

Development Corporation of Puerto Rico, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing plant of the Pfizer Pharmaceuticals, Inc., in Barceloneta, Puerto Rico, was filed by the Board on April 13, 1998, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 20-98, 63 FR 19708, 4-21-98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the pharmaceutical manufacturing plant of Pfizer Pharmaceuticals, Inc., located in Barceloneta, Puerto Rico (Subzone 61K), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of September 1998.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 98-27404 Filed 10-9-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-818]

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

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

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

**EFFECTIVE DATE:** October 13, 1998.

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

**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 ("URAA"). 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).

### **Affirmative Final Determination of Circumvention**

Pursuant to section 781(a) of the Act, we 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 S.r.L. ("Barilla") which subsequently are repackaged in the United States into packages of five pounds or less for sale in the United States. However, as discussed in the "Continuation of Suspension of Liquidation" section, below, for this final determination we are implementing a certification scheme to distinguish between Barilla's bulk imports for repackaging and any bulk imports which may have been exempt from the scope of the antidumping duty order, i.e., bulk imports that are sold in the United States in bulk packaging.

### **Case History**

Since the preliminary determination in this anti-circumvention inquiry on April 7, 1998 (63 FR 18364, April 15, 1998) ("Notice of Preliminary Determination"), the following events have occurred:

On April 14, 1998, the Department formally notified the International Trade Commission ("ITC") of the preliminary determination in this inquiry. Section 781(c)(2) of the Act permits the ITC to request consultations with the Department, when the Department proposes to include merchandise in an antidumping order. On May 12, 1998, the ITC informed the Department that consultations were not necessary in this case (see Memorandum to the File, dated May 15, 1998).

Barilla submitted a case brief on May 5, 1998. Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc. (collectively, "petitioners") submitted a rebuttal brief on May 12, 1998. The Department also received comments from the European Union's Delegation of the European Commission ("EU") on May 29, 1998.

On May 7, 1998, Barilla submitted a revised proposal for certifying that

certain pasta which is imported into the United States in packages of greater than five pounds will not be repackaged into packages of five pounds or less after entry into the United States.

### **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.

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 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 proceeding. In addition, the Department issued a scope ruling on July 30, 1998, 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 July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc.)

### **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.

#### Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes an antidumping investigation, or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available (subject to subsections 782(c)(1) and (e) of the Act) to make its determination. Section 776(b) of the Act provides that adverse inferences may be used if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See also*, "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA).

As discussed in the *Notice of Preliminary Determination*, the Department found that Barilla "failed to cooperate by not acting to the best of its ability to comply with the Department's request" for information in its refusal to respond to the Department's questionnaire. Accordingly, the Department based the preliminary determination on adverse facts otherwise available ("facts available"). For this final determination, and in accordance with section 776(b) of the Act, we will continue to rely on the adverse inference 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.

#### Interested Party Comments

##### *Comment 1 (Scope Language is Dispositive)*

Barilla claims that the scope language is dispositive and the Department has ignored prior determinations during the antidumping investigation that excluded pasta in packages greater than five pounds. Barilla argues that the Department's use of facts available is unwarranted because the Department has ignored its prior rulings and it was not economically feasible for Barilla to respond to the Department's questionnaire.

The petitioners argue that the purpose of the anti-circumvention provisions of

the Act is to authorize the Department to include within the scope of an antidumping order articles not expressly included within the scope language but that are imported in a manner to circumvent and evade the coverage of antidumping orders. The petitioners also contend that Barilla's explanations as to why it did not respond to the Department's anti-circumvention questionnaire do not negate the fact that Barilla failed to provide any of the information that the Department requested. Finally, the petitioners cite Barilla's February 9, 1998 letter to the Department, wherein Barilla stated that it had "little to gain from responding [to the Department's questionnaire]" as a demonstration of Barilla's failure "to cooperate to the best of its ability," within the meaning of section 776(b) of the Act, which authorizes the Department to make adverse inferences in applying facts available.

