exporters, exporters, overseas investors/contractors and companies engaged in foreign currency earning services. It provides Turkish exporters with one-year blanket insurance coverage for exports purchased on short term credits. The percentage of cover is up to 90 % for losses due commercial risks for the shipments to be paid up to 360 days. Main objectives are to increase the market share of Turkey in international trade, enhance the competitiveness of Turkish exporters and contractors as well as to create opportunities in newly emerging markets.

As discussed in Program 10, the Turk Eximbank is an SOE that is granted or vested with authority by statute and is meaningfully controlled by the GOT. Therefore, the Turk Eximbank can be considered government pursuant to subsection 2(1) of SIMA.

For the purposes of the final determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a complete response by any other exporter, there is not sufficient information on the record to determine whether this subsidy is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in Turkey and therefore appears to be specific.

### **Identified Programs Found Not to be Subsidies**

#### **Program 2: Inward Processing Regime**

This program is made available pursuant to the Resolution Concerning Inward Processing Regime (“The Resolution No. 2005/8391”) and was established on December 31, 1995. The program is administered by the Ministry of Economy.

The policy behind this program is to give Turkish manufacturers access to raw materials at world market prices and the opportunity to compete in the international markets. The Inward Processing Regime, is a system allowing Turkish manufacturers/exporters to obtain raw materials, intermediate unfinished goods that are used in the production of the exported goods without paying customs duty including Value Added Tax and being subject to commercial policy measures if any.

Regulations 35 and 35.01 of the Special Import Measures Regulations pertain to the determination of the amount of subsidy when the subsidy takes the form of an exemption or remission of duties and taxes in excess of that permitted under SIMA. These provisions relate to the definition of “subsidy” found paragraph 2(1)(a) of SIMA. This provision provides that a subsidy does not include the amount of any duty or internal tax imposed on any goods by the government of the country of origin or export which is exempted or relieved because the goods have been exported.

A subsidy for this program arises when the exemption or relief is in an amount greater than the amount of duty or taxes that would be paid if the goods had been consumed domestically rather than being exported.

### **CBSA Determination**

It was determined that no financial contribution was received by the exporter with respect to the terms outlined in subsection 2(1.6) of SIMA during the POI. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

### **Program 3: Investment Encouragement Program**

This program is made available pursuant to the provisions of the Council of Ministers' Decree No. 2012/3305 which has been in force since June 15, 2012. The program is administered by the Ministry of Economy, Directorate General for Incentives Implementation and Foreign Investment. The Ministry of Finance is also responsible for the implementation of any tax reductions.

The government policy behind this program is to steer savings into high added value investments, to boost production and employment, to encourage regional, large scale and strategic investments with high research and development content for increasing international competitiveness, to increase foreign direct investments, to reduce regional development disparities, and to promote investments for clustering, environment protection and R&D.

Producers can benefit from this program in a number of different ways, including: Customs Duty and VAT exemptions, interest support, tax reductions, land allocation, tax refunds, social security premium support and income tax withholding support.

### **CBSA Determination**

It was determined that this program was not specific as information from the granting authority indicates that the program is generally available. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

### **Program 5: Small and Medium Enterprises Support for Pasta Producers - General Support Program**

This program is made available through the Small and Medium Enterprises Development Organization (KOSGEB) Law, Regulation on Support Programs of the Small and Medium Enterprises Development Organization (KOSGEB), and General Support Program and was entered into force on June 15, 2010. Administration and operation of the program is carried out by Small and Medium Enterprises Development Organization (KOSGEB).



The purpose of this program is to increase the share and effectiveness of small and medium-sized enterprises in meeting economic and social needs of Turkey, increase their competitiveness and to increase the level of economic integration.

#### **CBSA Determination**

It was determined that this program was not specific as information from the granting authority indicates that the program is generally available. Therefore, this program does not constitute a subsidy for the purposes for the final decision.

