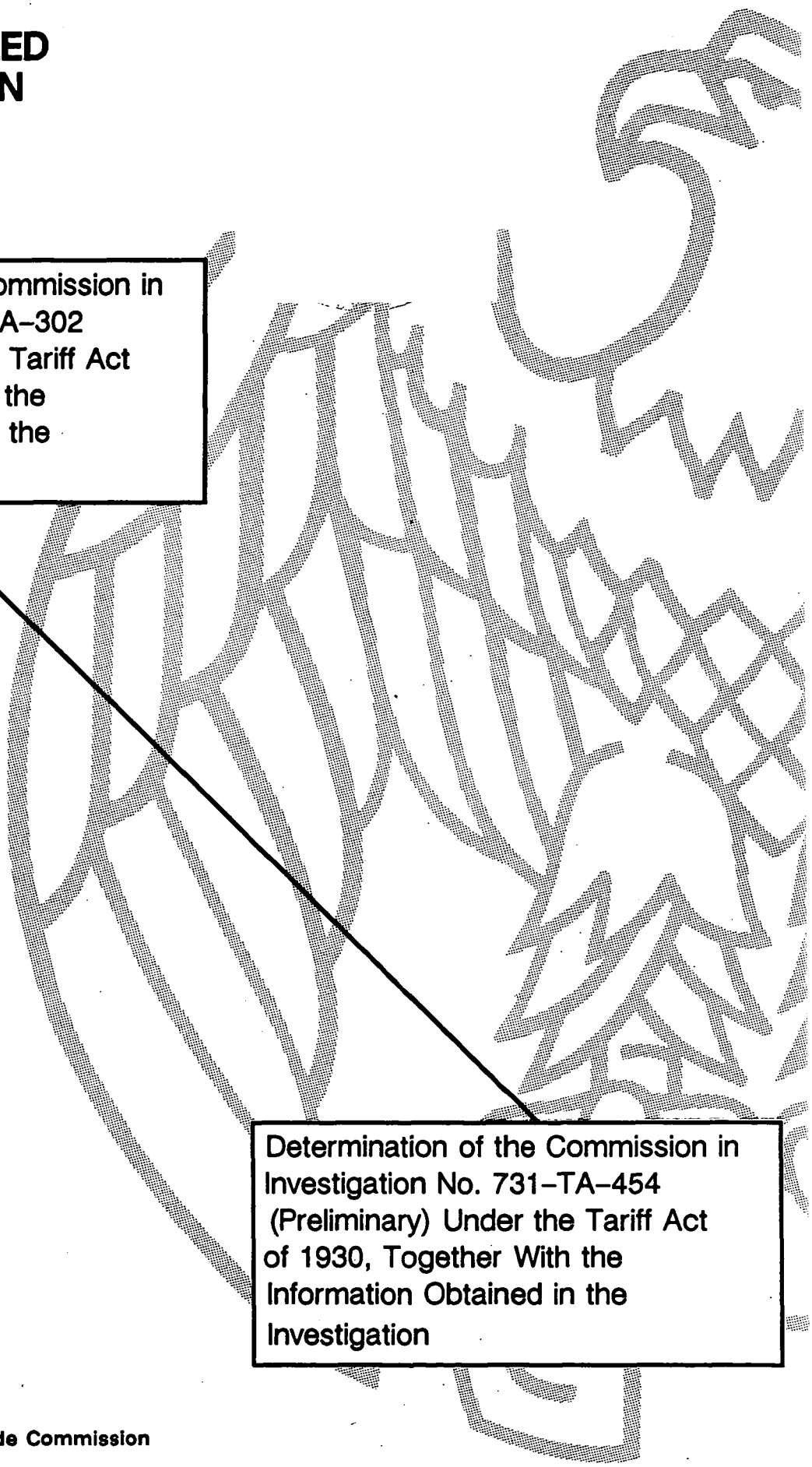
FRESH AND CHILLED ATLANTIC SALMON FROM NORWAY

Determination of the Commission in Investigation No. 701-TA-302 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



Determination of the Commission in Investigation No. 731-TA-454 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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United States International Trade Commission
Washington, DC 20436

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-302 (Preliminary)
and 731-TA-454 (Preliminary)

FRESH AND CHILLED ATLANTIC SALMON FROM NORWAY

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and § 1673b(a), respectively), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Norway of fresh and chilled Atlantic salmon (fresh Atlantic salmon),[2] provided for in subheading 0302.12.00 of the Harmonized Tariff Schedule of the United States (previously provided for in item 110.20 of the former Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Norway and sold in the United States at less than fair value (LTFV).

Background

On February 28, 1990, a petition was filed with the Commission and the Department of Commerce by The Coalition for Fair Atlantic Salmon Trade, alleging that an industry in the United States is materially injured or threatened with material injury or that the establishment of an industry in the United States is materially retarded by reason of subsidized and LTFV imports of fresh Atlantic salmon from Norway. Accordingly, effective February 28,

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[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(h)).

[2] For the purposes of these investigations, the subject product "fresh Atlantic salmon" comprises fresh whole and nearly-whole Atlantic salmon, including cleaned and/or gutted fresh Atlantic salmon, whether or not with the head. Atlantic salmon is the species Salmo salar. Fresh Atlantic salmon is generally marketed packed in ice ("chilled"). Excluded from the subject product are fresh Atlantic salmon fillets, steaks, or other cuts; Atlantic salmon that is frozen, canned, smoked, or otherwise further processed; and other species of fish, including other species of salmon, and their meats.

1990, the Commission instituted preliminary countervailing duty investigation No. 701-TA-302 (Preliminary) and preliminary antidumping investigation No. 731-TA-454 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 9, 1990 (55 F.R. 9025). The conference was held in Washington, DC, on March 21, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

On the basis of the information in the record in these investigations, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fresh and chilled Atlantic salmon (fresh Atlantic salmon) from Norway that allegedly are subsidized and sold at less than fair value (LTFV). 1/ 2/

1/ The legal standard in preliminary antidumping and countervailing duty investigations is set forth in sections 703(a) and 733(a) of the Tariff Act of 1930, as amended. 19 U.S.C. §§ 1671b(a), 1673b(a). These sections require the Commission to determine whether, based on the best information available at the time of the preliminary determinations, there is a reasonable indication of material injury to a domestic industry, or threat thereof, or material retardation of the establishment of such an industry, by reason of imports of fresh Atlantic salmon from Norway. The definition of "material injury" is the same in both preliminary and final investigations, but in preliminary investigations an affirmative determination is based on a "reasonable indication" of material injury, as opposed to the actual finding of material injury or threat required in a final determination. Compare 19 U.S.C. §§ 1671b(a), 1673b(a) with 19 U.S.C. §§ 1671d(b)(1), 1673d(b)(1). See, American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (September 1988) at 4-5.

2/ The petition was filed on behalf of the Coalition for Fair Atlantic Salmon Trade, an ad hoc group of U.S. producers of Atlantic salmon. Appearing as respondents in the investigations are Norske Fiskeoppdretteres Forening and Norske Fiskeoppdretteres Salgslag (Norwegian Fishfarmers Association and Norwegian Fishfarmers Sales Organization, respectively; hereinafter, the Norwegian respondents).

I. Like product

As a threshold matter in title VII investigations, the Commission must determine what constitutes the domestic industry. The statute defines domestic industry as "the domestic producers as a whole of a like product...." 3/ "Like product," in turn, is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with" the articles subject to investigation. 4/

The Commission's decision concerning like product is factual and is made on a case-by-case basis. 5/ The Commission has traditionally considered: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) customer and producer perceptions, (5) common manufacturing facilities and employees, and (6) price. 6/ No single factor is dispositive, and the Commission may consider other factors. The Commission has not drawn distinctions based on minor physical differences, 7/ but,

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3/ 19 U.S.C. § 1677(4)(A).

4/ 19 U.S.C. § 1677(10).

5/ Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT ___, 693 F. Supp. 1165, 1169 & n.5 (1988); 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Final), USITC Pub. 2170 (March 1989) at 6.

6/ Sweaters Wholly or in Chief Weight of Manmade Fibers From Hong Kong, the Republic of Korea, and Taiwan (Sweaters), Invs. Nos. 731-TA-448-450 (Preliminary), USITC Pub. 2234 (November 1989) at 4; Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989) at 4.

7/ S. Rep. 249, 96th Cong., 1st Sess. 90-1 (1979).

rather, has looked for clear dividing lines between articles before considering them to be separate like products. 8/

Two like product issues have arisen in these preliminary investigations, both concerning whether the Commission should adopt a like product definition more expansive than the "class or kind" of imports subject to investigation. 9/ These issues are: (1) whether the like product should include any or all species of Pacific salmon; and (2) whether the like product should include steelhead or rainbow trout. As described below, for the purposes of these preliminary investigations we define the like product to include only fresh Atlantic salmon. However, we intend to reexamine these issues in the event of final investigations.

A. Atlantic versus Pacific salmon

Atlantic salmon is a single species of salmon found naturally in the Atlantic ocean. Commercial production of Atlantic salmon takes place on "farms" on both the Atlantic and Pacific coasts of

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8/ Sweaters at 5.

9/ In its notice of initiation, the Department of Commerce defined the articles subject to investigation as follows:

> The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink"), and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon.

55 Fed. Reg. 11419, 11423 (March 28, 1990).

the United States. The term "Pacific salmon" includes five species of salmon found naturally in the Pacific ocean: chinook (or "king"), coho ("silver"), sockeye ("redfish"), pink salmon ("humpback"), and chum ("dog"). Pacific salmon do not belong to the same genus as Atlantic salmon.

Petitioner argues that the like product in these investigations should be limited to fresh Atlantic salmon. 10/ Respondents claim that fresh Pacific salmon should be part of the like product definition. 11/

1. Physical characteristics. Compared to Pacific salmon, Atlantic salmon is generally larger, lighter in color, has a milder flavor, and has a longer shelf life. 12/ There are significant differences among the five Pacific species. Closest in appearance to Atlantic salmon is apparently chinook, unless allowed to grow to full size, followed by coho -- with the exception of small "pan-size" coho. Sockeye is next closest, although it has an oilier, redder meat, and a stronger flavor than Atlantic salmon and even chinook and coho. 13/ Pink salmon and

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10/ Petitioner's Postconference brief at 7-19; Transcript of Preliminary Conference (Tr.) at 46-7, 65.

11/ Respondents' Postconference brief at 1-5; Tr. at 97-102.

12/ Staff Report to the Commission (Report) at A-5. An exception is the chinook, a species of Pacific salmon that can grow to 60 to 70 pounds in the wild. Tr. at 79.

13/ Report at A-5.

chum are generally considered inferior in taste as a fresh fish and are therefore the least similar to Atlantic salmon. 14/

2. Uses, distribution channels. Nearly all Norwegian and U.S.-produced Atlantic salmon is sold fresh. It is sold primarily to distributors for resale to restaurants and seafood stores, and is also sold to supermarkets or smokers. 15/

In contrast, the majority of coho and chinook is frozen, although a significant portion is sold fresh. Much of the fresh coho and chinook is net-caught and is consequently more often sold into the lower end of the market, such as to supermarkets. 16/ However, higher quality fresh coho and chinook, particularly troll-caught or farmed, is sold to restaurants and seafood stores. Only fresh coho and chinook share the same distribution channels as Atlantic salmon to any significant degree. 17/

With respect to seasonality, although some Pacific salmon is harvested wild year-round, the wild Pacific catch occurs primarily in the summer months. By contrast, Norwegian Atlantic salmon is

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14/ Report at A-5. In fact, a chum is apparently less similar in physical characteristics to a chinook than a chinook is to an Atlantic salmon. Tr. at 79-80.

15/ Report at A-12.

16/ Tr. at 76. This is because netting often scars or otherwise damages the fish, making the fish less attractive to restaurants and seafood stores. Report at A-5--A-6.

17/ The vast majority of sockeye, the Pacific species caught in the largest quantity, is exported to Japan. Other Pacific species are exported as well, but in smaller percentages. Petitioner's Postconference brief at Exhibit 5. Practically all pink salmon and chum that is not exported is frozen or canned and sold largely to supermarkets.

present in the U.S. market year-round, and is at its lowest levels during the summer.

3. Production processes, machinery, and workers. Because wild harvesting of Atlantic salmon in U.S. waters is prohibited by law, all commercial production of Atlantic salmon is accomplished through a process known as "aquaculture," or "fish-farming." Salmon farming involves first hatching "alevin" which mature into semi-grown salmon "smolts" in freshwater tanks. The smolts are transferred to saltwater pens to be raised to adult salmon. Salmon farming is a three-year, technologically sophisticated process. 18/

The vast majority of Pacific salmon is caught from fishing vessels, either with nets or by means of trolling. Wild harvesting is entirely distinct from fish-farming with regard to production process, equipment, and workers.

In addition to the wild catch, there is apparently some farming of coho and chinook in the United States. 19/ The information on the record, though not complete, appears to indicate that the amount of farmed Pacific salmon is small in comparison to the wild Pacific harvest. 20/

18/ Report at A-3--A-4.

19/ Report at A-5, n.19.

20/ See, e.g., Respondents' Postconference brief at Chart 2. A third type of production of Pacific salmon is "ranching," which is distinct from both the wild harvest and farming. Report at A-3, n.12. The available information suggests that it accounts for only a small percentage of Pacific production.

4. Interchangeability, customers' perceptions, and price.

There is disagreement about the degree of substitutability between fresh Pacific (i.e., chinook and coho) and fresh Atlantic salmon. 21/ It appears that fresh wild chinook and coho are not completely substitutable with Atlantic salmon, due to differences in consistency of quality, size, taste, and supply resulting primarily from distinctions in how the salmon is produced (farming versus wild catch). 22/ Nonetheless, there is information in the record to suggest that there is some substitutability between Atlantic and certain Pacific species. 23/

Fresh Pacific salmon, with one exception, is considerably less expensive than fresh Atlantic salmon. 24/ Finally, fresh Atlantic salmon has only limited substitutability with frozen Pacific salmon, and even less with canned Pacific salmon.

5. Discussion. On the basis of the above analysis, we believe that it would be inappropriate to include all Pacific salmon within the like product in these investigations. Only a small fraction of total Pacific salmon is produced in the same manner as Atlantic salmon. Moreover, because most Pacific salmon

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21/ Petitioner's Postconference brief at 16-17; Respondents' Postconference brief at 2-3; Tr. at 66, 98; Report at A-32, A-5.

22/ Report at A-5--A-6. The latter difference may not hold true for farmed Pacific salmon.

23/ Petition at Exhibit X; Tr. at 86-87; Report at A-5.

24/ Petitioner's Postconference brief at 18 & Ex. 9. The exception is sockeye, for which prices are comparable to Atlantic salmon. The vast majority of sockeye is exported.

is exported, frozen, or canned, it has limited substitutability with Atlantic salmon and does not pass through similar distribution channels.

The Norwegian respondents' proposal -- that the like product include only fresh Pacific salmon (along with Atlantic salmon) -- is more plausible. In a comparison between fresh Atlantic salmon and fresh Pacific salmon, the facts relating to certain of the like product criteria are mixed: fresh chinook and coho are at least moderately substitutable with Atlantic salmon, and a significant amount of fresh Pacific salmon and Atlantic salmon move through similar general distribution channels. However, the record discloses at least the following distinctions between fresh Atlantic and fresh Pacific salmon: (1) because most fresh Pacific salmon is not farmed, the production process, equipment and workers differ from Atlantic salmon; (2) most Pacific salmon is in the market at a time when Norwegian Atlantic salmon is at its lowest levels, and vice versa; and (3) prices for fresh Pacific salmon sold in the U.S. market are lower than for fresh Atlantic salmon. Thus, for the purposes of these preliminary investigations, we do not include fresh and chilled Pacific salmon in the like product. 25/

25/ This result is consistent with the Commission's like product determination in Certain Fresh Atlantic Groundfish from Canada, Inv. No. 701-TA-257 (Prelim.), USITC Pub. 1750 (September 1985) at 5, n.8. There the Commission declined to include certain Pacific groundfish in the like product, citing differences in taste, consumer preference, and the condition in which the fish were sold (e.g., fresh, frozen, highly processed).

Finally, we note that there is another possible definition of the like product in these investigations on which none of the parties has focused. The subset of Pacific salmon closest to Atlantic might be exclusively farmed Pacific salmon. However, there is little information in the record concerning how farmed Pacific salmon compares with Atlantic salmon under the traditional like product criteria. Moreover, in order to include only farmed Pacific salmon in the like product, we would also have to distinguish farmed Pacific from other Pacific salmon, such as fresh coho and chinook that is caught wild. The record is not well developed on whether this further distinction would be justified.

In light of the above, we do not include farmed Pacific salmon in the like product. However, we will explore in more detail the issue of whether to include any or all Pacific salmon in the like product in any final investigations.

B. Steelhead/rainbow trout

An additional issue that has arisen in the course of the investigations is whether the Commission should include steelhead or rainbow trout in the like product. Rainbow trout and steelhead trout are the same species: the sea-run strain is known as steelhead; the freshwater strain is known as rainbow.

Petitioner asserts that it does not object to the inclusion of steelhead trout within the like product. 26/ Respondents assert that steelhead are probably not interchangeable with

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26/ Tr. at 90.

Atlantic salmon. [27] Other than those few remarks, none of the parties address this issue.

Some producers of Atlantic salmon also farm steelhead trout, using the same type of equipment. Unlike Atlantic salmon, however, there is no prohibition on wild harvest of steelhead. Although there are some differences in outward appearance, the meat of farm-raised steelhead trout is apparently quite similar to Atlantic salmon meat. Farmed steelhead has been marketed as "salmon trout" through similar channels as Atlantic salmon. [28] Steelhead is generally priced below Atlantic salmon. [29] Rainbow trout is much smaller than steelhead. [30] Unlike some steelhead trout, rainbow trout is marketed as trout.

Because the parties have spent little time on this issue, the record is not developed on such issues as the significance of the wild catch of steelhead trout, the degree of steelhead's interchangeability with Atlantic salmon, and the extent of steelhead's interchangeability with rainbow trout. On balance, we determine that steelhead trout should not be included in the like product for these preliminary investigations. We will consider this issue further in any final investigations.

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[27] Tr. at 152.

[28] Until recently, steelhead/rainbow trout was classified in the same genus as Atlantic salmon, making the trout closer to Atlantic salmon in biological classification than Pacific salmon was. However, steelhead/ rainbow trout was recently reclassified to the genus that includes Pacific salmon. Report at A-2, n.9.

[29] Report at A-38; B-31, Figure F-6.

[30] Report at A-2.

II. Domestic Industry

There are three main types of salmon growers: (1) vertically integrated growers that take the salmon through both the freshwater and saltwater stages of their growth; (2) growers that focus exclusively on the first half of the process -- freshwater growing ("hatcheries"); and (3) growers that engage in only the second half of the process -- saltwater growing ("grow-out operators"). 31/

The statute defines "domestic industry" as "the domestic producers as a whole of a like product...." 32/ Because production of full-grown salmon consists of two phases, each taking roughly the same time and each requiring significant capital investment, entities that engage in one or both of the two stages are arguably taking part in "producing" salmon.

However, the end product of the hatcheries -- semi-grown salmon called "smolts" that later grow into full-grown salmon -- does not correspond to the subject imports, which are full-grown salmon. Thus there may be a question whether these freshwater hatcheries are part of the domestic industry. 33/

31/ Report at A-10--A-11. Integrated producers account for over half of domestic Atlantic salmon production.

32/ 19 U.S.C. § 1677(4)(A).

33/ We note that there is no independent use for salmon smolts other than becoming full-grown salmon. Also, there is no question that the vertically integrated growers, and the saltwater growers, are part of the domestic industry. Their end product -- fully grown salmon -- is like the subject imports.

Although petitioner states in its postconference brief that all entities involved in the production of Atlantic salmon should be part of the domestic industry, [34] no party has focused on this precise issue. In fact, defining "domestic industry" in an agricultural industry consisting of two roughly equal growing stages may be an issue of first impression for the Commission. [35] Under this unusual set of facts, because hatcheries, like saltwater operators, take part in "growing," we have determined for the purposes of these preliminary investigations to include Atlantic salmon hatcheries as "producers" of salmon. [36] In the event of final investigations, we will explore how best to address this issue. [37]

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[34] Petitioner's Postconference brief at 4-6.

[35] This is not a typical grower-versus-processor situation present in many agricultural cases. Both fresh and saltwater growers are "growers;" neither is properly a "processor." Thus the statutory provision added by the 1988 Act concerning whether to combine growers and processors together as an industry is inapplicable. 19 U.S.C. § 1677(4)(E).

[36] A passage from the legislative history on the Trade Agreements Act of 1979 indicates a Congressional awareness that unusual situations could present themselves in applying dumping and countervailing duty laws in the agricultural context: "Because of the special nature of agriculture, . . . special problems exist in determining whether an agricultural industry is materially injured." S.Rep. 249, 96th Cong., 1st Sess. 88 (1979).

[37] In its postconference brief, petitioner notes that there is at least one entity whose only role in production of whole salmon is bleeding, eviscerating, packaging, and marketing the salmon. Because any such entities add some value to the product and sell a like product, they are part of the domestic industry. Not only is gutted salmon included among the subject imports, but so is "round" -- i.e., unbled, ungutted -- salmon. Therefore, even growers that might sell round salmon to processors for gutting produce a like product and are part of the domestic industry.

III. Material retardation

Petitioner claims that the domestic Atlantic salmon industry is "nascent," and that the Commission should therefore apply the "material retardation" standard. 38/ The statute does not provide guidance in applying this provision. In prior investigations, the first question the Commission has addressed is whether a domestic industry is already "established." If the industry is not established, the Commission has applied the material retardation test. If the domestic industry is established, the Commission has found the material retardation standard to be inapplicable, and has instead focused on the standards of material injury or threat of material injury. 39/ Thus the threshold question is whether a domestic industry is established.

The fact that there is some domestic production does not preclude the possibility that the domestic industry may not be "established." In cases in which domestic companies have begun production, the Commission has examined whether domestic producers have "stabilized" their operations. 40/ To make this assessment,

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38/ 19 U.S.C. § 1671b(a), 1673b(a)("reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports" subject to investigation.).

39/ Material retardation and material injury/threat are therefore mutually exclusive standards. Certain Copier Toner from Japan, Inv. No. 731-TA-373 (Prelim.), USITC Pub. 1960 (March 1987) at 10, n.26; Pressure Sensitive PVC Battery Covers from West Germany, Inv. No. 731-TA-452 (Prelim.), USITC Pub. 2265 (March 1990) at 11, n.22.

40/ Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 (July 1985) at 4, aff'd BMT Commodity Corp. v. United States, 11 CIT 524, 667 F.Supp. 880 (1987); aff'd,

(continued...)

the Commission has considered several aspects of domestic operations: (1) when the domestic industry began production; (2) whether the production has been steady or start-and-stop; (3) the size of domestic production compared to the size of the domestic market as a whole; (4) whether the domestic industry has reached a reasonable "break-even point"; and (5) whether the activities are truly a new industry or merely a new product-line of an established firm. 41/ Applying these factors, we determine on balance that a domestic industry producing fresh Atlantic salmon is established.

Domestic production operations have been in existence for a number of years. There has been commercial smolt production since at least the early 1980's. Processing operations and saltwater growing facilities were established several years prior to the period of investigation. 42/ The long production process for

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40/ (...continued)
852 F.2d 1285 (Fed. Cir. 1988), cert. den., 109 S.Ct. 1120 (1989); Toner at 10 (Material retardation analysis appropriate if "domestic industry has yet to attain a stable presence in the market."). In cases in which no domestic entities have begun production of the like product, the Commission has attempted to assure itself that "one or more domestic companies . . . have demonstrated a 'substantial commitment' to production." Codfish (Prelim.), USITC Pub. 1571 (Sept. 1984) at 5-6; Certain Commuter Airplanes from France and Italy, Invs. Nos. 701-TA-174 & 175 (Prelim.), USITC Pub. 1269 (July 1982) at 8; Motorcycle Batteries from Taiwan, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (March 1982). The "substantial commitment" standard is inapplicable in this case because domestic firms have been producing Atlantic salmon for several years. Report at A-13.

41/ Battery Covers at 12-13; Lime Oil from Peru, Inv. No. 303-TA-16 (Prelim.), USITC Pub. 1723 (July 1985) at 8, n.19.

42/ Report at A-13.

salmon farming means that for most companies production begins several years before commercial sales. Even based on initial commercial sales, however, one large company's starting date was 1984. 43/

Other factors also indicate that a domestic industry is "established." Shipments for the 1988/89 harvest season, and actual and projected shipments for the 1989/90 harvest season, can only be described as substantial. 44/ The same must be said for total productive assets held by U.S. firms producing Atlantic salmon. 45/ Domestic producers' share of U.S. consumption, although small, grew significantly during the period of investigation. 46/ The limited financial data suggest that by 1988 a portion of the industry had achieved profitability. Another company showed marked improvement from 1987 to 1988, suggesting some stabilization of operations. 47/

Despite these facts, certain other factors indicate that an industry may not be established. Market share of domestic producers remains low. Sustained profitability has not been

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43/ Id.

44/ Report at A-17, Table 5. The exact figures are business proprietary.

45/ Report at A-22.

46/ Report at A-31.

47/ Report at A-19--A-21.

attained. A number of firms are only now establishing production. 48/

Nevertheless, we find that those producers already in the business of producing Atlantic salmon are sufficient to constitute an "established" industry for the purposes of our analysis. We will reexamine this issue in any final investigations if presented with new information.

IV. Condition of the Industry 49/

The domestic Atlantic salmon market and industry grew rapidly in the years 1987 through 1989. Apparent consumption of fresh Atlantic salmon nearly doubled in volume during the period. 50/ In value terms, apparent consumption grew at a lesser but still substantial rate.

As for the U.S. industry, a number of new entrants started operations, and existing firms expanded activities. Capacity grew rapidly. 51/ Production of whole salmon expanded several-

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48/ Report at A-13.

49/ Chairman Brunsdale joins in this discussion of the condition of the domestic industry. However, she does not reach a separate legal conclusion regarding the presence or absence of material injury based on this information. While she does not believe an independent determination is either required by the statute or useful, she finds the discussion of the condition of the domestic industry helpful in determining whether any injury resulting from dumped or subsidized imports is material. See Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 10-15 (Views of Chairman Brunsdale and Vice Chairman Cass).

