the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14736 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–489–806]

Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Kristin Mowry, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4105 and 482–3798, respectively.

Final Determination

The Department determines that countervailable subsidies are being provided to manufacturers, producers, or exporters of pasta in Turkey. For information on the countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the preliminary affirmative determination in the Federal Register (60 FR 53747, October 17, 1995), the following events have occurred.

On October 21, 1995, we aligned the date of our final determination with the date of the final determination in the companion antidumping duty investigation of certain pasta from Turkey (60 FR 54847, October 26, 1995). Subsequently, the final determinations in the antidumping and countervailing duty determinations were postponed until June 3, 1996 (61 FR 1351, January 13, 1996).

Verification of the responses of the Government of Turkey (GOT), Filiz Gida Sanayi ve Ticaret (Filiz), Maktas Makarnacilik ve Ticaret (Maktas), Andas Gida Dagitim ve Ticaret A.S. (Andas), Dogus Holding A.S. (Dogus), and Aytac Dis Ticaret Yatirim Sanayi A.S. (Aytac) was conducted between October 30, 1995, and November 10, 1995. We verified that Aytac did act as the exporter of record for certain of Maktas'' sales of pasta to the United States during 1994 and that Aytac had transferred its rights to benefits with respect to those exports to Maktas. Furthermore, we verified that Aytac received no benefits during the POI. Based on this information, we have not calculated an individual countervailing duty rate for Aytac. If this company exports to the United States, it will be subject to the all others rate.

On February 14, 1996, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that date (61 FR 3672, February 1, 1996) (*see* Suspension of Liquidation section, below).

Petitioners and respondents filed case and rebuttal briefs on April 17, 1996 and April 22, 1996. The hearing in this case was held on April 25, 1996.

Scope of Investigation

The product covered by this investigation is certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this investigation is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. In the companion countervailing and antidumping duty investigations involving pasta from Italy, we have excluded imports of organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB). The Department has determined that AMAB is legally authorized to certify foodstuffs as organic for the Government of Italy (GOI). If certification procedures similar to those implemented by the GOI are established by the GOT for exports of organic pasta to the United States, we would consider an exclusion for organic pasta at that time.

The merchandise under investigation is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTS).* Although the *HTS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), which have been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Petitioners

The petition in this investigation was filed by Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc.

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is calendar year 1994.

Facts Available

Section 776(a)(2)(A) of the Act requires the Department to use the facts available ''if an interested party or any other person withholds information that has been requested by the administering authority or the Commission under this title.'' One of the companies included in this investigation, Oba, did not respond to our questionnaire. Section 776(b) of the Act provides that the administering authority may use an inference that is adverse to the interests of such a party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record. Because the petition did not provide subsidy rates, we were unable to use the petition as a source for facts available.

In the absence of verified data concerning benefits received by Oba during the POI, we have determined that rates based on record data obtained from similarly situated firms constitute the most appropriate data available. Therefore, we have used as the facts available for Oba the sum of the highest

rate calculated for each program used by any of the companies.

Based upon the responses to our questionnaires and the results of verification, we determine the following:

I. Programs Determined to be Countervailable

A. Pre-Shipment Export Loans

The Export Credit Bank of Turkey (Turk Eximbank) provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program was commenced in March 1989 in order to meet the financing needs of exporters and overseas contractors. Loans are made available to certified exporters who commit to a certain value of exports within a specified time period. Generally, loans are extended for 180 days, covering between 50 and 75 percent of the FOB value of the committed export value. During the POI, the food sector (including pasta) was eligible for pre-shipment export loans amounting to 75 percent of the committed FOB value of exports, for a maximum of 180 days. These loans were denominated in Turkish lira (TL).

Of the companies investigated, only Maktas received Eximbank Pre-Shipment Export Loans.

Short-term Loan Benchmark: Due to an average inflation rate in Turkey of 91 percent during the POI, interest rates have fluctuated significantly. Hence, we have calculated monthly benchmarks. (*See* section 355.44(b)(3)(iii) of the *Proposed Regulations*.)

As illustrated by section 355.44(b)(3) of our *Proposed Regulations,* the Department's practice is to use as its short-term benchmark the interest rate on the predominant alternative source of short-term financing in the country in question. Typically, we use national average benchmarks and not company-specific interest rates. However, the GOT responded that there is no predominant source of short-term financing in Turkey and that it does not maintain statistics concerning short-term interest rates. Moreover, our review of the *Annual Report of the Central Bank of Turkey* did not reveal any national average short-term interest rates.

Therefore, in the absence of our preferred benchmark, we have turned to company-specific interest rates. Specifically, we have used the average cost of Maktas' short-term commercial loans outstanding during each of the months it received Pre-Shipment Export Loans as our benchmark. We note that because of the way in which Maktas kept its records we were not able to calculate monthly benchmarks based only on loans taken out in each month. However, given the information available, we believe this monthly average cost of borrowing provides the most accurate measure of what Maktas would pay on a comparable commercial loan that it could actually obtain on the market. (*See* section 771(5)(E)(ii) of the Act.)