## **APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS**

Case arguments were received on behalf of the Canadian Pasta Manufacturers Association (the Complainant),<sup>24</sup> and on behalf of Durum Gida Sanayi ve Ticaret A.Ş. (Durum Gida).<sup>25</sup>

The CBSA received reply submissions on behalf of the Complainant,<sup>26</sup> and on behalf of Durum Gida.<sup>27</sup>

Certain details provided in case arguments and reply submissions were qualified as confidential information by the submitting counsel. This has restricted the ability of the CBSA to discuss all issues raised in these submissions.

The material issues raised by parties through case briefs are summarized as follows:

### **DUMPING REPRESENTATIONS**

#### **Cost of Durum Wheat**

##### **Case Brief**

Counsel for the Complainant argued that the dry wheat pasta exported to Canada requires No. 1 grade durum wheat during the production of dry wheat pasta, a higher quality grade of wheat than is used in dry wheat pasta produced for the Turkish domestic market. The Complainant argued that Durum Gida's costs do not accurately reflect the proper grade of wheat used in the production of dry wheat pasta exported to Canada. As such, upward adjustments to the normal value must be made to reflect the true cost difference of durum wheat used.

##### **Reply Brief**

Counsel for Durum Gida argued that Durum Gida provided accurate information to the CBSA to verify the costs of durum wheat and to confirm the grade of wheat used in production of dry wheat pasta.

##### **CBSA's Response**

The CBSA verified the costs and types of durum wheat used by Durum Gida during the final phase of the investigation through Supplemental RFIs and on-site verification. The CBSA is satisfied with the information produced by Durum Gida for the purposes of determining normal values.

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<sup>24</sup> Exhibit 145 (PRO) and 146 (NC) - Case Argument – The Canadian Pasta Manufacturers Association.

<sup>25</sup> Exhibit 147 (PRO) and 148 (NC) - Case Argument – Durum Gida Sanayi ve ticaret A.S.

<sup>26</sup> Exhibit 149 (PRO) and 150 (NC) - Reply submission - The Canadian Pasta Manufacturers Association.

<sup>27</sup> Exhibit 151 (PRO) and 152 (NC) - Reply Submission – Durum Gida Sanayi ve ticaret A.S.

## **Model Matching**

### **Case Brief**

Counsel for Durum Gida argued that the CBSA should have matched models by cut (e.g. short, long, and specialty) for the purposes of determining normal values. By utilizing the method the CBSA used for the purposes of estimating normal values at the preliminary determination which created more models, the CBSA eliminated export and domestic matches.

### **CBSA's Response**

Upon review of the information submitted by Durum Gida, although the selling prices usually do not vary within pasta groups, the CBSA found that the total costs of production at times varied within each pasta group (e.g. short, long, and specialty dry wheat pasta) for a given month. As a result, the CBSA determined normal values by dry wheat pasta model type (e.g. spaghetti, penne, linguini, rotini, etc.).

## **Selection of Domestic Customers**

### **Case Brief**

Counsel for Durum Gida argued that the CBSA should include sales to Durum Gida's largest domestic customer of like goods when determining normal values as they are in the same or substantially the same quantities as sales to Durum Gida's largest retail customer in Canada.

Counsel also argued that two of Durum Gida's importers in Canada should be treated as the same importer for SIMA purposes.

### **CBSA's Response**

For the purposes of the final determination, the CBSA determined that for export sales to Durum Gida's largest retail customer in Canada by quantity, Durum Gida's largest domestic customer by quantity is considered to be at the same or substantially the same quantities. As such, these domestic sales were included for the purposes of determining normal values.

The CBSA did not consider two export customers of Durum Gida to be the same importer. Each importer is a separate legal entity and shows up separately as the importer of record for their respective purchases of dry wheat pasta from Durum Gida.

## **Domestic sales from all Warehouses when Calculating Normal Values**

### **Case Brief**

For its domestic sales, Durum Gida sells dry wheat pasta which is shipped from several warehouses located across Turkey, including one in Mersin where all like goods in Turkey are produced. For its export sales to Canada, Durum Gida sells dry wheat pasta which is shipped from its warehouse in Mersin only, also where the subject goods are produced.

Counsel for Durum Gida argued that domestic sales of dry wheat pasta shipped from all warehouses in Turkey should be considered for the purposes of determining normal values as they are all produced and sold from the same factory as sales of dry wheat pasta to Canada.

