

Expiration Date of Approval: February 29, 2004.

Type of Request: To extend a currently approved information collection.

Abstract: Under Interagency Agreement Number DOA-1, between the Department of Agriculture and Office of Personnel Management, the USDA Administrative and Financial Management Staff examines, rates, and certifies applicants for Agricultural Statistician positions GS-1530 and Mathematical Statistician (Agricultural) GS-1529 positions within the National Agricultural Statistics Service. The Interagency Agreement was made under provisions of 5 U.S.C. 1104, as amended by Public Law No. 104-52(1995).

Resumes, curriculum vitae, and the "Optional Application for Federal Employment" (OF-612) are general purpose forms used to evaluate applicants for positions in the Federal service. While these forms request specific information about an applicant, they do not always obtain detailed references to those knowledge, skills, and abilities (KSA's) that are critical to the job. The Supplemental Qualifications Statement for agricultural statistician and mathematical statistician (agricultural) positions allows applicants the opportunity to describe their achievements or accomplishments as they relate to the required KSA's.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Individual job Applicants.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden on Respondents: 600 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720-5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 5336 South Building, Washington, DC 20250-2009. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 14, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03-20007 Filed 8-5-03; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Staff Briefing

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

Time and Date: 2 p.m., Monday, August 18, 2003.

Place: Conference Room 104-A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

Status: Open.

Matters to be discussed:

1. Annual retirement of class A stock.
2. Annual class C stock dividend rate.
3. Loan loss reserve for FY 2003.
4. Privatization discussion.
5. Administrative and other issues.

ACTION: Board of Directors Meeting.

Time and Date: 9 a.m., Tuesday, August 19, 2003.

Place: Conference Room 104-A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

Status: Open.

Matters to be considered: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the May 9, 2003, board meeting.
3. Secretary's Report on loans approved.
4. Treasurer's Report.
5. Report on the allowance for loan loss reserve for FY 2003.
6. Privatization presentation by the Office of Management and Budget and the Department of Treasury.
7. Consideration of resolution to retire class A stock in FY 2003.
8. Consideration of resolution to set annual class C stock dividend rate.
9. Governor's Remarks.

10. Adjournment.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720-9554.

Dated: August 1, 2003.

Roberta D. Purcell,

Acting Governor, Rural Telephone Bank.

[FR Doc. 03-20079 Filed 8-1-03; 4:47 pm]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818, C-475-819]

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

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

ACTION: Notice of Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders.

SUMMARY: On April 27, 2000, the Department of Commerce (the Department) self-initiated an anti-circumvention inquiry to determine whether an Italian producer of pasta is circumventing the antidumping and countervailing duty orders on certain pasta from Italy, issued July 24, 1996. We preliminarily determine that certain pasta produced in Italy by Pastificio Fratelli Pagani S.p.A. (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, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(g). Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Ronald Trentham, AD/CVD Enforcement, Office IV, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4114 or (202) 482-6320.

SUPPLEMENTARY INFORMATION:

Scope of Antidumping and Countervailing Duty Orders

Imports covered by these orders are shipments of 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, diastasis, 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 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 Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review 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 subject to these orders is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. See Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, on file in the Central Records Unit (CRU) of the main Commerce Building, Room B-099.

(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.

By way of background, during the investigations, the issue of whether to expand the scope of the investigations to include pasta in packages of greater than five pounds was addressed in an October 10, 1995, decision memorandum (see Memorandum to Susan Esserman from Pasta Team, through Barbara Stafford).¹ In considering this issue, the Department acknowledged that the weight-restricted scope language could allow pasta

producers to export their pasta in bulk and repackage it into packages of five pounds or less in the United States; however, it was the Department's understanding, based on assertions by Borden, Inc., New World Pasta, Inc., and Gooch Foods, Inc. (collectively, the petitioners), that repackaging operations of this sort would be too costly and inefficient and thus would not pose a circumvention threat. As a consequence, we did not alter the scope of the merchandise covered by the investigations.

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 (Notice of Initiation)*, 65 FR 26179 (May 5, 2000). Since the initiation of this inquiry on April 27, 2000 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. parties participating in the repackaging operations to examine these criteria. Accordingly, on December 7, 2000, the Department issued a supplemental circumvention questionnaire to an unaffiliated U.S. repacker and a U.S. customer that participated in

¹ This memorandum was written as a result of a request made by the petitioners and the Association of Food Industries past a group to expand the scope to include pasta imported in packages over five pounds.

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 U.S. customer.

Pagani's Proposed Certification Scheme

Pagani described its reasoning for its repackaging operation in the United States in its responses. Pagani asserts that its business is primarily in the food service sector, including restaurants, not in the retail sector which was the target of the petitioners' original complaint. Pagani maintains that many restaurants prefer to buy pasta in one pound packages for reasons of portion control and inventory maintenance and, thus, Pagani, wishing to continue to supply pasta to the United States, explored the possibility of repackaging pasta in the United States. In 1997, Pagani located the unaffiliated repacker, a U.S. company in the business of packing dried food products such as crackers. The unaffiliated U.S. repacker already possessed the equipment to pack short-cut pasta, and it acquired from Pagani a packaging line for long cuts. Pagani began its U.S. repackaging operations in the third quarter of 1997.

