

2016-11-007



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

03 November 2016

MEMORANDUM:

TO : **All District and Sub-port Collectors
All Chiefs, Formal Entry Division
And Formal Entry Division Personnel**

RE : **Final Report on Anti-Dumping against Wheat flour**

Attached is a letter dated 11 October 2016 from Ms. Marilou P. Mendoza, Officer-In-Charge, Tariff Commission re: "In accordance with Section 3(n) of Republic Act No. 8752 (otherwise know as the "Anti-Dumping Act of 1999"), the Tariff Commission issued a **Final Report** (public version) on the application of Arcasan Makarna Un Gida Insaat San. Ve Tic. A.S. for accelerated review of the anti -dumping duty imposed against **Wheat Flour** (2012 AHTN Subheading No. **1101.00.10**) imported from the **Republic of Turkey**, said report was submitted to the Secretary of Agriculture on 10 October 2016."

For your information and guidance.


MELITA O. DEL ROSARIO

OIC-Deputy Commissioner
Assessment and Operations Coordinating Group

cc: COMMISSIONER OF CUSTOMS

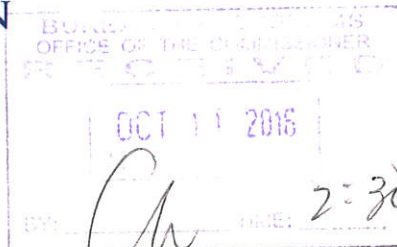
2016-11-007 P-2



REPUBLIC OF THE PHILIPPINES

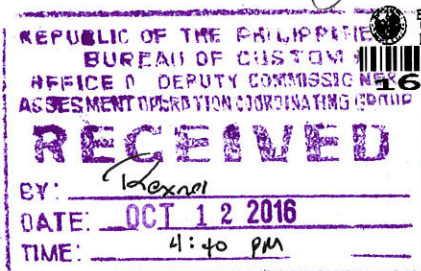
TARIFF COMMISSION

11 October 2016



COMMISSIONER NICANOR FAELDON

Bureau of Customs
G/F, OCOM Bldg., Port Area
Manila



From 10/13/2016
10:27 AM (11)

Dear Commissioner Faeldon:

In accordance with Section 3(n) of Republic Act No. 8752 (otherwise known as the "Anti-Dumping Act of 1999"), the Tariff Commission is furnishing your good Office a copy of its Final Report (public version) on the application of Acarsan Makarna Un Gida Insaat San. Ve Tic. A.S. for accelerated review of the anti-dumping duty imposed against Wheat Flour (2012 AHTN Subheading No. 1101.00.10) imported from the Republic of Turkey. Said report was submitted to the Secretary of Agriculture on 10 October 2016.

Thank you.

Very truly yours,

MariLou P. Mendoza

MARILOU P. MENDOZA
Officer-In-Charge

Attachments: as stated



REPUBLIC OF THE PHILIPPINES

TARIFF COMMISSION

**FINAL REPORT ON THE APPLICATION OF
ACARSAN MAKARNA UN GIDA INSAAT SAN. VE TIC. A.S.
PURSUANT TO REPUBLIC ACT NO. 8752 FOR ACCELERATED
REVIEW OF THE DEFINITIVE ANTI-DUMPING DUTY IMPOSED
AGAINST WHEAT FLOUR (2012 AHTN SUBHEADING No.
1101.00.10) IMPORTED FROM REPUBLIC OF TURKEY
(TC Anti-Dumping Investigation No. 2014-01)**

(PUBLIC VERSION)

07 October 2016

1. TERMS OF REFERENCE

1.1 The Original Investigation

The Philippine Association of Flour Millers, Inc. (PAFMIL), representing the domestic flour milling industry, lodged an application with the Department of Agriculture (DA) for the imposition of anti-dumping measure against imports of wheat flour originating from the Republic of Turkey. The Secretary of Agriculture (herein referred to as the "Secretary") officially accepted the application on 29 May 2013 and simultaneously initiated a preliminary investigation resulting to the imposition of a provisional measure¹ ranging from 2.28% to 39.26% of export prices for a period of four (4) months.