Based on our comparison of the benchmark interest rate to the rate paid by Maktas on its export loans, we have determined that these loans provide a countervailable subsidy within the meaning of section 771(5) of the Act. The loans are a direct transfer of funds from the GOT through commercial banks. They provide a benefit because the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan. Finally, the loans are specific because their receipt is contingent upon export performance.

We calculated the countervailable subsidy as the difference between actual interest paid on loans for shipments to the United States during the POI and the interest that would have been paid using the benchmark interest rates. This difference was divided by Maktas' total exports to the United States during the POI. On this basis, we determine the countervailable subsidy from this program to be 8.82 percent *ad valorem* for Maktas.

Respondents argue that the Department should use as its benchmark the interest rate on Central Bank Rediscount Loans. They point to the fact that Maktas received such loans during the POI and that this type of loan was available throughout the POI. Moreover, respondents argue, if the Department elects to use this benchmark, it must find that Eximbank Pre-Shipment Export Loans are not countervailable because, in two of nine months that Maktas received Pre-Shipment Export Loans, the interest rate on Central Bank Rediscount loans was lower than the rate for commercial loans obtained by Maktas.

We have not used the Central Bank Rediscount Loan rates as our benchmark, nor have we included Central Bank Rediscount Loans received by Maktas in calculating Maktas' average monthly cost of outstanding loans. Information obtained at verification indicates that the Central Bank Rediscount Loans are offered to increase liquidity in the economy. In light of the policy objectives of these loans, and the lack of any information that would support the conclusion that they were made as part of the Central Bank's commercial operations (if any), we have concluded that these loans should not be viewed as commercial loans. Moreover, while we have information on the terms of the Central Bank Rediscount Loans (90 days), we do not have information on the lengths of the other short-term loans Maktas had outstanding. Therefore, we have no basis to say that the Central Bank Rediscount Loans are more comparable to the Pre-Shipment Export Loans taken out by Maktas.

Petitioners urge the Department to rely on adverse facts available and use the highest rate per month from the various sources on the record (this includes Maktas' own rates, the overnight rates, the sale of government securities, etc.) as the benchmark rate. Petitioners believe adverse facts available is justified because they claim Maktas ''manipulated its rates'' and failed to cooperate with the Department's attempts to find the appropriate company-specific rates.

We disagree that adverse facts available are warranted in this situation. In seeking short-term loan benchmarks, it is our practice to request this information of the government. Companies are not asked to provide any short-term benchmark data. In this case, Maktas provided its own borrowing rates. As we learned at verification, those rates included the interest rate on the Eximbank Pre-Shipment Export loans. We have since verified the correct company specific interest rates and have used them in our calculation.

B. Pasta Export Grants

During 1994, the Central Bank of Turkey provided cash grants and government promissory notes or bonds to exporters of pasta. According to the GOT, the purpose of the program was to develop Turkey's export potential. In order to receive the grants, exporters were required to submit applications (including proof of exportation and payment from the customer) to the local office of the Central Bank. The exporter received a specified percentage of the FOB U.S. dollar price, subject to a cap.

We have determined that these export grants and bonds are countervailable subsidies within the meaning of section 771(5) of the Act. The grants and bonds are a direct transfer of funds from the GOT providing a benefit in the amount of the grant. Also, the grants and bonds are specific because their receipt is contingent upon export performance.

We have also determined that the benefits under this program are bestowed when the cash is received, in the case of grants, and on maturity date, in the case of promissory notes or

bonds. Regarding the bonds, although we note that there are no restrictions on their transfer or sale, markets have not developed that would allow exporters to convert their bonds to cash. Therefore, we have treated the subsidy as being received at the first point in time when the exporter knows with certainty the amount being received, which is the date of maturity.

We have further determined that the benefits under the Pasta Export Grant program are ''recurring.'' Once a company has exported and provided documentation to the local office of the Central Bank it becomes eligible for the Pasta Export Grants. The receipt of benefits is automatic and continues from year to year. (*See General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37268–69, July 9, 1993) (''General Issues Appendix'').)

To calculate the countervailable subsidy, we divided the total amount of cash grants received and the value of bonds maturing during the POI for exports to the United States (denominated in Turkish lira) by the total exports to the United States denominated in Turkish lira. On this basis, we determine the countervailable subsidy from this program to be 1.17 percent *ad valorem* for Filiz and 3.79 percent *ad valorem* for Maktas.

The GOT has stated that this program was terminated for pasta exports made on or after January 1, 1995, by a confidential government decree. However, we saw at verification that while this program had expired, it was reinstated with a new formula for determining the subsidy amount and a new time line for implementation. This reinstatement was effective September 29, 1995. Therefore, we do not view this program as having been terminated.

