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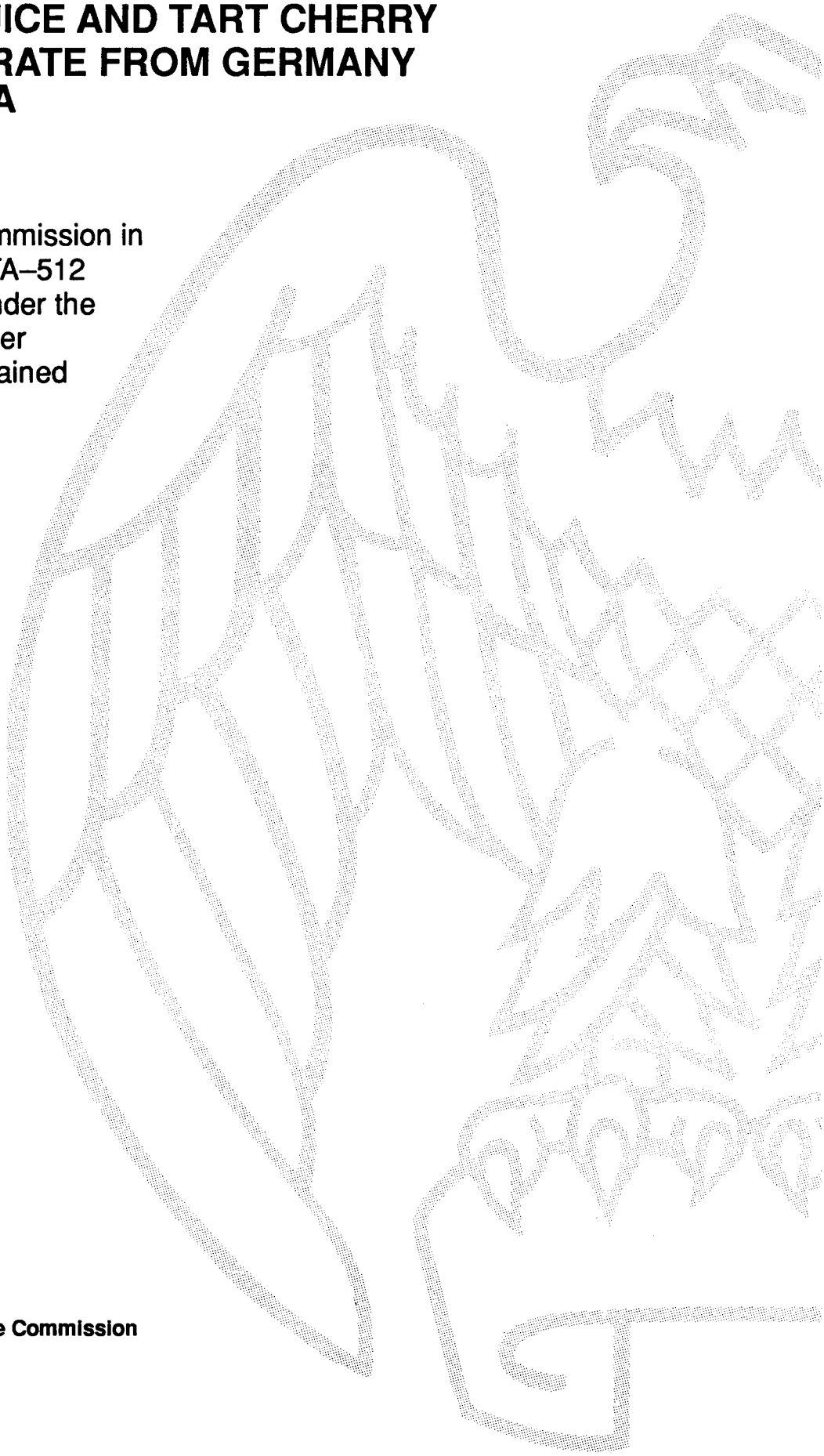
TART CHERRY JUICE AND TART CHERRY JUICE CONCENTRATE FROM GERMANY AND YUGOSLAVIA

Determination of the Commission in Investigation Nos. 731–TA–512 and 513 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained In the Investigations



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-512 and 513 (Preliminary)

