

MESSAGE NO: 9293111 MESSAGE DATE: 10/20/1998
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TYPE: OTH-Other PUBLIC NON-PUBLIC
SUB-TYPE:

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REFERENCE
MESSAGE #
(s):

CASE #(s): A-475-818

EFFECTIVE DATE: COURT CASE #:

PERIOD OF REVIEW: TO

PERIOD COVERED: 12/08/1997 TO

Notice of Lifting of Suspension Date:

TO: { Directors Of Field Operations, Port Directors }

FROM: { Director AD/CVD & Revenue Policy & Programs }

RE: ANTI-CIRCUMVENTION INQUIRY OF THE ANTIDUMPING DUTY ORDER ON CERTAIN PASTA FROM ITALY. AFFIRMATIVE FINAL DETERMINATION OF CIRCUMVENTION OF THE ANTIDUMPING DUTY ORDER (A-475-818)

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CASES: A - 475 - 818

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PERIOD COVERED: 12 08 1997 TO

LIQ SUSPENSION DATE:

TO: CMC DIRECTORS,
PORT DIRECTORS

FROM: DIRECTOR, IMPORT OPERATIONS

RE: ANTI-CIRCUMVENTION INQUIRY OF THE ANTIDUMPING DUTY ORDER ON CERTAIN PASTA FROM ITALY. AFFIRMATIVE FINAL DETERMINATION OF CIRCUMVENTION OF THE ANTIDUMPING DUTY ORDER (A-475-818)

1. ON OCTOBER 13, 1998, THE DEPARTMENT OF COMMERCE PUBLISHED IN THE FEDERAL REGISTER ITS AFFIRMATIVE FINAL DETERMINATION OF CIRCUMVENTION OF THE ANTIDUMPING DUTY ORDER ON CERTAIN PASTA FROM ITALY.

2. SCOPE OF THE ANTIDUMPING DUTY ORDER

THE SCOPE OF THIS ORDER CONSISTS OF CERTAIN NON-EGG DRY PASTA IN PACKAGES OF FIVE POUNDS (OR 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 THIS 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 ISTITUTO MEDITERRANEO DI CERTIFICAZIONE (IMC), BY BIOAGRICOOP SCRL, OR BY QC&I INTERNATIONAL SERVICES.

THE MERCHANDISE UNDER ORDER IS CURRENTLY CLASSIFIABLE UNDER ITEMS 1902.19.20 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS). ALTHOUGH THE HTSUS SUBHEADINGS ARE PROVIDED FOR CONVENIENCE AND CUSTOMS PURPOSES, THE WRITTEN DESCRIPTION OF THE SCOPE OF THIS ORDER IS DISPOSITIVE.

3. SCOPE RULINGS

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 THIS ORDER.

IN ADDITION, THE DEPARTMENT ISSUED A SCOPE RULING ON JULY 30, 1998, THAT MULTIPACKS CONSISTING OF SIX-ONE POUNDS PACKAGES OF PASTA THAT ARE SHRINK-WRAPPED INTO A SINGLE PACKAGE ARE WITHIN THE SCOPE OF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

4. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRY

THE PRODUCT SUBJECT TO THIS ANTI-CIRCUMVENTION INQUIRY IS CERTAIN PASTA PRODUCED IN ITALY BY BARILLA S.R.L. 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.

5. FOR FURTHER REPORTING PURPOSES THIS CASE HAS BEEN ASSIGNED INVESTIGATION NUMBER A-475-818.

6. THESE INSTRUCTIONS CONCERN ENTRIES OF CERTAIN PASTA MANUFACTURED IN ITALY BY BARILLA S.R.L. WHERE THE ENTRIES ARE IN PACKAGES OF GREATER THAN FIVE POUNDS AS DESCRIBED IN PARAGRAPH 4. FOR ALL OTHER SHIPMENTS OF CERTAIN PASTA MANUFACTURED IN ITALY BY BARILLA S.R.L. THAT ARE SUBJECT TO THE ANTIDUMPING DUTY ORDER, AS DESCRIBED IN PARAGRAPHS 2 AND 3 ABOVE, YOU SHALL, UNLESS OTHERWISE INSTRUCTED, CONTINUE TO SUSPEND LIQUIDATION OF SUCH SHIPMENTS ENTERED OR WITHDRAWN FROM WAREHOUSE, FOR CONSUMPTION ON OR AFTER DECEMBER 8, 1997 AND COLLECT CASH DEPOSITS OF ESTIMATED ANTIDUMPING DUTIES FOR THE MERCHANDISE AT THE CURRENT RATES.

7. FOR IMPORTS OF CERTAIN PASTA MANUFACTURED IN ITALY BY BARILLA S.R.L. IN PACKAGES OF GREATER THAN FIVE POUNDS THAT MEET ALL THE REQUIREMENTS FOR THE MERCHANDISE SUBJECT TO THE ANTIDUMPING DUTY ORDER, WITH THE EXCEPTION OF PACKAGING SIZE, THE CUSTOMS SERVICE HAS SUSPENDED LIQUIDATION OF SUCH SHIPMENTS THAT HAVE BEEN ENTERED OR WITHDRAWN FROM WAREHOUSE, FOR CONSUMPTION ON OR AFTER DECEMBER 8, 1997. CUSTOMS SHALL CONTINUE TO REQUIRE A CASH DEPOSIT IN THE AMOUNT EQUAL TO THE MARGIN SHOWN BELOW FOR ONLY THOSE ENTRIES THAT ARE NOT ACCOMPANIED BY THE CERTIFICATE DESCRIBED IN PARAGRAPH 8 OF THESE INSTRUCTIONS. THIS SUSPENSION OF LIQUIDATION SHALL REMAIN IN EFFECT UNTIL FURTHER NOTICE.

