

pasta manufacturers.² The manufacturing process for the production of pasta involves multiple steps and advanced technology. In the initial production stage, semolina flour is mixed with water to a specific moisture level. Specific pasta types are then extruded through different dies in a die block. Following extrusion, the product proceeds through several separate drying stages, after which the pasta is cooled. The cooled dry pasta is then packaged into the desired finished package size (e.g., one pound bags, five pound bags, ten pound bags, etc.) and these finished packages are placed into larger shipping boxes.

In contrast to these steps, which require significant capital expenditures and labor, and which all typically would take place in Italy, the repackaging in the United States simply involves the last stage of processing. For exports of bulk pasta, the merchandise is packaged in Italy into "neutro" bags, rather than into the finished package size. In the United States the pasta is merely transferred from large bags into smaller packages. Thus, while we do not know what process the unaffiliated repacker actually employs, the only information we do have strongly suggests that the nature of the repackaging operation is minor relative to the entire process of pasta production.

(D) The Extent of Production Facilities in the United States

Like the level of investment, the only information we have concerns one processing line that is of comparatively little value, and was in operation only temporarily. Thus, the record is inconclusive as to the extent of production facilities in the United States.

(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

Pagani calculated the value added in the United States as the price it paid for repacking on a per-unit basis, (i.e. per one one-pound bag of pasta). Using this calculation, Pagani asserted that the value of the processing in the United States is significant. Pagani did not provide a range of the value added in its public version of its submission. However, our analysis of Pagani's data shows that 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 (see *Proprietary Analysis Memo*).

In summary, we preliminarily find that the record evidence supports a finding that the process of assembly or completion in the United States is minor and insignificant. In fact, based on a review of the record evidence it is clear that the actual production process for the pasta is concentrated in Pagani's pasta production facilities in Italy. While some of the statutory factors are inconclusive, the information on the record tends to show that the repackaging operation in the United States is minor and insignificant. The legislative history to section 781(a) establishes that Congress intended the Department to make determinations regarding circumvention on a case-by-case basis in recognition that the facts of individual cases and the nature of specific industries vary widely. In particular, Congress directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components. See S. Rep. No. 103-412, at 81-82 (1994). Thus, we believe that it is appropriate to place more weight on the nature of the production and packaging process (the latter of which merely involves removing pasta from larger bags and placing it in smaller packages) rather than attempt to establish a numerical standard, which would be contrary to the intentions of Congress. See *Carbon Steel Products*, 64 FR at 40347. Therefore, our decision is based more on the qualitative nature of the process rather than the quantitative amount of the value added.

(4) Whether the Value of Imported Parts or Components is a Significant Portion of the Total Value of the Merchandise

Under section 781(a)(1)(D) of the Act, the value of the imported parts or components must be a significant portion of the total value of the subject merchandise sold in the United States in order to find circumvention. The major parts and components that make up repackaged pasta consist of: pasta, packaging film, and cartons. As discussed in the section of this notice entitled *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*, in all instances the bulk pasta is imported from Italy. For certain scenarios where the packaging

film and cartons used in the repackaging were produced in the United States, the only "imported part or component" was the bulk pasta. In the remaining instances, the packaging film and cartons are imported into the United States along with the bulk pasta. Based on our analysis, the value of Italian pasta imported in bulk constitutes the great majority of the value of the finished product ultimately sold to customers in the United States and thus constitutes a significant portion of the value of the repackaged pasta (see *Proprietary Analysis Memo*).

Other Factors To Consider

In making a determination whether to include parts or components within an order, section 781(a)(3) of the Act instructs us to take into account such factors as: the pattern of trade, including sourcing patterns; whether affiliation exists between the exporter of the parts and the person who assembles or completes the merchandise sold in the United States; and whether imports into the United States of the parts produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order. Each of these factors are examined below.

(1) Pattern of Trade

The first factor to consider under section 781(a)(3) of the Act is changes in the pattern of trade, including changes in the sourcing patterns of the bulk pasta. Before the antidumping and countervailing duty orders on pasta from Italy were issued, Pagani had a well established food service channel of trade in which it sold pasta in packages of five pounds or less. After the antidumping and countervailing duty orders were issued, Pagani began selling bulk pasta for repackaging in the United States, in order to continue to supply pasta to its food service customers. Pagani began this repackaging in 1997. Thus, the pattern of trade changed after the imposition of the orders.

(2) Affiliation

The second factor to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the bulk pasta is affiliated with the entity that repackages the merchandise sold in the United States from the imported bulk pasta. Based on available information, Pagani and the U.S. repacker are not affiliated within the meaning of section 771(33) of the Act. There is neither common ownership, direct or indirect control, nor a joint venture between the companies.

² Pagani submitted an excerpt from a book that discussed pasta packaging. However, there is no way to determine whether this information is relevant to the actual operations of the unaffiliated repacker.