Respondents further argue that, should the Department value the benefits on an earned basis, it should then treat this program as having undergone a program-wide change, and benefits should be adjusted to reflect the newly-announced formula. As discussed above, we are not valuing the benefits on an earned basis. Moreover, we are not aware of any change in the reinstated program that would lead us to value the benefits on an earned basis. Therefore, because the benefits of the Pasta Export Grant Program are being valued on a received basis which, in the case of bonds is the date of maturity, the changes effectuated in September 1995 are not measurable and do not qualify as a program-wide change. (*See* section 355.50 of the *Proposed Regulations.*)

C. Free Wheat Program

During our verification of Filiz, we discovered that the company received free wheat under a GOT program. The program, established by Decree 93/4534, provides free wheat to companies that agree to export flour, pasta, semolina, or biscuits. The companies sign contracts with the Turkish Grain Board (TMO) committing to export a certain amount of their product in return for a pre-determined amount of durum wheat. Once the company has exported the product, it provides the TMO with copies of its export documents. The TMO examines the documents, and upon TMO approval, wheat is delivered to the company. We verified that the price of wheat is determined on the date of the TMO invoice and Filiz received seven invoices during 1994.

Filiz argues that it did not receive a benefit under the Free Wheat Program during the POI. Although the company received wheat in 1994, Filiz contracted with the TMO in 1993, and knew at the time of the contract precisely how much wheat it would receive for each ton of pasta exported. Filiz cites to section 355.48(b)(7) of the *Proposed Regulations* in support of its claim that the benefit of the Free Wheat Program was received in 1995. Petitioners assert that the applicable section of the *Proposed Regulations* is 355.48(b)(2), which discusses the governmental provision of goods or services. According to section 355.48(b)(2), the benefit for governmental provision of goods or services occurs ''at the time a firm pays, or in the absence of payment would have paid for the good or service.''

Section 355.48(b)(7) states that, in the case of an export benefit provided as a percentage of the value of the exported merchandise, the cash flow effect of the subsidy is deemed to occur on the date of export. Because the benefit from the Free Wheat program is not provided as a percentage of the value of the exported merchandise, we agree with petitioners that section 355.48(b)(7) does not apply to this program. The benefit from the GOT's provision of free wheat occurred when Filiz actually received the wheat. Therefore, pursuant to section 355.48(b)(2) we have determined that Filiz benefitted from the Free Wheat Program during the POI.

We have determined that the provision of free wheat to exporters of pasta is a countervailable subsidy within the meaning of section 771(5) of the Act. The program provides goods for less than adequate remuneration and is specific because its receipt is contingent upon export performance. To calculate the countervailable subsidy, we divided the total value of the free wheat provided to Filiz during the POI by the total value of the company's exports during the POI. On this basis, we determine the countervailable subsidy from this program to be 1.99 percent *ad valorem* for Filiz.

We have further determined that the benefits under the Free Wheat Program are ''recurring.'' Once a company has exported and provided documentation to the TMO it becomes eligible for the free wheat. The receipt of benefits is automatic and continues from year to year. (See Allocation section of the General Issues Appendix.)

Respondents argue that if the Department finds that Filiz received benefits during the POI, then the Department should treat the program as terminated and adjust the deposit rate accordingly. They assert that the GOT's statement that ''the subsidy program that was supposed to end on October 31, 1993 will be extended until November 28, 1993,'' and the statement that ''the wheat subsidy program will be terminated'' constitute clear evidence that the program has been terminated.

Petitioners disagree that the Department should consider the Free Wheat program terminated. They state that the only documentation on the record refers to the possible termination of the program. As such, the Department has insufficient evidence on the record to treat the program as terminated. We agree with petitioners and have not adjusted the deposit rate.

Respondents further assert that exporters were not allowed to receive benefits from the Free Wheat and Pasta Export Grant programs for the same exportation. Consequently, if countervailed, the Free Wheat program should not be subject to a deposit rate above the rate for the Pasta Export Grant program. Petitioners rebut respondents' claim that the Pasta Export Grant program and the Free Wheat program are mutually exclusive. They claim that respondents have provided no documentation to that effect.

We agree with respondents that Turkish pasta exporters cannot claim Pasta Export grants and Free Wheat on the same exportation. (Contrary to petitioners' assertions, the record evidence is clear on this point.) We further believe that our methodology appropriately accounts for this. Regarding Pasta Export grants, we have divided the total amount of benefit received on U.S. shipments in the POI by the total U.S. exports during the same period. The fact that export grants were not received on every shipment is reflected in this calculation. For the Free Wheat program, we divided the

value of free wheat received as a consequence of exports to all markets by total exports. The two rates, when added together, reflect the total grants and free wheat that were received on exports to the United States.

D. Payments for Exports on Turkish Ships/State Aid for Exports Program

At verification, GOT officials explained that the Payments for Exports on Turkish Ships program was instituted to aid industries producing processed goods. Under the program, exporters applied to the Central Bank for cash grants or bonds based on the number of tons of product transported by sea. As with the Pasta Export Grant program, payments are made to companies in the form of cash grants or bonds.