#### *Department's Position*

During the investigation, the petitioners proposed to define the scope as all pasta sold in retail channels. However, in order to cover only retail sales, an "end use" certification or similar documentation would have been required at importation to determine whether imports of pasta, regardless of packaging, were intended for sale in the retail segment of the market. This type of documentation is often burdensome for the U.S. Customs Service to administer. The "five pounds or less" packaging limitation in the scope language was a pragmatic way of limiting the order to pasta imported for retail sale, while attempting to avoid the burden of administering an "end use" certification program. Accordingly, the scope language also provided that "[t]he pasta covered by this scope is typically sold in the retail market \* \* \*."

The Department also rejected a request from the Association of Food Industries Pasta Group (which was supported by the petitioners) to amend the scope language by removing the package size limitation of five pounds or less during the investigation. We rejected the request, in substantial part, because the petitioners had informed the Department that importing pasta in bulk and subsequently repackaging it for retail sale in the United States would be impractical and inefficient. Thus, the Department's acceptance of the five-pound limit was premised on the information that it would ensure that the order covered all retail sales of pasta.

We therefore disagree with Barilla's claim that the product description in the order is dispositive of the scope issue.

Where the requirements of section 781(a) of the Act for "minor assembly" in the United States are met, the statute regards the components subject to the finding of circumvention as, in effect, imports of the subject merchandise, rather than components, *per se*. As the legislative history to this section states:

[T]he application of the U.S. finishing or assembly provision will not require new injury findings as to each part or component. The anti-circumvention provision is intended to cover efforts to circumvent an order by importing disassembled or unfinished merchandise for assembly in the United States. Hence, the ITC would generally advise as to whether the parts or components "taken as a whole" fall within the injury determination. If more than one part or component is proposed for inclusion, the ITC would \* \* \* determine whether the imported parts or components can be constructively assembled so as to constitute a like product for purposes of the original order \* \* \*.

The ITC would advise as to whether the inclusion of the parts or components, taken as a whole, would be inconsistent with its findings in the prior injury determination.

H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 603 (1988). The repackaging in the United States of Italian pasta imported in bulk is so insignificant that it easily satisfies the statutory standard.

We also disagree with Barilla that the use of facts available is unwarranted. By refusing to answer our anti-circumvention questionnaire, Barilla deprived the Department of any information it may have possessed necessary for determinations under sections 781(a)(2) and (3) of the Act or which could have rebutted the information in the anti-circumvention application. Although Barilla claimed that it was not "economically feasible" to respond, it provided no information, and made no suggestions concerning alternative reporting. A more detailed discussion of our reasons for resorting to adverse inferences with respect to Barilla's refusal to answer the Department's questionnaire is set out in our affirmative preliminary determination in this proceeding (63 FR 18364, 18365-18366, April 15, 1998). Nothing has changed since the preliminary determination to alter the reasons or bases for our use of facts available for the final determination. Therefore, we have continued to rely on adverse facts available because of Barilla's refusal to answer the Department's questionnaire, as discussed in the preliminary determination.

*Comment 2 (Scope Expansion is Impermissible)*

Barilla argues that the inclusion of bulk pasta constitutes an impermissible expansion of the scope of the order because bulk pasta was specifically excluded from the scope of the investigation. Barilla cites several Court cases in support of this position, including *Wheatland Tube v. US*, 973 F. Supp. 149 (July 18, 1997) (*Wheatland Tube*).

The EU notes that the Department's notices did not explain why the original antidumping petition was deliberately limited to pasta imported in packages of five pounds or less, and more particularly, why the Department refused to extend the scope during the course of the antidumping investigation.

