

packaging film and cartons used in the repackaging were produced in the United States and the only imported "part" or "component" was the bulk pasta. Nonetheless, the criterion is still satisfied because bulk pasta constitutes almost the entire finished product sold in the United States.

In other instances, packaging film and cartons are also imported into the United States from Italy along with the bulk pasta. Thus, the merchandise sold in the United States was completed or assembled in the United States entirely from parts or components produced in the foreign country with respect to which the orders apply.

*(3) Whether the Process of Assembly or Completion in the United States is Minor or Insignificant*

Section 781(a)(2) lists the factors the Department will consider in determining whether the process of assembly or completion is minor or insignificant. These criteria are: (A) The level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of the production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. With regard to the criteria listed above, the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. R. Doc. No. 103-316, at 893 (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. *Id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumvention inquiry.

In this anti-circumvention inquiry, we attempted to base our analysis of whether the process of repackaging bulk pasta in the United States was minor or insignificant on both qualitative and quantitative factors concerning the nature of the processing performed in the United States, in accordance with the criteria of section 781(a)(2) of the Act. This approach is consistent with our analysis in previous anti-circumvention inquiries. *See, e.g., Carbon Steel Products and Barilla Circumvention Inquiry.*

*(A) The Level of Investment in the United States*

As explained above in the *Background* section, we did not receive responses to our December 7, 2000, questionnaire from the unaffiliated U.S. repacker or the U.S. customer. Thus, the only information on the record concerning investment is the fact that Pagani sold one long-cut repackaging line to the unaffiliated U.S. repacker. After two years this line was returned to Pagani. *See* March 16, 2001, *Memorandum from Pasta Circumvention Team to the File (Proprietary Analysis Memo)*. Thus, the record is inconclusive as to whether the level of investment in the United States is minor.

Pagani provided information showing that 25 percent of its productive assets in Italy are involved in the packing of pasta. Pagani argues that this shows that investment in packing operations is significant. However, Pagani has no investment itself in the United States. Moreover, there is no reliable way to compare the investment in productive assets of Pagani, a pasta manufacturer in Italy, with the investment in productive assets of the unaffiliated food repacker in the United States. Thus, Pagani's information and argument provide no support for finding that investment in the United States in the repackaging operation is not minor.

*(B) The Level of Research and Development (R&D) in the United States*

Because repackaging bulk pasta is a technically mature process, R&D into the process of repackaging is not a significant factor in this industry (*see Barilla Circumvention Inquiry*). In addition, Pagani did not perform or assist with any R&D in connection with the repackaging of bulk pasta in the United States.

*(C) The Nature of the Production Process in the United States*

As discussed above, the only element of the production process performed in the United States is the repackaging of the pasta into packages of five pounds or less. According to its questionnaire response, the repackaging of Pagani's pasta proceeded in accordance with three different methods:

(1) Pagani sold retail pasta to the U.S. customer and subcontracted to have the repacking done in the United States.

Pagani exported bulk pasta in plain large plastic bags (*i.e.*, "neutro" bags), along with the film and cartons into which it would be repackaged for shipment to the ultimate consignee. The pasta, film and cartons were shipped by

Pagani to the repacker; the repacker broke open the large plastic bags, packed the pasta into the film, put the film packages into the cartons, and sent the pasta to the U.S. customer. In such transactions, the packaging company invoiced Pagani for the repackaging services (including any supplies used therein), and Pagani invoiced the U.S. customer for pasta, for film and cartons, and for the repackaging service (a tolling arrangement, in the sense that Pagani had ownership of the pasta, the film and the cartons until the repackaging was completed and the pasta was shipped and invoiced to the customer).

(2) Pagani sold bulk pasta to the U.S. customer who repacked the pasta in the United States at its own expense.

Pagani sold bulk pasta packed in large plastic bags to a U.S. customer on a delivered CIF or FOB port basis, as applicable. The merchandise was then shipped to the consignee (the U.S. customer, in care of the repackaging company's location). The U.S. customer bought the packing film and supplied it to the repacker for the subsequent repackaging into retail packages of five pounds or less. In this type of sale, Pagani invoiced the U.S. customer for the pasta, and all other expenses incurred by Pagani. Film and repackaging fees were invoiced by their respective providers directly to the importer. According to Pagani, this scenario represented a simple export sale of "neutro" packed pasta.

(3) Pagani sold pasta to the U.S. customer and the film to the repacking company.

Pagani invoiced the U.S. customer for the bulk pasta and then invoiced the repacking company for the packaging material. The repackaging company then invoiced the U.S. customer for the repacking fee and materials. Pagani invoiced the U.S. customer for the repacking fee which was included in the price of the bulk pasta.

For all three methods, the bulk pasta was exported in "neutro" bags to the unaffiliated U.S. repacker, transferred to smaller packages, and shipped to the U.S. customer by the repacker. The neutro-packed pasta is required by U.S. law to be repacked, since it is unlawful to sell food in the United States in packages without labeling information.

We have little direct information regarding the nature of the repackaging process in the United States actually employed by the unaffiliated U.S. repacker. The only potentially relevant information is about the general nature of packing operations conducted by