50/ Report at A-9, Table 1.

51/ Report at A-14, Table 2; A-15, Table 3.

fold. [52] For adult salmon, projections for the 1989/90 harvest season show a considerable increase compared with 1988/89 levels. [53] Smolt capacity and production are projected to level off in 1990. [54] Shipments of smolts and whole salmon show trends similar to the trends for production. [55] Employment steadily increased during the period of investigation. [56]

Financial indicators show a radically different picture, however. [57] The Commission obtained profit-and-loss data from integrated domestic firms that account for a substantial percentage of domestic production. Combined profitability improved from 1987 to 1988. [58] However, a sharp downturn occurred in 1989. The turnaround was so severe that the continued ability of one producer to obtain working capital to sustain operations appears in doubt. [59] In addition, financial

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[52] Report at A-15, Table 3.

[53] Id.

[54] Report at A-14, Table 2. Although the like product in these investigations is whole Atlantic salmon, to understand the condition of the industry it is useful to note trends concerning smolts, because future adult salmon production is determined in large part by the number of smolts and salmon at other intermediate stages of growth that are in production.

[55] Report at A-16, Table 4; A-17, Table 5.

[56] Report at A-18, Table 6.

[57] Because this information is business proprietary, we are not at liberty to disclose specific figures.

[58] Report at A-21.

[59] Tr. at 13-14, 27-28.

information submitted by another producer is consistent with a finding of reasonable indication of material injury. 60/

In determining whether there is a reasonable indication of material injury, 61/ we are mindful of two characteristics of this industry: (1) the domestic industry, though "established," is young; and (2) there is a three-year production cycle, which means that current levels of production and shipments of salmon are determined in large part by prior years' smolt production. 62/

Because the bulk of this industry is in the early-growth stage, it is not surprising to see increases in many of the production indicia as operations approach planned capacity. Continued growth in 1990 in salmon production and shipments, despite downturns in prices in 1989, is to be expected given increases in the number of fish reaching maturity from earlier

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60/ Report at A-21, Table 11.

61/ Vice Chairman Cass does not join in this or subsequent statements referring to conclusions that the Commission has drawn concerning the condition of the domestic industry. He believes that the statute under which the Commission conducts Title VII investigations does not contemplate that the Commission will make a separate legal finding respecting the condition of the industry. While he believes the condition of the domestic industry is relevant to assessing whether the effect of the LTFV imports had been "material," that information has relevance only in assessing material injury by reason of the allegedly subsidized or LTFV imports. See Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (January 1989) at 95-113 (Concurring and Dissenting Views of Commissioner Cass); Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 47 (Additional Views of Vice Chairman Cass).

62/ See 19 U.S.C. § 1677(7)(C)(iii) (Commission shall evaluate relevant economic factors "within the context of . . . conditions of competition that are distinctive to the affected industry.").

hatchings. Therefore, although growth in the domestic industry has been remarkable, the significance of the expansion in our assessment of material injury is less than would be the case if this growth occurred in an older, more mature industry.

On the financial side, it is true that in certain circumstances young industries do not show the profitability of more mature industries due to start-up costs or other factors. However, this phenomenon would not explain what has occurred in this industry: significant financial improvement, followed by a substantial drop-off in profitability. Based on the troubled financial condition of the industry, and in particular, the precarious situation of its largest producer, we find that there is a reasonable indication that a domestic industry is materially injured. 63/ 64/

63/ Commissioners Eckes and Rohr note that several factors in this investigation also support the petitioner's contention that the domestic industry is threatened with further material injury by reason of the allegedly unfair imports of Norwegian salmon. The Norwegian industry has grown very rapidly in recent years and has substantial reserve capacity. The ability of Norway's announced freezing program to effectively limit the supply of fresh fish produced is still in question, given the large price differential for fresh and frozen salmon. Although much of Norway's production has been marketed in countries other than the United States in the past, pending antidumping proceedings in the EC could result in a change in marketing strategy after mid-1990. The possibility of threat to the domestic industry should be reassessed in any final investigation.

64/ See Commissioner Lodwick's Additional Views on the nature of this industry.

V. Reasonable indication of material injury by reason of subject imports [65/]

In these preliminary investigations, the Commission must determine whether there is a reasonable indication of material injury or the threat thereof to the domestic industry "by reason of" the imports under investigation. [66/] The Commission considers the volume of imports, their effect on prices for the like product, and their impact on domestic producers. [67/] In doing so, the Commission examines whether import volumes or increases in volume are significant, whether there has been significant underselling by imports, whether imports significantly depress or suppress prices for the like product, and such factors as domestic production, sales, capacity utilization, inventories, employment, and profits. [68/]

The Commission may consider alternative causes of injury, but it is not to weigh causes. [69/] The Commission need not determine

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[65/] Vice Chairman Cass does not join in the Commission's discussion of whether there is a reasonable indication of material injury by reason of the subject allegedly subsidized or LTFV imports. His analysis of this issue is set forth separately in his Additional Views.

[66/] 19 U.S.C. §§ 1671b(a), 1673b(a).

[67/] 19 U.S.C. § 1677(7)(B)(i).

[68/] 19 U.S.C. § 1677(7)(C).

[69/] Citrosuco Paulista S.A. v. United States, 12 CIT ___, 704 F. Supp. 1075, 1101 (1988). Alternative causes may include: the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance (continued...)

that imports are the principal or a substantial cause of material injury. 70/ Rather, the Commission is to determine whether imports are a cause of material injury. 71/ 72/

Norwegian capacity to produce adult salmon increased significantly during the period of investigation. 73/ Reflecting this growth, imports of fresh Atlantic salmon from Norway increased steadily from 16.8 million pounds in 1987 to 25.1

69/(...continued)
and productivity of the domestic industry. S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. 317, 96th Cong., 1st Sess. 47 (1979).

70/ "Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979).

71/ LMI - La Mettali Industriale, S.p.A. v. United States, 13 CIT ___, 712 F. Supp. 959, 971 (1989), citing, British Steel Corp. v. United States, 8 CIT 86, 593 F. Supp. 405, 413 (1984); Hercules, Inc. v. United States, 11 CIT 710, 673 F. Supp. 454, 481 (1987). See also, Maine Potato Council v. United States, 9 CIT 293, 613 F. Supp. 1237, 1244 (1985)(The Commission must reach an affirmative determination if it finds that imports are more than a "de minimis" cause of injury.).

72/ Chairman Brunsdale notes that while the Commission is not to weigh causes, it must nonetheless determine that the injury "by reason of" the subject imports is material in order to reach an affirmative determination. While the a-cause-of-material-injury formulation used in the text has received some favorable commentary in judicial dicta, it finds no support in the language of the statute or in the legislative history. For a full treatment of this issue, see Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989) at 147-248 and particularly 228-48 (Dissenting Views of Vice Chairman Ronald A. Cass).

73/ Report at A-26.

million pounds in 1989, an increase of nearly fifty percent. 74/ In value terms, imports from Norway increased 25 percent from $74.7 million in 1987 to $93.7 million in 1989. 75/ We find that the level of Norwegian imports in absolute terms, and the continued rise in those imports through 1989, are significant in light of the decline in the fortunes of the domestic industry in 1989. 76/

Because non-subject fresh Atlantic salmon imports and U.S. production grew at a faster rate than Norwegian imports, the market penetration of Norwegian Atlantic salmon decreased over the period of investigation. In both quantity and value terms, Norwegian imports dropped from near 80 percent of apparent domestic consumption in 1987 to near 60 percent in 1989. 77/ Falling market penetration rates suggest a decrease in the preeminence of Norwegian imports in the U.S. market. Nevertheless, we find that the Norwegian market share -- well over half the U.S. market -- was significant throughout the period of investigation. 78/

Turning to price trends, publicly available data reveal that prices for the three reported weight ranges of fresh Atlantic

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74/ Report at A-30, Table 15.

75/ Id.

76/ 19 U.S.C. § 1677(7)(C)(i).

77/ Report at A-31, Table 16.

78/ 19 U.S.C. § 1677(7)(C)(i).

salmon moved together. 79/ Prices increased slightly in early to mid-1988 to above $5.00 per pound. Prices began to fall in mid-to-late 1988 and continued to fall through early 1989, at which time U.S.-produced Atlantic salmon -- unlike Norwegian Atlantic salmon -- was no longer available in the market due to present seasonal production constraints in the U.S. industry. 80/ When U.S. Atlantic salmon re-entered the market in fall of 1989, prices for two of the weight ranges had fallen further. Prices for all three weight ranges of Atlantic salmon continued to decline in autumn 1989 to levels near $3.00 per pound, a fall of roughly 40 percent from early to mid-1988. Prices rose somewhat in early 1990 for all three reported weights. 81/ However, it is clear that prices for U.S. Atlantic salmon are significantly depressed. Purchasers contacted by the Commission were in agreement that an over-supply in the U.S. market caused the price decline for Atlantic salmon in 1989. 82/

79/ Report at A-35--A-37. The information presented here is from the "Urner Barry" report, which groups prices for U.S. and Canadian Atlantic salmon together. However, U.S. and Canadian prices do not differ appreciably. Report at A-34, n.79.

80/ An industry representative indicated that U.S. producers typically harvest their Atlantic salmon from late September/early October through April of the next year. Tr. at 21.

81/ One of the largest U.S. producers complained that in order to ensure sufficient sales it had entered into several extended contracts before the price rise, committing itself to sell to buyers at the earlier, more depressed price. Tr. at 26. To a large extent, therefore, the price increase has not benefitted this producer.

82/ Report at A-43.

Published prices for U.S. Atlantic salmon closely track prices for Norwegian Atlantic salmon. Norwegian prices increased in early 1988, then steadily declined through 1989, only to bounce back slightly at the end of 1989 and the beginning of 1990. 83/

As for evidence of underselling by imports, we note that the probative value of price comparisons is limited because relatively complete data on prices for both U.S. and Norwegian Atlantic salmon are available only for two weight categories and only in one channel of distribution. With this in mind, the questionnaire responses for the two complete price series show Norwegian imports overselling domestic Atlantic salmon more often than underselling. 84/ Therefore, we do not find significant underselling based on the limited information collected in these preliminary investigations. 85/

Finally, we note that because it is the same species and is grown in the same manner, imported Norwegian fresh Atlantic salmon is largely substitutable with U.S.-produced Atlantic salmon. 86/ Greater substitutability tends to increase the likely effects of imports on sales and prices of the domestic like product.

83/ Report at A-35--A-37.

84/ Report at A-41, Table 17; A-42, Table 18. This is so even if one excludes certain atypical low-priced U.S. sales that are noted at A-42, Table 18.

85/ 19 U.S.C. § 1677(7)(C)(ii)(I). We note in this context that a representative of one domestic producer indicated that buyers often require domestic producers to sell their salmon at a lower price than Norwegian salmon in light of U.S. producers' transportation cost advantage. Report at A-33, n.74.

86/ Tr. at 40, 55; Report at A-43.

In sum, we find that on the basis of: (1) the large and increasing volume of Atlantic salmon imports from Norway, (2) the dominant market position of these imports, and (3) the interchangeability of Norwegian and U.S. Atlantic salmon, imports of fresh Atlantic salmon from Norway were a major factor in the significant depression of prices of U.S. Atlantic salmon. 87/ 88/

Lower prices, in turn, were a significant factor in the worsening financial condition of the U.S. industry in 1989. This is shown by the fact that although the domestic industry sold a higher volume of Atlantic salmon in 1989 than in 1988, the unit value of the shipments declined steadily through 1989, 89/ and the industry's profitability was worse. Because current production levels of adult salmon are largely determined by production decisions made several years in advance, and because there is little ability to maintain inventory, the domestic fresh Atlantic salmon industry is particularly vulnerable to injury in the event of price declines.

Respondents claim that causes other than subject imports explain whatever injury the domestic industry is experiencing. They allege that because of the enormous U.S. Pacific salmon

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87/ 19 U.S.C. § 1677(7)(C)(ii)(II).

88/ Chairman Brunsdale also notes the substantial levels of the alleged dumping margins and the number of subsidy programs allegedly involved. Report at A-7--A-8. While these are no more than petitioner's claims at this point, they do suggest that the prices of Norwegian salmon may be significantly below "fair" levels.

89/ Report at A-16--A-17.

harvest, the effect of Pacific salmon on the Atlantic salmon market dwarfs any effect Norwegian imports could have. 90/ Respondents also point to non-subject salmon imports from Canada as an alternative explanation for any difficulties of the domestic industry. 91/ Finally, respondents assert that U.S. producers are disadvantaged by being out of the market for about half the year. Because the Norwegian producers are able to supply salmon year-round, respondents claim, Norwegian producers are better able to retain customers. 92/

On the basis of the information generated to date, we do not agree that Pacific salmon production fully explains the price decrease for farmed U.S. Atlantic salmon. As noted above, the substitutability of Pacific salmon as a whole with Atlantic salmon is limited, because most Pacific salmon is exported (if U.S.-produced) or sold frozen or canned. The substitutability of fresh

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90/ Respondents' Postconference brief at 13-14.

91/ Petitioner responds that the effects of Pacific salmon on producers of Atlantic salmon is not substantial, because: (1) most Pacific salmon is exported; (2) what is not exported is primarily sold frozen or canned, unlike Atlantic salmon which is sold fresh; (3) even fresh Pacific salmon is not a close substitute for Atlantic salmon; and (4) contrary to respondents claims, there is little price correlation between Atlantic and Pacific salmon. Petitioner's Postconference brief at 51-53. As for imports from Canada, petitioner claims that the vast majority of that is Pacific salmon, most of which is sold frozen or canned.

92/ Respondents' Postconference brief at 14-15.

Pacific salmon -- which is a small subset of Pacific salmon -- with Atlantic salmon is greater, but still not complete. 93/

As for imports of Atlantic salmon from Canada and other non-subject countries, their market share increased significantly during the period of investigation. However, the Commission is not to weigh different causes of injury to the domestic industry. 94/ Because imports from Norway held a dominant share of the U.S. market, and increased significantly in absolute terms at the time that prices for the like product were falling, we find that there is a reasonable indication that imports from Norway contributed to the price decline.

Finally, there is some information on the record to suggest that the inability of the domestic industry to supply Atlantic salmon year-round may be significant. 95/ However, we cannot conclude on the basis of the information presented in these investigations that this factor is of such overriding importance, either alone or in combination with other suggested alternative causes of injury, as to fully explain the condition of the

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93/ Respondents claim that there is a direct correlation between prices for Pacific salmon and prices for imports of Atlantic salmon from Norway, indicating that Pacific prices are the driving force behind prices in the U.S. Atlantic salmon market. Respondents' Postconference Brief at Chart 1; Tr. at 103. The available research on this issue does not confirm such a correlation. Report at A-32.

94/ Citrosuco Paulista, 704 F. Supp. at 1101.

95/ Report at A-43; Petition at Ex. X (importance of consistent supplies of Atlantic salmon).

domestic industry as described above. We will explore this issue in more detail in the event of any final investigations. 96/

VI. Conclusion

For the reasons described above, we find that there is a reasonable indication that a domestic industry is materially injured by reason of allegedly subsidized and LTFV imports of fresh and chilled Atlantic salmon from Norway. 97/

96/ As a final matter, we note respondents' assertion that negative determinations are justified by the fact that the petition did not contain injury data from each of petitioner's members. Tr. at 105; Respondents' Postconference brief at 5-7. We do not agree. The Court of International Trade has stated that the Commission has an independent obligation to conduct a thorough investigation. In Budd Company, Railway Division v. United States, 1 CIT 67, 507 F.Supp. 997, 1003-4, 1006 (1980), the Court reasoned that title VII investigations are investigatory, not adjudicatory. The Court admonished the Commission to use its best efforts to gather information from whatever sources. Accord, American Lamb v. United States, 785 F.2d at 1003.

97/ Commissioner Newquist concurs in general with the analysis set forth in the Additional Views of Commissioner Lodwick.

ADDITIONAL VIEWS OF VICE CHAIRMAN RONALD A. CASS

Fresh and Chilled Atlantic Salmon from Norway
Inv. Nos. 701-TA-302 and 731-TA-454
(Preliminary)

I concur with the Commission's unanimous affirmative determination in these preliminary investigations. I join in the Commission's discussion of the domestic like product and domestic industry issues, including the Commission's conclusion that, for purposes of these preliminary investigations, the domestic industry is sufficiently established to preclude our finding that the establishment of a domestic industry has been materially retarded by reason of the imports that are the subject of these investigations and that were allegedly subsidized and sold at less-than-fair-value ("LTFV"). I also join in the Commission's discussion of the condition of the domestic industry to the extent that it accurately characterizes information relevant to my analysis of the record before us.

I offer these Additional Views primarily for two reasons. First, the parties have raised certain issues respecting the economic analysis relevant to determining the appropriate like product definition. These issues are not fully treated in the majority opinion; although their resolution is not essential to the outcome of these investigations, I believe that they may prove important in any final investigation. Second, the analytical and legal approach that I have used in determining

whether there is a reasonable indication of material injury to domestic industry by reason of the subject, allegedly unfairly traded imports is, as in other cases, quite different from that employed by certain of my colleagues.

I. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

For the purposes of these preliminary investigations, I believe that the Commission has appropriately chosen to evaluate the record by using the like product definition suggested by Petitioner, i.e., a like product that consists only of Atlantic salmon. I note, however, that I do not believe that the record evidence on the like product issue is so clear-cut as to preclude the possibility that the Commission might decide in a final investigation to define the like product more broadly -- for example, by including in the like product certain types of Pacific salmon, such as chinook or coho.

In these preliminary investigations, the Commission has been presented by Petitioner with a number of econometric studies that appear to show that the various types of Pacific salmon are, as a group, not a good substitute for Atlantic salmon in the domestic marketplace.1/ Respondents, on the other hand, cite a survey of fish wholesalers that appears to indicate that a large percentage of domestic consumers view certain types of Pacific salmon (particularly chinook) as highly interchangeable with Atlantic

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1/ See Petitioner's Postconference Brief at 16 and Exhibit 8.

salmon.2/ Given the legal standard applicable in preliminary investigations -- which requires only a reasonable indication of material injury to domestic industry by reason of unfairly traded imports -- it is not necessary to disposition of these investigations that we determine which of these diametrically opposed arguments is closer to the truth. In a final investigation, however, this issue may well prove critical.3/

II. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF LTFV AND SUBSIDIZED IMPORTS: FRESH AND CHILLED ATLANTIC SALMON FROM NORWAY

In assessing the effects of dumped or subsidized imports under Title VII of the Tariff Act of 1930, as amended, it is necessary both to ascertain how the condition of the domestic industry differs from the condition that would have existed had there not been unfairly traded imports, and to determine whether the change in the circumstances of the industry that resulted from dumping or subsidization, if any, constitutes material injury.4/ Title VII directs the Commission, in assessing the causation of injury by dumped or subsidized imports, to consider, among other factors:

> (i) the volume of imports of the merchandise which is the subject of the investigation,

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2/ See Respondents' Postconference Brief at 2-3.

3/ See also discussion, infra, in Section II.B.

4/ See, e.g., 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076, Inv. No. 731-TA-389 (Preliminary) (April 1988) (Views of Commissioner Cass).

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise on domestic producers of like products . . . ."5/

Other, succeeding provisions of the statute describe these three factors in greater detail.

The text of the statute does not purport to identify every factor that is, or may be, relevant to an assessment of whether unfairly traded imports have materially injured a domestic industry; indeed, the statute explicitly contemplates that the Commission will consider economic factors in addition to those identified in the statute.6/ The factors that are listed in the statute and the order in which they are listed nevertheless provide us with essential guidance respecting the fundamental inquiry to be performed. Three related questions are singled out

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5/ See 19 U.S.C. § 1677(7)(B).

6/ See 19 U.S.C. § 1677(7)(C).

Under Title VII, as amended by the Omnibus Trade and Competitiveness Act of 1988, we are required to explain how these factors affect the outcome reached in any particular investigation. The statute also requires Commissioners to describe the relevance of other economic factors that we consider in addition those specifically identified in the statute. See Pub. L. No. 100-418, § 1328(1), 102 Stat. 1107, 1205 (to be codified as 19 U.S.C. § 1677(7)(B)(ii)). I have explained in detail in other opinions how the three-part inquiry that I employ considers certain other economic factors relevant to an assessment of the impact of unfairly traded imports on the domestic industry producing the like product -- e.g., dumping margins -- in addition to the specific factors listed in the statute. See, e.g, New Steel Rails from Canada, USITC Pub. 2135, Inv. Nos. 701-TA-297 and 731-TA-422 (Preliminary) 35-37 (Nov. 1988) Additional Views of Commissioner Cass) ("New Steel Rails I"); Generic Cephalexin Capsules from Canada, USITC Pub. 2143, Inv. No. 731-TA-433 (Preliminary) 56-58 (Dec. 1988) (Additional Views of Commissioner Cass).

as critical to an assessment of the possible existence of material injury by reason of dumping or subsidization.

First, we are to examine the volumes of imports of the merchandise under investigation. The absolute volumes of imports and their magnitude relative to domestic sales of the competing like product are both relevant to this question. So, too, is the effect of dumping or subsidization on the prices of the imports, as the change in import volumes brought about by dumping or subsidization will be closely related to changes in the prices of the imports that occurred as a result of sales at less-than-fair-value or subsidized prices.

Second, we must attempt to determine how dumping or subsidization of the subject imports affected prices, and concomitantly sales, of the domestic like product. In addition to evidence relating to the prices at which imports and domestic like products are sold, evidence bearing on three issues is central to an analysis of this question: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports and the domestic like product); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products.

Finally, we must evaluate the extent to which these changes in demand for the domestic like product caused by unfairly traded imports affected the financial and employment performance of the

domestic industry, and determine whether these effects are material.7/ A variety of factors, such as the industry's operating income, its return on investment and its level of employment and employment compensation, must be examined in considering that issue.8/

A. Volumes and Prices of the Subject Imports

In these investigations, the volume of the subject imports is substantial by any standard. In 1989, approximately 25 million pounds of fresh Atlantic salmon, valued at $93.3 million, were imported from Norway.9/ By contrast, import levels in 1987 and 1988 were significantly lower in both quantity and value terms. In 1987 and 1988, imports of fresh Atlantic salmon from Norway amounted to 16.8 million pounds and 19.7 million pounds, respectively.10/ The value of these imports was $74.7 million in 1987 and $90.3 million in 1988.11/ Throughout the period covered

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7/ The judgment as to whether these effects are "material" within the meaning of the statute may be assimilated to the third inquiry or may be seen as a fourth part of our inquiry. See Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) 117-19 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass).

8/ In making each of these inquiries under the statute, we are to consider the particular dynamics of the industries and markets at issue. See new Section 771(7)(C)(iii) of the statute (to be codified at 19 U.S.C. § 1677(7)(C)(iii)). See also S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987).

9/ Report at A-30.

10/ Id.

11/ Id.

by our investigation, imports of fresh salmon from Norway accounted for a sizeable percentage of total domestic consumption of fresh Atlantic salmon. In 1989, for example, Norwegian imports of fresh Atlantic salmon represented [*]% of total U.S. fresh Atlantic salmon consumption.12/

The record evidence provides at least a reasonable indication that these import volumes significantly increased due to dumping and/or subsidization. Petitioner has alleged that the subject imports were sold at prices reflecting significant margins of dumping. For Norway as a whole, the alleged average dumping margins range from 26% to 33%.13/ Petitioner also asserts that Norwegian producers of fresh Atlantic salmon have benefited from a number of countervailable subsidies. Although we do not in these preliminary investigations have any information respecting the magnitude of the subsidization that has allegedly occurred, the Department of Commerce has initiated an investigation of 14 separate Norwegian governmental programs that have allegedly provided Respondents with countervailable subsidies.14/

The analytical issues involved in determining how dumping affected the prices of subject imports are quite different from those involved where subsidization is at issue. Both unfair

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12/ Id. at A-30.

13/ Id. at A-7. Petitioner has alleged different subsidies for different regions of Norway. Id.

14/ See Initiation of Countervailing Duty Investigation: Fresh and Chilled Salmon from Norway, 55 Fed. Reg. 11423 (Mar. 28, 1990), reprinted in Report at B-7-B-8.

trade practices are, of course, at issue in these investigations. I turn first to the issue of dumping.

In general, dumping margins (as alleged or as determined by Commerce) measure the difference between prices in two markets, but they do not constitute a precise measure of the extent to which the prices of subject imports declined as the result of charging different prices in the two markets (that is, as a result of dumping). In most cases, the actual price decrease in sales to the United States will be less than the full amount of the dumping margin.15/ In cases where, as here, the alleged dumping margins at issue reflect an assertion that the subject foreign producers/exporters have charged a lower price for their product in the United States than the price that they have charged in their home market (or another foreign market used as the surrogate for the home market),16/ the actual decrease in the U.S. price of the subject imports that occurred consequent to dumping will be only a fractional percentage of the dumping margin. This percentage, in turn, will be in large measure a function of the proportion of the total sales of the subject foreign producer(s) in the U.S. and the exporter's home market

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15/ The reason for this is explained in 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2170, Inv. No. 731-TA-389 (Final) 82-89 (Mar. 1989) (Dissenting Views of Vice Chairman Cass).

16/ The Commerce Department has not initiated an investigation of Petitioner's claim that Respondents sold their products in the United States at prices below Respondents' cost of production. See Initiation of Antidumping Duty Investigation: Fresh and Chilled Atlantic Salmon from Norway, 55 Fed. Reg. 11418 (Mar. 28, 1990), reprinted in Report at B-5-B-6.