TART CHERRY JUICE AND TART CHERRY CONCENTRATE
FROM GERMANY AND YUGOSLAVIA

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication 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 imports from Germany and Yugoslavia of tart cherry juice and tart cherry juice concentrate, provided for in subheading 2009.80.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 19, 1991, a petition was filed with the Commission and the Department of Commerce by the Cherry Marketing Institute, Inc., Okemos, MI, alleging that an industry in the United States is materially injured by reason of LTFV imports of tart cherry juice and tart cherry juice concentrate from Germany and Yugoslavia. Accordingly, effective March 19, 1991, the Commission instituted preliminary antidumping investigations Nos. 731-TA-512 and 513 (Preliminary).

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

[2]Acting Chairman Brunsdale dissenting with respect to Yugoslavia.

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 27, 1991 (56 F.R. 12743). The conference was held in Washington, DC, on April 9, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS LODWICK, ROHR AND NEWQUIST[1]

Based on the information obtained in these preliminary investigations, we determine that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury[2] by reason of imports of tart cherry juice and tart cherry juice concentrate from Germany and Yugoslavia that are alleged to be sold at less than fair value (LTFV). The legal standard in preliminary antidumping investigations is set forth in section 733(a) of the Tariff Act of 1930, 19 U.S.C. § 1673b(a), which requires the Commission to determine, based on the best information available at the time of the preliminary determination, whether there is a reasonable indication of material injury to a domestic industry, or threat thereof, or of material retardation of establishment of such an industry, by reason of imports alleged to be sold at LTFV.

In American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986), the Federal Circuit held that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations, and that the "reasonable indication" standard requires more than a finding that there is a possibility of such injury. Further, the Commission may weigh the evidence in determining whether: "(1) the record as a whole contains clear and convincing evidence that there is no material injury, threat of material

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[1] Acting Chairman Brunsdale joins the discussion regarding the like product, domestic industry and related parties. She also concurs with the finding that there is no reasonable indication of material injury or threat thereof with respect to the subject imports from Germany for the reasons set forth in her Concurring and Dissenting Views.

[2] Material retardation of the establishment of an industry is not an issue in these investigations and will not be discussed herein.

injury, or material retardation; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[3]

LIKE PRODUCT

To determine whether a "reasonable indication of material injury" exists, the Commission must first define the "like product" and the "domestic industry." The term domestic "industry" is defined as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product..."[4] In turn, like product is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation..."[5] The Commission's decision regarding like product is a factual determination made on a case-by-case basis.[6]

The Commission generally considers a number of factors in analyzing like product issues, including: (1) physical characteristics, (2) end uses, (3) interchangeability, (4) channels of distribution, (5) common manufacturing facilities and production employees, (6) customer or producer perceptions, and, where appropriate, (7) price.[7] No single factor is dispositive, and the

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[3] 785 F.2d at 1001-04.

[4] 19 U.S.C. § 1677(A).

[5] 19 U.S.C. § 1677(10).

[6] Asociacion Colombiana De Exportadores De Flores v. United States (ASOCOFLORES), 693 F. Supp. 1165, 1169 (Ct Int'l Trade 1988) (like product issue essentially one to be based on the unique facts of each case).

[7] See, e.g., Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 (March 1988) at 6; ASOCOFLORES, 693 F. Supp. at 1170 n.8.

Commission may consider other factors it deems relevant based on the facts of a given investigation. The Commission looks for "clear dividing lines" between like products,[8] and has found minor distinctions to be an insufficient basis for finding separate like products.[9]

The Department of Commerce has defined the imported product subject to this investigation as:

> [T]art cherry juice, whether or not concentrated, whether or not containing added sugar or other sweetening matter, unfermented and not containing added spirit. This product is produced from tart cherries (prunus cerasus). Juice from sweet cherries (prunus avium), whether or not concentrated, is not included in the scope of this investigation. Also not included in scope of this investigation is cherry syrup, an unfrozen viscous liquid containing over 50 percent of added sugars in addition to the natural sugars. Tart cherry juice and tart cherry juice concentrate are currently classifiable under Harmonized Tariff Schedule item 2009.80.60.10.[10]

These investigations raise two like product issues. The first is whether tart cherry juice concentrate made from U.S. grown "Montmorency" cherries is like the imported tart cherry juice concentrate made from "Morello" and "Oblacinska" variety cherries. The second issue is whether the pre-concentrated form of tart cherries - frozen, sorted and washed tart cherries - should be included in the like product definition.[11]

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[8] See, e.g. Operators for Jalousie and Awning Windows from El Salvador, Invs. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 (January 1987) at 4, n.4.