*Department's Position*

We do not agree that the inclusion of Barilla's bulk pasta in this proceeding is an expansion of the scope of the underlying order, and we have not ignored our prior scope determinations. The circumstances surrounding the Department's treatment of bulk pasta at the time of the investigation are discussed in Comment 1. Subsequent to the investigation, and in response to a petition filed by U.S. producers, the Department initiated this anti-circumvention investigation under section 781(a) of the Act. That provision permits the application of antidumping duties to components of subject merchandise that are imported for assembly or completion into subject merchandise before being sold in the U.S. market. Under section 781(a) of the Act, such components are treated as constructively the subject merchandise upon importation. Covering sales of pasta in packages weighing more than five pounds that are specifically imported for repacking into packages of less than five pounds for retail sales does not constitute an expansion of the scope of the order. Only the circumventing shipments—essentially the same merchandise being shipped from the same producers to the same customers for ultimate retail sale—are covered. All other pasta imports in packages exceeding five pounds remain free from antidumping duties, as before.

Although the Department does not agree with the CIT's holding in *Wheatland Tube*, Barilla's reliance upon *Wheatland Tube* to argue that the Department cannot cover bulk pasta is misplaced for several reasons. First, the Court emphasized that *Wheatland* involved a product (line pipe) that was not covered by the ITC's injury determination, regardless of how it was

used. *Wheatland* at p. 158. The Court stated that even the small proportion of line pipe imports sold as standard pipe could not be subject to antidumping duties because they were not covered by an injury determination on line pipe. By contrast, the injury determination for this order covers the producers as a whole of the domestic like product, which the ITC defined as consisting of all dry pasta. See Certain Pasta From Italy and Turkey, USITC Pub. No. 2977, at 7 (July 17, 1996) (final det.).

Because the domestic like product on which the ITC's injury determination is based includes bulk pasta, the U.S. producers of the product comparable to the bulk pasta were included in the Commission's determination of material injury by reason of subject imports. The ITC has confirmed that its injury finding applies to the imports of pasta at issue in this proceeding. See letter to Gary Taverman, Acting Deputy Assistant Secretary, from Marcia E. Miller, Chairman, ITC, dated May 12, 1998.

Second, *Wheatland* involved a product (line pipe) that the Department found had been specifically excluded at the petitioners' request from the scope of the order regardless of its actual use. *Wheatland*, at 156. As explained above, there was no such specific exclusion in the case of bulk pasta. Quite to the contrary, the petitioners in this case consistently made clear that they wished to have pasta sold in the United States for retail covered, and the Department intended the nominal size restriction to be an appropriate way of limiting the coverage of the order to pasta imported for retail sales.

Third, whereas *Wheatland* involved section 781(c) of the Act, covering merchandise that has been subject to "minor alterations," this case involves section 781(a) of the Act, which covers merchandise that has been subject to minor or insignificant assembly or completion in the United States after importation. Thus, the Court's finding in *Wheatland* that the substitution of line pipe for standard pipe in filling standard pipe contracts did not involve an "alteration" of the merchandise exported to the United States is of no relevance here.

Section 781(a) of the Act was drafted to cover exactly the situation in this case—merchandise sold in the United States that is the same class or kind as the merchandise covered by the product description in the order, which did not fit that product description exactly when it passed through customs, but was subject to minor or insignificant assembly or completion after importation that transformed it into the subject merchandise.

Finally, the Court in *Wheatland* found (at p. 159) that, although the Department had received an anti-circumvention petition, it had elected, with the petitioners' acquiescence, to treat that petition as a request for a scope ruling (*Wheatland*, at n. 5). Accordingly, the Court held that, when the Department held that line pipe was outside the scope of the order, it correctly disposed of the petition and *Wheatland*'s only permissible challenge was to the scope ruling. No such procedural complexities are present in this case. The petitioners have filed an anti-circumvention petition and the Department has duly ruled on the issue of circumvention.

Barilla also relies on *Smith-Corona v. US*, 797 F. Supp. 1532, 1534–35 (July 10, 1992) (*Smith-Corona*), and *FTC v. US*, 716 F. Supp. 1580, 1582, n.2 (July 31, 1989) (*FTC*), to support its contention that bulk pasta was specifically excluded from the scope of the investigation. Neither of these cases advances Barilla's position because they involved only issues of scope contested in the original investigation, not allegations of circumvention of an outstanding antidumping order by means of domestic completion or assembly.