(or other surrogate foreign market) that is accounted for by sales in the home market.17/

Although the relative importance of the Norwegian and U.S. markets to Norwegian producers of fresh Atlantic salmon varied somewhat during the period covered by our investigation, for these producers as a group, the U.S. market has consistently

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17/ See, e.g., Certain All-Terrain Vehicles from Japan, USITC Pub. 2163, Inv. No. 731-TA-388 (Final) 58-60 (March 1989) (Additional Views of Commissioner Cass); Granular Polytetrafluoroethylene Resin from Japan and the Netherlands, USITC Pub. 2112, Inv, Nos. 731-TA-385 and 386 (Final) 74 (Aug. 1988) (Additional Views of Commissioner Cass); Certain Bimetallic Cylinders from Japan, USITC Pub. 2080, Inv. No. 731-TA-383 (Final) 44 (May 1988) (Additional Views of Commissioner Cass). The price decline in the United States will be a function both of the difference in competitive conditions faced by the dumping firm in the United States and in its home market and of the value to the firm of sales in each of those markets. The dumping margin, if properly calculated, reflects the first of these considerations, and the relative shares of sales by the firm in the two markets reflects the second (at least over the time frame relevant to our dumping investigations). For that reason, a proportional fraction of the dumping margin equal to the portion of the firm's combined U.S.-home market sales accounted for by sales to the home market will, by combining these two considerations, approximate the price change consequent to dumping.

In reality, an estimate of the decrease in the price of the dumped product that is derived in this fashion will be somewhat overstated as it represents an approximate upper bound of that decrease. For a thorough explication of this subject, see Office of Economics, Assessing the Effects on the Domestic Industry of Price Dumping, USITC Memorandum EC-L-149 at 1, n. 1, 13, 19-21 (May 10, 1988). A more accurate statement of the effects of dumping on import prices also may require some adjustment to reflect the fact that dumping margins are calculated on an ex-factory, rather than final sales price, basis. However, the evidence that would be necessary to make such an adjustment is not contained in the record here.

rivaled the home Norwegian market in relative size.18/ Accordingly, in these investigations, it appears that the amount by which the alleged dumping of the subject imports affected the prices of those imports was significantly less than the alleged dumping margins might at first blush suggest. However, if dumping of the magnitude alleged by Petitioner in fact occurred -- as we must assume in these preliminary investigations 19/ -- the effects of dumping on prices of the subject Norwegian imports were nevertheless significant.

Where subsidization is at issue, the appropriate analysis is different than that required for dumping. As Congress recognized in directing the Commission to consider the type of subsidy at issue in evaluating the threat of material injury,20/ different types of subsidies will have different effects on the price and volume of the subsidized product. Some subsidies may be direct payments to exporters based on the amount of the subject product exported, while others may be payments for production regardless

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18/ See Report at A-28, Table 14. In 1989, for example, when dumping is alleged to have occurred, U.S. sales by the Norwegian producers significantly outweighed the sales that they made in their home market. Id.

19/ In Title VII preliminary investigations such as these, these alleged margins, as modified by Commerce, are the best evidence available to us, and we are, in my view, generally required to accept them as such. See New Steel Rails I, supra, at 39-40. The legislative history of the Trade Agreements Act of 1979 makes clear that, in preliminary investigations in antidumping cases, the Commission "will be guided by the description of the allegation of the margin of dumping contained in the petition or as modified by . . . [Commerce]". Statements of Administrative Action, Trade Agreements Act of 1979, at 415.

20/ 19 U.S.C. § 1677(7)(E)(i).

of the market for which the product is produced. Still other subsidies may be payments for the use of particular inputs to production, including subsidies based on the location of the production operation. In each case, a careful evaluation of the manner in which the subsidy operates is normally necessary to determine its price and volume effects.21/

In these investigations, however, a precise assessment of the degree to which each of the alleged subsidies affected import volumes and prices is not possible on the basis of the record before us because, inter alia, Petitioner has not yet provided the Commission (or, apparently, the Commerce Department) with any information respecting the magnitude of the subsidization that has allegedly occurred. In the circumstances presented here, however, such precision is unnecessary. As previously noted, the record contains sufficient evidence that dumping alone -- viewed entirely without reference to subsidization -- caused a significant decrease in prices of the subject Norwegian imports. This evidence, taken together with the fact that the Commerce Department has determined that there is enough evidence of countervailable subsidies to warrant an investigation of nine separate government programs cited by Petitioner, is sufficient

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21/ Diamond, Economic Foundations of Countervailing Duty Law, 29 U. Va. Int'l L. 767 (1989); Goetz, Granet & Schwartz, The Meaning of "Subsidy" and "Injury" in the Countervailing Duty Law, 6 Int'l Rev. L. & Econ. 17 (1986). See also Cass, Trade Subsidy Law: Can A Foolish Inconsistency Be Good Enough for Government Work? (forthcoming).

evidence that the unfair trade practices alleged by Petitioner significantly affected prices of the subject imports.

There is also more than sufficient evidence that dumping and/or subsidization produced significant increases in import volumes. The extent to which decreases in subject import prices cause increases in subject import sales is, in large measure, a function of the degree to which the imported goods are substitutable for the domestically produced product. For reasons explained in more detail in the succeeding section of these Views, the record evidence indicates that the substitutability of the subject imports was moderate-to-high.

B. Effects on Domestic Prices and Sales

In determining how dumping and/or subsidization of the subject imports affected prices, and concomitantly sales, of the domestic like product, it is necessary to take into account certain evidence in addition to the record evidence relating to import volumes and direct observation of market prices.22/ The record evidence respecting three issues is critical to such an

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22/ Congress explicitly has asked us to look for the existence of significant price underselling. 19 U.S.C. § 1677(7)(C)(ii). The occurrence of price differences between imports and domestic products, however, cannot provide a basis for inference of effects of dumping or subsidization (or of dumped or subsidized imports) on domestic products' prices without analysis of various product features and sales terms that may differ across products and sales. See Pressure-Sensitive PVC Battery Covers from West Germany, USITC Pub. 2265, Inv. No. 731-TA-452 (Preliminary) (Mar. 1990) (Additional Views of Vice Chairman Cass) at note 58 and text associated therewith. See also Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 (Final) (Aug. 1988).

analysis: the share of the domestic market held by the subject imports; the substitutability of the subject imports and the domestic like product; and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products. As discussed in more detail below, viewed in the context of the other record evidence, the information presented to the Commission respecting the first two of these issues -- the import market share and the substitutability of the subject imports for the domestic like product -- provides a reasonable indication that dumping and/or subsidization of the subject imports had a significant adverse effect on prices and sales of the domestic like product.

As previously discussed, the level of import market penetration evident in these investigations is substantial by any standard. During all relevant periods and by all relevant measures, the subject imports accounted for more than 60% of domestic consumption of fresh Atlantic salmon.23/

The second important factor concerns the substitutability of domestically grown fresh Atlantic salmon for fresh Atlantic salmon imported from Norway. On this issue, in these preliminary investigations, the evidence is also consistent with an indication of significant effects on the domestic industry from dumping and/or subsidization.

Petitioner argues that, from the standpoint of domestic consumers, there is a high degree of interchangeability between

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23/ Report at A-32, Table 16.

domestically grown fresh Atlantic salmon and fresh Atlantic salmon imported from Norway.24/ According to Petitioner, Norwegian fresh Atlantic salmon and domestic fresh Atlantic salmon are of "comparable quality".25/ Petitioner acknowledges that there are certain other non-price related differences between the two products -- notably the fact that Norwegian salmon are available year-round, but are sourced from a location distant from the U.S. market. However, Petitioner minimizes the importance of these factors in light of the undisputed evidence respecting the similar quality of salmon from the two different sources.26/

Respondents have not directly challenged Petitioner's contentions on this issue. Respondents have, however, suggested by implication that the fact that Norwegian salmon are available year-round, while domestically grown Atlantic salmon are marketed during only a portion of the year, substantially limits competition between Norwegian Atlantic salmon and U.S.-grown Atlantic salmon.27/ In these preliminary investigations, this argument has been advanced primarily in an attempt to show that domestic producers of fresh Atlantic salmon have failed to compete as effectively as they might with their domestic counterparts who produce Pacific salmon year-round. The argument

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24/ Petitioner's Postconference Brief at Exhibit 7 at 1.

25/ Id.

26/ Id.

27/ Respondents' Postconference Brief at 14-15.

has not focused on the degree of competition between these products and does not provide a basis for concluding that this competition is so slight as to reduce the apparent effects of dumping below the statutory standard. While Respondents have implicated the limits of the competition between U.S-grown salmon and Atlantic salmon, they have presented us with little, if any, information that would allow the Commission to reach a conclusion here respecting the limits of that competition. Accordingly, in my view, for the purposes of these preliminary investigations, we must credit Petitioner's argument that the substitutability of Norwegian fresh Atlantic salmon for domestically grown fresh Atlantic salmon is reasonably high.

The remaining issue that requires consideration in assessing the impact of the alleged unfairly traded imports on prices and sales of the domestic like product concerns the extent to which domestic demand for fresh Atlantic salmon is responsive to prices of that product. Evidence concerning this issue is significant because, when consumer demand for the product group in which the imports under investigation are a part is highly responsive to changes in price, the effects of dumping or subsidization on prices and sales of the domestic like product are attenuated, for in that case the lower prices accompanying dumping or subsidization of the subject imports will stimulate significantly increased domestic demand for the lower-priced product. Conversely, much greater effects will be felt by U.S. producers when consumers perceive no difference between the imported and

domestic product other than price but their overall purchases of these products are relatively unresponsive to price changes. In the latter case, consumers will simply switch their purchases from U.S.-made to lower-priced imported products, with resulting adverse effects on both prices and sales of the domestic product.

In these investigations, the record evidence concerning the price responsiveness of domestic demand for fresh Atlantic salmon contains at least some indication that the lower prices accompanying dumping and/or subsidization may have produced significantly increased demand for that product. In considering this issue, the potential availability of substitutes for fresh Atlantic salmon is of critical importance. As noted above, there is some basis for belief that other species of fish, notably Pacific salmon, may be substituted for fresh Atlantic salmon. However, the record evidence concerning the extent to which such substitution may take place is in sharp conflict. Given the record before us and the legal standard applicable in preliminary investigations, we must find that the potential availability of Pacific salmon as a substitute for fresh Atlantic salmon is so great as to preclude the possibility that dumping and/or subsidization of the subject imports had a significant effect on either prices or sales of the domestic like product. Thus, the record as a whole contains a reasonable indication that the alleged unfair trade practices under investigation did in fact have such effects.

C. Investment and Employment

In these investigations, as in others, it is very difficult to draw meaningful conclusions respecting the impact of the subject, allegedly dumped and subsidized imports on the domestic industry based only on an examination of the financial and employment data compiled by the Commission. Many factors entirely unrelated to dumping or subsidization of these imports have inevitably influenced the performance of the industry during the period covered by our investigation. Among other things, for example, as all parties agree, the domestic industry producing fresh Atlantic salmon is relatively new; consequently, the industry has, over the period covered by our investigation, been experiencing start-up costs even as it has been reporting significant increases in production and production-related employment.28/ For such an industry, the various measures of industry performance that we have collected are not, if viewed in isolation, likely to provide a very meaningful indication of the extent to which dumping and/or subsidization of the subject imports has affected the domestic industry.

That said, it appears that the domestic industry as a whole was unprofitable during 1989, the period during which dumping was alleged to have occurred and during which the effects of subsidization on the operations of the Norwegian producers are

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28/ See Petitioner's Postconference Brief at 33; Respondents' Postconference Brief at 27-29.

alleged to have been keenly felt.29/ This is certainly consistent with -- even if it does not offer strong independent support for -- an inference that the industry was adversely affected by the alleged dumping and subsidization. The same is true of the price data collected by the Commission. These data indicate that the prices that the domestic producers were able to command for their production dropped dramatically, beginning in mid-1988.30/

The production and employment data collected by the Commission are, on the other hand, quite positive. Huge production increases were recorded by the domestic industry over the period from 1987 to 1989.31/ Similarly large increases were reported for the various measures of the employment performance of the domestic industry.32/ However, as previously suggested, increases in production and employment are the expected norm for a new and growing industry. Accordingly, standing alone, the production and employment data clearly do not form any basis for negating the inference, otherwise suggested by the record evidence, that there is a reasonable indication that the dumping and subsidization alleged by Petitioner had a material adverse effect on the performance of the domestic industry.

29/ See Report at A-19-A-23.

30/ Report at A-32-A-36.

31/ Id. at A-13-A-15.

32/ Id. at A-19, Table 6.

CONCLUSION

For the foregoing reasons, I determine that a reasonable indication exists that an industry in the United States has been materially injured by reason of imports of fresh Atlantic salmon from Norway.

Additional Views of Commissioner Lodwick

I note the legislative language concerning agricultural cases.

> "Because of the special nature of agricultural production including the cyclical nature of much of agricultural production, special problems exist in determining whether an agricultural industry is injured. For example, in the livestock sector, certain factors relating to state of a particular industry within that sector may appear to indicate a favorable situation for that industry when in fact the opposite is true. Thus gross sales and employment in the industry producing beef could be increasing at a time when economic loss is occurring, i.e. cattle herds are being liquidated because prices make the maintenance of the herds unprofitable." S. Rep. 96-249, 96th Cong., 1st Cong., 1st Sess. (1979) at 88.

Cyclical Agricultural Production

Some agricultural products such as beef cattle and swine are marked by cyclical levels of production. Both the number of live animals being produced and the prices for the finished products vary over the production cycle and are marked by lagged response relationships. These production cycles are marked by an "up phase" as growers are induced by high current commodity prices to expand their production operations.[1] As supply expands to exceed demand at a given price level, biological constraints force growers to sell their animals; prices then drop and growers may liquidate their stock, often at a loss, and curtail their production operations. This "down phase" continues until demand again exceeds supply at a given price level and prices begin to rise thereby repeating the cycle. This production cycle is about 10 years long for beef cattle and about 4 years long for swine.

Agricultural producers have difficulty adjusting their production levels to price signals in the short run given the fixity of land and capital assets and the biological time lag in production decisions. Producers can make some short run adjustments by selling commodities before or

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[1] This is done by holding back some marketable animals for breeding purposes to enlarge the breeding stock and future herd size.

after their optimum slaughter weights or harvest conditions at a lower total profit per unit. However, if there is a continuous stream of commodities reaching their optimum slaughter weight or harvest condition and entering the market, this option is limited to some extent.

Cyclical production in agriculture occurs due to several factors[2]:

1) a biological time lag exists between the decision to breed and the actual realization of finished animal available for slaughter - about 32 months for cattle and 10 months for swine;

2) many producers base their production decisions on current or recent commodity prices rather than on the expected price levels at a future time when their finished products enter the market;

3) current prices are mainly a function of current supply - the finished products are marketed at optimum slaughter weight or harvestable condition over a very short period of time;[3]

4) many agricultural sectors are characterized by a large number of suppliers that are price takers; and

5) the price inelastic nature of many agricultural markets -- during a market downturn, some agricultural product prices fall at a faster rate than the rate at which quantities sold increases resulting in lower total producer revenues and lowering the contribution margin to cover the fixed production costs.

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[2] Kenneth L. Robinson and William G. Tomek, Agricultural Product Prices (Cornell University Press, 1981), p. 178-189.

[3] While corn can be harvested at its optimum time in October, it can be stored to be marketed around the year or over a period of years. In contrast, the growth of a steer reaching its optimum slaughter weight of 1100 lbs. can not stopped; the steer must be slaughtered and marketed quickly if it is sold as fresh beef. The price received for the steer will reflect in large part, the number of steers being slaughtered at that point in time. Steer producers have a relatively narrow "window" of time to market their steer at an optimum weight that maximizes profit per steer.

Salmon Production

The fresh Atlantic salmon industry appears to have some characteristics of cyclical agricultural production. Atlantic salmon has a biological growth period of about 3 years[4] at which point it must be marketed within a few months or held for breeding stock.[5] There appears to be an expansion -- an up phase -- in the U.S. and Norwegian fresh Atlantic salmon industries during the period of investigation in response to high salmon prices before and during the early part of the investigation[6]. By 1989, however, the increasing fresh Atlantic salmon supplies had evidently affected price levels which fell sharply and stimulated demand thereby absorbing the extra fresh Atlantic salmon on the market.[7] Without additional increases in demand, this increased supply of harvestable salmon at low prices in the market -- a down phase -- will probably continue for some time as U.S. and Norwegian producers still have large numbers of fry and smolt in production.[8] Both U.S. and Norwegian productive capacities also remain high[9], with new U.S. firms scheduled to make their first commercial sales in 1990.[10]

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[4] Some salmon used as brood stock are held over for a fourth year. Growers must make a sell or breed decision with small part of their salmon production or decide to purchase fry from breeders depending on prices and returns to production.

[5] It is not clear how long the salmon production cycle is at this point in the investigation. However, an observable market cycle may be masked by a steadily growing or developing industry or by increasing demand. See the growth of the Norwegian salmon industry in Table 2 on page 152 of the Petitioner's Post Conference Brief.

[6] See the imported Norwegian salmon prices well over $3.00 per lb., f.o.b. (Customs) value, from 1984 to 1988 dropping to under $3.00 per lb. in 1989 in Exhibit Y of the Petition. Also see the fresh and chilled salmon import price levels over $7.00 per kilo from 1985 to 1988 dropping to less than $6.00 per kilo submitted by Respondents at Chart 4 of their post-conference brief.

[7] Despite almost a 50% increase in the apparent U.S. consumption of fresh Atlantic salmon from 1988 to 1989, the total value of fresh Atlantic salmon rose considerably less from 1988 to 1989 as unit prices fell from $4.50 per lb. to less than $4.00 per lb. from 1988 to 1989. The value of U.S. shipments was affected even more during the 1988 to 1989 period. Report at Table 1.

[8] See Tables 4 and 13.

[9] See Tables 3 and 14.

[10] Report at A-13.

Thus, after years of steady growth in the supply of Norwegian salmon[11], the more than doubling of farmed fresh Atlantic salmon supply from 1987 to 1990[12] may have resulted in a situation where the market for fresh Atlantic salmon is now saturated; prices, in 1989, have declined as a result.[13]

The special nature of agricultural production is particularly relevant in considering whether the fresh Atlantic salmon industry is injured. The expanding U.S. production and capacity in fry, smolt and fresh Atlantic salmon as well as increasing shipments of fresh Atlantic salmon through the period of investigation could be seen as evidence that the industry is vigorously expanding and doing well. Most of this expansion in production, however, was based on price signals in earlier time periods and represents new entry into the market; it does not reflect the industry's reaction to current market conditions. As noted earlier, large increases in U.S. shipments of fresh Atlantic salmon from 1988 to 1989 resulted in only a small increase in total U.S. sales as fresh Atlantic salmon prices fell sharply.[14] Only eyed egg production, with a short production lag, has declined[15] in response to 1989 prices. With dropping prices in 1989 and uncertain price levels in 1990 and 1991,[16] the emerging U.S. fresh Atlantic salmon industry is already faced with difficulties which are reflected in their poor financial condition in 1989. U.S. growers can choose to bring their fish to maturity to be sold at a possible loss if prices

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[11] See Table 2 on page 152 of the Petitioner's Post Conference Brief.
[12] See Table 4 on page 153 of the Petitioner's Post Conference Brief. Note this includes farmed Pacific as well as Atlantic salmon.
[13] It could be argued that increasing demand in various markets, such as restaurants have effectively absorbed increasing fresh salmon supply and maintained fresh salmon prices, but the recent price behavior in 1989 in the U.S. market indicates a limited capacity by markets to absorb large supplies of fresh Atlantic salmon at high prices.
[14] Report at Table 1.
[15] Fry and smolt production increases have also slowed by 1989.
[16] Future price levels are very uncertain given the level of harvestable Atlantic salmon in production in the U.S. and abroad.

remain depressed[17] or cut their possible losses by destroying or selling some or all of their fry or smolt now. Either way, U.S. growers must liquidate their current stock at an immature stage or in the future at an adult stage at whatever prices prevail in the market.[18] Decisions about future production will also be affected by current financial conditions as investments in breeding stock and fry are directly impacted by current cash flows and prices. The sharp drop in prices in 1989 and its affect on cash flows make investment in future fresh Atlantic salmon production difficult to sustain or justify.[19] The increased supply of fresh Atlantic salmon from all sources and the depressed prices in the U.S. fresh Atlantic salmon market have affected U.S. producers' ability to cover the costs incurred for smolts and juvenile salmon still in production, to pay for the cost of newly acquired production assets in a relatively capital intensive industry and to continue development and gain expertise in the farming of Atlantic salmon. Therefore, I find that there is a reasonable indication that the fresh Atlantic salmon industry is materially injured.

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[17] The "window" of time in which adult Atlantic salmon are in their optimum harvestable weight is unclear at this point. If this is only a few weeks or months, growers have would little leeway in waiting to market their fish when prices are favorable. If prices stay low for a period of time, growers may have to liquidate their fish or suffer maintenance costs.

[18] Only the Norwegians, with their large market share, can significantly affect U.S. prices to any degree by withholding supplies of fresh Atlantic salmon to the U.S. market.

[19] As indicated this already is showing up in eyed egg production. See report at Table 2. The other products such as fry, smolt and fresh Atlantic salmon have a lagged response to price signals.

INFORMATION OBTAINED IN THE INVESTIGATIONS

Introduction

On February 28, 1990, counsel for the Coalition for Fair Atlantic Salmon Trade (the Coalition) filed petitions with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) alleging that an industry in the United States is materially injured, threatened with material injury, and the establishment of an industry is materially retarded by reason of imports from Norway of fresh and chilled Atlantic salmon (fresh Atlantic salmon)[1] that are alleged to be subsidized by the Government of Norway and sold in the United States at less than fair value (LTFV). Accordingly, effective February 28, 1990, the Commission instituted investigations Nos. 701-TA-302 (Preliminary) and 731-TA-454 (Preliminary), under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)), respectively, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from Norway of such merchandise into the United States.

The statute directs the Commission to make preliminary determinations within 45 days of receipt of the petition or, in this case, by April 16, 1990. Notice of the institution of these investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 9, 1990 (55 F.R. 9025). Commerce published its notices of initiation in the Federal Register of March 28, 1990.[2] The Commission held a public conference on March 21, 1990, at which time all interested parties were allowed to present information and data for consideration by the Commission.[3] The Commission voted on these investigations on April 10, 1990.

The Commission has conducted no previous investigations on fresh Atlantic salmon, although reports were issued in 1921 and 1937 on "salmon" and "salmon and other fish," respectively. In recent years, the Commission has conducted a number of countervailing duty and antidumping investigations regarding other fishery products. One of the most recent, on dried salted codfish from Canada, in 1985, was also the Commission's most recent affirmative determination of material retardation (USITC Publication 1711).

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[1] For the purposes of these investigations, the subject product "fresh Atlantic salmon" comprises fresh whole and nearly-whole Atlantic salmon, including cleaned and/or gutted fresh Atlantic salmon, whether or not with the head. Atlantic salmon is the species Salmo salar. Fresh Atlantic salmon is generally marketed packed in ice ("chilled"). Excluded from the subject product are fresh Atlantic salmon fillets, steaks, or other cuts; Atlantic salmon that is frozen, canned, smoked, or otherwise further processed; and other species of fish, including other species of salmon, and their meats.

[2] Copies of the Commission's and Commerce's Federal Register notices are presented in app. A.

[3] A list of witnesses who appeared at the conference is presented in app. B.

The Product

Description

The subject product of these investigations is fresh whole Atlantic salmon, including cleaned and/or gutted fresh Atlantic salmon, whether or not with the head. Excluded from these investigations are fresh Atlantic salmon fillets (pronounced "fil'-ets" in the seafood trade), steaks, or other cuts; Atlantic salmon that is frozen, canned, smoked, or otherwise further processed;[4] and other species of fish, including other species of salmon. Fresh fish are highly perishable and are, therefore, usually chilled with ice or refrigeration (but not to the freezing point); in this report, the term "fresh" refers to both chilled and unchilled fresh fish, as distinct from frozen or otherwise further processed.

Atlantic salmon (Salmo salar) is a member of the salmonidae family of finfish. Other members of this family include various species of trout and the Pacific and Danube salmon. Atlantic salmon is biologically more closely related to certain trout than to other salmon species.[5] The subject species is native to the northern Atlantic Ocean and to various freshwater bodies in North America and Europe.[6] In the natural state, females spawn in freshwater lakes and rivers, where the juvenile salmon remain until they reach the smolt (post-larval) stage, during which they migrate to saltwater. During their adult life, Atlantic salmon will return three or four times to their freshwater birthplace to spawn, each time returning to salt water. The commercial harvest of wild Atlantic salmon is banned in the United States and in most other countries in order to conserve the resource for the sportfishery.[7] Salmon farming accounts for all commercial production of Atlantic salmon in the United States and by all major foreign suppliers. Fresh Atlantic salmon is used exclusively as food for humans, usually served in either fillet or steak form.[8]

The rainbow/steelhead trout is a close relative of the Atlantic salmon.[9] Raised to maturity in freshwater, this fish attains a weight of only 1 to 3 pounds and is commonly referred to as "rainbow" trout; however, in saltwater, the fish can grow to over 20 pounds and is known as "steelhead" trout.[10] Like the Atlantic salmon and unlike the Pacific salmon, the steelhead trout can survive the freshwater spawn and return to the sea. Both the rainbow and

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[4] Filleting and cutting into steaks are referred to as "further processing" in this report, as are smoking, canning, and freezing.

[5] American Fisheries Society, A List of Common and Scientific Names of Fishes from the United States and Canada, 4th ed. (1980), p. 19.

[6] Ibid., p. 19. Freshwater populations of Atlantic salmon are variously known as landlocked salmon and Sebago salmon. These strains do not naturally migrate to saltwater as described below.

[7] Petition, p. 12. Data presented in this report exclude the recreational catch of Atlantic salmon.

[8] Fillets are wide strips, boneless (or nearly so), that are sliced lengthwise away from the spine and ribs of the fish. Steaks are cut crosswise from the fish, perpendicular to the backbone, one steak per vertebra, with the vertebra and ribs retained in the steak.

[9] From 1836 through 1988, rainbow/steelhead trout was classified as Salmo gairdneri, in the same genus as Atlantic salmon. In 1989, it was reclassified as Oncorhynchus mykiss, with the Pacific salmons. Information on steelhead trout was obtained from a Canadian steelhead farmer at the Boston International Seafood Show, Mar. 20, 1990.

[10] The term "salmon trout" has also been used for marketing purposes.

steelhead strains are farm raised for commercial sale; other trout species in the salmonidae family are harvested in the recreational fishery.