### **CBSA's Response**

Where there were sufficient domestic sales of dry wheat pasta from the warehouse in Mersin, normal values were determined using section 15 of SIMA, for dry wheat pasta sold during the POI. Where there were no sufficient sales from the warehouse in Mersin, the CBSA looked at all domestic sales from all warehouses. Where there were sufficient sales from all other warehouses, the CBSA determined normal values using section 15.

The basis for the CBSA's decision is section 15(e) of SIMA, where normal values are determined per section 15 of SIMA "at the place from which the goods were shipped directly to Canada or, if the goods have not been shipped to Canada, at the place from which the goods would be shipped directly to Canada under normal conditions of trade".

### **General, Selling, and Administrative Offset**

#### **Case Brief**

Counsel for Durum Gida argued that the CBSA should consider certain subsidies received for the purposes of exporting dry wheat pasta to Canada as offsets to general, selling and administrative expenses used to calculate normal values of dry wheat pasta.

### **CBSA's Response**

The CBSA did not offset subsidies Durum Gida received by the GOT in Durum Gida's general, selling and administrative expense. There are no provisions in SIMA to allow subsidy offsetting of general, administrative and selling expenses when determining normal values.

## **SUBSIDY REPRESENTATIONS**

### **Investment Encouragement Program and Inward Processing Regime**

#### **Case Brief**

Counsel for Durum Gida argued that no real benefit was received from these programs and that the programs are not specific, thus they should not be considered subsidies.

## **CBSA's Response**

Upon review of the submissions from Durum Gida and the GOT during the final phase of the investigation, it was determined that Program 3 is generally available and not specific. Therefore, no amount of subsidy was calculated for this program and it was removed from the investigation. Additionally, the CBSA verified that no VAT exemption was granted in excess of the taxes that would otherwise have been payable for the Inward Processing Regime. Therefore, the program was removed from the investigation.

## **Program 6 – Deduction from Taxable Income for Export Revenue**

### **Case Brief**

Counsel for Durum Gida argued that the estimated amount of subsidy for program 6 at the preliminary determination was incorrect as benefits from this program received by both Arbel and Durum Gida were used in the calculation, whereas benefits from Durum Gida should only have been used.

### **CBSA's Response**

Upon review of the submissions from Durum Gida and Arbel during the final phase of the investigation, it was determined that Arbel's export sales were independent of Durum Gida's export sales. Benefits from Program 6 are awarded on the basis of the particular goods exported by Turkish companies. Arbel did not export dry wheat pasta to Canada and any benefits received from program 6 were the result of exporting other products. Durum Gida did export dry wheat pasta and received a benefit from Program 6 for exporting these goods. Therefore, since the only benefit from program 6 as the result of exporting dry wheat pasta to Canada was to Durum Gida, only the benefit received from program 6 by Durum Gida was used for the purposes of determining an amount of subsidy for this program.

## **Program 9 – Input Materials Provided by Government for Less than Fair Market Value**

### **Case Brief**

Counsel for Durum Gida argued that the CBSA should consider purchases of durum wheat from Arbel in its calculation of program 9 as Arbel and Durum Gida operate at an arm's length. Additionally, counsel argued that some purchases of wheat from TMO that were sold to third parties should be excluded. Lastly, counsel argued that the CBSA should do a benchmark analysis by wheat grades to have a proper apples to apples comparison.

## **CBSA's Response**

For the purposes of the final determination, the CBSA conducted a benchmark analysis of durum wheat purchases based on wheat grades. The CBSA is of the opinion that an analysis by wheat grade was the best method to accurately compare prices and to help prevent the benchmark prices from being skewed by higher or lower priced durum wheat at larger quantities.

The CBSA included purchases of durum wheat from Arbel in addition to non-SOE Turkish companies in its benchmark analysis in program 9. The CBSA is of the opinion that purchases of durum wheat from Arbel can be used in the benchmark analysis as these transactions were made at arm's length.

Lastly, durum wheat purchased from the TMO that were resold were excluded from the benchmark analysis. The CBSA excluded these sales as Durum Gida did not use these raw materials in the production of dry wheat pasta.