Pagani does not believe the repackaging operations subject to this inquiry constitute circumvention. Nevertheless, Pagani proposed that, in the event of an affirmative finding of circumvention, the Department adopt 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, Pagani states that each of its unaffiliated customers who purchase pasta in packages greater than five pounds (hereafter referred to as "bulk pasta") would certify that it would not repack any bulk pasta into packages of five pounds or less. Pagani states that this certification follows the certification program that Barilla, an Italian producer and exporter of pasta, proposed and which the Department accepted in its final determination of anti-circumvention. See *Barilla Circumvention Inquiry*, 63 FR at 54672.

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 the merchandise that is the subject to the antidumping duty and countervailing duty orders; (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 orders apply; (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 and countervailing duty orders apply 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 from the parts or components produced in the foreign country with respect to which the orders or above findings apply; 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 orders or findings.

The Department's questionnaire, transmitted to Pagani on May 10, 2000, and supplemental questionnaire, transmitted on December 7, 2000, were 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. In addition, a questionnaire was transmitted to an unaffiliated U.S. repacker and U.S. customer. This approach is consistent with our analysis in previous anti-circumvention inquiries. See, e.g., *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders (Carbon Steel Products)*, 64 FR 40336 (July 26, 1999) and *Barilla Circumvention Inquiry*. For the Department to ascertain the value of the completed merchandise sold in the United States, we requested that Pagani 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 the processing and repackaging operations performed in the United States.

Statutory Analysis

(1) Whether Merchandise Sold in the United States is of the Same Class or Kind as Other Merchandise That Is Subject to the Orders

The merchandise under review is imported as bulk pasta, then repackaged by an unaffiliated U.S. food packager, and sold in the United States as non-egg dry pasta in packages of five pounds (2.27 kilograms) or less. As the antidumping and countervailing duty orders encompass "certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less," the merchandise subject to this inquiry is the same class or kind of merchandise as that subject to the antidumping and countervailing duty orders on certain pasta from Italy.

(2) 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

Although the terms "parts" or "components" are not defined specifically, the bulk pasta produced by Pagani that is subsequently repackaged in the United States is imported from Italy, which is the country to which the orders apply. Specifically, the legislative history identifies the types of circumvention that are addressed by section 781(a) of the Act: (1) The importation of parts or components to be assembled in the United States into the class or kind of merchandise covered by the order, such as when picture tubes and printed circuit boards are shipped by the manufacturer to a related subsidiary in the United States to be assembled and sold as television receivers; and (2) the importation of an incomplete or unfinished article to be completed in the United States, by means other than assembly, into the class or kind of merchandise covered by the order, such as when steel pipe is imported by a related party that threads it and sells it as threaded pipe. H. Rep. No. 100-40, at 134 (1987).

In this particular case, the bulk pasta is imported into the United States from Italy and assembled into smaller packages of five pounds or less. The major parts and components that make up repackaged pasta consist of: pasta, packaging film, and cartons. In all instances, the pasta is imported from Italy, the country subject to the antidumping and countervailing duty orders. For certain scenarios the

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

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.

(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

basis to believe or suspect that the order is being circumvented. If such information is provided, we will require certification only for the product(s) for which evidence is provided that such products are being used in the circumvention of the order. Normally we will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require Pagani to provide such certification on invoices accompanying shipments to the United States. *See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907 (May 4, 2000).

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 and countervailing duty orders 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, it will have 60 days to provide written advice to the Department.

Public Comment

Interested parties may request a hearing within 10 days of publication of this notice. 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.

Dated: August 30, 2003.

Joseph A. Spetrini,

*Acting Assistant Secretary for Grant Aldonas,
Under Secretary.*

[FR Doc. 03-20046 Filed 8-5-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-880]

Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: August 5, 2003.

SUMMARY: We determine that barium carbonate from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended the Act. The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

FOR FURTHER INFORMATION CONTACT: David Layton or Tisha Loeper-Viti at (202) 482-0371 or (202) 482-7425, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on March 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate from the People's Republic of China*, 68 FR 12664 (March 17, 2003) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

We conducted verification of the questionnaire responses of Qingdao Red Star Chemical Import & Export Co., Ltd. (Qingdao Red Star)¹ from June 25 through June 30, 2003. Qingdao Red

Star filed surrogate value information and data on April 23 and 28, 2003, and the petitioner² filed surrogate value information and data on April 28, 2003. Because of the unique circumstances surrounding this investigation, which led to a delay in the scheduling of verification,³ and because both parties also suggested surrogate information after the regulatory deadline for filing such information, we have accepted the information for consideration in this final determination.

On July 18, 2003, Qingdao Red Star and the petitioner filed case briefs. Both parties filed rebuttal briefs on July 23, 2003. A public hearing was held on July 25, 2003.

Scope of Investigation

The merchandise covered by this investigation is barium carbonate, regardless of form or grade. The product under investigation is currently classifiable under subheading 2836.60.0000 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 scope of this proceeding is dispositive.

Period of Investigation (POI)

The POI is January 1, 2002, through June 30, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the *Appendix* to this notice and addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B-099 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovadum from the*

¹ Guizhou Red Star Development Co., Ltd. (Guizhou Red Star), was the producer of the subject merchandise sold by Qingdao Red Star during the period of investigation (POI).

² The petitioner is Chemical Products Corporation.

³ There was a delay in conducting the verification due to the SARS epidemic in the PRC.