Filiz reported in its questionnaire response that it did not apply for, use, or benefit from this program during the POI. However, we discovered during verification that Filiz had applied for benefits on shipments made in both 1993 and 1994. We further verified that the company received payment during 1994 in the form of both cash grants and maturing bonds for certain of its 1993 applications, and was still waiting for payment in 1995 for applications filed in both 1993 and 1994. Additionally, contrary to the explanation provided by the GOT, Filiz officials explained that the program provided the company 15 U.S. dollars per ton for its exports made using Turkish ships and 7.50 U.S. dollars per ton for its exports made on non-Turkish ships.

We have determined that these export grants and bonds are countervailable subsidies within the meaning of section 771(5) of the Act. The grants and bonds are a direct transfer of funds from the GOT providing a benefit in the amount of the grant and bonds. Also, the grants and bonds are specific because their receipt is contingent upon export performance.

We have further determined that the benefits under the Payments for Exports on Turkish Ships program are ''recurring.'' Once a company has exported and provided documentation to the Central Bank it becomes eligible for the cash grants or bonds. The receipt of benefits is automatic and continues from year to year. (*See* Allocation section of the General Issues Appendix.)

To calculate the countervailable subsidy we divided the total amount of grants received and bonds maturing during the POI by Filiz's total exports. On this basis, we determine the countervailable subsidy from this program to be 0.45 percent *ad valorem* for Filiz.

Petitioners assert that in light of Filiz's failure to report these benefits in its questionnaire response, the Department should calculate an adverse facts available rate by including all transportation subsidy amounts on the record, regardless of when the amounts were received. They also state that the benefit should be divided by exports of the subject merchandise to the United States. We disagree with petitioners. Although we agree that these benefits should have been included in the questionnaire response, we collected and verified all of the necessary data required to calculate a benefit under this program. Therefore, there is no basis for applying an adverse facts available rate.

Respondents assert that the Freight Premium for Distance Program should not be countervailed because it has been modified to exclude pasta products. However, respondents argue if the Department determines that the program is countervailable, then the benefit should be treated as having been bestowed when the cash was received (for grants) and on the maturity date (for bonds). In their view, the benefit should be allocated over total exports.

We agree with respondents that the program was terminated. We verified that this program was terminated by confidential government decree. Although a new transportation program entitled ''State Aid for Exports'' was instituted on September 29, 1995, we verified that this program differs from the former program in that it covers sea, air, and truck transportation, and specifically excludes exports of pasta. We are calculating the benefit as of the time the cash grant was received or the date on which the bond matures. Filiz has still not received all of its payments from applications made in 1993 and 1994. Based on the fact that residual benefits continue to be bestowed under the program, we are not adjusting the cash deposit rate for the termination. (*See* section 355.50 of the *Proposed Regulations*.)

E. Incentive Premium on Domestically Obtained Goods

The Incentive Premium on Domestically Obtained Goods is part of the General Incentives Program (GIP), which is discussed further below. Although we have analyzed certain of the benefits provided under the GIP within the context of the GIP as a whole, two types of benefits merit separate consideration. These are the Incentive Premium on Domestically Obtained Goods and the Resource Utilization Support Fund, discussed below. In both instances, the benefit is tied to the purchase of domestic over imported goods. Therefore, because receipt of both of these benefits is contingent upon the use of domestically-sourced inputs, these particular benefits are specific pursuant to section 771(5A)(C) of the Act.

The Incentive Premium program provides companies holding investment incentive certificates under the GIP with rebates of the 15 percent VAT paid on locally-sourced machinery and equipment plus a 10 percent premium. We verified that imported machinery and equipment is subject to the VAT and is not eligible for the rebate.

Respondents argue that we should not countervail the Incentive Premium because VAT paid on imported equipment may be deferred, which, in a hyperinflationary economy, results in the amount of VAT ultimately paid having a present value substantially less than the amount of VAT originally incurred. Hence, they argue, there is essentially no difference between exempting domestically-sourced goods from the VAT and deferring payment of the VAT on imported goods. Petitioners argue that the complementarity of the two programs does not eliminate the benefit provided by the Incentive Premium program. They assert that the two types of benefits are not identical and that hyperinflationary pressures would not necessarily nullify the difference between these two benefits. Additionally, they argue that not all companies receive the same GIP benefits and, therefore, not all companies would receive both the Incentive Premium VAT rebates and the VAT deferral.

Despite respondents' assertions, the benefit is not related to the treatment of imported merchandise. The VAT rebates constitute revenue foregone by the GOT and provide a benefit in the amount of the rebates.

We have determined that these VAT rebates are countervailable subsidies within the meaning of section 771(5) of the Act. As stated above, the rebates constitute revenue foregone by the GOT and provide a benefit in the amount of the VAT savings to the company. Also, as discussed above, they are specific because their receipt is contingent upon the use of domestic goods rather than imported goods. Maktas received incentive premiums in 1991 and Filiz received incentive premiums in 1993 and 1994.