[9] ASCOFLORES, 693 F. Supp. at 1168-69; S. Rep. 249, 96th Cong., 1st Sess. 90-91 (1979).

[10] 56 Fed. Reg. 15326, 15327 (April 16, 1991).

[11] All of the parties agree that tart cherry juice is not "like" tart cherry juice concentrate. See Transcript at 69, 105, 130. In addition, none of the parties urged that sweet cherry juice or concentrate be considered as a like product. The record indicates that there is little, if any, substitutability between juice and juice concentrate made from sweet cherries and that made from tart cherries.

A. Tart Cherry Concentrate made from Montmorency cherries[12]

Cherry juice concentrate produced in the United States is made almost exclusively from the "Montmorency" variety tart cherry. The imported tart cherry juice concentrates from Yugoslavia and Germany that are subject to investigation are produced from different varieties known as "Morello" and "Oblacinska" cherries. Respondents argue that the like product should be concentrate produced from these two imported cherry varieties. Petitioners argue that the like product should be concentrate produced from the "Montmorency" variety cherries because they claim that there are no significant differences between the concentrate made from these three varieties of cherries.

The record indicates that there are physical differences in the color of the European and United States concentrate. Yugoslav Oblacinska cherry concentrate has a darker (deeper red) pigmentation than that made from Montmorency cherries which has a lighter, browner hue. The Montmorency concentrate also appears to have a more intense cherry flavor and aroma than the Morello tart cherry concentrate.[13] However, domestic and the imported concentrates are shipped to end users with the flavor "essences" separated out. End users re-introduce the flavor essences in particular ways depending

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[12] Acting Chairman Brunsdale would avoid applying a seven prong balancing test in this case. The varieties of tart cherries and their concentrates that are subject to this investigation are not grown in commercial quantities in this country. A-5. In her view, the Commission should apply the test found in Section 1677(10), which defines the like product to be the product "most similar in characteristics and uses" to the subject imports when this is the case. Respondents do not contest that concentrate made from the Montmorency variety is the most similar. It is therefore the like product. See All Terrain Vehicles From Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989) at 7-8 ("we reject the notion that a like product could be defined as a product not produced by a U.S. industry").

[13] See Report at A-7.

on their needs which may reduce any taste, odor and flavor differences between the two types of concentrate.[14]

There is evidence of considerable interchangeability between European and United States concentrate. Petitioners testified that "important and large [U.S.] cherry juice users indicated . . . [i]n many instances a willingness to use Montmorency variety tart cherry juice concentrate in place of the imported Oblacinska and Morello varieties so long as the Montmorency variety was price competitive."[15] Petitioners also indicated that, following the January 1, 1989 imposition of a 100 percent retaliatory tariff against imports of EC tart cherry[16] and a 1990 drought in Yugoslavia, U.S. imports dropped considerably and U.S. Montmorency variety concentrate sales increased substantially.[17] This evidence suggests that in many instances, U.S. end users simply substituted domestic Montmorency cherry concentrate for the imported Oblacinska and Morello cherry concentrate.[18] In addition, certain

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[14] Transcript at 67-68.

[15] Transcript at 23; see also Report at A-24-25, 29.

[16] This tariff was imposed in retaliation for an EC ban on imports of U.S. hormone treated beef.

[17] Petitioners' Post-Conference Brief at 5.

[18] There was other information which indicates that in some situations end users have particular color requirements. In such cases, Montmorency cherry concentrate may not be a suitable substitute for Oblacinska and Morello cherry concentrate. Some importers of Yugoslav concentrate apparently have switched from using Oblacinska and Morello cherry concentrate to grape skin extract in order to obtain the appropriate natural coloring. Transcript at 108. Petitioners also acknowledge that the two types of cherries are substitutable in the "bulk" of cases, suggesting that there may be "unique" applications in which the two types of cherry concentrate are not substitutable. Transcript at 26. However, we find that these particular applications are not sufficient to justify a finding that concentrate made from Oblacinska and Morello cherries should be the like product.