DA endorsed the case to the Tariff Commission (hereinafter referred to as the "Commission") for formal investigation on 22 April 2014. The Commission's investigation report was submitted to the Secretary on 11 November 2014.

The Secretary, following the positive findings of the Commission, issued Department Order (DO) No. 10 dated 17 November 2014 imposing a definitive anti-dumping duty against imports of wheat flour (2012 AHTN Subheading No. 1101.00.10) originating and imported from Turkey for a period of five (5) years, as follows:

Table 1. Anti-Dumping Duty Against Turkish Wheat Flour Imports

No.	Exporters	Weighted Average Dumping Margin (% of Export Price)
1	Unay Gida Nak San Ve Tic Ltd Sti	16.19
2	Dost Gida Sanayi Ve Ticaret A.S.	15.43
3	Tekinak Gida Sanayi Ve Ticaret A.S.	13.72
4	Tekirdag Un San Ve Tic Ltd Sti	12.60
5	Karahan Degirmencilik Ltd Sti	7.91
6	Akduy Gida Traim Tarim Ins Nak San	5.90
7	Erisler Gida Sanayi Ve Ticaret	5.07
8	Eksun Gida Tarim San Ve Tic A.S.	4.72
9	Turun Gida San Ve Tic A.S.	4.60
10	Kale Madencilik San Ve Tic A.S.	3.55
11	Doruk Marmara Un Sanayi Ciligi A.S.	3.12
12	Ulusoy Un Sanayi ve Ticaret	3.04
13	Ulas Gida Un Tekstil Nakliye Ticaret Ve Sanayi A.S.	2.87
14	Yorukugullari Gida Sanayi Ve	0
15	Ektas Tarim Urunleri End Ve Tic A.S.	0
16	Ozdoyuran Dis Tikaret Ve Un Sanayi	0
17	Yuksel Tezcan Gida San Ve Tic Ltd Sti	0
	Other Exporters (All Others' Rate)	16.19

¹ Department Order dated 23 April 2014 issued by DA, which took effect on 02 June 2014 upon the issuance of Customs Memorandum Order No. 12-2014 by the Bureau of Customs.




On 09 January 2015, Bureau of Customs (BOC) issued Customs Memorandum Order (CMO) No. 2-2015 to effect the imposition of definitive anti-dumping duties on Turkish wheat flour imports.

1.2 The Application for Accelerated Review

On 01 June 2016, Acarsan Makarna Un Gida Insaat San. ve Tic. A.S. (Acarsan) formally submitted to the Commission its application for accelerated review of the definitive anti-dumping measure on Turkish wheat flour. In its submission, Acarsan claimed that: (i) it is a producer of wheat flour, semolina and pasta in Turkey since 2003; and (ii) it is not related to any producer/exporter in Turkey subject to the imposition of anti-dumping measure on wheat flour. Acarsan further claimed that it has not yet exported wheat flour to the Philippines. Although negotiations with Philippine customers were initiated in 2015, exportation was deferred due to the anti-dumping duty currently imposed on Turkish wheat flour. Hence, an application for accelerated review for an exemption from the imposition of the "All Others' Rate" dumping duty was filed.



2. THE ACCELERATED REVIEW PROCESS

Section 3(n) of Republic Act (RA) No. 8752 provides the legal basis for the Commission to conduct an accelerated review to determine individual dumping margins for exporters or producers who have not exported the subject product during the original investigation period.²

Section 18(g) of the Implementing Rules and Regulations (IRR) of RA 8752 defines a "new foreign exporter" and sets the requirements for application of accelerated review, to wit:

"New foreign exporters who have not exported the dumped product to the Philippines during the POI may request for an accelerated review provided they are not related to any foreign exporter who is subject to the anti-dumping duty. The application must be submitted to the Commission in writing and must contain:

- 1. a description of the foreign exporter's product; and*
- 2. the basis of the request.*

No anti-dumping duty shall be imposed during the review. A provisional duty may be required to ensure that, in the case of an affirmative finding, the anti-dumping duty can be levied retroactively up to the date of the initiation of the review."

