

of the Board's regulations (15 CFR part 400), requesting authority on behalf of Pepsi-Cola Manufacturing International, Ltd. (PCMIL), operator of FTZ 61J, at the PCMIL soft drink and juice beverage concentrate manufacturing plant in Cidra, Puerto Rico, requesting an expansion of the scope of manufacturing authority to include additional finished products and manufacturing capacity under FTZ procedures. It was formally filed on September 12, 2003.

PCMIL operates a facility (171 employees) within the Cidra Industrial Park, in Cidra, Puerto Rico, which is used to produce flavoring concentrates for soft drink beverages under FTZ procedures for the U.S. market and export (Board Order 926, 62 FR 55574, 10-27-97).

The applicant currently requests that the scope of manufacturing authority be expanded to include the manufacture of fruit juice beverage concentrate products marketed under the Dole, Tropicana Season's Best, and Tropicana Twister brands. The application also requests that the scope of authority for sourcing foreign ingredients used in production be extended to include: Banana puree, and fruit juice concentrates (passion, white grape, orange, pear, concord grape, red grape, grapefruit, pineapple) (2003 duty rate range: Free-10%, 0.5¢-7.9¢/liter). Production authority under FTZ procedures would be increased to approximately 5,000 40-foot shipping containers annually.

FTZ procedures would continue to exempt PCMIL from Customs duty payments on the foreign ingredients used in production for export. On its domestic sales and exports to NAFTA countries, the company can choose the lower duty rates that apply to finished beverage concentrates (free, 6.4%) for the foreign ingredients noted above. In accordance with § 400.32(b)(2) of the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is November 3, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 18, 2003.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above.

Dated: September 12, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

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## 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 Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders**

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

**ACTION:** Affirmative Final 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. The period of inquiry is July 1, 1998 through June 30, 1999. On August 6, 2003, we preliminarily determined 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). We invited interested parties to comment on our preliminary determinations. Interested parties did not submit case briefs or request a hearing. Consequently, our preliminary determinations remain unchanged for these final determinations.

**EFFECTIVE DATE:** September 19, 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, D.C. 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 S.r.L., by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

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.

#### **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

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 were last invoiced on February 8, 2000. Thus, Pagani asserts that the repackaging operations have ceased.

As discussed in the *Notice of Preliminary Determinations*, Pagani requested that the Department implement a certification scheme, 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 the U.S. customer, 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 from the scope of the antidumping and countervailing duty orders bulk pasta that was not destined for repackaging after importation, e.g., bulk pasta shipped directly to institutional or food service users.

For these final determinations, we determine 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 the customer would not repackage any bulk pasta into packages of five pounds or less.

### Suspension of Liquidation

We have made affirmative final determinations 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 would direct 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 produced by Pagani, not accompanied by appropriate certification, 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 again 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).

These affirmative final circumvention determinations are in accordance with section 781(a) of the Act and 19 CFR 351.225.

Dated: September 12, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-853]

#### Notice of Amended Final Results of Antidumping Duty Administrative Review: Bulk Aspirin from the People's Republic of China

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

**ACTION:** Notice of Amended Final Results of Antidumping Duty Administrative Review.

**EFFECTIVE DATE:** September 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Julie Santoboni or Blanche Ziv, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-4194 or (202) 482-4207, respectively.

### SUPPLEMENTARY INFORMATION:

#### Scope of Review

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula  $C_9H_8O_4$ . It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of bulk aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

#### Amended Final Results

On August 7, 2003, the Department of Commerce ("the Department") determined that bulk aspirin from the People's Republic of China ("PRC") is not being sold in the United States at less than fair value, as provided in section 751(a) of the Tariff Act of 1930, as amended ("the Act"). See *Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 68 FR 48337 (August 13, 2003) ("Final Results"). On August 18, 2003, Rhodia, Inc. ("petitioner"), timely filed ministerial error allegations pursuant to 19 CFR 351.224(c)(2).<sup>1</sup> The respondents

<sup>1</sup> On September 10, 2003, the Department received the ministerial error allegation with