

Dated: April 7, 1998.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 98-9873 Filed 4-14-98; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 8-98]

#### Foreign-Trade Zone 151—Findlay, Ohio, Application for Expansion, Amendment of Application

Notice is hereby given that the application of the Findlay/Hancock County Chamber of Commerce, grantee of FTZ 151, requesting authority to expand its zone in Findlay, Ohio, (Doc. 8-98, 63 F.R. 10588, 3/4/98), has been amended to include an additional site (48 acres), contiguous to Proposed Site 2 (the Ball Metal facility). A large public warehouse facility (400,000 sq. ft.) will be constructed on the property.

As amended, Proposed Site 2 would cover 2 parcels (101 acres). The application otherwise remains unchanged.

The application was initially filed by the Community Development Foundation, which was grantee of FTZ 151 at the time of submission in December 1997. The grant of authority was reissued on April 1, 1998 (Board Order 970) to the Findlay/Hancock County Chamber of Commerce, which has also become the applicant in this case.

The comment period is extended until June 16, 1998. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at the following locations:

Office of the Findlay/Hancock County Chamber of Commerce, Room No. 1, 123 E. Main Cross Street, Findlay, Ohio 45840

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: April 7, 1998.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-805]

#### 1995/1996 Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe From Mexico

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit.

**SUMMARY:** The Department of Commerce is extending the time limit of the final results of the antidumping duty administrative review of circular welded non-alloy steel pipe from Mexico. This review covers the period November 1, 1995 through October 31, 1996.

**EFFECTIVE DATE:** April 15, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ilissa Kabak or John Kugelman, AD/CVD Enforcement, Group III, Office 8, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0145 or 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:** Due to the complexity of issues present in this case, it is not practicable to complete this administrative review within the original time limit. Therefore, the Department of Commerce is extending the time limit for completion of this administrative review until June 8, 1998, in accordance with section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: April 7, 1998.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-818]

#### Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta From Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order.

**SUMMARY:** On October 23, 1997, the Department of Commerce received an allegation of circumvention of the antidumping duty order on certain pasta from Italy. Pursuant to that allegation, the Department of Commerce initiated an anti-circumvention inquiry on December 8, 1997.

We preliminarily determine that certain pasta produced in Italy by Barilla S.r.L. (Barilla) and exported to the United States in packages of greater than five pounds, which subsequently are repackaged in the United States into packages of five pounds or less, constitute circumvention of the antidumping duty order on certain pasta from Italy, within the meaning of section 781(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.225(g). Interested parties are invited to comment on this preliminary determination.

**EFFECTIVE DATE:** April 15, 1998.

**FOR FURTHER INFORMATION CONTACT:** Edward Easton or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1777 or (202) 482-5288, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to the regulations as codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

## Background

Since the initiation of this anti-circumvention inquiry on December 8, 1997 (see *Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order on Certain Pasta from Italy*, 62 FR 65673 (December 15, 1997) (*Notice of Initiation*), the following events have occurred:

On January 2, 1998, the Department issued a questionnaire to Barilla. On the day that Barilla's response was due (February 9, 1998), Barilla informed the Department that it would not respond to our questionnaire.

On January 16, 1998, Barilla proposed 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, each of Barilla's independent distributors would certify that it would (1) resell all pasta purchased from Barilla in the packaging in which the pasta was delivered to it, and (2) would not repack any pasta in packages greater than five pounds (hereafter referred to as bulk pasta) into packages of five pounds or less. At the Department's request, the U.S. Customs Service (Customs) transmitted to the Department its initial comments on Barilla's proposed certification program on February 23, 1998 (see Memorandum to the File dated March 31, 1998).

On February 13, 1998, the petitioners filed a response to Barilla's January 16 and February 9 letters. The petitioners argued that, given Barilla's failure to respond to the Department's questionnaire, the Department should immediately issue an affirmative circumvention ruling and suspend liquidation on entries of bulk pasta by Barilla. The petitioners also stated that they did not oppose Barilla's proposed certification scheme, but have urged the Department to adopt any such certification scheme for *all* importers of bulk pasta. Barilla submitted rebuttal comments on February 20, 1998.

## Scope of Antidumping Duty Order

The merchandise currently subject to the antidumping order is certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or

polypropylene bags, of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, or by QC&I International Services. Furthermore, multicolored pasta imported in kitchen display bottles of decorative glass, which are sealed with cork or paraffin and bound with raffia, is excluded from the scope of this order.

The merchandise under order is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

## Scope of the Anti-Circumvention Inquiry

The product subject to this anti-circumvention inquiry is certain pasta produced in Italy by Barilla 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 duty order, 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.