The most common and commercially significant salmon are the Pacific salmon, which are biologically and geographically distinct from Atlantic salmon. Pacific salmon species are classified under the genus Oncorhynchus, separate from the Salmo genus of Atlantic salmon.[11] Species of Pacific salmon include chinook or king salmon (Oncorhynchus tshawytscha), coho or silver salmon (O. kisutch), sockeye or red salmon (O. nerka), pink salmon (O. gorbuscha), and chum or dog salmon (O. keta). Pacific salmon are native to the salt waters of the northern Pacific and some of its freshwater tributaries. A behavioral characteristic that distinguishes Pacific from Atlantic salmon is that the former, after spending several years in the ocean, return to their freshwater birthplace to spawn only once before dying. The various species of Pacific salmon differ widely in physical characteristics. Pacific salmon may be harvested commercially throughout the year, but the largest catch is landed as the salmon return towards their spawning grounds in the summer months. A small percentage of the chinook and coho harvest is farmed or "ranched."[12] In 1988, commercial landings of Pacific salmon increased by 7.9 percent in volume compared with those in 1987, as shown in the following tabulation:[13]

Species	1987		1988	
	Quantity (1,000 lbs)	Value ($1,000)	Quantity (1,000 lbs)	Value ($1,000)
Chinook	39,938	80,068	45,672	117,551
Coho	39,041	56,281	47,486	93,506
Sockeye	227,411	359,767	190,036	437,630
Pink salmon	169,308	56,459	176,487	127,297
Chum	86,320	43,801	146,467	134,689
Total	562,018	596,376	606,148	910,673

In relative importance, sockeye accounts for about 35 percent of the U.S. Pacific salmon harvest, pink salmon for 30 percent, chum 20 percent, and chinook and coho 7 to 8 percent each.

Aquaculture production[14]

Operations that farm Atlantic salmon typically rely on an enclosure system, in which salmon are raised from eggs through maturity in a series of tanks and pens. It takes about three years for an Atlantic salmon to grow from the egg stage to harvestable size. This period is divided into two halves, in the first, the salmon lives in fresh water; in the second, in saltwater.

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[11] American Fisheries Society, A List of Common and Scientific Names of Fishes from the United States and Canada, 4th ed. (1980), pp. 18-19.

[12] "Ranched" Pacific salmon are released into a river as juveniles and swim freely to the ocean; upon their return to spawn at their point of release, they are harvested. Salmon ranches, which raise and harvest primarily Pacific salmon, are found mainly in Oregon.

[13] Fisheries of the United States 1988, NMFS, May 1989, p. 1. Aquaculture production is excluded. 1989 data are not yet available.

[14] Information presented in this section is based on the petition and discussions with U.S. producers; however, these production methods are similar to those in Norway and in other salmon-farming countries.

Atlantic salmon typically spawn in the late fall.[15] Brood stock are hand-stripped of eggs (from the female) and "milk" (from the male). In January, the fertilized "green egg" will become an "eyed egg," with visible eyes and a yolk sac. Generally in early February, the eyed egg hatches and a tiny fish-like creature emerges; this "alevin" continues to feed from the yolk sac. In March, the yolk sac is consumed and the juvenile "fry" markings appear; at this point feeding begins and within a couple of months the fish is transferred from an incubator tank to a large freshwater "grow-out" tank. Over the summer the fry will grow rapidly; by the fall it is referred to as a "parr." Parr remain in the freshwater tanks until they lose their juvenile markings and develop the silver skin which identifies a smolt. This typically occurs by the following April.

In order for the juvenile salmon to develop properly and yield a high quality flesh (similar to wild salmon), the environment experienced by farmed salmon must simulate a natural environment; for that reason, the hatchery and freshwater grow-out tanks are set up with cold, quickly circulating fresh water, like a natural river current. Oxygen levels, water temperature, and biomass are monitored closely to avoid any type of stress factor that would threaten the health or growth of the young fish. The diet of the fish changes as it matures; as a parr, its diet prepares it for the transfer to salt water. At each stage of the development process, fish of inferior size and/or health are "culled" or eliminated.

At the end of the 18-month freshwater cycle, the salmon smolt is transferred to a cage-like pen in salt water, usually in a protected area like a cove. (Therefore, regions like the coasts of Norway, Scotland, and Maine, and Washington's Puget Sound, with their many protected saltwater coves and fjords, make good locations for salmon farms.) A pen is typically constructed of nets secured to a metal frame. An inner net holds the fish and an outer net protects them from predators. A typical site will have a single system composed of an anchored metal frame with up to ten attached pens. Using as few pens as possible makes it easier to feed the stock and to generally oversee their development; therefore, only some of the pens will initially be filled with the newly arrived smolts. As the fish grow, some will be removed and placed in empty pens to allow them all enough room to develop to harvestable size. Several times during the growing process the fish are separated according to size. Fish of similar size tend to feed and grow more uniformly.

The salmon remains in the pen for 18 months (for a total development period of 3 years), after which it is ready to be harvested. During the saltwater cycle, the farmer continues to monitor fish growth and health. Nets are changed and cleaned several times a year. Brood stock are selected at the end of the third year. These fish will be left to develop for a fourth year, during which the reproductive organs mature. Farmers harvest Atlantic salmon with a purse seine, a bag-shaped net that encircles the stock of fish. The fish are entrapped by closing the bottom of the net, like a purse, and the net is then hauled up. The fish are generally bled at the pen site and then transported to a processing facility where they are eviscerated (gutted), cleaned, and packed in freshwater ice. They are shipped to market in this chilled form.

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[15] The Norwegians have reportedly had some success in having fish spawn in the spring.

Substitute products

What constitutes an acceptable substitute for fresh Atlantic salmon is largely a subjective matter and perceptions differ at various levels of trade. The individual consumer often perceives Pacific salmon as identical, or nearly identical, to Atlantic salmon, as evidenced by the generic "salmon" label given to these products in some fish stores and restaurants. There also appears to be some regional bias favoring Pacific salmon on the west coast and Atlantic salmon on the east coast.[16] Other close substitutes for Atlantic salmon fillets and steaks at the end-user level could include fillets of cod and flounder, and steaks from halibut, swordfish, and tuna. The restaurant patron often finds these products priced within the same broad price range.

The "white-tablecloth trade" (high-end restaurant) and specialty seafood stores are the most discriminating in their judgement of substitutability. These retailers would likely consider fresh farmed chinook and coho as the closest substitutes for Atlantic salmon in terms of taste and customer acceptance. The chinook is typically much larger than the Atlantic salmon, although small chinook compete in the whole fish market.[17] In contrast, coho is typically smaller than Atlantic salmon.[18] Both chinook and coho are farmed on a limited scale;[19] nevertheless, they are most widely available in fresh form during the summer months.[20] A 1985 study by the National Marine Fisheries Service of the Department of Commerce (NMFS) considered Atlantic salmon, chinook, and coho (whether wild or farmed) to be competitive products.[21] Sockeye has a distinctly stronger, oilier, flavor than the Atlantic salmon (although this taste is preferred by many people).[22] Pink and chum salmon are generally considered inferior in taste as a fresh fish. Because the latter three species are not known to be farmed in the United States, they are also not generally available year-round in fresh form.

Retailers also want a product of consistent quality and size, which the farmed fish offers more readily than the wild-caught fish. Between species, farmed fish are somewhat more substitutable because the farming process yields a milder flavored fish.[23] Farmed steelhead trout is similar to the Atlantic salmon in size and taste and it is available fresh during much of the year, but it is a lesser known fish at the consumer level. Appearance is also important to the restaurant and seafood store trade. Thus, a troll-caught fish (caught by the traditional hook-in-mouth method) is more substitutable for a farmed

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[16] Transcript of the staff conference (transcript), p. 60.

[17] Transcript, p. 79.

[18] "Pan-size" coho, at one-half to three-quarters of a pound, is a popular specialty product that does not generally compete with larger fish, including larger coho.

[19] Since at least 1969, Pacific salmon have been farmed by the enclosure system, described above, both commercially and as part of university- and government-sponsored experimental research, with widely varying economic results. W.S. Leet, et al., "Pen Rearing Pacific Salmon, Oncorhynchus spp., in San Francisco Bay," Marine Fisheries Review, vol. 48 (1986), p. 24.

[20] Farmed coho imported from Chile is also available during the winter months.

[21] Aquaculture and Capture Fisheries: Impacts on U.S. Seafood Markets, NMFS, April 1985, pp. xi and 12.

[22] The Japanese, in particular, favor sockeye over other species of salmon and the large majority of the U.S. catch of sockeye is exported to Japan.

[23] For example, a farm-raised chinook will have a taste and texture that are closer to that of a farmed Atlantic salmon than will a wild-caught chinook.

fish than is a netted fish because netting often causes scarring and loss of skin.

Frozen salmon, whether Atlantic or Pacific, is perceived to be of slightly lower quality when thawed than is the fresh product (as indicated by, for example, flesh texture), but it usually is not so low that consumers will reject it. This is particularly true for the institutional buyer, as the manner of cooking and other preparation of the entree tend to mask minor differences in the original quality of the salmon flesh.

In a survey of 25 seafood wholesalers that handled both Atlantic and Pacific salmon,[24] respondents judged fresh chinook to be the strongest substitute for fresh Atlantic salmon, followed first by fresh coho and then by fresh sockeye. These wholesalers did not consider any other fresh salmon or any frozen salmon to be a strong substitute for fresh Atlantic salmon. Wild chinook was judged superior to Atlantic salmon in taste and color by a small majority, but markedly inferior in availability, consistency of quality, and shelf life. Wild coho was preferred slightly to Atlantic salmon for its color but lost on most other criteria.

U.S. tariff treatment

Under the Harmonized Tariff Schedule of the United States (HTS), U.S. imports of fresh Atlantic salmon are accorded duty-free entry under column 1-general (which covers imports from most-favored-nation sources, including Norway); column 2 imports are subject to a duty of 4.4 cents per kilogram.

As of January 1, 1990, Atlantic salmon, fresh or chilled, excluding fillets and such other fish meat as steaks, is identified under its own statistical reporting number, 0302.12.0002. This category comprises primarily Atlantic salmon in whole, eviscerated, or beheaded form. Fresh Atlantic salmon fillets fall under a basket category of heading 0304. In 1989, Atlantic and Danube salmon, fresh or chilled, excluding fillets, were reported under statistical reporting numbers 0302.12.0060 ("steaks") and 0302.12.0065 ("other"). There are no known U.S. imports of Danube salmon from Norway. Atlantic salmon fillets, again, fell under a basket category.

Prior to the 1989 U.S. adoption of the HTS, fresh Atlantic salmon was provided for in the Tariff Schedules of the United States (TSUS) in TSUS item 110.20 and reported under statistical annotation 110.2045 (salmon, "whole; or processed[25] by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed, fresh or chilled"), a basket category that covered all species of salmon. Salmon fillets and steaks (whether fresh or frozen) were provided for in TSUS item 110.70 (TSUSA item 110.7070, salmon, "otherwise processed"). U.S. imports from Norway of fresh Atlantic salmon (in all forms) were also accorded duty-free entry under column 1 of the TSUS.

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[24] M. Herrmann, B. Lin, and R. Mittelhammer, U.S. Salmon Markets: A Survey of Seafood Wholesalers, Alaska Sea Grant Report No. 90-01, University of Alaska, Fairbanks, 1990. Coverage is not believed to constitute a statistically significant sample. The survey did not include farmed chinook, pan-sized coho, or steelhead trout.

[25] The term "processed," as used in this report, refers to the gutting, cleaning, and packaging of Atlantic salmon. (The "processed" fish may also have had the head and/or tail removed.) "Processing" is distinguished from "further" processing and "otherwise" processing.

Import restriction and regulation

U.S. imports of fresh Atlantic salmon are subject to inspection by the Food and Drug Administration (FDA) to ensure wholesomeness and compliance with the standards of identity and labeling requirements that apply to domestic salmon. Fish is not subject to mandatory FDA inspection during processing; however, the Department of Commerce does carry out at industry expense a voluntary inspection program of processed fish production.

The Magnuson Fishery Conservation and Management Act of 1976 (MFCMA) (P.L. 94-265) established a 200-mile fishery conservation zone within which the United States exercises exclusive management of fishery resources. The MFCMA is administered by NMFS. Under the MFCMA, U.S. imports of any fishery product must be embargoed from a country with which the United States cannot conclude an international fishery agreement allowing U.S. fishing vessels equitable access to fisheries over which that country asserts exclusive fishery management authority, as recognized by the United States. No embargoes on U.S. imports of salmon have been imposed under the MFCMA.

Under the MFCMA, eight Regional Fishery Management Councils are charged with preparing Fishery Management Plans (FMPs) for the fisheries needing management within their areas of authority. The FMPs are approved and implemented by the Secretary of Commerce, in cooperation with the U.S. Coast Guard, which enforces the FMP laws and regulations. There are two FMPs for salmon fisheries. In 1988, the first FMP for Atlantic salmon was prepared by the New England Regional Fishery Management Council and approved by the Secretary of Commerce. The FMP for commercial and recreational Pacific salmon fisheries, which was originally prepared by the Pacific Regional Fishery Management Council (whose jurisdiction excludes Alaska) was implemented in 1978 and has been amended nine times since, the last time in 1988.

Nature and Extent of the Alleged Subsidies and Sales at LTFV

Subsidies

The petitioner alleges that Norwegian producers and exporters of fresh Atlantic salmon benefit from a wide variety of programs that constitute subsidies within the meaning of countervailing duty laws. Regional development in Norway is reportedly concentrated in the remote coastal areas where salmon farming is conducted. District Development Banks, the Regional Development Fund, and other Norwegian Banks all provide funding for commercial undertakings in less developed and populated areas. The petition alleges that aquaculture in these areas is encouraged through loans, loan guarantees, investment grants, preferential financing terms, transport subsidies, and tax incentives. The Government of Norway also supports research that benefits salmon farming on a scale and in a manner that petitioner alleges to constitute a countervailable subsidy. Finally, the Norwegian Government reportedly subsidizes exports of fresh Atlantic salmon by underwriting air freight charges, providing export financing, and facilitating sales abroad. Commerce's notice of initiation states that 14 of the programs specified in the petition will be investigated.

Sales at LTFV[26]

On the basis of comparisons of U.S. and foreign market values, the petitioner alleges that fresh Atlantic salmon from Norway, on a country-wide basis, is being sold in the United States at 26 to 33 percent below fair value. The alleged dumping margins vary by region, from a 23-31-percent range for southern Norway, to 22-30 percent in the middle of the country, to a 74-85-percent range for northern Norway. The petition states that these margins were calculated comparing published U.S. importers' prices for fresh Norwegian Atlantic salmon during September-December 1989 with constructed foreign market values, adjusted for processing and transportation costs. Foreign production costs were available from the Norwegian Directorate of Fisheries.

The World Market[27]

Between 1950 and 1970, the world catch of fisheries products increased at a rate greatly exceeding population growth, and per capita seafood consumption more than doubled. From 1970 to 1985, however, population growth of 33.2 percent exceeded the 29.4 percent increase in the world catch. Increases in demand are projected to result in substantial shortfalls of supplies from natural marine stocks in the years to come. Aquaculture is seen as providing the required additional supplies.

World production of farmed Atlantic salmon has expanded rapidly in recent years. This growth has been led by Norway, the world's largest supplier of Atlantic salmon, accounting for over half of world production. The United Kingdom is another major producing nation. Smaller suppliers include Canada, Chile, the Faroe Islands, Iceland, and Ireland. The vast majority of Norwegian production is exported, whereas British and Irish production is consumed largely within the European Community (EC).[28]

Demand for fresh Atlantic salmon has been strong in major consumer markets. The French lead the world in consumption of fresh Atlantic salmon, followed by the United States and then by other EC member states. The EC is by far the largest market for Norwegian exports, and the United States is Norway's second largest export market. Canada and the United Kingdom have also been important suppliers of fresh Atlantic salmon to the U.S. market.

The U.S. Market

Apparent U.S. consumption

U.S. consumption of seafood has increased in recent years, largely as a result of increases in income and health and diet awareness. U.S. per capita consumption of seafood increased by almost 15 percent from 1980 to 1986 and a

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[26] This information was taken from the petition and the Mar. 16, 1990 supplement to the petition.

[27] Information on the world market was obtained from Aquaculture and Capture Fisheries: Impacts in U.S. Seafood Markets, NMFS, April 1988; and from articles included as exhibits to the petition.

[28] The named smaller suppliers also export the majority of their production of Atlantic salmon.

further increase of 5 to 17 percent is forecast by the year 2000.[29] Also, technological developments have enabled fishermen and, especially, fish farmers to provide greater supplies to more markets and have reduced certain costs of production.

Apparent U.S. consumption, as presented in this report, is calculated from questionnaire responses of U.S. producers and official import statistics. Because not all U.S. producers provided data, consumption is believed to be slightly understated. As shown in table 1, apparent U.S. consumption of fresh Atlantic salmon increased strongly during the period of investigation. Such consumption increased from * * * pounds and $* * * in 1987 to * * * pounds and $* * * in 1988, increases of * * * percent and * * * percent, respectively. Consumption jumped to * * * pounds in 1989, a further * * *-percent increase. However, in terms of value, consumption rose at almost one-third that rate, * * * percent, to a total of $* * *.

Table 1
Fresh Atlantic salmon: U.S. shipments[1] by U.S. producers, imports from Norway and all other countries, and apparent U.S. consumption, by quantity and value, 1987-89

Item	1987	1988	1989
	Quantity (1,000 pounds)		
U.S. producers' U.S. shipments	***	***	***
U.S. imports from--			
Norway	16,843	19,688	25,124
All other countries	3,808	6,850	13,468
Total imports	20,651	26,538	38,592
Apparent U.S. consumption	***	***	***
	Value (1,000 dollars)		
U.S. producers' U.S. shipments	***	***	***
U.S. imports from--			
Norway	74,703	90,348	93,672
All other countries	16,396	29,627	46,881
Total imports	91,099	119,975	140,553
Apparent U.S. consumption	***	***	***

[1] Includes company transfers and open-market sales.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official U.S. import statistics.

U.S. producers

The farming of Atlantic salmon is a relatively new industry in the United States and requires an extensive lead time and investment. Industry sources have indicated that licensing procedures (for a cage system site) take 1 to 2

[29] Aquaculture and Capture Fisheries: Impacts in U.S. Seafood Markets, NMFS, April 1988, p. vii.

years in Maine and costs average $100,000 per lease. Although some hatcheries existed prior to the period of investigation,[30] most saltwater operations are very new to the industry. To properly assess petitioner's allegations of material injury and material retardation, the term "producer," as used in this report, includes firms that maintain hatchery operations, freshwater grow-out tanks, saltwater cages, and/or processing facilities for Atlantic salmon, as well as those that have actively pursued substantial investment in such facilities. Producers' questionnaires were sent to 26 firms identified by the petitioner. Staff has since become aware of one additional producer. Fifteen firms responded to the questionnaire; several reported that they raised only steelhead trout.[31] The majority of producers expressed support for the petition.

U.S. farming of fresh Atlantic salmon is concentrated in the extreme northeast and the northwest of the United States. Saltwater farming was first introduced in Cobscook Bay in Maine, on the United States-Canada border, and this area remains the primary Atlantic salmon-producing region in North America. These waters favor salmon rearing in part because of the unusually strong tides (averaging near 20 feet). Hatchery operations, including freshwater grow-out tanks, are generally located near the saltwater cage sites. The Canadian Atlantic salmon industry is likewise concentrated near Cobscook Bay. The northwestern United States is the base of the Pacific salmon industry. Reportedly, the ranching of Pacific salmon has proven relatively unsuccessful, and most of the operations in Washington are being converted to Atlantic salmon farming.[32]

Ocean Products, Inc., Portland, ME.--Ocean Products, Inc., established in 1982, attracted the backing of venture capital investors in 1983 and commenced substantial production in 1986. The company remains privately held.[33] Ocean Products is the largest U.S. producer of fresh Atlantic salmon, accounting for * * * percent of reported 1989 smolt production and * * * percent of reported 1989 U.S. shipments of unprocessed adult Atlantic salmon. The firm is vertically integrated, with 2 hatcheries, over 200 saltwater pens, a processing plant, and a separate corporate/sales office, all located in the State of Maine.[34] Ocean Products also buys, processes, and markets the harvest of other farmers.[35] This firm is a member of the petitioning coalition and supports the petition.

Maine Pride Salmon, Inc., (Maine Pride) Eastport, ME.--Maine Pride is also a Coalition member and in support of the petition. Also backed by investor capital, this company owns saltwater cage systems at four lease sites, with the leases held by the individuals that manage and run each cage facility. Maine Pride secures investment and working capital, owns the equipment and the fish, markets the harvest, and provides technical support to each site lessee/manager. The lessee/managers are salaried and share in overall

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[30] Before the establishment of integrated salmon farmers, public and commercial hatcheries reared juvenile Atlantic salmon for release into the wild to replace natural populations.

[31] Certain data were provided on operations farming steelhead trout. These data are not included in those presented for Atlantic salmon.

[32] Petition, p. 18. Alaska has an on-going moratorium on salmon farming.

[33] Transcript, p. 20.

[34] Transcript, p. 11.

[35] Transcript, p. 36.

profitability. Maine Pride will bring its first substantial crop to market in the 1990/91 harvest season.[36]

Smolt producers.--* * * producers reported operating only hatcheries and grow-out tanks, thus raising Atlantic salmon only to the smolt stage. They sell these juveniles primarily to producers who operate only saltwater cage systems. * * * firms reported smolt production throughout the period of investigation.

* * * * * * *

Norwegian-owned producers.--Norwegian-owned production facilities are reportedly located in Maine and Washington. * * * indicated Norwegian ownership and opposition to the petition. * * *. Other firms that are believed to be Norwegian owned did not respond to the producers' questionnaire.

Other Maine producers.--

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The other U.S.-owned producers in Maine that responded to the questionnaire are small family-owned and operated farms that purchase smolt and maintain a small number of saltwater pens. The owners rely on a variety of income sources, including the farming of steelhead trout. The salmon operations, generally financed with personal savings or debt, are relatively new and account for a minority of total U.S. capacity.

Other Washington producers.[37]--The Washington Atlantic salmon industry is very new; some producers have only obtained licenses and do not anticipate marketing fish for several years. Among the aspiring producers are several Indian tribes that have preferential fishing rights. Many of the U.S.-owned west coast Atlantic salmon farmers have been involved in the aquaculture of other fish species, namely steelhead trout, chinook, and coho.

U.S. importers

The petition identified 23 importers of the subject product. U.S. Customs sources identified several times this number of firms as importers of fresh Atlantic salmon from Norway. Questionnaires were sent to a total of 48 firms; 15 responses were received, including 7 that indicated that the firm was not in fact an importer. The eight responding importers accounted for about 45 percent of U.S. imports of fresh Atlantic salmon in 1989.

Importers are generally wholesale seafood brokers or distributors. Boston and New York are the major ports of entry for fresh Atlantic salmon. Importers resell to retail customers located in urban centers throughout the United States.

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[36] Transcript, pp. 31-32 and 36.

[37] Washington-based producers other than those identified above did not respond to the producers' questionnaire; therefore, the information presented is based on the petition and other industry sources.

Channels of distribution and marketing considerations

U.S. producers and importers compete in similar markets for sales. Principle channels of distribution are regional and national distributors (some of whom are also importers), retail chains (restaurants and supermarkets), and processors (salmon smokers). Distributors, who tend to buy at slightly higher prices, resell to individual restaurants and seafood stores, which tend to have some preference for the imported product.[38] U.S. producers sell a greater proportion of their output to the lower priced grocery store and supermarket buyers than do importers. Producers and importers reported their 1989 sales by market, as shown in the following tabulation (as a percent of the total):

	Market		
Supplier	Distributors	Retail chains	Other
U.S. producers.....	***	***	***
U.S. importers.....	***	***	***

Atlantic salmon is commonly offered by restaurants, seafood stores, and (increasingly) by urban supermarkets. These retailers' requirements, which dominate the market, include taste, freshness, appearance, size, and consistent supply. According to industry representatives, Atlantic salmon is often preferred over other fish for its taste and size. Farmed fish has several other advantages over competitive products; specifically, it can be supplied fresh in greater quantities and at a more consistent size and quality than nonfarmed species. The Norwegians, unlike U.S. producers, can supply some fresh Atlantic salmon during the summer months when U.S. supplies are largely depleted. Also, the qualifier "Norwegian" denotes a tradition of high quality in the salmon industry. However, the U.S. industry may have some advantage regarding proximity to market and freshness.[39]

Consideration of Material Injury to, and Material Retardation of, an Industry in the United States

Information presented in this section of the report is based on the questionnaire responses of 10 firms, accounting for the majority of U.S. shipments of unprocessed Atlantic salmon during the period of investigation.[40] Coverage of the U.S. industry is estimated to be near 75 percent. As appropriate, data are presented separately by stage of production.[41] Actual trade data were requested for 1987-89. Vertical integration and the long growth cycle allow producers to estimate volumes of production and shipments in future periods with relative accuracy. Therefore, estimated trade data were also requested and are presented for the first half of 1990.

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[38] Restaurants, for example, often specify "Norwegian salmon" on their menus.

[39] See the discussion of pricing for further specifics on marketing considerations.

[40] A separate questionnaire was sent to 50 firms believed to be producers of Pacific salmon. * * * responses were received. These responses are summarized in app. C.

[41] "Production" as used in this report generally refers to the development of fish to a certain stage of maturity. In the usual sense, it also refers to the processing of adult Atlantic salmon.

Status of operations of U.S. producers

A number of new firms have not yet begun or have only recently begun commercial sales. Responding producers reported the year of establishment of various facilities and the year of initial commercial sales, as shown in the following tabulation:

Company and location	Year of establishment of-- Hatcheries	Saltwater cage systems	Processing facilities	Year of 1st commercial sale
* * *	* * *	* * *	* * *	* * *

Available information regarding the operations of all these firms is presented in this report.

U.S. production, capacity, and capacity utilization

U.S. capacity and production have risen strongly during 1987-89, as producers responded to increased demand for the subject product. Producers have tended to bring capacity on line somewhat prior to production, but have increased capacity utilization over time. The number of fish declines from one stage of development to the next because of mortality and culling.

