

### Scope of Antidumping and Countervailing Duty Orders

Imports covered by these orders are shipments of certain non-egg dry pasta in packages of five pounds (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, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope 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. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

### Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. See Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, on file in the Central Records Unit (CRU) of the main Commerce Building, Room B-099.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. See Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, on file in the CRU.

(3) On October 23, 1997, the petitioners filed a request that the Department initiate an anti-circumvention investigation against Barilla S.r.L. (Barilla). On October 5, 1998, the Department issued a final determination that, pursuant to section 781(a) of the Act, Barilla was circumventing the antidumping duty order by exporting bulk pasta from Italy which it subsequently repackaged in the United States into packages of five pounds or less for sale in the United States. See *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998) (*Barilla Circumvention Inquiry*).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing up to (and including) five pounds four ounces, and so labeled, is within the scope of the antidumping and countervailing duty orders. See Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, on file in the CRU.

### Scope of the Anti-Circumvention Inquiry

The product subject to this anti-circumvention inquiry is certain pasta produced in Italy by Pagani and exported to the United States in packages of greater than five pounds (2.27 kilograms) that meets all the requirements for the merchandise subject to the antidumping and countervailing duty orders, with the exception of packaging size, and which is repackaged into packages of five pounds (2.27 kilograms) or less after entry into the United States.

By way of background, during the investigations, the issue of whether to expand the scope of the investigations to include pasta in packages of greater than five pounds was addressed in an October 10, 1995, decision memorandum (see Memorandum to Susan Esserman from Pasta Team, through Barbara Stafford).<sup>1</sup> In considering this issue, the Department acknowledged that the weight-restricted scope language could allow pasta

producers to export their pasta in bulk and repackage it into packages of five pounds or less in the United States; however, it was the Department's understanding, based on assertions by Borden, Inc., New World Pasta, Inc., and Gooch Foods, Inc. (collectively, the petitioners), that repackaging operations of this sort would be too costly and inefficient and thus would not pose a circumvention threat. As a consequence, we did not alter the scope of the merchandise covered by the investigations.

### Background

On August 30, 1999, we issued an antidumping questionnaire to Pagani for the third administrative review of the antidumping duty order, covering the period July 1, 1998 through June 30, 1999. In its October 1, 1999, questionnaire response, Pagani stated that it "exported sacks of non-subject bulk pasta for repackaging after importation." Based upon our verification of Pagani's questionnaire responses in the third administrative review, we initiated this inquiry. See *Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry on the Antidumping and Countervailing Duty Orders (Notice of Initiation)*, 65 FR 26179 (May 5, 2000). Since the initiation of this inquiry on April 27, 2000 the following events have occurred.

On May 10, 2000, the Department issued a circumvention questionnaire to Pagani. We requested information with respect to Pagani's corporate structure, sales and shipment information, process of repackaging in the United States, value of merchandise repackaged in the United States, and pattern of trade and levels of imports.

On June 14, 2000, Pagani responded to the Department's questionnaire. Pagani's response revealed that it did not have its own manufacturing or repackaging facility in the United States. Rather, all of the repackaging activity in the United States was conducted by an unaffiliated party. Section 781(a) of the Act sets forth the criteria the Department must examine when determining whether to include merchandise completed or assembled in the United States within the scope of an existing order. We determined it was necessary to collect information from the unaffiliated U.S. parties participating in the repackaging operations to examine these criteria. Accordingly, on December 7, 2000, the Department issued a supplemental circumvention questionnaire to an unaffiliated U.S. repacker and a U.S. customer that participated in

<sup>1</sup> This memorandum was written as a result of a request made by the petitioners and the Association of Food Industries past a group to expand the scope to include pasta imported in packages over five pounds.