We have further determined that the benefits under the Incentive Premium program are ''recurring.'' Once a company has received an investment incentive certificate it becomes eligible for the Incentive Premium benefits. The receipt of benefits is automatic and continues from year to year. (*See*

Allocation section of the General Issues Appendix.)

For the rebates received by Filiz during the POI, we divided the amount received by the total value of the company's sales during the POI. On this basis, we determine the countervailable subsidy to be 0.0022 percent *ad valorem* for Filiz.

F. Resource Utilization Support Fund (GIP)

Filiz reported that it received Resource Utilization Support Fund (RUSF) rebates during the POI, but failed to identify the nature of the benefit. Because RUSF payments are made under the GIP, we treated RUSF benefits like other GIP benefits and we did not consider them to be countervailable in the preliminary determination. However, during verification of Filiz, we learned that the RUSF program actually operates like the Incentive Premium program in that it provides rebates of the 15 percent VAT paid on domestically-sourced machinery and equipment.

We have determined that the RUSF rebates are countervailable subsidies within the meaning of section 771(5) of the Act. The rebates represent revenue foregone by the GOT and provide a benefit in the amount of the VAT savings to the company. Also, they are specific because their receipt is contingent upon the use of domestic goods over imported goods. Filiz received RUSF rebates during 1993 and 1994.

We have further determined that the benefits under the RUSF program are ''recurring.'' Once a company has received an investment incentive certificate it becomes eligible for the RUSF benefits. The receipt of benefits is automatic and continues from year to year. (*See* Allocation section of the General Issues Appendix.)

For the rebates received by Filiz during the POI, we divided the amount received by the total value of the company's sales during the POI. On this basis, we determine the countervailable subsidy to be 0.27 percent *ad valorem* for Filiz.

G. Tax Exemption Based on Export Earnings

Corporate Tax Law 3946, dated December 25, 1993, provided that companies exporting industrial products valued in excess of U.S.$250,000 (or the equivalent) were entitled to deduct five percent of total export revenues from taxable profit. We verified that tax returns for fiscal year 1993 filed in 1994 provided the last opportunity for companies to benefit from this program.

We have determined that this tax exemption is a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the GOT and provides a benefit in the amount of the tax saving to the company. Also, the subsidy is specific because its receipt is contingent upon export performance. Of the exporters investigated, only Maktas claimed this tax exemption on the tax return it filed in 1994.

Petitioners argue that the Department does not have sufficient evidence on the record to consider this program terminated. They assert that the GOT is required to do more than just show that the current law is silent regarding a previous subsidy in order for the Department to treat the program as terminated. Furthermore, given the GOT's practice of revising, renaming, and reinstating subsidy programs, petitioners argue that the Department should treat the program as a suspended subsidy rather than as a terminated subsidy.

We disagree with petitioners. Although the GOT did not publish a specific decree describing the termination of this program, through a detailed review of the Budget Laws (Tax Code) and an examination of the tax return for fiscal year 1994 filed in 1995, we were able to verify that the GOT had abolished the Tax Exemption for Export Earnings program for tax returns for fiscal year 1994 (filed in 1995). Therefore, based on this information, we have determined that the termination of the program qualifies as a program-wide change. (*See* section 355.50 of the *Proposed Regulations*.) Moreover, there is no evidence on the record which would indicate that residual benefits are being bestowed or that a substitute program has been implemented. Therefore, we have adjusted the cash deposit rate to account for this change.

To calculate the countervailable subsidy, we divided the tax savings realized during the POI by the company's export sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.50 percent *ad valorem* for Maktas. For cash deposit purposes the subsidy rate for Maktas is zero.

II. Benefits Determined to be Not Countervailable

Certain GIP Benefits to Filiz

The GIP is designed to eliminate the developmental differences between regions in Turkey and to support investments in industry sectors where the country is lacking investment. The regions and sectors targeted by the GIP are generally selected by the Undersecretariat of the Treasury (UT). The UT is also responsible for issuing investment incentive certificates under the GIP. Investment incentive certificates identify the types of GIP benefits for which certificate holders are eligible.

In deciding whether to issue investment incentive certificates, the UT considers whether the proposed investment project meets certain criteria and financial thresholds set by the Council of Ministers. These criteria include whether the project: (1) Provides international competitiveness; (2) incorporates appropriate advanced technology; and (3) satisfies at least a minimum of economic capacity or scale determined on a sectoral basis. We verified that exportation was not a prerequisite for receiving benefits under this program. Each application for an investment incentive certificate must be accompanied by a feasibility study and detailed financial projection. The GOT stated that approximately 99 percent of the applications for investment incentive certificates are approved. Those applications which are rejected are generally revised, resubmitted, and eventually obtain approval.