Freshwater operations.--Table 2 presents production data for eyed eggs, fry, and smolt. Atlantic salmon typically develop from the eyed egg stage to alevin and then to fry during the months of January-March and they reach the smolt stage around the following March; reported data represent 4 full years. Six producers reported production of juvenile Atlantic salmon in hatcheries and freshwater grow-out tanks. Eyed eggs usually remain in the incubators until they become fry; thus, the capacity of incubator tanks is ultimately constrained by their capacity to hold fry. The producer then transfers the fry to freshwater grow-out tanks where they mature into smolt. Because of natural mortality rates, calculated capacity utilization rates for eyed eggs and fry appear modest. However, the more significant capacity utilization rate for freshwater operations, that for smolt production, is very high.

Capacity and production of juvenile Atlantic salmon generally * * * during the period of investigation. Ocean Products * * *. * * * established operations during the period of investigations, and * * *; these firms contributed further to recent industry growth. Several producers reported declines in capacity and/or production of juvenile Atlantic salmon in 1990; however, * * * of the aggregate declines are explained by * * *. * * *.

Table 2
Atlantic salmon eyed eggs, fry, and smolt: U.S. capacity, production, and capacity utilization, 1987-90

Product and item	1987	1988	1989	1990[1]
Eyed eggs:				
Capacity (1,000 units)	***	***	23,800	23,400
Production (1,000 units)	***	***	15,500	13,061
Capacity utilization (percent)	***	***	65.1	55.8
Fry:				
Capacity (1,000 units)	***	7,060	10,390	9,800
Production (1,000 units)	***	4,825	6,130	6,640
Capacity utilization (percent)	***	68.3	59.0	67.8
Smolt:				
Capacity (1,000 units)	***	2,420	3,142	3,228
Production (1,000 units)	***	2,220	3,201	3,362
Capacity utilization (percent)[2]	***	91.7	93.9	93.3

[1] Eyed eggs typically develop in January, fry in March, and smolt during March-April of the following year; thus, 1990 data include both actual and estimated production.
[2] Computed from data of firms providing both capacity and production.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Saltwater operations and processing.--In the United States, the harvesting and processing of Atlantic salmon, presented in table 3, typically commences in September and may continue through April.[42] Four producers reported production of adult fish and * * * firms reported processing data. Ocean Products * * *. Although calculated capacity utilization ratios for the industry appear low, pens stocked with adult fish must be emptied to receive the new smolt each spring.[43] Processing plants operate seasonally and, therefore, * * *.

Production of adult fish * * * each year during the period of investigation as Ocean Products expanded saltwater operations and several new producers entered the industry. Production difficulties encountered by most producers hindered further expansion. First of all, several farmers in Maine reported a lack of supply of smolt in the years preceding 1989.

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On the west coast, producers reported water quality problems and "alga bloom."[44] Production increases in the future are uncertain; although further

[42] As appropriate to the industry, data in this section are presented on a "crop year" or seasonal basis. Each period covers July through the following June.
[43] See p. 57 of the transcript.
[44] The alga Prinnesium parvum, which is deadly to fish at high concentrations, grows in brackish waters and has also hurt fjord-bound Norwegian production in several recent harvests.

Table 3
Unprocessed and fresh Atlantic salmon: U.S. capacity, production, and capacity utilization, January-June 1987 and harvest seasons 1987/88-1989/90

Product and item	Jan.-June 1987	Harvest season--[1] 1987/88	1988/89	1989/90[2]
*	*	*	*	*	*	*

[1] Data cover a 12-month period from July through June.
[2] The 1989/90 harvest season was essentially over in March; thus, the data are primarily actual, as opposed to estimated, data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

expansion is planned, producers reported that investment shortfalls have forced them to reduce transfers of smolt from the levels originally set.[45]

U.S. producers' shipments and inventories

Shipment data differ from production data because of producers' culling of inferior fish and planned reductions in operations, as specified below. Trends are still very similar. Except for smolt, the vast majority of trade in "intermediate products" is transferred within a vertically integrated production process. In contrast, eviscerated adult fish are sold * * * on the open market. The data for these products are presented and discussed in terms of U.S. shipments. Smolt, however, are both sold and transferred in significant quantities; therefore, separate data on company transfers and domestic shipments of smolt are presented. There were * * * exports.

Freshwater operations.--Shipments of eyed eggs,[46] fry,[47] and smolt[48] typically take place during January-June of each year; the data reported in table 4 represent 4 full years. Six producers reported shipments of juvenile Atlantic salmon. Shipments of these products * * * during 1987-89 with the expansion of the number and size of producers; however, shipments of eyed eggs and smolt are projected to decline by more than 15 percent in 1990. Several producers reported reductions in eyed egg shipments in 1990; the largest drop, * * *. The decrease in 1990 smolt shipments is primarily due to * * *.[49]

[45] Transcript, p. 37. See also the discussion of 1990 smolt shipments below.
[46] Producers were asked to report, as "shipments" of eyed eggs, the hatching of the eggs. The resulting alevin continue to be raised in the same facilities.
[47] Producers were asked to report, as "shipments" of fry, the transfer of young fry to the freshwater grow-out tanks where they will continue to develop, first into parr and then into smolt.
[48] Producers were asked to report, as "shipments" of smolt, the transfer of young smolt from freshwater grow-out tanks to saltwater cages, where they will mature into adults.
[49] * * *.

Table 4
Atlantic salmon eyed eggs, fry, and smolt: U.S. producers' U.S. shipments, 1987-90

Product and item	1987	1988	1989	1990[1]
U.S. shipments of eyed eggs[2] (1,000 units)...	***	***	15,500	13,061
U.S. shipments of fry[2] (1,000 units).....	***	4,825	6,190	6,700
U.S. shipments of smolt:				
Company transfers:				
Quantity (1,000 units).....	***	***	1,859	1,375
Value (1,000 dollars).....	***	***	2,710	2,228
Unit value (dollars per unit)[3].....	***	***	$1.47	$1.67
Domestic shipments:				
Quantity (1,000 units).....	***	***	1,477	1,360
Value (1,000 dollars).....	***	***	1,738	3,093
Unit value (dollars per unit).....	***	***	$1.18	$2.27[4]
Total U.S. shipments:				
Quantity (1,000 units).....	***	2,160	3,336	2,735
Value (1,000 dollars).....	***	2,858	4,448	5,321
Unit value (dollars per unit)[3]...	***	$1.32	$1.34	$1.97

[1] Eyed eggs are typically "shipped" in February, and fry and smolt by June; thus, 1990 data include both actual and estimated shipments.
[2] Only quantity data were requested for shipments of eyed eggs and fry. Such shipments are primarily company transfers.
[3] Computed from data of firms providing both quantity and value of shipments.
[4] * * *.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Saltwater operations and processing.--In the United States, Atlantic salmon are typically harvested from September through April.[50] * * * producers reported shipments, which are presented in table 5. Despite the various production problems encountered, U.S. shipments of fresh Atlantic salmon essentially * * * in volume each year during the period of investigation. The value of shipments rose somewhat less sharply. Unit values of U.S. shipments of fresh Atlantic salmon fell steadily. They declined from $* * * per pound during January-June 1987 to $* * * per pound in 1987/88. Unit values averaged $* * * per pound in 1988/89, a * * *-percent decrease from the previous season, and fell to $* * * per pound in 1989/90, a further * * *-percent decrease.

[50] Data in this section are also presented on a "crop year" or harvest basis, with each period covering July through the following June.

Table 5
Unprocessed and fresh Atlantic salmon: U.S. producers' U.S. shipments, January-June 1987 and harvest seasons 1987/88-1989/90

Product and item	Jan.-June 1987	Harvest season--[1] 1987/88	1988/89	1989/90[2]
*	*	*	*	*	*	*

[1] Data cover a 12-month period from July through June.
[2] Data include both actual and estimated shipments.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The 1989/90 season ended "prematurely," according to industry witnesses. Reportedly, the lower prices that prevailed during the fall of 1989 forced producers to "front-load" their sales, i.e., harvest and sell larger-than-expected quantities of fish earlier in the harvest season to maintain revenues.[51] Unit values of U.S. shipments fell to their lowest point, $* * * per pound, in the second half of 1989 and rebounded somewhat in early 1990, averaging $* * * per pound.

Inventories.--"Inventories," in the usual sense of the word, are not held by the industry.[52] Likewise, meaningful inventory-to-shipment ratios cannot be calculated. However, producers were asked to report marketable adult fish held in saltwater cages at yearend. Most fish reach marketable weight (generally considered to be over 4 pounds) near the end of their third year, or during their second fall in saltwater. The fish will be harvested and sold during these months and into the following spring. Thus, the data below represent fish that will be sold within several months. Reported "inventories" are presented in the following tabulation (in 1,000 units):

Inventories	As of December 31-- 1987	1988	1989
Live adult fish.....	***	***	***

Employment

Employment in the production of fresh Atlantic salmon increased during the period of investigation, but not quite at the rates of production or shipments. This is largely due to the fact that the long growth cycle of the salmon demands labor input years before any product is marketed. Although the type of labor activity varies seasonally, there is sufficient year-round demand that most workers are permanent employees. The work force is not unionized, nor are there significant nonwage benefits. Aquaculture is labor-intensive; feeding, harvesting, net care, fish transfers and handling, and processing all demand

[51] Transcript, pp. 26 and 36.
[52] So-called swimming inventories, which include smolt and parr, are more comparable to "work-in-progress" than to finished inventories.

considerable semiskilled manual labor. The industry is just beginning to introduce some labor-saving machinery.

Salmon farming is important to the economy of the Cobscook Bay area, although the textile industry is somewhat larger in terms of number of workers. Tourism and other fisheries also offer seasonal employment. The herring fishery and canning operations, formerly predominant, have almost disappeared from the area, as has the herring.[53]

Ten producers, accounting for the vast majority of reported production, provided the data on employment presented in table 6.[54] The number of persons employed, hours worked, and total compensation paid all more than doubled during the period of investigation. Hourly compensation increased by about 15 percent. Smaller producers indicated that the majority of their labor was supplied by family members and was unpaid. Meaningful productivity ratios and unit labor costs could not be calculated.

Table 6
Fresh Atlantic salmon: Average number of production and related workers, hours worked, total compensation paid, and hourly total compensation, 1987-89[1]

Item	1987	1988	1989
Production and related workers:			
Farming (number)	82	143	209
Processing (number)	***	***	***
Hours worked:			
Farming (1,000)	137	272	410
Processing (1,000)	***	***	***
Total compensation paid:			
Farming ($1,000)	1,015	1,991	3,359
Processing ($1,000)	***	***	***
Hourly total compensation:[2]			
Farming (per hour)	$7.46	$7.54	$8.40
Processing (per hour)	***	***	***

[1] * * *.

[2] Based on companies providing data on both hours worked and total compensation paid.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

[53] Transcript, p. 30 and discussions with producers and other area residents, Mar. 12-13, 1990.

[54] * * *.

Financial experience of U.S. producers

Three producers, * * *, provided requested financial data.

* * * * * * *

Data of these three firms are presented separately in this section. Seven other producers, which started production at various stages in the Atlantic salmon growth cycle and had no commercial sales, supplied limited investment data.

Ocean Products, Inc.--Ocean Products grows, processes, and sells only fresh Atlantic salmon. The company was formed in 1982 and began commercial sales in 1984. Income-and-loss data of Ocean Products are shown in table 7.

* * * * * * *

Table 7
Income-and-loss experience of Ocean Products, Inc., on its operations producing fresh Atlantic salmon, accounting years ended June 30, 1987, 1988, and 1989, and July-December 1989

Item	Audited			Unaudited
	1987	1988	1989	July-Dec. 1989
* * * * * * *				

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

* * * * * * *

Ocean Products provided its break-even price levels on the basis of actual production levels for marketing season 1989/90 and on the basis of projected production levels for marketing season 1990/91. These data are shown in the following tabulation:

Size of fish	1989/90	1990/91
4-6 pounds	***	***
6-9 pounds	***	***

Ocean Products attributes the decline in break-even price levels in 1990/91 to a projected increase in production in that season.[55]

* * * * * * *

[55] Post Conference Brief of the Petitioner, p. 24, fn. 9.

The balance sheet of Ocean Products as of the end of its last three complete fiscal years (ending June 30 of 1987-89) is presented in table 8.

* * * * * * *

Table 8
Balance sheet of Ocean Products, Inc., as of June 30, 1987, 1988, and 1989

(In thousands of dollars)

Item	1987	1988	1989
* * * * * * *			

Source: Compiled from the Annual Reports submitted by Ocean Products.

* * * * * * *[56]

Selected key financial ratios of Ocean Products are presented in the following tabulation:

* * * * * * *

* * *.--

* * * * * * *

Table 9
Income-and-loss experience of * * *

Item	1987	1988	1989
* * * * * * *			

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

* * * * * * *

[56] * * *.

Table 10
Balance sheet of * * *

Item	1987	1988	1989
* * * * * * *			

Source: Compiled from the financial statements submitted by * * *.

* * * * * * *

Combined key financial data of Ocean Products and * * * are presented in the following tabulation:

* * * * * * *

* * *.--

* * * * * * *

Table 11
Income-and-loss experience of * * *

Item	1987	1988	1989
* * * * * * *			

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

* * * * * * *

Table 12
Balance sheet of * * *

Item	1987	1988	1989
* * * * * * *			

Source: Compiled from the financial statements submitted by * * *.

Sales and gross profit projections.--The Commission requested from U.S. producers their initial projections for sales and gross profitability for their fiscal years 1987-90. * * *. These projections are shown in the following tabulations, along with actual figures for each of these firms.

* * * * * * *

Investment in production facilities.--Most of the U.S. producers, which commenced their production at various stages in the Atlantic salmon growth cycle,[57] provided very limited data with respect to their investment in assets and capital expenditures. Their total assets as of the end of accounting year 1989 are presented in the following tabulation (in thousands of dollars):

Company and location	Total assets as of end of accounting year 1989
* * * * * * *	
Total investments	34,857

Research and development expenses.--* * * U.S. producers provided data with respect to research and development expenses.

* * * * * * *

Impact of imports on capital and investment.--The Commission requested U.S. producers to describe any actual and/or potential negative effects of imports of fresh Atlantic salmon from Norway on their growth, investment, and ability to raise capital and/or existing development and production efforts. Their responses are shown in appendix D.

Consideration of the Question of Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

> In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors[58]--

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[57] For information on the year of establishment of various facilities and the year of first commercial sales of these firms, see the tabulation in the section of this report entitled "Status of operations of U.S. producers."

[58] Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.[59]

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[59] Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall

(continued...)

The available information on the nature of the alleged subsidies (item (I)) is presented in the section of this report entitled "Nature and extent of the alleged subsidies and sales at LTFV;" information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV)) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of material injury to, and material retardation of, an industry in the United States." U.S. importers do not hold inventories of the subject product (item (V)). Available information on foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), (VIII), and (IX)); any other threat indicators, if applicable (item (VII)); and any dumping in third-country markets follows.

The Norwegian industry[60]

Norway has traditionally had a large fisheries sector, which contributes significantly to the national economy and greatly to export earnings. As overexploitation reduced certain fish and shellfish populations and as demand for fishery products grew, Norway pioneered in the development of aquaculture technology in the early 1970s. The Norske Fiskeoppdretteres Salgslag (Norwegian Fish Farmers' Sales Organization) controls the flow of product from the salmon farmer to the exporter and maintains maximum and minimum prices. Norway has exported, on average, slightly more than 85 percent of its Atlantic salmon harvest in recent years as fresh fish.

The Government of Norway permitted farmers to expand their salmon farms from 3,000 cubic meters to 8,000 cubic meters in the early 1980s, and to 12,000 cubic meters in 1988. Also, the number of salmon farms increased from 5 in 1971 to over 650 in 1989. As a result, Norwegian production of farmed salmon nearly doubled every two years during this period. Also, partly as a result of the large number of producers, Norway harvests and exports Atlantic salmon during the summer months when other suppliers are generally "fished out."

Most analysts agree that the rapid increase in production by the Norwegian industry resulted in a worldwide oversupply of fresh Atlantic salmon in 1989. Production increased from 105 million pounds in 1987 to 177 million pounds in 1988, a 70-percent jump. Then, in early 1989, with harvests forecast at nearly 310 million pounds, Norway acted to limit the harvest to 243 million pounds, still more than 35 percent higher than in 1988. Some of the harvest was frozen and the balance of marketable fish was left in the water. Minimum prices were adjusted downward twice in 1989; however, sources in the trade press suggest that some Atlantic salmon has been sold below such prices in the EC. The peak

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[59] (...continued)
consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

[60] Except as noted, information on the Norwegian industry is drawn from "Norwegian Salmon Farming, 1988-89," IFR-90/03, Foreign Fisheries Analysis Branch of NMFS (exhibit G of the petition). Other available sources generally present less current and less conservative data.

smolt production of 1988 suggests that the 1990 harvest could again be at least 310 million pounds.

On January 4, 1990, the Norwegian Government implemented an "intervention plan" designed to reduce supplies and stabilize the market. The plan provides for the freezing of up to 88 million pounds of Atlantic salmon, which is to be sold outside the fresh market. This program will be financed through a surcharge paid by (and presumably passed on by) exporters.

In 1989, capacity, based on available cubic space and average yield, was estimated at nearly 400 million pounds; thus the industry is operating well below capacity. However, further additions to capacity are uncertain in the current market. Licensing of salmon farms has been temporarily suspended and farming of other fish and shellfish species is increasing. Production of Atlantic salmon may continue to increase as existing crops of juveniles mature, but stabilization at 265-310 million pounds is predicted by 1991-92.

Data provided by respondents in these investigations are presented in tables 13 and 14. These data do not differ materially from those available from other sources. Reported data indicate that the number of hatch house operations in Norway remained in the range of 30-50 firms and that they operated well below their reported aggregate capacity of 200 million eyed eggs throughout the period of investigation. The number of fry and smolt producers peaked in 1988 at 370 and declined thereafter. Production of fry more than doubled from 1987 to 1989, but is projected to decline through 1991. As noted above, smolt production peaked in 1988; however, 1990 and 1991 levels are still projected to remain above those of 1987. Data on these freshwater operations are presented in table 13.

Table 13
Atlantic salmon eyed eggs, fry, and smolt: Number of producers in Norway and capacity, production, and capacity utilization of such producers, actual 1987-89 and projected 1990-91 data

Product and item	1987	1988	1989	1990[1]	1991[2]
Eyed eggs:					
Number of producers	30-50	30-50	30-50	30-50	30-50
Capacity (1,000,000 units)	200	200	200	200	200
Production (1,000,000 units)	56	50	33	(3)	(3)
Capacity utilization (percent)	28.0	25.0	16.5	(3)	(3)
Fry:					
Number of producers	300	370	360	340	250-300
Capacity (1,000 units)	(3)	(3)	(3)	(3)	(3)
Production (1,000 units)	57	105	120	105	70-85
Capacity utilization (percent)	(3)	(3)	(3)	(3)	(3)
Smolt:					
Number of producers	300	370	360	330	250-300
Capacity (1,000 units)	(3)	(3)	(3)	(3)	(3)
Production (1,000 units)	43	73	66	60	50-60
Capacity utilization (percent)	(3)	(3)	(3)	(3)	(3)

[1] Eyed eggs are typically "shipped" in February, and fry and smolt by June; thus, 1990 data include both actual and estimated shipments.
[2] Projected.
[3] Not available.

Source: Compiled from data submitted by counsel for the Norwegian respondents.

There were well over 700 saltwater farming operations during the period of investigation and about half that number of processors; no increases are projected during 1990-91 (table 14). Capacity to raise adult Atlantic salmon rose by 34.6 percent from 1987 to 1989 but is expected to stabilize. Production more than doubled from 1987 to 1989, with a further increase of 30.4 percent forecast in 1990; however, production is forecast to decline by 6.7 percent in 1991. Capacity utilization nearly doubled from 1987 to 1989 and is projected to increase through 1990. As noted above, Norway exports the vast majority of its production but mostly to markets other than the United States. Exports to the U.S. market increased during 1987-89 but are projected to decline in 1990. Exports to other countries rose more rapidly.

Table 14
Unprocessed and fresh Atlantic salmon: Number of producers in Norway; capacity, production, and capacity utilization of saltwater operations; and home-market shipments and exports[1] to the United States and all other countries of processed fish; actual 1987-89 and projected 1990-91 data[2]

Product and item	1987	1988	1989	1990[3]	1991[3]
Saltwater operations:					
Number of producers	747	782	791	791	791
Capacity (1,000,000 pounds)	287	309	386	386	386
Production (1,000,000 pounds)	107	176	254	331	309
Capacity utilization (percent)	36.2	57.1	65.7	85.7	80.0
Processing operations:					
Number of producers	340-350	340-350	340-350	340-350	340-350
Home-market shipments (1,000,000 pounds)	7	26	22	(4)	(4)
Exports to the United States (1,000,000 pounds)	18	22	29	22	(4)
Exports to all other countries (1,000,000 pounds)	97	128	196	(4)	(4)

[1] Export data include some unprocessed Atlantic salmon and an insignificant quantity of frozen Atlantic salmon.
[2] Volume data were reported in thousands of metric tons and have been converted to millions of pounds.
[3] Projected.
[4] Not available.

Source: Compiled from data submitted by counsel for the Norwegian respondents.

Antidumping proceeding in the EC

On February 2, 1990, the EC published a notice of initiation of an antidumping proceeding concerning imports of fresh Atlantic salmon from Norway.[61] According to the "Lodgement of Complaint"[62] by the Scottish Salmon Board and the Irish Salmon Growers Association, 67.5 percent of Norwegian production of fresh Atlantic salmon is exported to the EC. Allegations of dumping margins range from 33.0 percent for the largest size fish to 94.7 percent for the smallest size. According to EC sources, a determination will likely be made around mid-1990. If affirmative, the EC will negotiate a price undertaking with Norway, whereby the Norwegians would guarantee a certain price level for exports to the EC. Norway would enforce, and the EC would monitor, compliance with the agreement.[63]

[61] A copy of the EC notice is presented in app. E.
[62] Excerpts from the Complaint are presented in exhibit D of the petition.
[63] * * *.

Consideration of the Causal Relationship between Imports of the Subject Merchandise and the Alleged Material Injury

U.S. imports

In 1989, the United States imported 38.6 million pounds of fresh whole Atlantic salmon under HTS statistical reporting number 0302.12.0065.[64] Norway supplied 65.1 percent of the total, followed by Canada (16.9 percent), the United Kingdom (5.8 percent), Chile (3.2 percent), the Faroe Islands and Iceland (each 2.7 percent), and Ireland (2.4 percent). Other countries accounted for less than 0.5 percent each and less than 1.5 percent in the aggregate.

Prior to 1989, fresh whole salmon of all species was classified in a single TSUS item. Available information suggests that most major suppliers of salmon products to the United States produced and exported primarily Atlantic salmon during these years.[65] Thus, official import statistics are believed to provide a very accurate representation of imports of the subject product from Norway, the United Kingdom, the Faroe Islands, Iceland, and Ireland. For Canada and Chile, however, which export greater quantities of Pacific salmon than of Atlantic salmon, official U.S. import data are of limited value in terms of identifying imports of Atlantic salmon. This report presents estimates of U.S. imports of fresh Atlantic salmon from Canada, Chile, and other countries during 1987-88, based on available information.[66]

Importers' questionnaires were sent to 48 firms identified as importers of the Norwegian product in 1989, although questionnaires were not sent to any of the hundreds of companies identified as importers of (all) salmon from other countries. Data were provided by importers accounting for an estimated 40 percent of 1989 imports of the subject product from Norway. These data reflect the same trends observed in official U.S. import data.

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[64] Also included in the statistical reporting number during 1989 was Danube salmon, a species so obscure that no country is known to export it. In the 1990 HTS, Danube and Atlantic salmon are reported separately for statistical purposes.

[65] According to official U.S. import statistics, aggregated imports of fresh whole chinook, coho, sockeye, pink salmon, and chum from Norway, the United Kingdom, the Faroe Islands, Iceland, and Ireland in 1989 accounted for less than 0.1 percent of total 1989 imports of fresh whole salmon from these countries.

[66] 1989 data for Canada were available from U.S. import statistics. 1987 quantity data for Canada were derived by taking the ratio of fresh whole Atlantic salmon exported to the United States to all fresh whole salmon exported to the United States (24.9 percent), on the basis of 1987 Canadian export statistics, and applying that ratio to U.S. import data for all fresh whole salmon from Canada in 1987. 1988 quantity data were extrapolated, assuming growth rates observed for the U.S. industry. Unit values for imports from Canada were assumed to be 91.2 percent of the Norwegian unit values (the ratio observed in 1989). Value data were calculated from these estimates.

1989 data for Chile and countries not separately specified in table 15 were available from U.S. import statistics. 1987 and 1988 quantity data for these countries were extrapolated, assuming growth rates observed for the Faroe Islands, Iceland, and Ireland. Unit values for imports from Chile and "all other" countries were assumed to be 84.5 and 86.6 percent, respectively, of the Norwegian unit values (ratios observed in 1989). Value data were calculated from these estimates.

U.S. imports from Norway.--As shown in table 15, U.S. imports from Norway of fresh Atlantic salmon increased from 16.8 million pounds in 1987 to 19.7 million pounds in 1988 and to 25.1 million pounds in 1989, representing annual increases of 16.9 and 27.6 percent, respectively. The landed, duty-paid value of such imports increased somewhat more steeply (by 20.0 percent) from 1987 to 1988, from $74.7 million to $90.3 million, but rose by only 3.7 percent, to $93.7 million, in 1989. Unit values rose in 1988 to $4.59 per pound, up 3.4 percent from an average unit value of $4.44 during 1987. Unit values then fell 18.7 percent, to $3.73 per pound, in 1989.

U.S. imports from other countries.--Also as shown in table 15, compared to imports from Norway, U.S. imports from all other countries have increased at a much steeper rate as these other countries developed their salmon farming industries. Estimated imports from Canada nearly doubled each year. Imports from the more established British producers declined in 1988 but then more than doubled in 1989. Smaller suppliers have experienced exponential growth rates. Unit values of imports from all countries generally mirrored the trends of imports from Norway. The unit value of imports from Canada was about 10 percent less than that of imports from Norway in terms of landed, duty-paid value, which pulled down the average unit value of aggregated imports to below the Norwegian unit value. In fact, this is due to lower transportation costs from Canada. In 1989, unit values on an f.o.b. (customs) transaction value basis show the Norwegian unit values to have been over 20 percent less than Canadian unit values and slightly below the average of imports from all countries. Imports from the United Kingdom were consistently higher, and those from Chile consistently lower, in unit value than imports from Norway.

