



DWP 2017 IN

OTTAWA, April 12, 2018

## STATEMENT OF REASONS

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

### DECISION

Pursuant to subsection 38(1) of the *Special Import Measures Act* (SIMA), the Canada Border Services Agency (CBSA) made preliminary determinations on March 28, 2018 respecting the dumping and subsidizing of 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 were invited for consultations pursuant to Article 13.1 of the *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.

### **PERIOD OF INVESTIGATION**

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

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

### **PROFITABILITY ANALYSIS PERIOD**

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

### **INTERESTED PARTIES**

#### **Complainant**

[13] 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

[14] The CPMA comprises 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

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

#### **Other Producers**

[16] 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>

[17] 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>

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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.

<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.

## **Importers**

[18] 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**

[19] 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>

[20] 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.

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

[22] Deficiencies were communicated to these two companies, however, these two companies did not furnish sufficient information in time for purposes of the preliminary determinations.

## **Government**

[23] 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.

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<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.

[24] 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**

[25] 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>**

[26] 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.

[27] 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).

[28] 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>**

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

[30] 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.

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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.

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

[31] 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.

[32] 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.

[33] 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**

[34] 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	

[35] The listing of tariff classification numbers is for convenience of reference only. 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.

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

[36] 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.

[37] 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>

[38] 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.

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



## THE CANADIAN INDUSTRY

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

## IMPORTS INTO CANADA

[40] During the preliminary phase of the investigations, the CBSA refined the estimated volume and value of imports based on information from CBSA import entry documentation and information received from exporters and importers.

[41] The following table presents the CBSA's analysis of imports of certain dry wheat pasta for purposes of the preliminary 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>

## REPRESENTATIONS

[42] Representations from counsel for the complainant were received on February 23, 2018 and February 27, 2018.<sup>20</sup> In these representations, the complainant provided comments with respect to the dumping and subsidy RFI responses received and noted deficiencies in these responses. In its representations provided on February 23, 2018, the complainant provided comments and evidence with respect to costs of subject goods exported to Canada by Durum Gida. The cost issues identified by the complainant include ensuring that all relevant costs are captured in related party transactions between Durum Gida and associated companies, ensuring that the costs of subject goods provided by Durum Gida are based on the same quality of durum wheat used to produce the subject goods shipped to Canada, and ensuring that the acquisition costs of durum wheat and pasta processing costs of Durum Gida are correct. In its representations of February 27, 2018, the complainant provided comments and evidence with respect to by-product offsets and selling expenses of subject goods exported to Canada by Durum Gida. The by-product offset issues identified by the complainant relate to offsets against the cost of production of subject goods. The selling cost issues identified by the complainant relate to the activities of Durum Gida in selling the subject goods to Canada and the like goods sold in its domestic market.

<sup>20</sup> Exhibit 79 (PRO) and Exhibit 80 (NC) – Letter from Canadian Pasta Manufacturer Association in regards to Raw Material Costs for Exports to Canada; Exhibit 82 (PRO) and Exhibit 83 (NC) - Letter from Canadian Pasta Manufacturer Association in regards to offset and selling costs; and Exhibit 85 (NC) - Letter from Canadian Pasta Manufacturer Association in regards to issues related to subsidies.

[43] The CBSA has noted these arguments and evidence submitted in the representations and will take them into consideration in the course of verifying information for the purposes of final decisions.

### **INVESTIGATION PROCESS**

[44] 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.

[45] 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.

[46] 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.

[47] 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 phase of the investigations.

[48] 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.

[49] Preliminary determinations are based on the information available to the CBSA at the time of the preliminary determinations. During the final phase of the investigations, additional information may be obtained and selected responding parties may be verified on-site, the results of which will be incorporated into the CBSA's final decisions, which must be made by June 26, 2018.

## **DUMPING INVESTIGATION**

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

### **Normal value**

[51] Normal values are generally estimated based on the domestic selling prices of like goods in the country of export, in accordance with the methodology 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 the methodology of paragraph 19(b) of SIMA.