For purposes of the GIP, Turkey is divided into four types of regions: (1) Developed; (2) normal; (3) priority regions of the second degree; and (4) priority regions of the first degree. The level of investment needed to obtain an investment incentive certificate for the priority regions is lower than the level needed for normal and developed regions (*e.g.*, the minimum investment requirement during 1994 in priority regions was 1 billion TL and the minimum investment in normal and developed regions was 5 billion TL). Moreover, we learned on verification that companies located in the developed region are required to utilize a greater percentage of their own funds and less bank financing in connection with the investment than companies located in any of the other three regions. Finally, we discovered that there are distinctions between the amounts granted in the different regions for the Fund-Based Credit and Investment Allowance benefits.

Filiz, located in a normal region, received the following benefits under the GIP during the POI: (1) Customs duty exemptions on imported machinery and equipment, (2) VAT deferrals on imported machinery and equipment, (3) Resource Utilization Support Fund Rebates, and (4) Incentive Premiums on Domestically-Obtained

Goods. Maktas, located in a developed region, only received Incentive Premiums on Domestically-Obtained Goods. As discussed above, we have determined that the Incentive Premiums on Domestically-Obtained Goods and RUSF rebates are countervailable. Therefore, the following analysis is limited to customs duty exemptions and VAT deferrals on imported machinery and equipment.

For these two types of benefits, the amount does not vary by region. Hence the issues before us are: (1) Whether the different eligibility requirements for each region render the program regionally specific, and (2) if not, whether the benefits received by Filiz under the GIP are otherwise specific. Regarding the first issue, although Filiz is located in the normal region and, thus, is subject to more lenient eligibility requirements than the developed region (which has the strictest requirements), Filiz surpassed the eligibility requirements for the developed region. Hence, Filiz's location did not affect its eligibility for benefits during the POI and we need not reach the issue of whether differing eligibility criteria by region make these benefits under the GIP specific.

Since Filiz would have qualified to receive benefits under the strictest eligibility requirements, we went on to analyze whether the customs duty exemptions and VAT deferrals granted under the GIP are being provided to a specific industry or enterprise or group thereof within the meaning of section 771(5A)(D) (i)–(iii).

In our original questionnaire, we asked the GOT to provide specificity information for each type of GIP benefit. In response to this request, the GOT stated that it did not maintain its records in such a way as to easily provide the requested information. Accepting their claim about the difficulty posed by our request, we asked the GOT to provide instead the total number of qualified applicants for investment incentive certificates by region. We relied on this data for our preliminary determination. At verification, we examined the GIP database and confirmed the enormous burden of retrieving the specificity information by type of benefit. Therefore, we have continued to rely on program-wide information for purposes of analyzing the specificity of customs duty exemptions and VAT deferral benefits under the GIP.

There are no *de jure* limitations on the types of industries that are eligible for benefits under the GIP. Regarding *de facto* specificity, we consider the following four factors, in accordance with section 771(5A)(D)(iii) of the Act: (1) The number of enterprises, industries or groups thereof which actually use a subsidy; (2) predominant use of a subsidy by an enterprise, industry, or group; (3) the receipt of disproportionately large amounts of a subsidy by an enterprise, industry, or group; and (4) the manner in which the authority providing a subsidy has exercised discretion in its decision to grant the subsidy.

We verified the statistics provided by the GOT for the period 1991–1994 concerning the awarding of investment incentive certificates to the various sectors of the economy. For 1994, these statistics indicate that during the POI, thirty-four industries, within the agriculture, mining, manufacturing, energy, and services sectors, received investment incentive certificates. We consider this distribution of industries sufficiently broad. We further verified that during the POI, the food and beverages industry received 7.5 percent of the investment incentive certificates issued. Pasta producers received less than 3.8 percent of the investment incentive certificates issued to the food sector. During the same period, the textiles and clothing industry received 24.6 percent and the transportation industry received 14.8 percent of the investment incentive certificates issued. Each of the thirty-one other industries accounted for 4.8 percent or less of the total investment incentive certificates issued. The statistics for the period 1991–1993 indicate a similar distribution of investment incentive certificates.

Based on this distribution of certificates (including the fact that pasta accounts for a fraction of the certificates issued to the food and beverage industry), we determine that the pasta industry was neither a dominant user of the program nor did it receive a disproportionate amount of the investment incentive certificates. Moreover, if the actual users of the subsidy are too large in number to reasonably be considered a specific group, and if there is no evidence of dominant or disproportionate use, the fact that a foreign authority administering a subsidy program may have exercised discretion in selecting the recipients of the subsidy is insufficient for a finding of *de facto* specificity. (*See*, SAA p. 261.) Therefore, we determine that customs duty exemptions and VAT deferrals on imported machinery and equipment are not specific and do not confer countervailable subsidies on Filiz.

Petitioners argue that because the Fund-Based Credit and the Investment Allowance programs provide different levels of benefits for each region, the Department cannot conclude that all GIP programs are not countervailable. They state further that the Department verified that GIP regulations issued in 1995 provide that no new investment certificates will be issued to companies located in developed regions. They conclude that because certain regions will no longer be able to receive benefits, a regional subsidy exists.