Table 15
Fresh Atlantic salmon: U.S. imports from Norway, Canada,[1] the United Kingdom, Chile,[2] the Faroe Islands, Iceland, Ireland, and all other countries,[2] 1987-89

Source	1987	1988	1989
	Quantity (1,000 pounds)		
Norway	16,843	19,688	25,123
Canada	2,117	3,700	6,522
The United Kingdom	1,245	831	2,229
Chile	123	615	1,229
Faroe Islands	-	76	1,055
Iceland	174	717	1,040
Ireland	103	683	938
All other countries	46	228	456
Total	20,651	26,538	38,591
	Value (1,000 dollars)[3]		
Norway	74,703	90,348	93,672
Canada	8,572	15,466	22,145
The United Kingdom	5,913	4,362	9,167
Chile	461	2,386	3,876
Faroe Islands	-	349	3,472
Iceland	802	3,101	3,262
Ireland	471	3,058	3,486
All other countries	177	905	1,473
Total	91,099	119,975	140,553
	Unit value (dollars per pound)		
Norway	$4.44	$4.59	$3.73
Canada	4.05	4.18	3.40
The United Kingdom	4.75	5.25	4.11
Chile	3.75	3.88	3.15
Faroe Islands	(4)	4.58	3.29
Iceland	4.60	4.32	3.14
Ireland	4.58	4.48	3.72
All other countries	3.84	3.97	3.23
Average	4.41	4.52	3.64

[1] 1989 data for Canada were available from U.S. import statistics. 1987 quantity data for Canada were derived by taking the ratio of fresh whole Atlantic salmon exported to the United States to all fresh whole salmon exported to the United States (24.9 percent), based on 1987 Canadian export statistics, and applying that ratio to U.S. import data for all fresh whole salmon from Canada in 1987. 1988 quantity data were extrapolated, assuming growth rates observed for the U.S. industry. Unit values for imports from Canada were assumed to be 91.2 percent of the Norwegian unit values (the ratio observed in 1989). Value data were calculated from these estimates.

[2] 1989 data for Chile and all other countries were available from U.S. import statistics. 1987 and 1988 quantity data for these countries were extrapolated, assuming growth rates observed for the Faroe Islands, Iceland, and Ireland. Unit values for imports from Chile and all other countries were assumed to be 84.5 and 86.6 percent, respectively, of the Norwegian unit values (ratios observed in 1989). Value data were calculated from these estimates.

[3] Landed, duty-paid value.

[4] Not applicable.

Source: Compiled from official U.S. import statistics and Canadian export statistics, adjusted as required.

Note.--Because of rounding, figures may not add to the totals shown.

Market penetration by the subject imports

Market penetration is calculated on a calendar year basis from U.S. producers' reported shipments and import statistics, adjusted for 1987-88, as noted above. Imports dominated the U.S. market for fresh Atlantic salmon, averaging a near-95-percent market share, with Norway accounting for a majority of total supply in each year (table 16). Market penetration by imports from Norway decreased steadily during the period of investigation as imports from all other countries increased. The U.S. market share more than doubled in terms of both quantity and value, from less than 2.5 percent to more than 5.0 percent, from 1987 to 1988; however, the market share of U.S. producers declined in 1989 both in terms of quantity and in terms of value. U.S. data are somewhat understated because not all producers reported shipments.

Table 16
Fresh Atlantic salmon: Apparent U.S. consumption and shares of consumption supplied by Norway, all other countries, and U.S. producers, by quantity and value, 1987-89

Item	1987	1988	1989
* * * * * * *			

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official U.S. import statistics.

Prices

Demand for fresh Atlantic salmon is derived from the demand for both processed and fresh retail Atlantic salmon products. Among factors that affect the demand for Atlantic salmon are the price of substitute products, consumer income, and consumer attitudes. An increase in the price of substitute products or consumer income will increase the demand for Atlantic salmon.[67] U.S. producers and importers reported that consumer demand for fresh Atlantic salmon has also increased as consumers have shifted to seafood from red meats.

Additional factors that affect the demand for fresh farmed Atlantic salmon include its consistency of quality and its continuity of supply. These salmon are nearly uniform in appearance and taste, guaranteeing the purchaser the same

[67] Economic studies have estimated that the income elasticity for salmon is greater than 2.00. These studies include: B. Lin, M. Herrmann, T. Lin, and R. Mittelhammer, "Forecasting the Price of Farmed Atlantic Salmon: An Integrated Econometric and Time Series Approach," Agribusiness, vol. 5, No. 5, 1989 and P. Bird, "Econometric Estimation of World Salmon Demand," Marine Resource Economics, vol. 3, No. 2, 1986.

product over time. Moreover, increased farming of Atlantic salmon in some countries has enabled its marketing on a year-round basis.[68]

Substitutes for Atlantic salmon include the various species of Pacific salmon as well as steelhead trout.[69] A review of the economic literature on the demand for salmon indicates some disagreement over the level and degree of substitutability between Atlantic salmon and these other products, specifically the three higher valued species of Pacific salmon, that is, chinook, coho, and sockeye. While a recent survey of wholesalers indicated a strong substitutability between Atlantic salmon and these three high-valued Pacific salmon, econometric studies have yet to confirm a significant cross-price elasticity.[70]

Petitioners have argued that Atlantic salmon does not compete with Pacific salmon. They state that U.S.-produced Atlantic salmon is priced higher than Pacific salmon and is sold generally during autumn and winter months whereas Pacific salmon is sold primarily during the summer months. However, respondents report that Norwegian-produced Atlantic salmon is supplied year-round and competes directly with the Pacific salmon. Moreover, petitioner acknowledged that during these summer months, such retailers as grocery store chains would substitute the Pacific product for the Atlantic product because of the lower price.[71] Finally, purchasers of Pacific salmon also reported that Norwegian-produced Atlantic salmon competes directly with some species of Pacific salmon and that the increased availability of Norwegian salmon during the summer and autumn of 1989 adversely affected their sales of the Pacific salmon product.[72] Industry sources argue that Atlantic salmon will become increasingly competitive with fresh wild salmon as year-round production of farmed salmon increases and if the price of farmed salmon declines.

There are several factors that determine the selling price for both wild and farmed salmon, including the type or species of salmon, its size, its channel of distribution, whether fresh or frozen, its source, and the quality of product. The price of wild salmon is also influenced by the method of catching the fish.

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[68] Norway markets Atlantic salmon in the United States year-round, whereas U.S. producers generally market this product during autumn through spring.

* * * * * * *

[69] Substitute products for fresh salmon include other sources of protein, provided by both seafood and nonseafood products. Frozen salmon has also been cited in some articles and questionnaire responses as a substitute for fresh salmon. Parties to the investigations have argued that frozen salmon does not compete with fresh salmon. Frozen salmon is sold mostly in overseas markets and is priced below fresh salmon according to these sources.

[70] These studies include: Aquaculture and Capture Fisheries: Impacts on U.S. Seafood Markets, NMFS, April 1988; Dunn, Leitz, and Harri, "The Salmon Aquaculture Industry in Canada;" M. Herrmann, B. Lin, and R. Mittelhammer, U.S. Salmon Markets: A Survey of Seafood Wholesalers, Alaska Sea Grant Report No. 90-01, University of Alaska, Fairbanks, 1990; P. Bird, "Forecasting the Price of Farmed Atlantic Salmon: An Integrated Econometric and Time Series Approach," Agribusiness, vol. 5, No. 5, 1989; B. Lin, M. Herrmann, T. Lin, and R. Mittelhammer, "Econometric Estimation of World Salmon Demand," Marine Resource Economics, vol. 3, No. 2, 1986; and Hempel, E., "Marketing Farmed Salmon," Aquaculture, A Review of Recent Experience, OECD.

[71] Transcript, p. 87.

[72] Conversations with purchasers of Pacific salmon at the Boston International Seafood Show, Mar. 20, 1990.

In general, Atlantic salmon is more expensive than Pacific salmon; larger, heavier salmon is more expensive than smaller salmon; and salmon sold to the white-tablecloth restaurant trade is more expensive than salmon sold to retailers.[73] Norwegian-produced farmed Atlantic salmon is typically more expensive than U.S. or Canadian farmed Atlantic salmon;[74] fresh salmon is generally more expensive than frozen salmon; and salmon that is inspected and given a USDA Grade A designation is priced higher than salmon not inspected, even though they may be identical fish.[75] Troll-caught fish are generally more expensive than gillnet- or purse seine-caught fish because the latter two methods of catching the fish may damage the skin.[76]

According to questionnaire responses, Atlantic salmon from both U.S. producers and importers is sold primarily on the spot market. Salmon prices are determined daily over the phone, whereby buyers compare competitive quotes before making a final purchasing decision. The product is usually sold to a "first receiver," a regional distributor or local wholesaler, who distributes it to the retail and restaurant trade. Some large restaurant and retail chains, primarily grocery chains, may also buy direct from the producer. Buyers will look for specific salmon sizes in certain price ranges. Because availability of specific species of salmon is largely seasonal, a buyer may purchase different types of salmon throughout the year.

* * * U.S. importers, * * * and * * * also reported selling salmon on a contract basis at a fixed price during the period of investigation. * * * reported that there are generally two types of contracts in the salmon market, both to the retail channel of distribution. The first type is arranged by retailers who want to guarantee a specific supply of salmon from one week to one month in advance of a special they may advertise. The second type is negotiated by retailers who want to guarantee a longer supply pipeline of salmon with 3- to 4-month fixed-price contracts.

* * * * * * *[77]

Questionnaire responses indicate that U.S. producers of farmed Atlantic salmon typically quote their product f.o.b. Portland, ME, or Logan Airport, Boston, MA, although * * *. U.S. importers report that they quote their product f.o.b. warehouse. Order lead times generally range from 3 to 5 days for spot orders and 2 to 3 weeks on contract orders.[78] For U.S. producers, sales terms range * * *, whereas U.S. importers' terms range from net 7 to net

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[73] At the conference, petitioner estimated the overall difference in price between the low-priced retail channel and the high-priced restaurants as within 5 percent. Restaurants are also more likely to emphasize the producing country of the salmon, e.g., Norwegian salmon, similar to the marketing of Maine lobster, and attach a higher price and image to its label.

[74] * * *.

[75] * * *. The Norwegians grade their fish in three categories: superior, ordinary, and production. The salmon is graded according to its appearance: the more bruises and other surface defects, the lower the grade. The Norwegians export only the two higher grades, superior and ordinary, to the United States. According to the petition, the superior grade accounts for about 70 percent of Norwegian production and ordinary grade accounts for about 20 percent.

[76] According to * * * of NMFS, troll-caught Pacific salmon represent approximately 2 percent of the total U.S. wild salmon catch.

[77] * * *.

[78] Salmon is harvested just prior to shipping.

30 days. Distribution of salmon is made by truck or air, and product is typically in transit less than 3 days. Both U.S. producers and importers reported that transportation costs are important to their purchasers and represent between 3 and 7 percent of the overall delivered price of the salmon.

Salmon price data.--The Commission collected price data from published sources for Atlantic and Pacific salmon and steelhead trout, and from responses to questionnaires by U.S. producers and importers of Atlantic salmon. Published price data for three different weight categories of Norwegian and U.S./Canadian Atlantic salmon are presented on a weekly basis from January 1987 to March 1990.[79] The three weight categories are 4 to 6 pounds (2 to 3 kilograms), 6 to 9 pounds (3 to 4 kilograms), and 9 to 11 pounds (4 to 5 kilograms).[80] Published price data for selected U.S., Canadian, and Chilean Pacific salmon and U.S. steelhead trout are also presented on a semiweekly basis from January 1988 to March 1990.[81]

The Commission requested U.S. producers and importers to provide monthly price data from September 1988 through February 1990 for their largest sale of fresh Atlantic salmon to four channels of distribution covering three weight categories for salmon. The four channels of distribution were restaurant chains, regional distributors, grocery chains, and further processors. The three weight categories were 4 to 6 pounds (2 to 3 kilograms), 6 to 9 pounds (3 to 4 kilograms), and 9 to 11 pounds (4 to 5 kilograms). For each product, producers were requested to report the quantity and net f.o.b. shipping point price during the middle of the month (the 10th to the 20th) from September 1988 through February 1990.

* * * U.S. producers and six U.S. importers reported pricing data for the selected Atlantic salmon from September 1988 through February 1990. The responding U.S. producers accounted for over 90 percent of all reported U.S.-produced domestic shipments of salmon in 1989. The responding U.S. importers accounted for over 40 percent of all reported imports of Norwegian salmon in 1989.

Published price trends for fresh Atlantic and Pacific salmon and steelhead trout.--Prices fluctuated widely for Norwegian Atlantic salmon for the three size categories from 1987 through mid-1988, before declining between 40 percent and 50 percent through the end of 1989 (figures 1-3). Prices increased between 14 percent and 30 percent during the first quarter of 1990. Prices also generally declined for U.S./Canadian-produced Atlantic salmon in each salmon size category from mid-1988 through 1989, before rising during the first quarter of 1990. Published prices for U.S./Canadian production only began to be reported in mid-1988 when production reached a measurable level.

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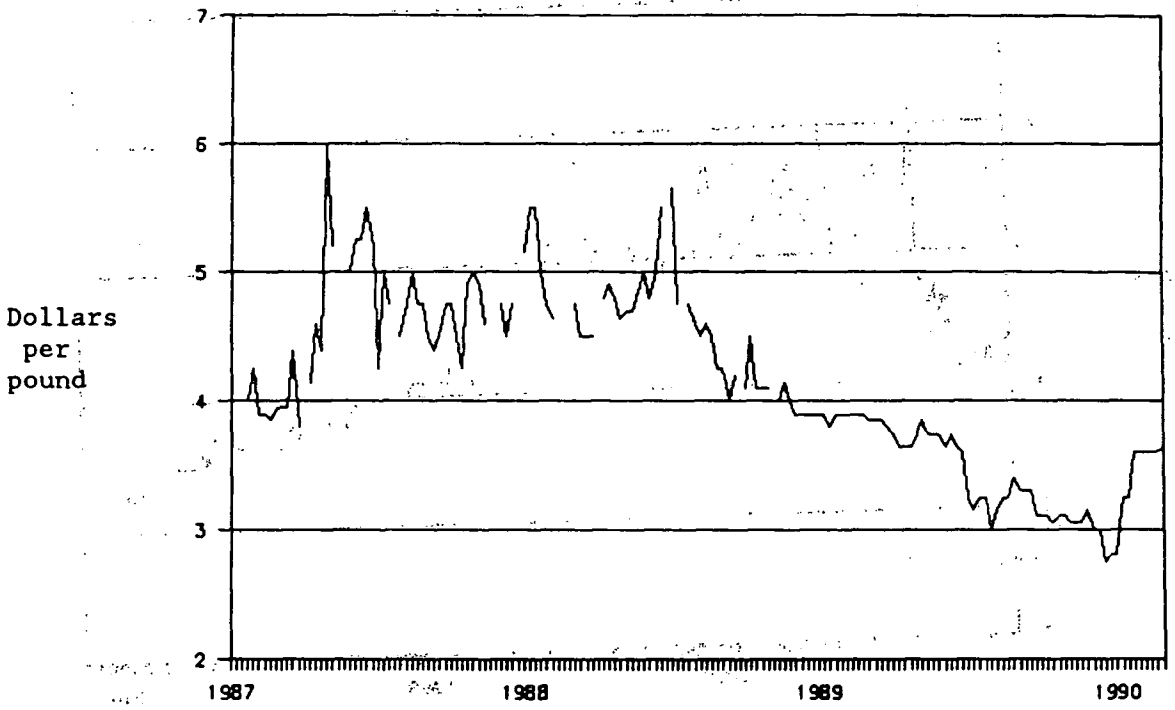
[79] Urner Barry, a company located in New Jersey, publishes pricing data for Atlantic and Pacific salmon sold in the U.S. market. In its publication, it presents a combined U.S./Canadian price for Atlantic salmon. * * * for Urner Barry, reported that the price for Atlantic salmon among all U.S. and Canadian producers is similar. There are no significant differences in transportation costs because both U.S. and Canadian producers of Atlantic salmon are located in the same general area, Maine and New Brunswick. Moreover, there is no duty on salmon traded between these two countries. The only reason that Urner Berry does not present a U.S. price separately is that it would violate confidentiality requirements.

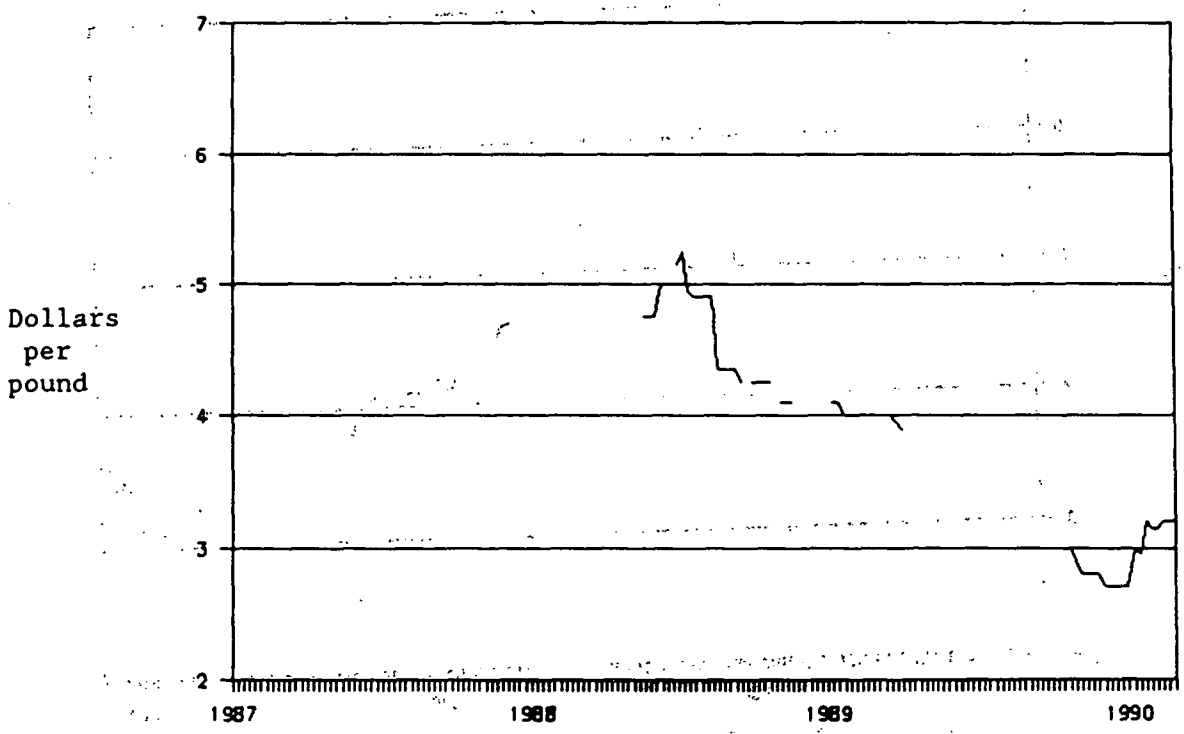
[80] Norwegian salmon is sold in weight categories measured in kilograms, whereas U.S.-produced salmon is sold in weight categories measured in pounds.

[81] Prices for Pacific salmon are published by Urner Barry and by NMFS.

Figure 1.--Fresh Norwegian- and U.S./Canadian-produced salmon published prices, 4 to 6 pounds (2 to 3 kilograms), sold in the U.S. market, weekly, January 1987-March 1990



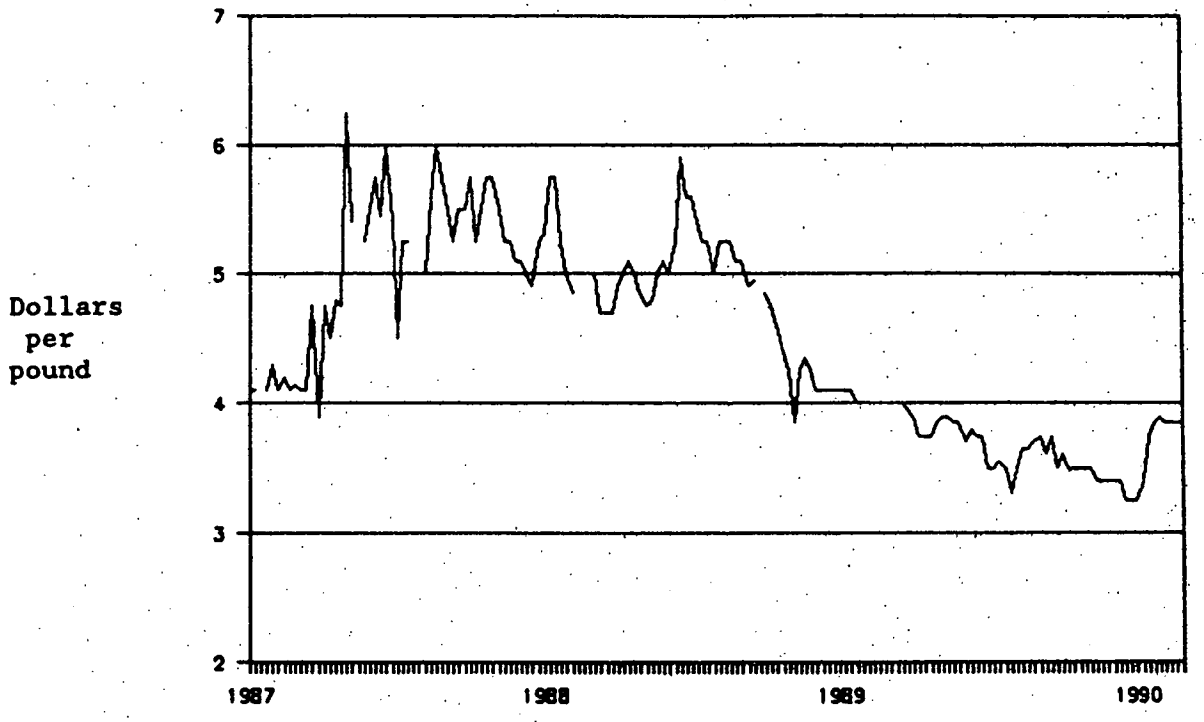
Norwegian Salmon



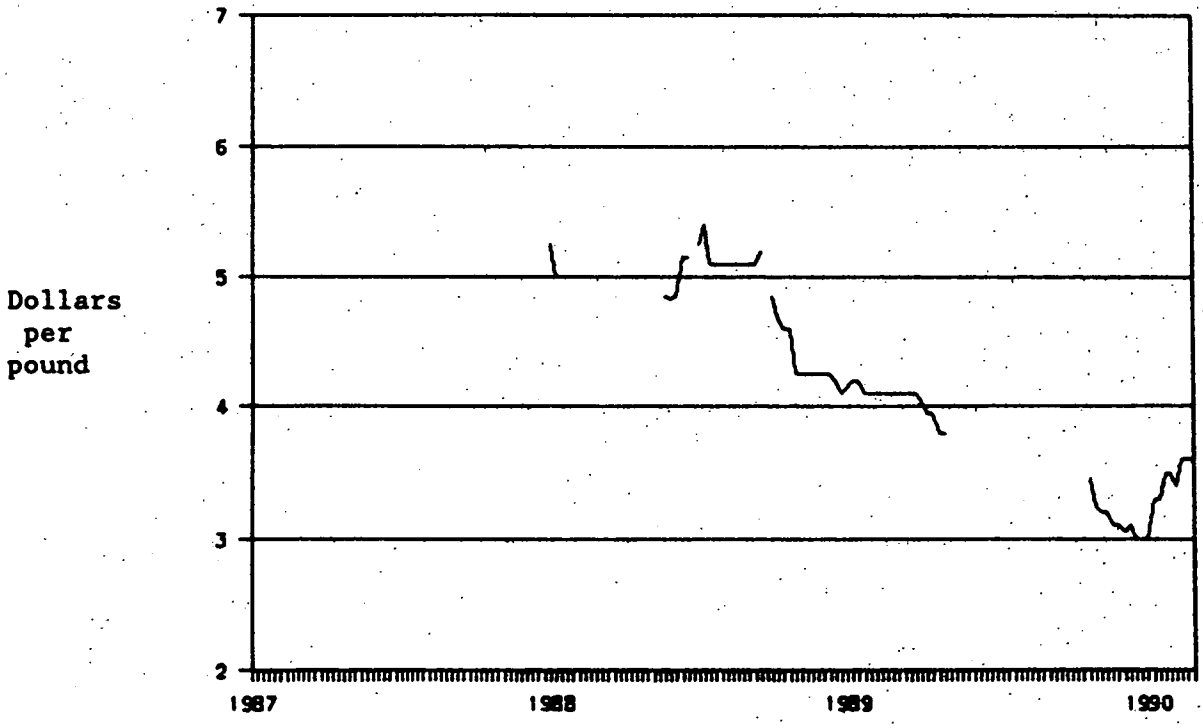
U.S./Canadian Salmon

Source: Urner Barry Publications, Inc.

