

(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.

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*, 65 FR 26179 (May 5, 2000) (*Notice of Initiation*). Since the initiation of this inquiry, 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. party participating in the repackaging operations to examine these criteria. Accordingly, on December 7, 2000, the Department issued a supplemental circumvention questionnaire to the unaffiliated U.S. repacker and a U.S. customer that participated in 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 the U.S. customer.

On August 6, 2003, we preliminarily determined that certain pasta produced in Italy by Pagani and exported to the United States in packages of greater than five pounds, which are subsequently repackaged in the United States into packages of five pounds or less, constitutes circumvention of the antidumping and countervailing duty orders on certain pasta from Italy. See *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty*

Orders on Certain Pasta from Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 46571 (August 6, 2003) (*Notice of Preliminary Determinations*). We invited interested parties to comment on our preliminary determinations. Interested parties did not submit case briefs or request a hearing.

Analysis

As detailed in the *Notice of Preliminary Determinations*, to make an affirmative determination of circumvention, the elements under section 781(a)(1) of the Act must be satisfied, taking into account the factors under section 781(a)(2) and 781(a)(3) of the Act. For these final determinations, we adopt the analysis set forth in the *Notice of Preliminary Determinations*, and determine that during the period examined there was circumvention of the orders as a result of Pagani's repackaging. 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, we find that the process of assembly or completion in the United States is minor and insignificant, since (A) the level of investment in the United States is minimal; (B) the level of research and development in the United States is non-existent; (C) the nature of the production process in the United States is minor relative to the entire process of pasta production; (D) the extent of the production facilities in the United States is limited; and (E) 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 *Notice of Preliminary Determinations*, at 46574-46475. Fourth, the value of imported parts or components is a significant portion of the total value of the merchandise sold in the United States. 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 determinations. As explained in detail in the *Notice of Preliminary Determinations*, the facts concerning pattern of trade, sourcing, affiliation, and import trends indicate during the period under consideration there was circumvention of the pasta orders. Consequently, our statutory requirements lead us to find that during the period examined there was