### **Export Price**

[52] The export price of goods sold to importers in Canada is generally estimated in accordance with the methodology of 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.

[53] Where there are sales between associated persons and/or a compensatory arrangement exists, the export price is estimated based on the importer's resale price of the imported goods in Canada to unrelated 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 included in the resale price 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 as provided for in paragraphs 25(1)(c) and 25(1)(d) of SIMA.

### **Margin of Dumping**

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

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

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

[55] 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).

[56] Durum Gida provided a substantially complete response to the Dumping RFI. The CBSA will continue to collect and verify information from Durum Gida during the final phase of the investigation.

[57] 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 estimated in accordance with the methodology of 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 estimated using the methodology of paragraph 19(b) of SIMA, based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs and a reasonable amount for profits.

[58] The amount for profits was estimated 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.

[59] For subject goods exported by Durum Gida to unrelated importers in Canada during the POI, export prices were estimated using the methodology of 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.

[60] 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 estimated section 24 export prices with the estimated section 25 export prices. The amount for profit used for the section 25 calculations was estimated 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 estimated export prices in accordance with section 24 of SIMA were reliable for all sales and, therefore, export prices for sales to AGT were estimated using the methodology of section 24 of SIMA.

[61] For the preliminary determination, the total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 25.4% for Durum Gida expressed as a percentage of the export price.

#### All Other Exporters

[62] 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 estimated on the basis of facts available.

[63] In establishing the methodology for estimating 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.

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

[65] The CBSA examined the difference between the estimated normal value and the estimated 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.

[66] The CBSA considered that the highest amount by which the estimated normal value exceeded the estimated export price on an individual transaction of Durum Gida (expressed as a percentage of the export price), excluding anomalies, was an appropriate basis for estimating normal values. 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. Therefore, the normal values were estimated based on the estimated export price, plus an amount equal to 201.8% of that estimated export price.

[67] The CBSA considered that the information submitted on the CBSA customs entry documentation was the best information on which to estimate 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.

[68] Based on the above methodologies, for exporters that did not provide a response or provided an incomplete response to the dumping RFI, the margins of dumping of subject goods originating in or exported from Turkey were estimated to be 201.8%, expressed as a percentage of the export price.

## Summary of Preliminary Results - Dumping

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

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

Country of Origin or Export	Estimated Margin of Dumping*	Estimated Volume of Subject Goods as Percentage of Total Imports
<b>Turkey</b>		<b>12.9%</b>
Durum Gida Sanayi ve Ticaret A.Ş.	25.4%	
All Other Exporters	201.8%	

\* Expressed as a percentage of the export price.

[70] Under section 35 of SIMA, if at any time before making a preliminary determination the CBSA is satisfied that the actual and potential volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to goods of that country.

[71] Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[72] The volume of subject goods from Turkey is above 3% of the total volume of goods released into Canada from all countries. Based on the definition above, the volume of subject goods from Turkey is, therefore, not negligible.

[73] If, in making a preliminary determination, the CBSA determines that the margin of dumping of the goods of a particular exporter is insignificant pursuant to subsection 38(1.1) of SIMA, the investigation will continue in respect of those goods but provisional duties will not be imposed on goods of the same description imported during the provisional period. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. The margins of dumping, estimated for the exporters of subject goods, are greater than the threshold of 2% and are therefore not considered insignificant.

[74] A summary of the estimated margins of dumping and provisional duties by exporter is presented in **Appendix 1**.

## **SUBSIDY INVESTIGATION**

[75] 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.

[76] 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.

[77] 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.

[78] 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.

[79] 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.

[80] 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.

[81] 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.

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

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

[83] 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.

[84] The GOT provided a substantially complete response to the CBSA’s Government Subsidy RFI.<sup>21</sup>

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

[86] At initiation of the subsidy investigation, the CBSA requested information on eight potential subsidy programs that could potentially confer benefits to producers/exporters of dry wheat pasta in Turkey. Based on preliminary analysis of the GOT’s submission and the exporter’s submission, the CBSA added eight new subsidy programs and removed two subsidy programs.