With regard to the EU's comment that the Department's published notices did not explain why the Department had refused to extend the scope of the original antidumping investigation beyond the packaging limitation, memoranda prepared by the Department's staff and placed in the file of the investigation addressed this issue and have been available to the public at all times since. See, e.g., Memorandum to Susan G. Esserman, Assistant Secretary, from the Pasta Team, dated October 10, 1995.

*Comment 3 (Bulk Pasta Cannot Constitute Parts or Components)*

Barilla argues that inclusion of bulk pasta in the scope of the order is without statutory authority because bulk pasta, as a finished product, cannot be considered "parts or components," as defined by section 781(a) of the Act.

The petitioners argue that the legislative history of section 781 of the Act indicates that the Congress intended that the Department use section 781 of the Act to close "loopholes" whereby antidumping orders are evaded by making small changes in importation activities which will bring otherwise subject merchandise outside of the literal scope of an order. Specifically, the petitioners cite to legislative history referring to the ability of importers "to evade the order by making slight changes in their method of production

or shipment of the merchandise destined for consumption in the United States.” [Emphasis in the reply brief.] S. Rep. No. 71, 100th Cong., 1st Sess., at 101 (1987).

#### *Department's Position*

We disagree with Barilla's interpretation of section 781(a) of the Act. Although the terms “parts” or “components” are not defined specifically, nothing in the statute or the legislative history suggests Barilla's interpretation. Rather, 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. 40, 100th Cong., 1st Sess. 100 at 134 (1987).

There are two parts or components to bulk pasta and the subject merchandise as imported in this case—the pasta and the packaging. The only and defining difference between the circumventing imports of Barilla's bulk pasta and the subject merchandise as defined in the scope is the packaging. As discussed fully above, the package limitation was specifically designed to capture retail sales of imported pasta. Therefore, bulk pasta which is assembled into smaller packages of five pounds or less after importation must constitute subject merchandise pursuant to section 781(a) of the Act.

Barilla's assertion that the finished pasta it imports is not subject to assembly or completion in the United States is contradicted by Barilla's conduct of repackaging bulk imports into packages of five pounds or less in its Syracuse, New York, facility. Barilla's repackaging operations are exactly the type of operations section 781(a) of the Act is intended to address.

#### *Comment 4 (Inclusion of Bulk Pasta Violates Antidumping Agreement)*

Barilla argues that the Department's preliminary determination in this proceeding is a violation of the Antidumping Agreement of the World Trade Organization (“WTO”) because there has been no finding of dumping or

of material injury for imports of bulk pasta, as required by the agreement. In addition, Barilla contends that the Department's circumvention finding constitutes discriminatory enforcement of the antidumping law. In support of this argument, Barilla refers to the preliminary affirmative determination of the ITC in the antidumping investigation of *Certain Pasta from Italy*. The ITC found that, as of the time the petitioners filed their petition for antidumping relief, Borden, Inc., a member of the petitioners' group, imported bulk pasta from an Italian affiliate and repackaged it in the United States. Barilla argues that by excluding bulk pasta from the scope of the original antidumping investigation and then enforcing the circumvention provision against Barilla for the same apparent repackaging activities that Borden was engaged in, the Department is discriminating against Barilla.

The petitioners argue that their original draft petition would have covered Borden's imports of bulk pasta but that the Department insisted on language that limited the scope of the investigation to pasta imported in packages of five pounds or less.

The EU notes that the Department had not explained how Barilla can be circumventing an antidumping order by merely following a repackaging process which, at times, is not only being followed by the petitioners themselves but which had been identified by both the petitioners and the Department and which led to imports in bulk being deliberately excluded from the original antidumping investigation.