"POI" refers to the period of investigation of the original case, i.e., 01 January to 31 December 2012.

2.1 Acceptance of Application

Acarsan, in compliance with the Commission's directive and in support of its application, submitted information and documentary evidence duly authenticated by the Philippine Consulate in Turkey, including among others: (i) company ownership and organizational structure; (ii) product specification and production capacity for each type of wheat flour produced; (iii) wheat purchases; (iv) domestic sales of wheat flour; (v) pro-forma statement of costs to produce and sell per unit for each type of wheat flour produced both for domestic sales and export to the Philippines; and (vi) annual financial statements.

The Commission examined the information and evidences submitted by the applicant and considered them sufficient to justify the initiation of an accelerated

² Article 9.5 of the WTO Anti-dumping Agreement (ADA) states "If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. x x x."



review. The requirements of an application for accelerated review prescribed in aforementioned provisions having been satisfied, the Commission accepted Acarsan's application and commenced the review on 27 July 2016.

2.2 Notification for the Commencement of the Review

The Commission formally informed the applicant on 29 July 2016 of the acceptance of its application and commencement of the review. Also notified were PAFMIL representing the domestic industry, the Secretary of Agriculture, the BOC Commissioner, and the Embassy of Turkey to the Philippines. Parties-in-interest were given ten (10) working days from receipt of notice of initiation to submit their comments, positions and other relevant information concerning the investigation.

2.3 Investigation Period for Dumping Margin Determination

Consistent with the original investigation and on the basis of the available information on hand, the Commission established the twelve-month period from 01 January to 31 December 2015 as the investigation period for dumping margin determination.

2.4 Product Coverage

The product covered by the current review is the same as that in the original investigation that led to the imposition of anti-dumping measures on imports of wheat flour from Turkey, i.e., wheat flour classified under 2012 ASEAN Harmonized Tariff Nomenclature (AHTN) Subheading No. 1101.00.10³.

2.5 Submission from the Parties

Comments and/or positions submitted by the parties form part of the record of the case. A public file containing the non-confidential information/submission is available in the Commission.

PAFMIL by counsel, in its position paper of 16 August 2016, averred that:

- Acarsan is not entitled to be exempted from "All Others' Rate" as it failed to refute the Commission's finding that the export price of Turkish wheat flour to the Philippines is much lower than its normal value in Turkey.
- Acarsan certifying itself as having no relationship or affiliation to any Turkish wheat flour producer/exporter subject to the imposition of the definitive anti-dumping duty is self-serving and cannot be given any probative value and consideration by the Commission.

³ In the original investigation, it was established that domestically produced wheat flour and imported wheat flour from Turkey are like products for purpose of the investigation [See page 29 of the Tariff Commission's Final Report of Findings and Recommendation on the Application of PAFMIL for the Imposition of Definitive Anti-Dumping Measure Against Importations of Wheat Flour from Turkey (TC Anti-Dumping Investigation No. 2014-01), submitted to the Secretary of Agriculture on 11 November 2014 and posted on the TC website].

- Adjustment for Inward Processing Regime (IPR) should not be considered in computing for the normal value considering the fatal defects and deficiencies attendant to its implementation based on a study on the IPR conducted by the DTB Associates, LLP for the US Wheat Associates. IPR certificates are normally being sold to traders at a profit. The sale of these certificates at a profit thus eliminates the supposed price difference between exported wheat flour and domestically sold wheat flour.
- On the basis of the foregoing, Acarsan's application should be dismissed and an order be issued stating that the "All Other's Rate of 16.19% is the applicable anti-dumping measure for Acarsan.

The Embassy of the Republic of Turkey, in its letter of 12 August 2016, informed the Commission that while its Ministry of Economy reserved its right to submit further comments and views in the course of the instant investigation, it also believed that the Commission will act consistently with the pertinent provisions of the WTO Anti-Dumping Agreement (ADA) and related WTO-jurisprudence.