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

[87] 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>22</sup>

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<sup>21</sup> Exhibits 065 (PRO) and 066 (NC) – Response to Government Subsidy RFI - Government of Turkey.

<sup>22</sup> Exhibits 055 (PRO) and 056 (NC) – Response to Exporter Subsidy RFI - Arbel Bakliyat Hububat Sanayi ve Ticaret A.Ş. and Durum Gıda Sanayi ve Ticaret A.Ş.



[88] For purposes of the preliminary determination, Durum Gida benefitted from the following subsidy programs during the subsidy POI:

- Program 1: Export Subsidy Program for Agricultural Products
- Program 3: Investment Encouragement Program
- Program 6: Deduction From Taxable Income for Export Revenue
- Program 9: Input Materials Provided by Government at Less than Fair Market Value

[89] For purposes of the preliminary determination, 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 Gida/Arbel and the GOT. The programs used by the responding exporter are listed in **Appendix 2**.

[90] The estimated amount of subsidy for Durum Gida is 1.9%, expressed as a percentage of the export price.

[91] The CBSA will continue to analyze the information submitted by the GOT and Durum Gida/Arbel during the final phase of the investigation. The CBSA may also consider any other potential subsidy programs that have not yet been identified.

#### All Other Exporters

[92] The GOT provided information on potentially actionable subsidy programs that conferred benefits to other exporters of subject goods who did not submit complete responses to the Subsidy RFI. Since the CBSA is unable to verify the amounts stated by the GOT with any exporter response other than Durum Gida, the CBSA did not use any benefit amount provided by the GOT to calculate individual amounts of subsidy for all other exporters. The CBSA was unable to utilize any exporter specific data such as cost of production and quantity of dry wheat pasta produced and sold that is normally used when calculating an amount of subsidy.

[93] For all other exporters of subject goods originating in or exported from Turkey that did not provide a response to the Subsidy RFI or did not furnish sufficient information, the CBSA estimated an amount of subsidy on the basis of the following methodology:

- 1) the estimated amount of subsidy for each of the 4 programs, as found at the preliminary determination, for the producer/exporter Durum Gida that provided a substantially complete response to the Subsidy RFI, plus;
- 2) the average of the estimated amounts of subsidy for the 4 programs referenced in (1), applied to each of the remaining 10 potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the preliminary determination.

[94] Using the above methodology, the estimated amount of subsidy for all other exporters in Turkey is 5.8%, expressed as a percentage of the export price.

## Summary of Preliminary Results – Subsidy

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

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

Country of Origin or Export	Estimated Amount of Subsidy*	Estimated Volume of Subject Goods as Percentage of Total Imports
<b>Turkey</b>		<b>12.5%</b>
Durum Gıda Sanayi ve Ticaret A.Ş.	1.9%	
All Other Exporters	5.8%	

\* Expressed as a percentage of the export price.

[96] Under section 35 of SIMA, if, at any time before making a preliminary determination, the CBSA is satisfied that the actual and potential volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to goods of that country.

[97] Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[98] The volume of subject goods from Turkey is above 3% of the total volume of goods released into Canada from all countries. Based on the definition above, the volume of subject goods from Turkey is, therefore, not negligible.

[99] If, in making a preliminary determination, the CBSA determines that the amount of subsidy on the goods of an exporter is insignificant pursuant to subsection 38(1.1) of SIMA, the investigation will continue in respect of those goods but provisional duties will not be imposed on goods of the same description imported during the provisional period. 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 amounts of subsidy, estimated in respect of the exporters, are above 1% of the export price and are, therefore, not insignificant.

[100] A summary of the estimated amounts of subsidy and provisional duties by exporter are presented in **Appendix 1**.

## **DECISIONS**

[101] On March 28, 2018, pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing respecting certain dry wheat pasta originating in or exported from Turkey.