Figure 2.--Fresh Norwegian- and U.S./Canadian-produced salmon published prices, 6 to 9 pounds (3 to 4 kilograms), sold in the U.S. market, weekly, January 1987-March 1990



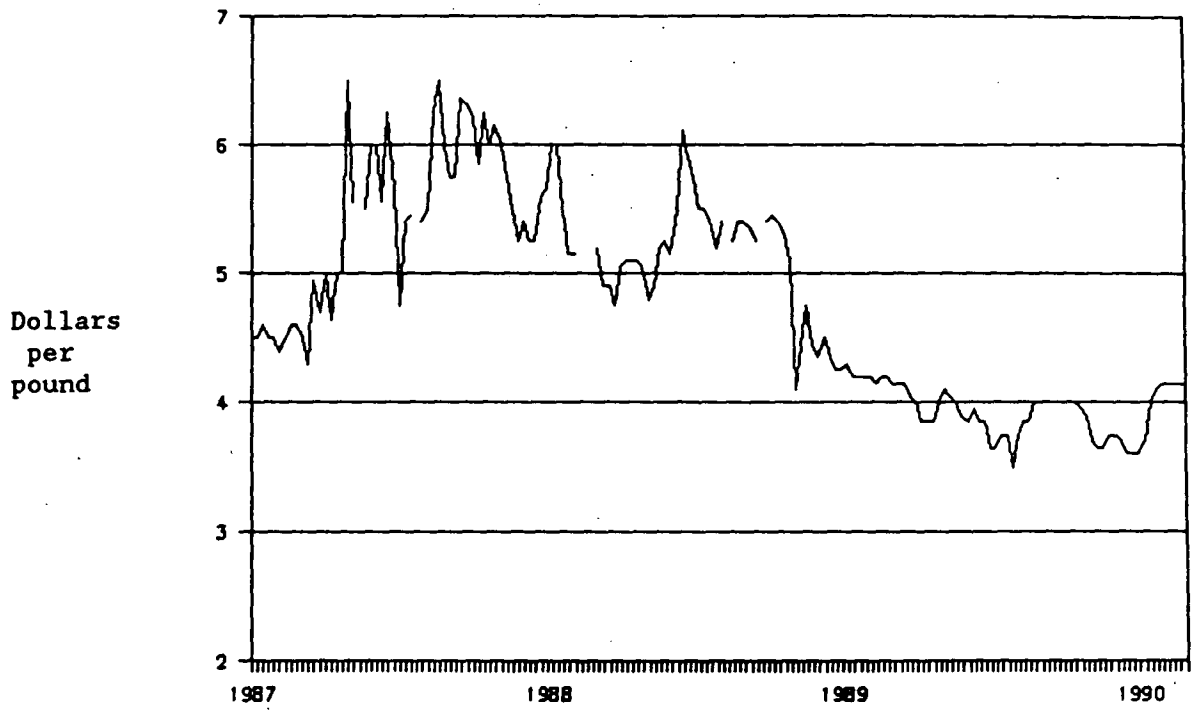
Norwegian Salmon



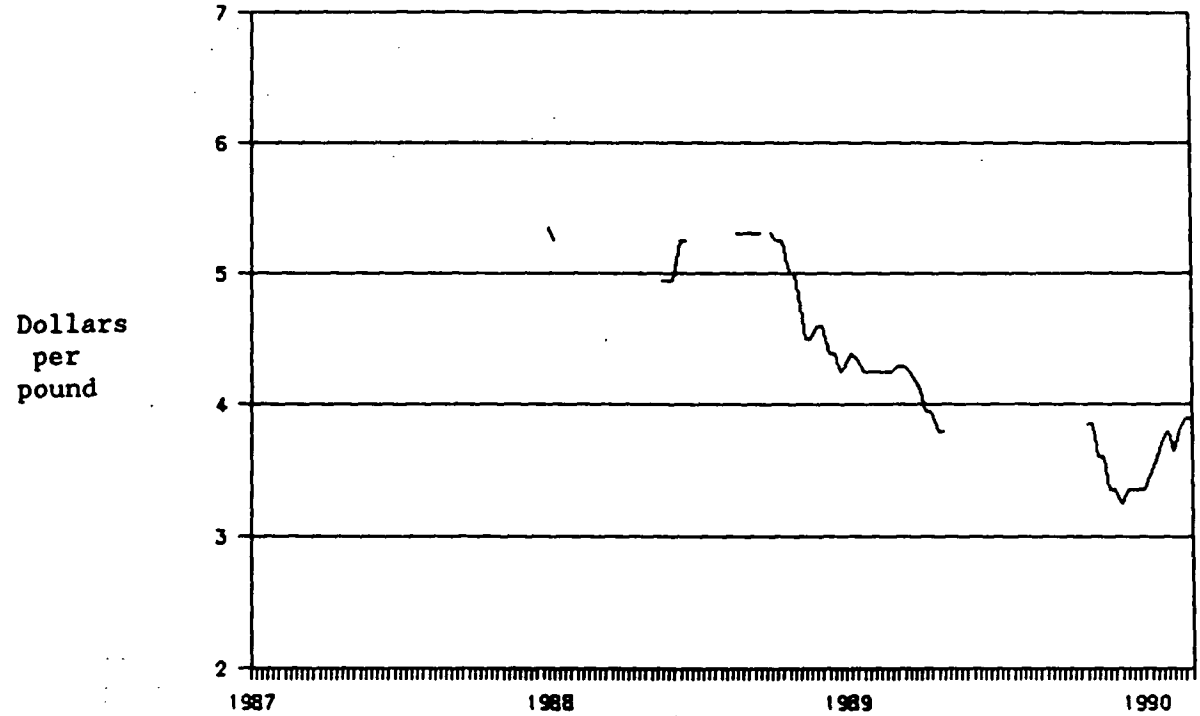
U.S./Canadian Salmon

Source: Urner Barry Publications, Inc.

Figure 3.--Fresh Norwegian- and U.S./Canadian-produced Atlantic salmon published prices, 9 to 11 pounds (4 to 5 kilograms), sold in the U.S. market, weekly, January 1987-March 1990



Norwegian Salmon



U.S./Canadian Salmon

Source: Urner Barry Publications, Inc.

This production, however, is seasonal, and generally ceases during the summer months.

The published U.S./Canadian price for Atlantic salmon followed a similar trend as the Norwegian price from mid-1988 through early 1989, yet remained below the Norwegian price during late 1989 through early 1990 (figures 4-6). The price differential in 1990 may have been influenced by long-term fixed-price contracts signed by Ocean Products in late 1989.

The published price series for Pacific salmon sold in the United States generally followed the same trend as Atlantic salmon, with prices dropping in 1989 and subsequently rising for most species in 1990.[82] Prices for Chilean-farmed coho were lower during the first quarter of 1990 than during the same period in 1989. Although seasonal patterns exist for all the Pacific salmon species presented, these patterns were less pronounced for the farmed Pacific species.

[82] Prices increased in late 1989 and early 1990 for chinook, two types of coho (U.S. gillnet-caught and Canadian-farmed), and steelhead trout. See app. F for a more detailed discussion.

Figure 4.--Fresh Norwegian- and U.S./Canadian-produced Atlantic salmon published prices, 4 to 6 pounds (2 to 3 kilograms), sold in the U.S. market, weekly, January 1987-March 1990

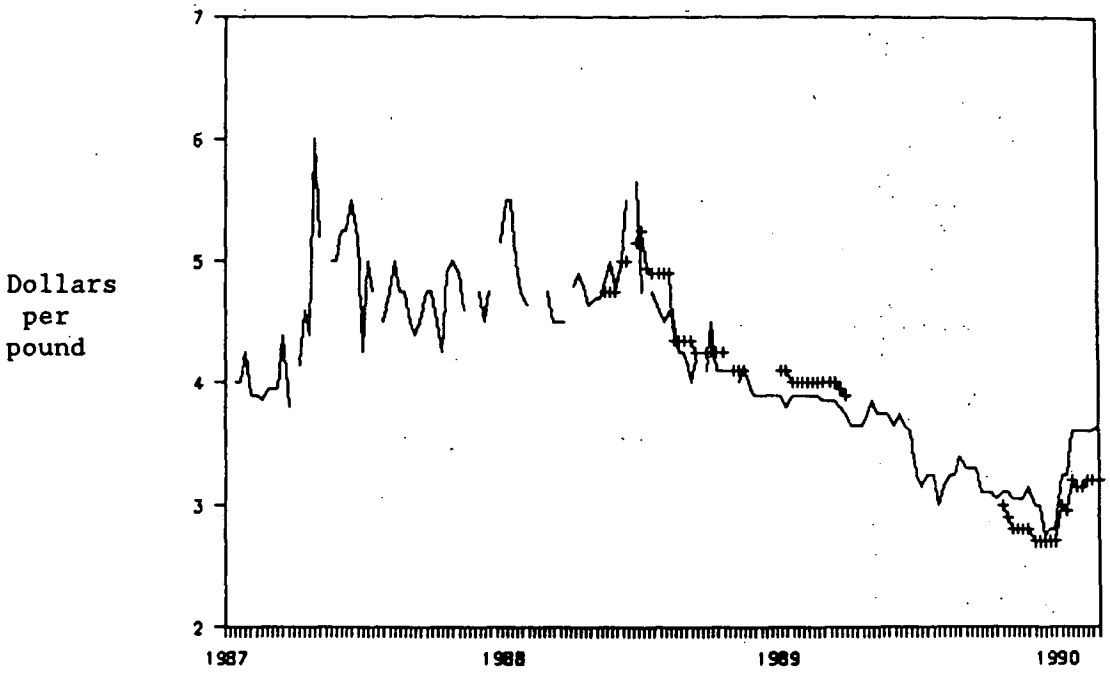
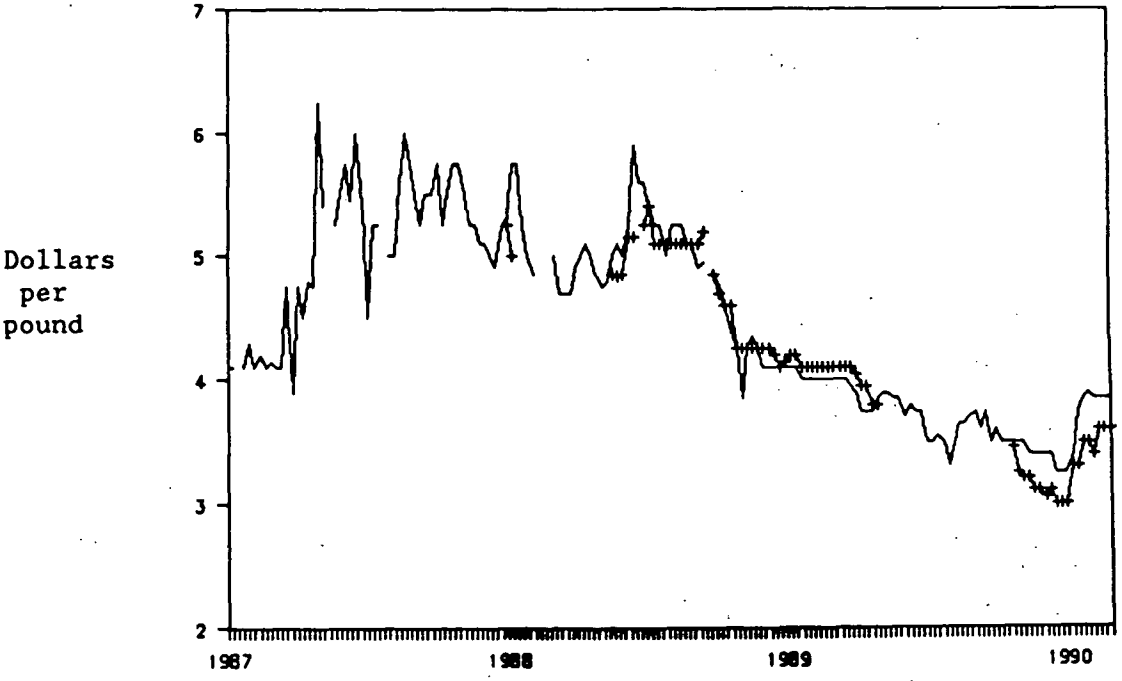
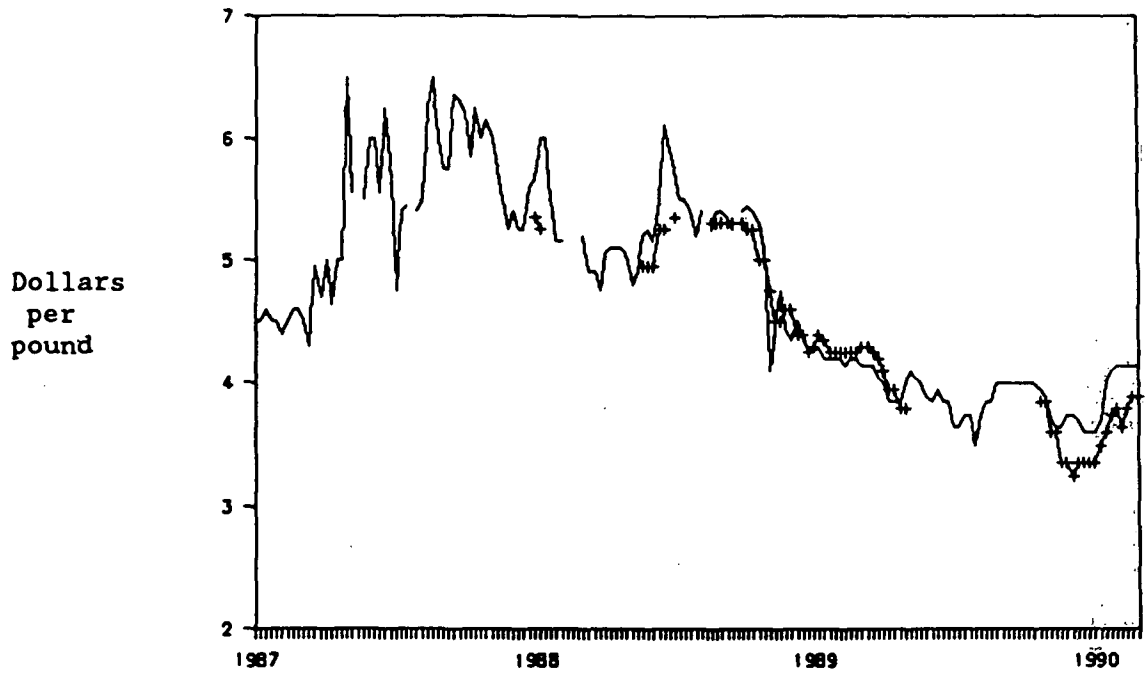


Figure 5.--Fresh Norwegian- and U.S./Canadian-produced Atlantic salmon published prices, 6 to 9 pounds (3 to 4 kilograms), sold in the U.S. market, weekly, January 1987-March 1990



Source: Urner Barry Publications, Inc.

Figure 6.--Fresh Norwegian- and U.S./Canadian-produced salmon published prices, 9 to 11 pounds (4 to 5 kilograms), sold in the U.S. market, weekly, January 1987-March 1990



Source: Urner Barry Publications, Inc.

Questionnaire price trends for fresh Atlantic salmon.--Monthly net f.o.b. price data collected through questionnaires for U.S.- and Norwegian-produced Atlantic salmon showed the same decline in price as the published price data. Prices generally declined between 25 and 35 percent during 1988 and 1989 for all salmon sizes in each channel of distribution, then increased between 9 and 17 percent during the beginning of 1990 (table 17). The higher the weight category of salmon sold in a specific channel, the higher the price paid per pound for that salmon. U.S. producers provided nearly complete price series in the * * * channels of distribution, whereas U.S. importers of Norwegian salmon provided complete price series in the restaurant and regional distributor channels. The price of salmon is higher in the restaurant channel of distribution than in the other channels.

Table 17
Fresh Atlantic salmon: Weighted-average net f.o.b. prices reported by U.S. producers and importers of Norwegian Atlantic salmon, by channels of distribution, by weight categories, and by months, September 1988-February 1990

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers of Atlantic salmon provided four relatively complete price series: * * *. In the * * * channel, prices fluctuated during the 18-month period, although prices for both sizes reached a low point during * * *. In the * * * channel, prices for * * *-pound salmon fluctuated during late-1988, before declining by * * * during 1989. Prices increased in this channel by * * * percent during January and February 1990. In the * * * channel, prices for * * *-pound salmon declined by * * * percent during 1989, before increasing by * * * percent during the first 2 months of 1990.

U.S. importers of Norwegian Atlantic salmon provided four complete price series: * * *. In each of these price series, prices declined fairly steadily through 1989, before increasing through February 1990. In the * * * channel, prices for * * *-pound salmon showed a net decline of * * * percent between September 1988 and December 1989, before increasing by * * * percent through February 1990. In the * * * channel, prices for * * *-pound salmon fluctuated downward by * * * percent between September 1988 and December 1989, before rising by * * * percent through February 1990. Prices for * * *-pound salmon and * * *-pound salmon showed net declines of * * * and * * * percent, respectively, between September 1988 and November 1989, before rising by * * * percent and * * * percent, respectively, through February 1990.

Price comparisons.--The reported sales information for U.S. producers' and importers' monthly shipments to their largest customer during September 1988-February 1990 resulted in 40 direct price comparisons within two channels of distribution and 3 weight categories (table 18). * * * of these comparisons were based on prices of one U.S. producer and * * * of these comparisons were based on prices of one U.S. importer. There were 12 instances of underselling and 28 instances of overselling. Margins of underselling ranged between

Table 18
Fresh Atlantic salmon: Average margins of underselling (overselling) by imports from Norway, by channels of distribution, by weight categories, and by months, September 1988-February 1990

(In percent)

Period	* * * *** lbs	*** lbs	*** lbs	* * * *** lbs
*	*	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

0.2 percent and 15.9 percent. Margins of overselling ranged between 0.7 percent and 75.2 percent.

Lost sales and lost revenues

* * * U.S. producers, * * *[83] reported to the Commission that, because of the Norwegian product, they had lost sales and revenues but that, because of the nature of the salmon market, it was very difficult to isolate specific instances.

* * * reported that it makes hundreds of quotes each day; some are accepted and some are rejected. The buyer rarely tells * * * what firm actually receives the business and at what price. * * * also stated that in order to compete in the marketplace, it was forced to sell its Atlantic salmon at or below Norwegian prices. When it quotes prices over the phone, the purchasers use Norwegian prices as a yardstick. Both producers stated that the price decline in early 1989 was caused by the increased supply of Norwegian salmon and by a decline in the Norwegian price. The two firms argue that the difference between their quote of a price at the beginning of a period and any subsequent selling price during the period constitutes lost revenues.[84]

* * * named specific purchasers who could illustrate lost sales and lost revenues because of the imported Norwegian product. * * * listed * * * purchasers as examples of lost sales and * * * purchasers as examples of lost revenues.[85] It also provided quantities sold during the period to these purchasers. * * * listed * * * purchasers to illustrate lost sales and * * * for lost revenues.

Commission staff contacted six of these purchasers during the current investigation.[86] Because no specific instances of head-to-head competition were provided by U.S. producers, these purchasers provided general market

[83] * * *.
[84] * * *.
[85] * * * purchasers were listed for both lost sales and lost revenues.
[86] The retailers contacted were * * *. The regional distributors/importers contacted were * * *.

information and, where possible, specific comments on the role of Norwegian salmon in the U.S. market.

All of these purchasers commented that they generally do tell potential vendors if their prices are not in line with the marketplace. However, all purchasers stated that the market price is a result of supply and demand for salmon and not clearly determined by any specific source of salmon. The six purchasers stated that an oversupply in the U.S. market in 1989 caused the price decline for Atlantic salmon. Salmon producers in most parts of the world doubled their production, far surpassing world demand for this product. Two purchasers commented that the high volume production of Pacific salmon (both farmed and wild) also pushed prices downward. One purchaser commented that frozen salmon export markets also indirectly exacerbated the decline in the price for fresh salmon. Countries that usually imported U.S. frozen salmon started purchasing from other sources. This caused more U.S. salmon to be diverted from the frozen to the fresh market.

All six of these purchasers stated that they buy salmon from more than one source to insure a steady supply of this product. One purchaser, * * *, commented that it had not purchased Norwegian Atlantic salmon for a long period of time and is sourcing its product solely from United States and Canadian producers. It varies its purchases depending on the price and the supply in the market. Another purchaser, * * *, reported that while it purchases on the spot market from a variety of suppliers, it bought * * * from an importer of Norwegian salmon primarily because of the importer's * * * and other marketing approaches that assisted * * * in the sale of this product. Four purchasers stated that the Norwegian price for Atlantic salmon is typically higher than the U.S. price, whereas one purchaser reported that prices varied between the two sources depending on their relative supply in the marketplace. Although four of these purchasers commented that the quality of the domestic salmon was similar to that of the Norwegians, two purchasers stated that the U.S. product was not red enough and was a softer fish. One purchaser remarked that some of its customers specifically request imported salmon (whether from Norway or other sources) because of these perceived differences. Two purchasers reported that the year-round availability of the Norwegian salmon is an additional advantage.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during January 1987-December 1989 the value of the Norwegian krone appreciated by a net 2.7 percent relative to the U.S. dollar (table 19).[87] Adjusted for movements in producer price indexes in the United States and Norway, the real value of the Norwegian currency showed an overall appreciation of 3.8 percent for the period January 1987 through December 1989.

[87] International Financial Statistics, February 1990.

Table 19
Exchange rates:[1] Nominal and real exchange rates of the Norwegian krone and producer price indexes in the United States and Norway,[2] by quarters, January 1987-December 1989

Period	U.S. producer price index	Norwegian producer price index	Nominal-exchange-rate index	Real-exchange-rate index[3]
1987:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.6	100.0	104.8	103.1
July-September.....	102.8	100.9	104.5	102.7
October-December....	103.2	101.9	108.7	107.3
1988:				
January-March.....	103.8	104.6	110.5	111.4
April-June.....	105.6	105.6	112.5	112.4
July-September.....	107.1	106.5	102.9	102.4
October-December....	107.6	108.3	106.4	107.2
1989:				
January-March.....	109.9	110.2	104.6	104.9
April-June.....	111.8	112.0	100.4	100.6
July-September.....	111.3	113.0	100.0	101.4
October-December....	111.8	113.0	102.7	103.8

[1] Exchange rates expressed in U.S. dollars per Norwegian krone.
[2] Producer price indexes--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.
[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and Norway. Producer prices in the United States increased 11.8 percent between January 1987 and December 1989 compared to a 13.0-percent increase in Norwegian prices during the same period.

Note.--January-March 1987=100.

Source: International Monetary Fund, International Financial Statistics, February 1990.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-302 (Preliminary) and 731-TA-454 (Preliminary)]

Fresh and Chilled Atlantic Salmon from Norway

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-302 (Preliminary), under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), and of preliminary antidumping investigation No. 731-TA-454 (Preliminary), under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Norway of fresh and chilled Atlantic salmon,[1] provided for in subheading 0302.12.00 of the Harmonized Tariff Schedule of the United States (previously under item 110.20 of the former Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Norway and sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by April 16, 1990.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: February 28, 1990.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to a petition filed on February 28, 1990, by the Coalition for Fair Atlantic Salmon Trade.

Participation in the investigations—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of apearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m., on March 21, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202-252-1192) not later than March 16, 1990, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions—Any person may submit to the Commission on or before March 23, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15).

[1] Atlantic salmon is the species Salmo salar. The product "fresh and chilled Atlantic salmon" refers to fresh whole Atlantic salmon, including cleaned and/or gutted Atlantic salmon, whether or not with the head. The product is generally marketed packed in ice ("chilled"). Excluded from the subject product are fresh Atlantic salmon that has been processed into fillets, steaks, or other cuts; Atlantic salmon that is frozen, canned, smoked, or otherwise processed; and other species of fish, including other species of salmon.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR §§ 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than March 26, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By Order of the Commission.

Kenneth R. Mason,

Secretary

Issued: March 5, 1990.

[FR Doc. 90-5405 Filed 3-8-90; 8:45 am]

BILLING CODE 7020-02-M

[A-403-801]

Initiation of Antidumping Duty Investigation: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of fresh and chilled Atlantic salmon from Norway are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of fresh and chilled Atlantic Salmon from Norway are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 16, 1990. If that determination is affirmative, we will make preliminary determination on or before August 7, 1990.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Tracey Oakes, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769 or (202) 377-3003, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On February 28, 1990, we received a petition filed in proper form by The Coalition for Fair Atlantic Salmon Trade. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of fresh and chilled Atlantic salmon from Norway are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price

Petitioner's estimate of United States Price (USP) for fresh and chilled Atlantic salmon is based upon the monthly F.O.B. foreign port prices of fresh and chilled Atlantic salmon for September, October, November and December, 1989, as reported in U.S. Census Bureau IM-146 reports. The Petitioner adjusted the above import statistics for estimated movement charges.

Foreign Market Value

Petitioner's estimate of foreign market value is based on the constructed value of the Norwegian product. The source for this data is a 1988 Norwegian

Directorate Study that reports the 1988 average production cost figures for farms producing salmon.

Petitioner also alleges sales below the cost of production. Because the Petitioner failed to provide sufficient information, pursuant to section 773(b) of the Act, we have determined that we do not have reasonable grounds to believe or suspect that there are sales below the cost of production. Therefore, we are not initiating a sales below the cost of production investigation at this time.

According to Petitioner's estimates, comparison of foreign market value and United States price results in dumping margins of between 22.22 percent to 84.86 percent, depending on the region in Norway that the fresh and chilled Atlantic salmon are raised.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on fresh and chilled Atlantic salmon from Norway and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of fresh and chilled Atlantic Salmon from Norway are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by August 7, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the following HTS subheadings: 0302.12.00.60.8 and 0302.12.00.65.3. Prior to January 1, 1989, Atlantic salmon was classifiable under item 110.2045 of the *Tariff Schedules of the United States Annotated (TSUSA).*

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations.

Preliminary Determination by ITC

The ITC will determine by April 16, 1990, whether there is a reasonable indication that imports of fresh and chilled Atlantic salmon from Norway are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: March 20, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-7010 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-403-802]

Initiation of Countervailing Duty Investigation: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Norway of fresh and chilled Atlantic salmon, (hereinafter referred to as the subject merchandise), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of fresh and chilled Atlantic salmon from Norway materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before May 24, 1990.

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 and (202) 377-3530.