Because Filiz did not benefit from the Fund-Based Credit and Investment Allowance programs during the POI, we have not made a determination as to the countervailability of these programs. With respect to the new regulations, they pertain to investment incentive certificates issued after our POI and, hence, are not relevant to our analysis.

Petitioners also assert that for certain GIP programs, *e.g.*, the Tax, Duty, and Charge Exemptions program, companies cannot receive benefits without pledging to meet a certain export commitment. They cite *Extruded Rubber Thread from Malaysia (Rubber Thread)*, 57 FR 38,472, 38,476 (August 25, 1992), where the Department determined that a program may be ''two-faceted'' in the sense that certain companies receive benefits under any number of eligibility criteria, but others receive it based on less neutral criteria (*e.g.*, export). As with the Fund-Based Credit and the Investment Allowance, Filiz did not receive benefits under the Tax, Duty, and Charge Exemptions program. Therefore, we have not determined whether the Tax, Duty, and Charge Exemptions program is specific.

Finally, petitioners claim that the GOT uses discretion in its distribution of GIP benefits, by designating certain projects as ''particularly worthwhile.'' These are projects in sectors targeted by the GOT and that are not subject to the normal GIP requirements. Additionally, petitioners point out that companies do not always receive the same array of benefits under the GIP, as the GOT determines which benefits will be provided to which companies. Respondents claim that petitioners' assertion that government discretion is used in the distribution of GIP benefits is without merit, as the Department found no evidence at verification to this effect.

We verified that the GOT did not designate pasta as a ''particularly worthwhile'' industry during the POI. Furthermore, as stated above, and in the SAA, if the actual users of the subsidy are too large in number to reasonably be considered as a specific group, and if there is no dominant or disproportionate use of the program, the

fact that a government may have exercised discretion in selecting the recipients of a subsidy is insufficient to justify a finding of *de facto* specificity. Such is the case here. Moreover, we saw no evidence that the GOT in anyway used its discretion to award benefits to selected companies and to deny them to others.

III. Programs Determined to be Terminated

A. Support and Price Stabilization Program (SPSF)

Petitioners argue that despite the Department's preliminary determination that this program was not used, and the GOT's claim that the program was terminated in 1992, the Department should countervail Filiz's reported SPSF payment. Respondents assert that they did not benefit from the SPSF program during the POI. It is simply a matter of nomenclature that the SPSF appears on Filiz's application for pasta export grants.

During verification, we reviewed the Official Gazette dated August 20, 1991, which discusses the termination of the SPSF. The Gazette states that the SPSF program was terminated effective February 1, 1992. Furthermore, we are confident that the term SPSF on Filiz's application for pasta export grants was simply an error on the company's part. Because this program was administered pursuant to a confidential government decree, companies were not aware which agency was providing the grants. Filiz mistakenly believed that the SPSF was providing the grants. However, during verification, we confirmed that the Central Bank and not the SPSF was the provider of the pasta export grants. We found no evidence during the verification of Filiz that the company received benefits from the SPSF.

B. Wharfage Fee Exemption (GIP)

During verification, we reviewed the Official Gazette dated July 11, 1992, which discusses the termination of the Wharfage Fee Exemption. The Gazette states that the Wharfage Fee Exemption program was terminated effective January 1, 1993. We saw no evidence during verification that companies could receive residual benefits or that the program had been reinstated.

IV. Programs Determined to be Not Used

Based on the information provided in the responses and the results of verification, we determine that the following programs were not used.

1. *Advance Refunds of Tax Savings*
2. *Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility*
3. *Normal Foreign Currency Export Loans*
4. *Performance Foreign Currency Export Loans*
5. *Export Credit Insurance*
6. *Regional Subsidies*
   a. *Investment Allowances*
   b. *Mass Housing Fund Levy Exemptions*
   c. *Customs Duty Exemptions*
   d. *Rebate of VAT on Domestically-Sourced Machinery and Equipment*
   e. *Additional Refunds of VAT*
   f. *Postponement of VAT on Imported Goods*
   g. *Other Tax Exemptions*
   h. *Payment of Certain Obligations of Firms Undertaking Large Investments*
   i. *Corporate Tax Deferral*
   j. *Subsidized Turkish Lira Credit Facilities*
   k. *Subsidized Credit for Proportion of Fixed Expenditures*
   l. *Subsidized Credit in Foreign Currency*
   m. *Land Allocation*
7. *Exemption from Mass Housing Fund Levy (Duty Exemptions)*
8. *Direct Payments to Exporters of Wheat Products to Compensate for High Domestic Input Prices*
9. *Interest Spread Return Program (GIP)*

V. Programs Determined Not To Exist

Based on the information provided in the responses and the results of verification, we determine that the following programs do not exist.