## **PROVISIONAL DUTY**

[102] Subsection 8(1) of SIMA provides that where a preliminary determination has been made and where the CBSA considers that the imposition of provisional duty is necessary to prevent injury, retardation or threat of injury, the importer in Canada of dumped and/or subsidized goods shall pay, or post security for, provisional duty. If, in making the preliminary determination, a determination is made that the estimated margin of dumping and/or the estimated amount of subsidy on the goods of an exporter is insignificant, subsection 8(1.3) provides that provisional anti-dumping and/or countervailing duties will not be imposed on importations of the goods from that particular exporter.

[103] Pursuant to subsection 8(1) of SIMA, provisional duty payable by the importer in Canada will be applied to dumped and subsidized imports of certain dry wheat pasta that are released from the CBSA during the period commencing on the day the preliminary determinations are made and ending on the earlier of the day on which the CBSA causes the investigations in respect of any goods to be terminated, in accordance with subsection 41(1), or the day on which the CITT makes an order or finding. The CBSA considers that the imposition of provisional duty is needed to prevent injury. As noted in the CITT's preliminary determination, there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain dry wheat pasta have caused injury or are threatening to cause injury to the domestic industry.

[104] Imports of certain dry wheat pasta originating in or exported from Turkey and released by the CBSA on or after March 28, 2018, will be subject to provisional duties equal to the estimated margin of dumping and estimated amount of subsidy, expressed as a percentage of the export price of the goods per exporter. **Appendix 1** contains the estimated margins of dumping, estimated amounts of subsidy and the rates of provisional duty.

[105] Importers are required to pay provisional duty in cash or by certified cheque. Alternatively, they may post security equal to the amount payable. Importers should contact their CBSA regional office if they require further information on the payment of provisional duty or the posting of security. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the import documents, an administrative monetary penalty could be imposed. The imported goods are also subject to the *Customs Act*. As a result, failure to pay duties within the specified time will result in the application of the provisions of the *Customs Act* regarding interest.

## **FUTURE ACTION**

### **The Canada Border Services Agency**

[106] The CBSA will continue its investigations of the dumping and subsidizing and will make final decisions by June 26, 2018.

[107] If the margins of dumping or amounts of subsidy of any exporter are found to be insignificant, the CBSA will terminate the investigation in respect of goods of that exporter and any provisional duty paid or security posted will be refunded to importers, as appropriate. If the CBSA is satisfied that the goods were dumped and/or subsidized, final determinations will be made.

### **The Canadian International Trade Tribunal**

[108] The CITT has begun its inquiry into the question of injury to the Canadian industry. The CITT is expected to issue its finding by July 26, 2018.

[109] If the CITT finds that the dumping has not caused injury, retardation or is not threatening to cause injury, the proceedings will be terminated and all provisional anti-dumping duty collected or security posted will be refunded.

[110] If the CITT makes a finding that the dumping has caused injury, retardation or is threatening to cause injury, anti-dumping duty in an amount equal to the margin of dumping will be levied, collected and paid on imports of dry wheat pasta that are of the same description as goods described in the CITT's finding.

[111] If the CITT finds that the subsidizing has not caused injury, retardation or is not threatening to cause injury, the proceedings will be terminated and all provisional countervailing duty collected or security posted will be refunded.

[112] If the CITT makes a finding that the subsidizing has caused injury, retardation or is threatening to cause injury, countervailing duties in the amount equal to the amount of subsidy on the imported goods will be levied, collected and paid on imports of dry wheat pasta that are of the same description as goods described in the CITT's finding.

[113] For purposes of the preliminary determination of dumping or subsidizing, the CBSA has responsibility for determining whether the actual and potential volume of goods is negligible. After a preliminary determination of dumping or subsidizing, the CITT assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the CITT is required to terminate its inquiry in respect of any goods if the CITT determines that the volume of dumped or subsidized goods from a country is negligible.

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[114] 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.

[115] 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.

