

repackaging. In addition, on December 7, 2000, we issued a supplemental questionnaire to Pagani.

On January 29, 2001, Pagani responded to the Department's supplemental questionnaire. We did not receive a response from the unaffiliated U.S. repacker or U.S. customer.

Pagani's Proposed Certification Scheme

Pagani described its reasoning for its repackaging operation in the United States in its responses. Pagani asserts that its business is primarily in the food service sector, including restaurants, not in the retail sector which was the target of the petitioners' original complaint. Pagani maintains that many restaurants prefer to buy pasta in one pound packages for reasons of portion control and inventory maintenance and, thus, Pagani, wishing to continue to supply pasta to the United States, explored the possibility of repackaging pasta in the United States. In 1997, Pagani located the unaffiliated repacker, a U.S. company in the business of packing dried food products such as crackers. The unaffiliated U.S. repacker already possessed the equipment to pack short-cut pasta, and it acquired from Pagani a packaging line for long cuts. Pagani began its U.S. repackaging operations in the third quarter of 1997.

Pagani does not believe the repackaging operations subject to this inquiry constitute circumvention. Nevertheless, Pagani proposed that, in the event of an affirmative finding of circumvention, the Department adopt a certification scheme which it states would enable the Department to exclude bulk pasta that is not to be repackaged after importation, e.g., bulk pasta shipped directly to institutional or food service users. Specifically, Pagani states that each of its unaffiliated customers who purchase pasta in packages greater than five pounds (hereafter referred to as "bulk pasta") would certify that it would not repack any bulk pasta into packages of five pounds or less. Pagani states that this certification follows the certification program that Barilla, an Italian producer and exporter of pasta, proposed and which the Department accepted in its final determination of anti-circumvention. See *Barilla Circumvention Inquiry*, 63 FR at 54672.

Nature of the Anti-Circumvention Inquiry

Section 781(a)(1) of the Act provides that the Department, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e) of the Act, may include the imported merchandise under review within the

scope of an order if the following criteria have been met: (A) The merchandise sold in the United States is of the same class or kind as the merchandise that is the subject to the antidumping duty and countervailing duty orders; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such orders apply; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country to which the antidumping duty and countervailing duty orders apply is a significant portion of the total value of the merchandise sold in the United States.

Section 781(a)(3) of the Act further provides that, in determining whether to include parts or components in the order, the Department shall consider: (1) The pattern of trade, including sourcing patterns; (2) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the orders or above findings apply; and (3) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such orders or findings.

The Department's questionnaire, transmitted to Pagani on May 10, 2000, and supplemental questionnaire, transmitted on December 7, 2000, were designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated at section 781(a) of the Act. In addition, a questionnaire was transmitted to an unaffiliated U.S. repacker and U.S. customer. This approach is consistent with our analysis in previous anti-circumvention inquiries. See, e.g., *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders (Carbon Steel Products)*, 64 FR 40336 (July 26, 1999) and *Barilla Circumvention Inquiry*. For the Department to ascertain the value of the completed merchandise sold in the United States, we requested that Pagani provide cost data relevant to the production of pasta produced in Italy that is repackaged and sold in the United States, as well as the costs

associated with the processing and repackaging operations performed in the United States.

Statutory Analysis

(1) Whether Merchandise Sold in the United States is of the Same Class or Kind as Other Merchandise That Is Subject to the Orders

The merchandise under review is imported as bulk pasta, then repackaged by an unaffiliated U.S. food packager, and sold in the United States as non-egg dry pasta in packages of five pounds (2.27 kilograms) or less. As the antidumping and countervailing duty orders encompass "certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less," the merchandise subject to this inquiry is the same class or kind of merchandise as that subject to the antidumping and countervailing duty orders on certain pasta from Italy.

(2) Whether Merchandise Sold in the United States Is Completed or Assembled in the United States From Parts or Components Produced in the Foreign Country With Respect to Which the Orders Apply

Although the terms "parts" or "components" are not defined specifically, the bulk pasta produced by Pagani that is subsequently repackaged in the United States is imported from Italy, which is the country to which the orders apply. Specifically, the legislative history identifies the types of circumvention that are addressed by section 781(a) of the Act: (1) The importation of parts or components to be assembled in the United States into the class or kind of merchandise covered by the order, such as when picture tubes and printed circuit boards are shipped by the manufacturer to a related subsidiary in the United States to be assembled and sold as television receivers; and (2) the importation of an incomplete or unfinished article to be completed in the United States, by means other than assembly, into the class or kind of merchandise covered by the order, such as when steel pipe is imported by a related party that threads it and sells it as threaded pipe. H. Rep. No. 100-40, at 134 (1987).

In this particular case, the bulk pasta is imported into the United States from Italy and assembled into smaller packages of five pounds or less. The major parts and components that make up repackaged pasta consist of: pasta, packaging film, and cartons. In all instances, the pasta is imported from Italy, the country subject to the antidumping and countervailing duty orders. For certain scenarios the