1. *Export Promotion Program*
2. *Export Credit Program*
3. *Interest Rebates on Export Financing (GIP)*
4. *Foreign Exchange Allocation Program (GIP)*

Interested Party Comments

Comment 1: Petitioners argue that because there is no evidence on the record concerning certain tax programs discussed at verification, the Department should conclude that its subsidy calculations understate the tax benefits, and identify these other programs as subsidies to be examined in future proceedings. Petitioners also assert that the Department should not treat the Advanced Refund for Tax Savings program as terminated in the final determination. They state that the program is still in existence and that the Department verified this.

Respondents assert that the Department verified that neither Filiz nor Maktas received benefits under the Advance Refund of Tax Savings program. Hence, this program should not be included in any countervailing duty order issued in this case. Respondents also assert that the Department has no record evidence with which to conclude that the other tax exemptions listed on the Turkish corporate income tax form constitute countervailable subsidies.

DOC Position: We agree with petitioners that the Advanced Refund for Tax Savings program is still in existence and, therefore, should not be treated as a terminated program. However, we disagree with petitioners' contention concerning the other tax programs. We found no evidence during verification which would lead us to believe that these programs should be considered countervailable subsidies. Therefore, we are not including them in our final determination.

Comment 2: Petitioners assert that the Department should allocate the benefits from the Pasta Export Grants to pasta exports to the United States. Petitioners also assert that certain subsidies attributed to Maktas appear in the company's ''Other Income'' account, which is a component of total sales. These subsidies should be subtracted from total sales so that they are not included in the denominator. Finally, petitioners argue that the Department should exclude from the denominator Filiz's sales of bulk pasta, because pasta sold in bulk is not subject merchandise.

Respondents agree with petitioners that where it is clear that the benefit is tied to sales of pasta to the United States, the denominator should be total exports to the United States. However, they assert that for certain invoices, it was impossible for respondents to separate benefits between retail and bulk pasta sales. Therefore, the Department should not adjust for bulk sales.

DOC Position: We have followed our standard practice of allocating countervailable benefits according to whether the benefit is tied to a particular product or market, or is untied. *See*, section 355.47 of the *Proposed Regulations*. Consequently, we have allocated the export grants received by Filiz for shipments to the U.S. to the company's exports to the United States. Because we were unable to distinguish between the pasta export grants received on bulk and those received on retail sales, we have included both retail and bulk sales in Filiz's total export sales. Finally, only the amount of foreign exchange gains from Maktas' ''Other Sales'' is included in the Maktas denominators used to calculate the benefit of the used subsidy programs.

Comment 3: Petitioners assert that because Maktas reported that it applied for Normal Foreign Currency loans during the POI, the Department should not treat this program as not used, but rather as countervailable without benefit during the POI. Respondents state that Maktas did not apply for or use Normal Foreign Currency loans during the POI, and therefore, the Department should only consider this program in any future review.

DOC Position: We found no evidence during verification of Maktas that the company had benefitted from the Normal Foreign Currency Loan program during the POI. Therefore, we will follow our standard practice of categorizing the program as not used. We may consider this program in future reviews.

Comment 4: Petitioners argue that the Department should use effective interest rates when calculating the benefit in the Eximbank loan program.

DOC Position: We agree with petitioners and have calculated the benefit from this program by comparing the effective Eximbank rates to the effective benchmark rates. Both the Eximbank and benchmark rates include legally-mandated commissions and fund surcharges.

Comment 5: Petitioners argue that the Department should countervail the two additional grants received in 1994 that were discovered at the Filiz verification.

Petitioners also argue that Filiz failed to establish that it did not use the Eximbank loan program. Therefore, the Department should use adverse facts available and apply to Filiz the rate calculated for Maktas under this program. Respondents state that the Department did, in fact, verify that Filiz did not benefit from the Eximbank loan program.

DOC Position: The additional grants described by petitioners were Pasta Export Grants for shipments to third countries. As they can be tied to other markets, we have not included these two additional grants in our calculations.

With respect to the Eximbank loan program, we agree with respondents that there is no evidence on the record to support the claim that Filiz benefitted from the Eximbank loan program. We examined Filiz's Chart of Accounts, General Ledger, and various accounts within each of these records, and found no evidence that Filiz had received loans through any GOT programs.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an ''all others'' rate by weighting individual company subsidy rates by each investigated company's exports of the subject merchandise to the United States, if available, or pasta exports to the United States. The all others rate does not include zero or *de minimis* rates, or any rates based solely on the facts available.

Based on our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of pasta from Turkey which were entered, or withdrawn from warehouse, for consumption on or after October 17, 1995, the date of publication of our preliminary determination in the Federal Register. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to terminate the suspension of liquidation for merchandise entered on or after February 14, 1996, but to continue the suspension of liquidation of entries made between October 17, 1995, through February 13, 1996. We will reinstate suspension of liquidation under section 706(a)(1) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Company	Ad valorem rate	Cash deposit rate
Filiz	3.87	3.87
Maktas	13.12	12.61
Oba	15.82	15.82
All Others	9.70	9.38

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14737 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P