## **UNDERTAKINGS**

[116] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[117] Similarly, after a preliminary determination of subsidizing by the CBSA, a foreign government may submit a written undertaking to eliminate the subsidy on the goods exported or to eliminate the injurious effect of the subsidy, by limiting the amount of the subsidy or the quantity of goods exported to Canada. Alternatively, exporters with the written consent of their government may undertake to revise their selling prices so that the amount of the subsidy or the injurious effect of the subsidy is eliminated.

[118] In view of the time needed for consideration of undertakings, written undertaking proposals should be made as early as possible, and no later than 60 days after the preliminary determinations of dumping and subsidizing. Further details regarding undertakings can be found in the CBSA's Memorandum D14-1-9, available online at: [www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-9-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-9-eng.html).

[119] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone number, mailing address and e-mail address to one of the officers identified in the "Information" section of this document.

[120] If undertakings were to be accepted, the investigations and the collection of provisional duties would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA's investigations be completed and that the CITT complete its injury inquiry.

### **PUBLICATION**

[121] A notice of these preliminary determinations of dumping and subsidizing will be published in the *Canada Gazette* pursuant to paragraph 38(3)(a) of SIMA.

### **INFORMATION**

[122] 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:** Jody Grantham 613-954-7405  
Kevin Lambertsen 613-954-0689

**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)



APR 10 2018

Doug Band  
Director General  
Trade and Anti-dumping Programs Directorate

### **ATTACHMENTS**

- Appendix 1: Summary of Estimated Margins of Dumping, Estimated Amounts of Subsidy and Provisional Duties Payable**
- Appendix 2: Summary of Preliminary Findings for Subsidy Programs**

**APPENDIX 1 – SUMMARY OF ESTIMATED MARGINS OF DUMPING,  
ESTIMATED AMOUNTS OF SUBSIDY AND PROVISIONAL DUTIES PAYABLE**

The following table lists the estimated margins of dumping, the estimated amounts of subsidy, and the provisional duty by exporter as a result of the decisions mentioned above. Imports of subject goods released from the Canada Border Services Agency on or after March 28, 2018, will be subject to provisional duties at the rates specified below.

<b>Country of Origin or Export</b>	<b>Estimated Margin of Dumping*</b>	<b>Estimated Amount of Subsidy*</b>	<b>Total Provisional Duty Payable*</b>
<b>Turkey</b>			
Durum Gıda Sanayi ve Ticaret A.Ş.	25.4%	1.9%	27.3%
All Other Exporters	201.8%	5.8%	207.6%

\* As a percentage of export price.

## **APPENDIX 2 – SUMMARY OF PRELIMINARY 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) and 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.

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.

### **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 preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.



### **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. For the purposes of the preliminary 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.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.3)(d) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

### **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 preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

### **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 preliminary determination was estimated 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 preliminary 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 preliminary 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. This will be further analyzed in the final phase of the investigation.

## **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 preliminary determination, the CBSA has found that these programs were not used by Durum Gida. 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 appear to be specific. Therefore, for purposes of the preliminary determination, these programs appear to be countervailable. The CBSA will continue to further investigate these programs in the final phase of the investigation.

### **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. These amounts will be established during the final phase of the investigation.

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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

**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.

For the purposes of the preliminary determination, this program is a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and confers a benefit to the recipient equal to the amount of the grant.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.3)(d) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available. This will be further analyzed in the final phase of the investigation.

**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.

The information available also indicates that this program may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

## **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 GOTs 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 preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

### **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 preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

### **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.

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For the purposes of the preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

### **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 3 years with one year grace period.

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For the purposes of the preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

#### **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 preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

#### **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 preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

#### **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 preliminary 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 may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

**Identified Programs Found Not to be Subsidies**

**Program 4: Turk Eximbank Credit Programs**

This program consists of many sub-programs and was replaced with programs 10-16 as shown above.

**Program 7: Resource Utilization Support Fund Levy Exemption on Export-Related Loans**

This program is no longer in force in Turkey and was removed from the subsidy investigation.