#### *Department's Position*

The Department disagrees that the provisions of the WTO Antidumping Agreement require additional determinations of dumping and of material injury with respect to Barilla's imports of bulk pasta from Italy. The scope of the antidumping duty order on pasta from Italy covers certain of Barilla's imports of bulk pasta from Italy. This is so specifically because Barilla's U.S. activities—minor or insignificant assembly or completion after importation of components of the same class or kind of merchandise—render such imports subject merchandise pursuant to section 781 of the Act. Accordingly, these imports are already covered by the antidumping duty order on pasta from Italy, including both the material injury determination and the determination of dumping. See the Department's position on Comment 1.

Contrary to Barilla's allegations, the Department's affirmative preliminary

determination of circumvention in this proceeding does not violate the Antidumping Agreement but furthers its ultimate purpose, which is to ensure the efficacy of the antidumping laws. The Ministerial Decision on Anti-Circumvention formed an integral part of the Final Act Embodying the Results of the Uruguay Round Multilateral Trade Negotiations, and that Decision acknowledged the problem of circumvention. It recognized the need to apply “uniform rules in this area as soon as possible” to prevent the evasion of antidumping measures resulting from circumvention. The Department believes it is imperative that its laws proscribing circumvention be enforced in order to preserve the credibility of the WTO Agreement, which establishes the right of WTO Members to impose antidumping duties to remedy the injurious effects of dumped imports.

#### *Continuation of Suspension of Liquidation*

In accordance with section 735(b) of the Act, we are directing the Customs Service to continue 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, and are not accompanied by the certificate described below.

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 Customs Service shall continue to require a cash deposit in the amount of 11.26 percent for all unliquidated entries that are not accompanied by the certificate described below. This suspension of liquidation shall remain in effect until further notice.

Excluded from these suspension of liquidation instructions are entries of bulk pasta produced in Italy, by Barilla, where the entry summaries covering the bulk pasta are accompanied by a certification provided by Barilla America, Inc., the sole U.S. 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 which includes the importer's certification that the merchandise 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. This certification proposal has been reviewed by the Customs Service, which has agreed that it is administrable (see Memorandum to the File, dated June 10, 1998).

After examining this certification for consistency with the entry summary, the Customs Service will forward the certification to the Department of Commerce, Import Administration.

This affirmative final circumvention determination is in accordance with section 781(a) of the Act and 19 CFR 351.225.

Dated: October 5, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98-27403 Filed 10-9-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### University of Minnesota; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

**Decision:** Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

**Reasons:** Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

**Docket Number:** 98-019. **Applicant:** University of Minnesota, Department of Neurosurgery, Lions Research Building, 2001 Sixth Street, S.E., #421, Minneapolis, MN 55455. **Instrument:** Eye Tracking System. **Manufacturer:** Thomas Recording, Germany. **Date of Denial Without Prejudice to Resubmission:** July 1, 1998.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 98-27401 Filed 10-9-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

**Docket Number:** 98-047. **Applicant:** University of California, Davis, 1 Shields Avenue, Davis, CA 95616.

**Instrument:** Plasma Generating Machine, Model SPS-1050. **Manufacturer:** Sumitomo Coal Mining Co., Japan. **Intended Use:** The instrument will be used to investigate the phenomena of the simultaneous synthesis and densification of hard material by a patented field-activated, pressure assisted combustion method that consists of exposing elemental powders to a pulsing high current while simultaneously subjected to high pressure. **Application accepted by Commissioner of Customs:** September 21, 1998.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 98-27402 Filed 10-9-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 092498A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Explosives Testing at Eglin Air Force Base, FL

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from the U.S. Air Force to take, by harassment and non-serious injury, bottlenose dolphins, spotted dolphin, and possibly other cetacean species incidental to explosive testing of obstacle and mine clearance systems at Eglin Air Force Base (Eglin). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize these takings for a period not to exceed 1 year. **DATES:** Comments and information must be received no later than November 12, 1998.

**ADDRESSES:** Comments on this application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application and draft environmental assessments (EAs) may be obtained by writing to this address or by telephoning the contact listed here.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead 301-713-2055, or David Bernhart, 727-570-5312.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the