SUPPLEMENTARY INFORMATION:

The Petition

On February 28, 1990, we received a petition in proper form from The Coalition for Fair Atlantic Salmon Trade, filed on behalf of the U.S. industry producing fresh and chilled Atlantic salmon. The Coalition is comprised of companies in Maine and Washington producing the subject merchandise. In compliance with the filing requirements of § 355.12 of the Commerce Regulations (19 CFR 355.12), the petition alleges that producers and exporters of fresh and chilled Atlantic salmon in Norway receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Norway is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Norway materially injure, or threaten material injury to, the U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on fresh and chilled Atlantic salmon from Norway and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Norwegian producers or exporters of fresh and chilled Atlantic salmon receive subsidies. However, we are not initiating an investigation on one program because the petition failed to allege the elements necessary for the imposition of a duty and failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before May 24, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink"), and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the following HTS subheadings: 0302.12.0060.8 and 0302.12.0065.3. Prior to January 1, 1989, Atlantic salmon was classifiable under item 110.2045 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Norway which allegedly confer subsidies on producers or exporters of fresh and chilled Atlantic salmon. We are initiating an investigation of the following programs:

- *District Development Bank Loans, Loan Guarantees and Investment Grants.*
- *Regional Development Fund Loans, Loan Guarantees, Investment Grants, and Regional Transport Subsidies.*
- *State Fisheries Bank Loans.*
- *Norwegian Bank for Industry Loans.*
- *Loans from the Institute for Financing of Structural Readaptation.*
- *Loans from the Fund for Industrial Enterprises.*
- *State Industry Bank Loans.*
- *State Agricultural Bank and Development Fund Loans.*
- *State Industry Fund Loans.*
- *Regional Capital and Tax Incentives.*
- *Norwegian Central Bank Loans.*
- *Government-Funded Aquaculture Research and Development.*
- *Export Transportation Subsidy for Salmon.*
- *Norwegian Export Council Export Financing.*

We are not initiating an investigation on the allocation of fish farming licenses. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The program listed above was alleged to confer domestic subsidies. The elements which must be alleged for a domestic subsidy program are (1) specificity (*i.e.*, the program is limited to a specific enterprise or industry or group of enterprises or industries), (2) provision of a countervailable benefit (*i.e.*, a subsidy paid or bestowed directly or indirectly on the manufacturer, producer or exporter of any class or kind of merchandise). We are not initiating on this program because petitioner failed to explain how the allocation or granting of licenses conferred a benefit upon the subject merchandise.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations.

Preliminary Determination by ITC

The ITC will determine by April 16, 1990, whether there is a reasonable indication that imports of fresh and chilled Atlantic salmon materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Dated March 20, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-7011 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

LIST OF WITNESSES

List of Witnesses

The persons listed below appeared at the United States International Trade Commission's public staff conference held in connection with the subject investigations.

Subject: Fresh and Chilled Atlantic Salmon from Norway

Invs. Nos.: 701-TA-302 (Preliminary) and 731-TA-454 (Preliminary)

Date and Time: March 21, 1990, 9:30 a.m.

Sessions were held in the Main Hearing Room of the United States International Trade Commission Building, 500 E Street, S.W., Washington, DC.

In support of the imposition of countervailing and antidumping duties:

The Coalition for Fair Atlantic Salmon Trade

Counsel:
Vinson & Elkins:
Theodore W. Kassinger
Michael J. Coursey
Michael E. Glover

Witnesses:
Ronald Hahn, Chairman of the Board, Ocean Products, Inc.
Wallace R. Stevens, President, Ocean Products, Inc.
Collin McLernon, President, Maine Pride Salmon, Inc.
Charles L. Anderson, Vice President, ICF Consulting Associates, Inc.
Daniel J. Klett, Economist, ICF Consulting Associates, Inc.

In opposition to the imposition of countervailing and antidumping duties:

Norske Fiskeoppdretteres Forening and
Norske Fiskeoppdretteres Salgslag

Counsel:
Mudge Rose Guthrie Alexander & Ferdon:
N. David Palmeter
Joseph F. Francois

APPENDIX C

RESPONSES BY PRODUCERS OF PACIFIC SALMON

Responses by Producers of Pacific Salmon

Questionnaires were sent to 50 firms believed to be producers of Pacific salmon. Several firms indicated that they were not, in fact, producers of Pacific salmon.[1] * * * . These firms, whose responses are characterized below, do not account for a statistically significant portion of the Pacific salmon industry. Comments on price competition with Atlantic salmon are presented in the pricing section of the report.

* * * * * * *

[1] "Producers" was defined to include firms involved in fishing and processing activities.

APPENDIX D

IMPACT OF IMPORTS ON CAPITAL AND INVESTMENT

Impact of Imports on Capital and Investment

The Commission requested U.S. producers to describe any actual and/or potential negative effects of imports of fresh Atlantic salmon from Norway on their growth, investment, and ability to raise capital and/or existing development and production efforts. Their responses are presented below:

* * * * * * *

APPENDIX E

EC NOTICE OF INVESTIGATION

Notice of initiation of an anti-dumping proceeding concerning imports of Atlantic salmon originating in Norway

(90/C 25/05)

The Commission has received a complaint alleging that imports of Atlantic salmon originating in Norway are being dumped and are thereby causing injury to a Community industry.

Complainant

The complaint was lodged by the Scottish Salmon Board and the Irish Salmon Growers' Association on behalf of producers representing all Community production of fresh and chilled Atlantic salmon.

Product

The product allegedly being dumped is fresh and chilled Atlantic salmon falling within CN code ex 0302 12 00.

Allegation of dumping

The allegation of dumping is based on a comparison of the constructed value with the price charged for export to the Community.

On this basis the dumping margins estimated are significant.

Allegation of injury

With regard to injury, the complaint alleges that the imports in question have increased from approximately 21 000 tonnes in 1986 to approximately 28 000 tonnes in 1987 and to approximately 44 500 tonnes in 1988. In 1989 these imports are estimated to have further increased to 75 000 tonnes. This trend would represent a significant increase on a yearly basis and in particular in 1989 when the increase would have amounted to nearly 70 %.

As far as market share is concerned, it is alleged that the share of the Community market of fresh and chilled Atlantic salmon held by the imports in question amounted to approximately 58 % in 1986 and 1987 and increased to approximately 65 % in 1988. In 1989 these imports are estimated to have further increased their market share to nearly 71 %. Whereas the market share held by the Community producers allegedly fluctuated between 28 % and 34 % during the period between 1986 and 1989, it is alleged that the Community producers' market share will decrease to 21 % in 1990, due to an expected increase of production of the product concerned in Norway and further increased exports from this country to the Community. The development of these market shares is, according to the complainants, to be seen in the light of the increase of the consumption of fresh and chilled Atlantic salmon in the Community from approximately 36 500 tonnes in 1986 to an estimated 106 000 in 1989, corresponding to an increase of approximately 190 %.

As for the development of the sales prices in the Community of the imports in question, it is alleged that they dropped by approximately 18 % (weighted average) during the second half of 1989. This fall in prices together with the particularly high increase of the volume of these imports in 1989 allegedly led the Community producers to reduce their prices during the same period by nearly 20 % (weighted average) to a level insufficient to cover their cost of production and give them an adequate return. This price depression allegedly had a significant impact on the profitability of the Community producers, in particular during the last quarter of 1989. In addition, it is alleged that increased imports of the allegedly dumped imports in 1990 would further jeopardize the financial situation of the Community producers, lead to a higher number of bankruptcies and significantly affect the level of employment in two areas of the Community where this industry is of primordial importance for the population.

Procedure

Having decided, after consultation, that there is sufficient evidence to justify initiating a proceeding, the Commission has commenced an investigation in accordance with Article 7 of Council Regulation (EEC) No 2423/88 of 11 July 1988 (1). Interested parties may make known their views in writing, in particular by replying to the questionnaire addressed to the parties known to be concerned and by providing supporting evidence. Furthermore, the Commission will hear parties who so request when making their views known, provided that they can show that they are likely to be affected by the result of the proceeding.

This notice is published in accordance with Article 7 (1) (a) of the abovementioned Regulation.

Time Limit

Any information relating to the matter, any arguments concerning the allegation of dumping and injury resulting therefrom, and any request for a hearing should be sent in writing to reach the Commission of the European Communities, Directorate-General for External Relations (Division I-C-1), 200 rue de la Loi, B-1049 Brussels (2) not later than 30 days following the date of publication of this notice or, for exporters and importers known to be concerned, the date on which the letter accompanying the abovementioned questionnaire was received, whichever date is the later. The receipt of this letter is deemed to occur seven days following the date of its dispatch.

If the required information and argumentation is not received in adequate form within the time limit specified above, the Community authorities may make preliminary or final findings on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

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(1) OJ No L 209, 2. 8. 1988, p. 1.

(2) Telex COMEU B 21877, telefax 32 2 235-65 05.

APPENDIX F

PRICING DATA FOR PACIFIC SALMON AND STEELHEAD TROUT

Pricing data for Pacific Salmon and Steelhead Trout

Prices for Canadian-farmed chinook in the 4-6 pound and 6-9 pound category declined by 50 percent between April 1988 and July 1989, before increasing by over 35 percent through 1990 (figure F-1). Prices for U.S. gillnet- and troll-caught chinook in the 11-18 pound category declined by over 40 percent and 25 percent, respectively, between 1988 and 1989 (figure F-2).

Prices for U.S. gillnet- and troll-caught coho, and Canadian-farmed coho declined by over 40 percent between 1988 and 1989 (figure F-3). Prices for Canadian-farmed coho increased by over 25 percent during the first quarter of 1990.[1] Prices for Chilean-farmed coho declined during January 1988-March 1990, falling by approximately 10 percent in each year or partial year period.

Prices for both U.S. sockeye and chum were lower in 1989 than in 1988 (figures F-4 and F-5). Prices for U.S.-produced steelhead trout declined by over 50 percent between January 1988 and September 1989, before increasing by over 25 percent during late-1989 (figure F-6).

[1] Prices for U.S. gillnet- and troll-caught coho were not reported through March 1990.

Figure F-1.--Fresh Canadian-farmed chinook published prices, 4 to 6 pounds and 6 to 9 pounds, sold in the U.S. market, weekly, January 1988-March 1990

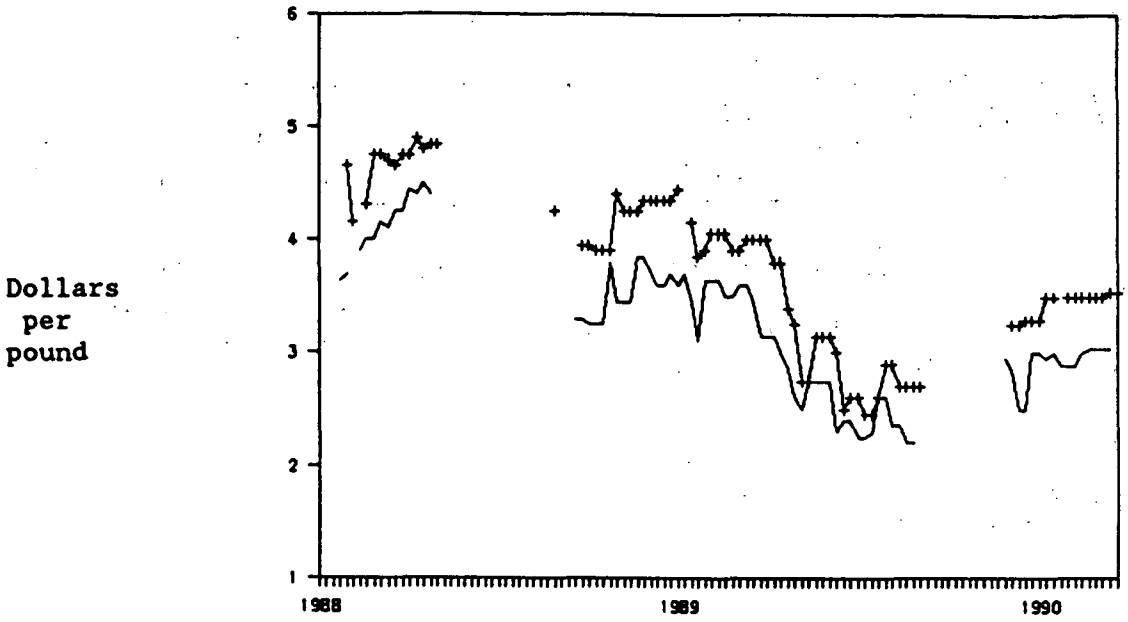
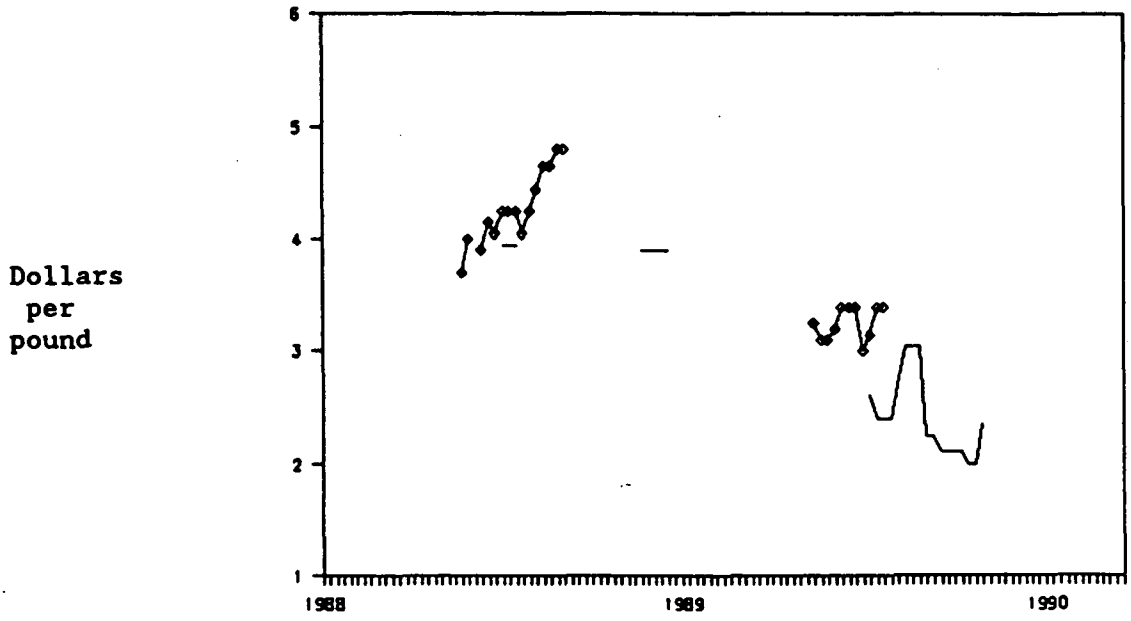
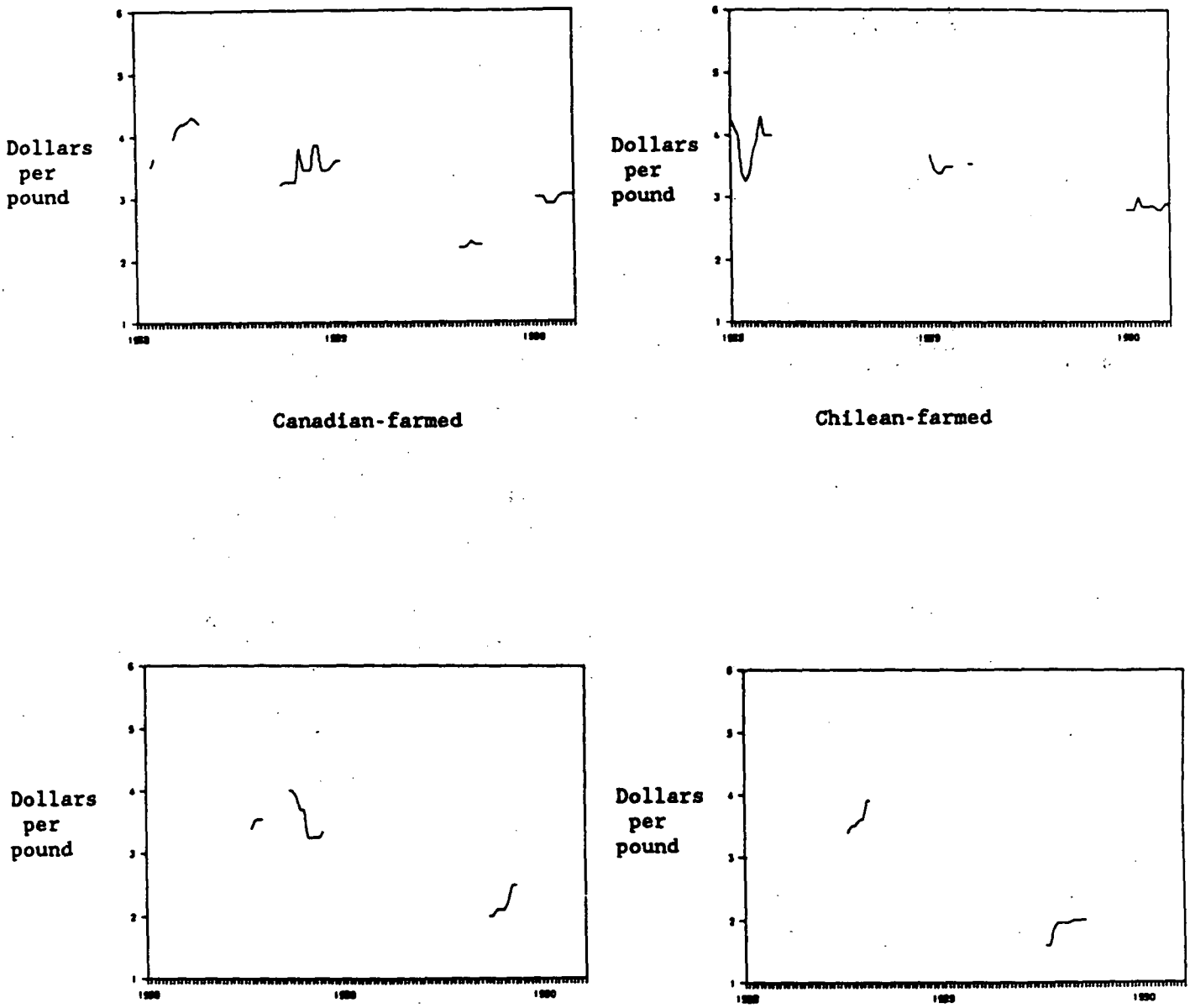


Figure F-2.--Fresh U.S. gillnet- and troll-caught chinook published prices, 11 to 18 pounds, sold in the U.S. market, weekly, January 1988-March 1990



Source: Urner Barry Publications, Inc.

Figure F-3.--Fresh Canadian-farmed, Chilean-farmed, and U.S. gillnet- and troll-caught coho published prices, 4 to 6 pounds, sold in the U.S. market, weekly, January 1988-March 1990



Source: Urner Barry Publications, Inc.

Figure F-4.--Fresh U.S. gillnet-caught sockeye published prices, 4 to 6 pounds, sold in the U.S. market, weekly, January 1988-March 1990

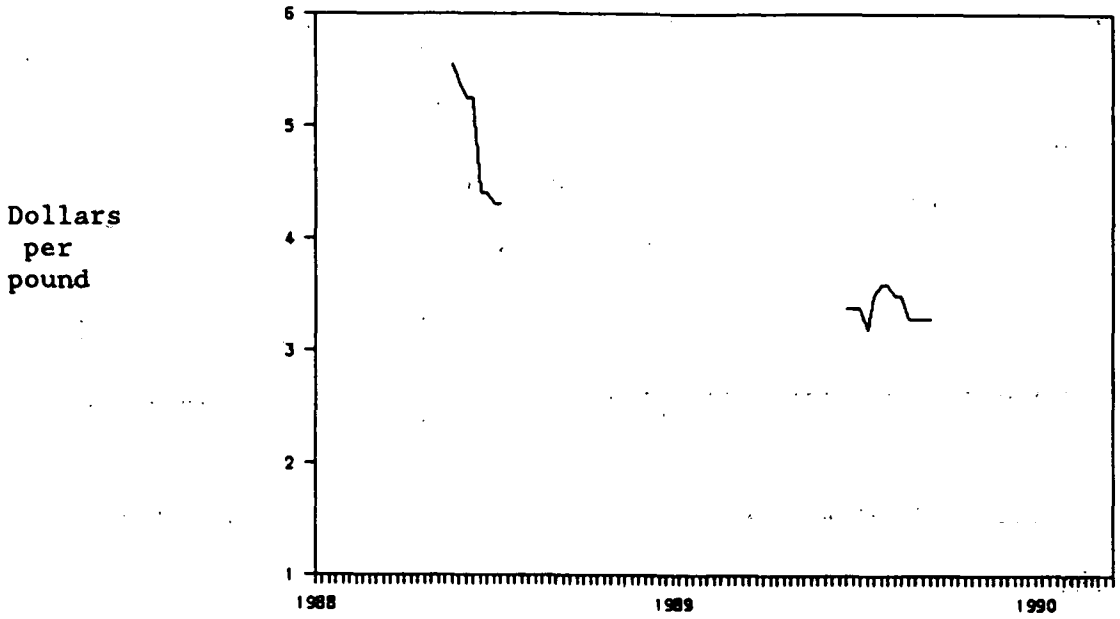
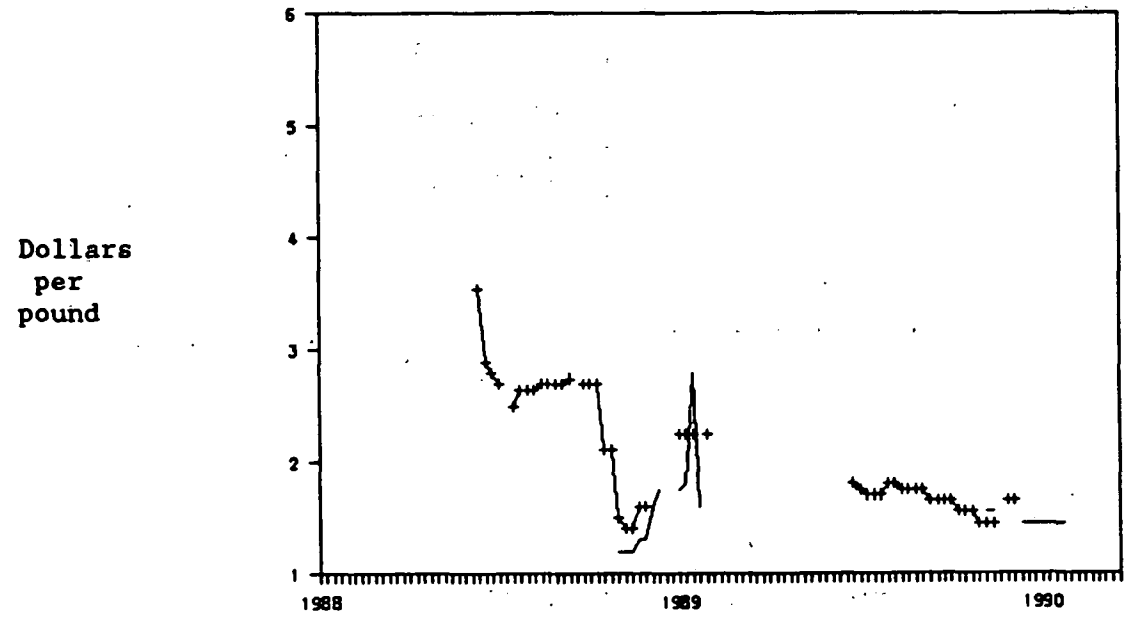


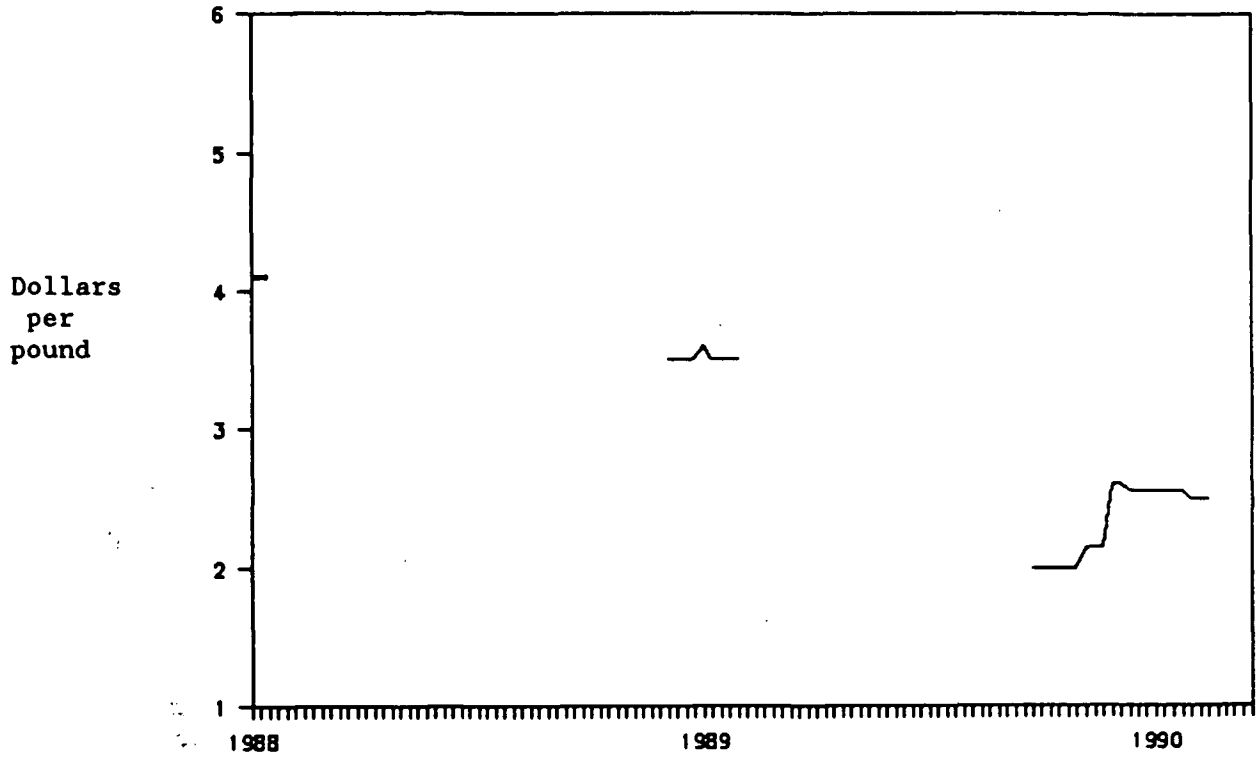
Figure F-5.--Fresh U.S. gillnet-caught silver and dark chum published prices, 6 to 9 pounds, sold in the U.S. market, weekly, January 1988-March 1990



- Dark chum + Silver chum

Source: Urner Barry Publications, Inc.

Figure F-6.--Fresh U.S. gillnet-caught steelhead trout published prices, 8 pounds and over, sold in the U.S. market, weekly, January 1988-March 1990



Source: Urner Barry Publications, Inc.