2.6 Data Verification

The Commission, in the course of its investigation, conducted due diligence to test the accuracy and reliability of the information submitted by the parties. Such test included, among others, comparison of Acarsan's information with the verified information used in the original investigation and other information obtained independently. The Commission is satisfied that the submission is accurate and reliable and therefore did not anymore conduct on-site data verification of the information submitted by Acarsan for this investigation.

2.7 Submission of the Final Report

The WTO ADA sets no specific time-limit for the completion of the accelerated review. However, Article 9.5 stipulates that such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member.

The Commission, in the interest of ensuring that the investigation is conducted in an open and transparent manner, has set a period of sixty (60) working days from the date of the commencement to complete the review and submit its report of findings and decision to the Secretary.



3. DETERMINATION OF NEW FOREIGN EXPORTER

Section 2(o) of the IRR of RA 8752 defines a "new foreign exporter" as:

"a foreign exporter who did not export the allegedly dumped product during the investigation period,"

Further, Section 18(g) of the same IRR elaborates on new foreign exporters thus:

"New foreign exporters who have not exported the dumped product to the Philippines during the POI may request for an accelerated review provided they are not related to any foreign exporter who is subject to the anti-dumping duty."

The Commission reviewed the list of exporters in the original investigation and the case records on company ownership, affiliations, and shareholding of exporters whose exports were verified. The information showed that Acarsan was neither an identified exporter nor related to any Turkish exporter subject to the anti-dumping duty imposition. A review of the BOC import database also revealed that Acarsan did not export wheat flour to the Philippines during the POI, i.e., 01 January to 31 December 2012.

Having met the requirements/qualifications prescribed in RA 8752, the Commission finds Acarsan a new exporter for purposes of this review and therefore eligible for an individual determination of its own dumping margin.



4. DETERMINATION OF DUMPING MARGIN

Dumping occurs when any specific kind or class of foreign article is imported or brought into the Philippines at a price i.e., export price, less than its normal value. Section 11(a) and (b) of the IRR of RA 8752 set the terms for comparing normal value and export price, to wit:

- “(a) The Secretary and the Commission shall determine the existence of dumping by making a fair comparison between the export price and the normal value of the allegedly dumped product, covering all transactions for the allegedly dumped product during the period of investigation (POI). x x x”*
- “(b) The comparison shall be made at the same level of trade, normally at the ex-factory level and in respect of sales made at the same time or as near as possible at the date of exportation. Due allowances shall be made in each case for differences which affect price comparability including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences which are also demonstrated to affect price comparability.”*

4.1 Export Price

Section 3(s)2 of RA 8752 refers to export price as:

- “(1) the ex-factory price at the point of sale for export; or
(2) the FOB price at the point of shipment.*

“In cases where (1) or (2) cannot be used, then the export price may be constructed based on such reasonable basis as the Secretary or the Commission may determine.”

The Commission confirmed that Acarsan did not export wheat flour to the Philippines during the investigation period. Thus, for purposes of this investigation and on the basis of best information available (BIA) principle, the Commission considered it appropriate to determine the export price using the average selling prices offered by Acarsan to its Philippine customer for the export sale of three (3) specific types of wheat flour to the Philippines in 2015. Said export prices, expressed in CNF US dollar per metric ton, were adjusted to ex-factory level by deducting post exportation charges (i.e., customs brokerage and inland freight) and credit expense (the imputed interest for the time that elapsed between the shipment and the date of receipt of payment, normally 30 days at 3% per annum as determined in the original investigation)⁴. The adjusted export prices of wheat flour applicable for Acarsan ranged from US\$ 260.29/MT to US\$ 280.25.

⁴ Similar to the interest rate used in the original investigation for consistency.

