

*(3) Whether Imports Have Increased*

The third factor to be considered under section 781(a)(3) is whether imports of bulk pasta into the United States have increased after the initiation of the original investigation. In our December 7, 2000, supplemental questionnaire, we requested Pagani to provide the volume and value of all Pagani pasta exported to the United States for 1994–2000. We requested Pagani to provide the information for sales of (1) pasta exported in packages of five pounds or greater that is repackaged in the United States into packages that are less than or equal to five pounds; (2) pasta sold in packages of greater than five pounds; and (3) pasta imported into the United States already in packages of five pounds or less that is subject to the antidumping and countervailing duty orders. This information is relevant to gauging the extent to which Pagani altered its exports (*i.e.*, by shifting its exports from merchandise subject to the orders to bulk pasta). Pagani failed to provide the requested information. Therefore, we are unable to determine whether imports have increased, based on record data.

Section 776(a) of the Act requires the Department to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person “fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782.” As provided in section 782 (c)(1) of the Act, if an interested party “promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner together with a full explanation and suggested alternative forms in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Since Pagani did not provide any such notification to the Department, subsection (c)(1) does not apply to this situation. Furthermore, since Pagani failed to respond to the Department’s questions regarding volume and value of all Pagani pasta exported to the United States during the period 1994–2000, we must base the preliminary determination in this inquiry on the facts otherwise available.

Section 776(b) of the Act permits the Department to use an inference that is adverse to the interests of an interested

party if that party has “failed to cooperate by not acting to the best of its ability to comply with a request for information.” Because Pagani refused to comply with the Department’s request for information without adequate explanation or suggested alternatives, we find that Pagani failed to cooperate by not acting to the best of its ability to comply with the Department’s request. Pagani’s refusal to respond to our questions regarding Pagani’s volume and value of exports impedes our ability not only to determine if circumvention of the antidumping and countervailing duty orders is occurring, but also to distinguish between its bulk imports for repackaging and any bulk imports which may have been exempt from the scope of the antidumping and countervailing duty orders. Therefore, the adverse inference we are relying upon in accordance with section 776(b) of the Act is that Pagani’s exports of pasta in bulk packages to the United States, for repackaging in the United States prior to delivery to the ultimate customer, have increased over the relevant period.

**Summary of Statutory Analysis**

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(a)(1) of the Act must be satisfied, taking into account the factors under section 781(a)(2) of the Act. First, the merchandise repackaged and sold in the United States is within the same class or kind of merchandise that is subject to the order. Second, bulk pasta was exported to the United States and then assembled into smaller packages of five pounds or less after importation. Third, the process of assembly or completion in the United States is minor and insignificant. Thus, we find affirmative evidence of circumvention in accordance with sections 781(a)(1) and (2) of the Act. We next considered the factors required by section 781(a)(3) of the Act, in reaching our determination. The facts concerning pattern of trade, sourcing, affiliation, and import trends indicate that there is circumvention of the pasta orders. Consequently, our statutory requirements lead us to find that during the period of time examined there was circumvention of the orders as a result of the repackaging operation discussed above.

**Certification Option**

Pagani certified that the U.S. repackaging operation, which began in the third quarter of 1997, was terminated for long cuts in 1999. With regard to short cuts, Pagani submitted a

certification from the U.S. repacker stating that short cuts of pasta from Pagani was last invoiced on February 8, 2000. Thus, Pagani asserts that the repackaging operations have ceased.

As discussed above in *Pagani Proposed Certification Scheme*, Pagani requested that the Department implement a certification scheme, similar to the program presented in the *Barilla Circumvention Inquiry*, whereby each of Pagani’s unaffiliated U.S. customers would certify that it would resell all pasta purchased from Pagani in the packaging in which the pasta was delivered to it, and would not repack any pasta from packages greater than five pounds into packages of five pounds or less. According to Pagani, this scheme would enable the Department to exclude bulk pasta that was not destined for repackaging after importation, *e.g.*, bulk pasta shipped directly to institutional or food service users, from the scope of the antidumping and countervailing duty orders.

We have preliminarily determined to adopt the certification scheme proposed by Pagani. According to that scheme, Pagani and each of Pagani’s unaffiliated customers who purchase bulk pasta would certify that it would not repack any bulk pasta into packages of five pounds or less.

**Suspension of Liquidation**

We have made an affirmative preliminary finding that Pagani’s activities for the repacking of bulk pasta into packages of five pounds or less for sale in the United States constitute circumvention. The merchandise subject to suspension of liquidation is pasta in packages of greater than five pounds as defined in the *Scope of the Anti-circumvention Inquiry* section of this notice, unaccompanied by the appropriate certification. In accordance with section 773(d) of the Act, the Department normally directs the U.S. Bureau of Customs and Border Protection (BCBP) to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, on all unliquidated entries of bulk pasta from Italy not accompanied by appropriate certification, produced by Pagani, that were entered, or withdrawn from warehouse, for consumption on or after April 27, 2000, the date of initiation of this anti-circumvention inquiry.

However, due to cessation of Pagani’s circumvention activity, the Department will not instruct BCBP to require such certification until such time as petitioner or other interested parties provide to the Department a reasonable