

including the results of its analysis of issues raised in any written comments.

We are issuing and publishing these determinations and notice in accordance with sections 751(b) and 777(i)(1) of the Act and sections 19 CFR 351.216 and 351.221.

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

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

Notice of Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy

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

ACTION: Notice of Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of changed circumstances reviews of the antidumping and countervailing duty orders on certain pasta from Italy. Based on this information, we preliminarily determine that Pasta Lensi S.r.l. is the successor-in-interest to Italian American Pasta Company Italia S.r.l. (IAPC) for purposes of determining antidumping and countervailing duty liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT:

Alicia Kinsey (Antidumping) or Stephen Cho (Countervailing), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793 or (202) 482-3798, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy (61 FR 38547). Also, on July 24, 1996, the Department published in the

Federal Register the companion countervailing duty order (61 FR 38544). Five reviews of these orders have been conducted, and a sixth is underway. IAPC participated in the fifth review and is an interested party in the ongoing sixth review of these orders. On February 12, 2003, IAPC submitted a letter stating that it changed its corporate name to Pasta Lensi S.r.l. (Lensi), and that Lensi is the successor-in-interest to IAPC. As such, the former IAPC argues that Lensi is entitled to receive the same antidumping and countervailing cash deposit rates accorded to IAPC.

The former IAPC also requested that the Department conduct expedited changed circumstances reviews pursuant to 19 CFR 351.221(c)(3)(ii). Petitioners have not responded to IAPC's February 12, 2003 request for changed circumstances reviews.

Scope of Review

Imports covered by these reviews 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, 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 these reviews 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.

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 the order 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, which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce Department Building.

(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 to Barbara P. Sidari*, dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(b). 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).

(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 is 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 or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. See *Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). See *Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry*

of the Antidumping and Countervailing Duty Orders, 65 FR 26179 (May 5, 2000).

Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Reviews

In the February 12, 2003 submission, IAPC advised the Department that in September of 2002, IAPC acquired certain intangible assets of Pastificio Lensi S.p.A and that IAPC resolved to change its name to Pasta Lensi S.r.l. The February 12, 2003 submission demonstrates that in November 2002, a Registration Notice registering the name change was filed with the Brescia Chamber of Commerce, Industry, Handicrafts, and Agriculture. Prior to the acquisition and name change, the former IAPC made two changes to its board of directors and company management. However, the corporate structure and ownership of the company did not change as a result of the name change. Lensi operates the same production facility operated by IAPC. No production facilities have been added, eliminated, or transferred since the name change. Lensi's supplier relationships have stayed the same as IAPC's, and Lensi's customer base did not substantially change as a result of the name change. In accordance with section 751(b) of the Act and 19 CFR 351.216, the Department has determined that there is a sufficient basis to initiate changed circumstances reviews to determine whether Lensi is the successor-in-interest to IAPC.

In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. See, e.g., *Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. See *Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994); see also *Canadian Brass*, 57 FR 20460, Comment 1 (“[G]enerally, in the case of an asset acquisition, the Department will consider the acquiring company to be a successor to the company covered by the antidumping duty order, and thus subject to its duty deposit rate, if the resulting operation is essentially similar to that existing before

the acquisition.”) Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that Lensi is the successor-in-interest to IAPC. Documentation attached to Lensi's February 12, 2003, submission supports its claims that the acquisition of certain intangible assets resulted in little or no change in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) minutes of the September 4, 2002 IAPC Board of Directors Meeting and September 19, 2002 Extraordinary Shareholder Meeting detailing the resolve to change the name from IAPC to Lensi and to acquire certain assets, and the shareholder approval of the name change and acquisition of assets; (2) Registration Statement filed with Brescia Chamber of Commerce; (3) legal structure of the former IAPC's parent company, the American Italian Pasta Company's European affiliates, before and after the name change; (4) a list of the IAPC/Lensi Board of Directors; (5) organization charts for IAPC and Lensi, before and after the name change; (6) list of suppliers and quantity of purchases for IAPC/Lensi; and (7) customers and quantity of sales for IAPC and Lensi, before and after the name change. The documentation described above

demonstrates that (i) substantially all employees of IAPC, including most of the management, remain the same, (ii) the intangible assets were sold as a going concern, and (iii) there were little or no changes in management structure, supplier relationships, production facilities, or customer base.

When “expedited action is warranted,” the Department may publish the notice of initiation and preliminary determination concurrently. See 19 CFR 351.221(c)(3)(ii); see also *Granular Polytetrafluoroethylene Resin from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 68 FR 13672 (March 20, 2003). The Department has determined that such action is warranted because IAPC has provided *prima facie* evidence that Lensi is its successor-in-interest, and we have the information necessary to make a preliminary finding already on the record.

Based upon the record evidence, we find that Lensi operates as the same business entity as IAPC. Thus, we

preliminarily determine that Lensi is the successor-in-interest to IAPC.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. See 19 CFR 531.309, 310. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of these changed circumstances reviews, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing these determinations and notice in accordance with sections 751(b) and 777(i)(1) of the Act and sections 351.216 and 351.221 of the Department's regulations.

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-507-502]

Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Rescission of Antidumping Duty Administrative Review

SUMMARY: On August 27, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 55000) a notice announcing the initiation of an administrative review of the antidumping duty order on certain in-shell pistachios from Iran covering two exporters. The period of review (POR) is July 1, 2001, to June 30, 2002. This review has now been rescinded because