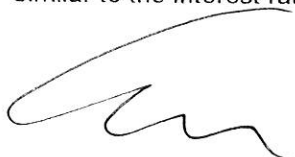


Table 2. Export Prices Calculation for Acarsan: 2015

Wheat Flour Type	Gross Export Prices (US\$/MT)	Adjusted Export Prices (US\$/MT)
550	Confidential	280.25
650	-do-	271.27
850	-do-	260.29
Weighted Average Export Price		270.60

4.2 Normal Value

Section 3(s)3 of RA 8752 refers to normal value as:

"A comparable price at the date of sale of the like product, commodity or article in the ordinary course of trade when destined for consumption in the country of export."

Since Acarsan did not export wheat flour to the Philippines during the POI (2012), and did not export from 2013 to 2015 either, the Commission finds merit to determine the normal value using the sales price of wheat flour produced and sold in the ordinary course of trade (OCOT)⁵ by Acarsan in the domestic market in Turkey in 2015. The domestic sale of Type 650, being the only wheat flour sold domestically in Turkey during the investigation period by Acarsan, was used as basis to determine the normal value. This product is comparable or like to the other types of Turkish wheat flour exported to the Philippines.

In its determination, the Commission first applied the OCOT test to determine whether there are sales to related parties or sales made at prices below costs. Sales below costs in substantial quantities⁶ were excluded in the calculation of normal value. The domestic selling prices of the remaining volume of domestic sales (net of the volume of sales below costs) were then adjusted to ex-factory level by deducting delivery and credit expenses directly linked to the sale of subject product. Duty drawback adjustment was not considered in the calculation of adjusted normal value as Acarsan failed the cost test applied by the Commission for the entitlement of duty drawback adjustment⁷. The adjusted normal value of wheat flour applicable for Acarsan is US\$ 380.03/MT.

⁵ Article 2.2.1 of WTO ADA states "Sales of the like product in the country of export at prices below cost may be treated as not being in the ordinary course of trade by reason of price and may be disregarded for determining normal value if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for recovery of all costs within a reasonable period of time".

⁶ Footnote 5 to Article 2.2.1 of WTO ADA states "Sales below cost are made in substantial quantities when the volume of sales at a loss represent 20% or more of the total volume sold x x".

⁷ An exporter is entitled to a duty drawback adjustment if the direct material cost of wheat flour for the domestic market is higher than that of wheat flour for export to the Philippines (See page 36 of the Tariff Commission's Final Report on the Application of PAFMIL for the Imposition of Definitive Anti-Dumping Measure Against Importations of Wheat Flour from Turkey).

Table 3. Normal Value Calculation for Acarsan: 2015

Wheat Flour Type	Gross Domestic Selling Price (US\$/MT)	Weighted Average Adjusted Normal Value (US\$/MT)
650	Confidential	380.03

4.3 Dumping Margin

In the determination of dumping margin, the weighted average normal value was compared with the weighted average export price of wheat flour. The calculation of dumping margin is shown in Table 4.

Table 4: Calculation of Dumping Margin: 2015

Name of the Exporter	Weighted Average Adjusted Normal Value	Weighted Average Adjusted Export Price	Dumping Margin	
			Absolute Terms (US\$/MT)	Percentage Terms (% of Export Price)
(a)	(b)	(c)	(d) = b - c	(e) = d/c*100%
Acarsan	380.03	270.60	109.43	40.44

The dumping margin applicable for Acarsan is US\$ 109.43/MT or 40.44% of export price, which is higher than the existing "All Others Rate" dumping duty of 16.19%.





5. DECISION

In view of the foregoing, the Commission recommends the imposition of anti-dumping duty, equivalent to the "All Others Rate" of 16.19% prescribed in Department Order No. 10 dated 17 November 2014 issued by the Department of Agriculture, on imports of Turkish Wheat Flour (2012 AHTN Subheading No. 1101.00.10) from Acarsan Makarna Un Gida Insaat San. Ve Tic. A.S.

Let copies of this Decision be furnished the applicant Acarsan, PAFMIL, the Secretary of the Department of Agriculture, the Commissioner of the Bureau of Customs, and the Embassy of the Republic of Turkey.

SO ORDERED
07 October 2016


MARILOU P. MENDOZA
Officer-In-Charge


ERNESTO L. ALBANO
Commissioner