EXPORTER

BARILLA S.R.L. A-475-818-028 11.26%

8. EXCLUDED FROM THESE SUSPENSION OF LIQUIDATION INSTRUCTIONS ARE ENTRIES OF CERTAIN PASTA MANUFACTURED IN ITALY BY BARILLA S.R.L. WHERE THE ENTRIES ARE IN PACKAGES OF GREATER THAN FIVE POUNDS AND ARE ACCOMPANIED BY A CERTIFICATE PROVIDED BY BARILLA AMERICA, INC., THE SOLE IMPORTER OF BARILLA PASTA, WHICH DESCRIBES THE MERCHANDISE ENTERED BY ENTRY NUMBER, PORT OF ENTRY, DATE OF ENTRY, THE PRODUCT, THE SIZE OF THE PACKAGING FOR THE ENTERED PRODUCT, THE HARMONIZED TARIFF NUMBER, THE VESSEL, AND THE IMPORTER'S CERTIFICATION THAT THE MERCHANDISE WAS NOT OR WILL NOT BE REPACKAGED INTO CONTAINERS OF FIVE POUNDS OR LESS AFTER ENTRY INTO THE UNITED STATES. THIS CERTIFICATION MAY BE MADE FOR ENTRIES FROM THE ORIGINAL DATE OF THE SUSPENSION OF LIQUIDATION, DECEMBER 8, 1997. ACCORDINGLY, CUSTOMS IS DIRECTED TO TERMINATE THE SUSPENSION OF LIQUIDATION FOR SHIPMENTS OF CERTAIN PASTA MANUFACTURED IN ITALY BY BARILLA S.R.L., WHERE THE ENTRIES ARE IN PACKAGES OF GREATER THAN FIVE POUNDS AND ARE ACCOMPANIED BY THE CERTIFICATE PROVIDED BY BARILLA AMERICA, INC., ENTERED, OR WITHDRAWN FROM WAREHOUSE, FOR CONSUMPTION ON OR AFTER DECEMBER 8, 1997, AND TO RELEASE ANY BOND OR OTHER SECURITY, AND REFUND ANY CASH DEPOSIT.

9. THE ASSESSMENT OF ANTIDUMPING DUTIES BY THE CUSTOMS SERVICE ON ENTRIES OF THIS MERCHANDISE IS SUBJECT TO THE PROVISIONS OF SECTION 778 OF THE TARIFF ACT OF 1930. SECTION 778 REQUIRES THAT CUSTOMS PAY INTEREST ON OVERPAYMENTS, OR ASSESS INTEREST ON UNDER PAYMENTS, OF THE REQUIRED AMOUNTS DEPOSITED AS ESTIMATED ANTIDUMPING DUTIES. THE INTEREST PROVISIONS ARE NOT APPLICABLE TO CASH OR BONDS POSTED AS ESTIMATED ANTIDUMPING DUTIES BEFORE THE DATE OF PUBLICATION OF THE ANTIDUMPING DUTY ORDER. INTEREST SHALL BE CALCULATED FROM THE DATE PAYMENT OF ESTIMATED ANTIDUMPING DUTIES IS REQUIRED THROUGH THE DATE OF LIQUIDATION.

THE RATE AT WHICH SUCH INTEREST IS PAYABLE IS THE RATE IN EFFECT UNDER SECTION 6621 OF THE INTERNAL REVENUE CODE OF 1954 FOR SUCH PERIOD.

10. AFTER EXAMINING THIS CERTIFICATION FOR CONSISTENCY WITH THE ENTRY SUMMARY, THE CUSTOMS SERVICE SHALL FORWARD THE CERTIFICATION TO THE DEPARTMENT OF COMMERCE, IMPORT ADMINISTRATION, OFFICE OF AD/CVD ENFORCEMENT II, ROOM 3099, 14TH STREET AND CONSTITUTION AVENUE, N.W., WASHINGTON, D.C. 20230.

11. IF THERE ARE ANY QUESTIONS REGARDING THIS MATTER BY CUSTOMS OFFICERS, PLEASE CONTACT VIA E-MAIL, THROUGH THE APPROPRIATE SUPERVISORY CHANNELS, OTHER GOVERNMENT AGENCY LIAISON, USING THE

ATTRIBUTE "HQ OAB". THE IMPORTING PUBLIC AND OTHER INTERESTED PARTIES SHOULD CONTACT JOHN BRINKMANN OF IMPORT ADMINISTRATION, INTERNATIONAL TRADE ADMINISTRATION, OFFICE OF AD/CVD ENFORCEMENT, AT 202-482-5288.

12. THERE ARE NO RESTRICTIONS ON THE RELEASE OF THIS INFORMATION.

PAUL SCHWARTZ

Company Details

*Party Indicator Value:

I = Importer, M = Manufacturer, E = Exporter, S = Sold To Party