## 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 any other merchandise that is the subject to the antidumping duty order; (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 order applies; (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 order applies 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; 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 order or finding.

The Department's questionnaire, transmitted to Barilla on January 2, 1998, was 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. This approach is consistent with our analysis in previous anti-circumvention inquiries. See, e.g., *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China; Affirmative Final Determination of Circumvention of Antidumping Duty Order*, 59 FR 15155 (March 31, 1994). For the Department to ascertain the value of the completed merchandise sold in the United States, we requested that Barilla 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 for the processing and repackaging operations performed in the United States. Barilla, however, refused to provide any of the information requested in the Department's questionnaire.

## Affirmative Preliminary Determination of Circumvention

For the reasons described below, we preliminarily determine that circumvention of the antidumping duty order on certain pasta from Italy is occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently are repackaged in the United States into packages of five pounds or less for sale in the United States.

## Facts Available

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, the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Since Barilla did not provide any such notification to the Department, subsection (c)(1) does not apply to this situation. Furthermore, since Barilla failed to respond to the Department's questionnaire, 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 Barilla refused to comply with the Department's request for information, we find that Barilla failed to cooperate by not acting to the best of its ability to comply with the Department's request. Barilla's refusal to respond to our questionnaire impedes our ability not only to determine if circumvention of the antidumping duty order 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 duty order. Therefore, the adverse inference we are relying upon in accordance with section 776(b) of the Act is that Barilla has been exporting pasta in bulk packages to the United States, where it has been repackaged into what would have been subject merchandise had it been imported directly. The Statement of Administrative Action (SAA), which accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103rd Congress, 2nd Session (1994) (URAA), states that information used to make an adverse inference may include such sources as the petition, other information placed on the record, or determinations in a prior proceeding regarding the subject merchandise. SAA at 870. We reviewed all information on the record including the petitioners' October 23, 1997 application for this anti-circumvention inquiry (see Memorandum from Gary Taverman to Richard W. Moreland, dated December 8, 1997). We have concluded that the application alleged each of the elements required by 781(a) of the Act and was

accompanied by supporting data, and continues to be of probative value.

#### **Barilla's Certification Proposal**

The scope of the antidumping duty order on pasta excluded pasta in packages of greater than five pounds. Our affirmative preliminary determination in this proceeding is that circumvention of the order is occurring by reason of imports of bulk pasta produced in Italy by Barilla which are subsequently repackaged in the United States into packages of five pounds or less for sale in the United States. This anti-circumvention inquiry, initiated pursuant to section 781(a) of the Act with respect to merchandise completed or assembled in the United States, is not intended to examine bulk pasta produced by Barilla, imported into the United States, and resold in bulk quantities within the United States because imports of bulk pasta into the United States for resale as bulk pasta would not constitute circumvention of the antidumping duty order.

As discussed in the Background section above, Barilla requested that the Department implement a certification scheme whereby each of its independent distributors would certify that it would resell all pasta purchased from Barilla 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 Barilla, 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 duty order.

For our final circumvention determination, we will allow Barilla an additional opportunity to provide the Department with information necessary to distinguish its exports of bulk pasta for repackaging in the United States from those imported for sale as bulk pasta. If Barilla provides sufficient relevant information, we will consider the certification scheme it proposed. In doing so, we will consult with the U.S. Customs Service to determine the effectiveness of this scheme and of alternative proposals.

#### **Suspension of Liquidation**

In accordance with section 773(d) of the Act, the Department is directing the Customs Service to suspend liquidation of all entries of bulk pasta from Italy produced by Barilla that were entered, or withdrawn from warehouse, for consumption on or after December 8,

1997, the date of initiation of this anti-circumvention inquiry.

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. The U.S. Customs Service shall require a cash deposit in the amount of 11.26 percent for all such unliquidated entries.

This suspension of liquidation will remain in effect until further notice.

#### **Notification of the International Trade Commission**

The Department, consistent with section 781(e) of the Act, will notify the ITC of this preliminary determination to include the merchandise subject to this inquiry within the antidumping duty order on certain pasta from Italy. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, the ITC may provide written advice to the Department. In such a case, the ITC will have 60 days to provide written advice to the Department.

#### **Public Comment**

Interested parties may request disclosure within five days of the date of publication of this determination, and may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 20 days from the publication of this notice. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments, may be filed no later than 27 days after publication of this notice. Any hearing, if requested, will be held no later than 34 days after publication of this notice. The Department will publish the final determination with respect to this anti-circumvention inquiry, including the results of its analysis of any written comments.

This affirmative preliminary circumvention determination is in accordance with section 781(a) of the Act and 19 CFR 351.225 of the Department's regulations.

Dated: April 7, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

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