U.S. purchasers of concentrate perceive the European and United States concentrate to be similar products sold at comparable prices.[19]

There is evidence of an overlap in the channels of distribution between the two types of cherry concentrate.[20] Concentrators and importers indicated that the majority of customers of tart cherry concentrate are food processors or beverage manufacturers who use concentrate as an ingredient in the production of other foods and beverages.[21] Sales are usually made directly from the concentrator or importer to the end user, although some end users obtain their supply from brokers.[22]

Finally, pricing information in the record suggests that there is some variability between the prices for U.S. concentrate and the Yugoslav and German concentrate. However, petitioners testified that domestic concentrate is sold in direct competition with the imported cherry concentrates to the same end users.[23]

Based on the foregoing, we find that the like product in these investigations is tart cherry juice concentrate produced from Montmorency cherries.

2. **Pre-concentrated tart cherries**

The second like product issue is whether the "pre-concentrated" form of tart cherries should be included with tart cherry juice concentrate in the

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[19] For example, one U.S. broker indicated that his customers prefer to purchase U.S. concentrate, but will purchase the Yugoslav or German concentrate if it is priced lower. Report at A-29.

[20] Report at A-14.

[21] Id.

[22] Id. at A-14, A-25-26.

[23] Transcript at 10.

same like product. These pre-concentrated cherries are normally the culls[24] from the processing of cherries in a processing plant. It is these culls which become the "juice feedstock" for juice concentrate. They are separated by processors and placed in 55 gallon drums and frozen.[25] These frozen cherries may be held for some time or frequently are shipped immediately to concentrators where they are processed into concentrated tart cherry juice.

The issue whether to include pre-concentrated cherries in the like product involves a determination of whether "semifinished" or "component" articles are "like" the finished product.[26] In analyzing this question, the Commission typically examines: (1) the necessity for, and the costs of, further processing, (2) the degree of interchangeability of articles at the different stages of production, (3) whether the article at an earlier stage of production is dedicated to use in the finished article, (4) whether there are significant independent uses or markets for the finished and unfinished articles, and (5) whether the article at an earlier stage of production

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[24] "Culls" are defined as those tart cherries separated out by processors in the initial sorting process due to blemishes or other defects.

[25] There is evidence that some, but by no means the majority, of U.S. tart cherry growers dedicate their entire crops to the production of juice concentrate. These growers deliver their entire production either to concentrators for immediate production as juice or to processors for cleaning and freezing. See Transcript at 32, 65-66.

[26] See Opinion of Commissioner Rohr in Frozen Concentrated Orange Juice From Brazil, Inv. No. 731-TA-326 (Final), USITC Pub.1970 (April 1987), at 34:

> [Frozen concentrated orange juice for manufacturing] is an intermediate stage in the production of orange juice. It is in essence a semifinished product and should be analyzed as such. The Commission's analysis of semifinished products is to look at the product itself as the 'like product" and include the semifinished form of the product within that definition.

embodies or imparts to the finished article an essential characteristic or function.[27]

The first factor, the necessity for and costs of further processing, suggests that pre-concentrated culled tart cherries are not a like product with concentrate. Pre-concentrated culled tart cherries in 55 gallon drums are not marketed or sold to end users until they have been concentrated. This rather extensive concentration process involves the thawing, crushing, filtering, pasteurizing, and heating of raw cherries. The essence or flavor in the cherries is then evaporated and collected separately for later addition at the time the concentrate is used commercially.[28] The resulting cherry concentrate is reduced to approximately one-sixth the volume and weight of the juice.

Petitioner has estimated the U.S. cost of the concentration operation is $7.76 per gallon, as opposed to only $.20 for the initial processing (cleaning, sorting and freezing).[29] This considerable disparity in the costs reflects the significant transformation of the raw frozen cherries in the concentration process.

The Commission has previously held semi-finished products to not be like finished products where (1) the process of transforming semi-finished input

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[27] Certain Telephone Systems and Subassemblies thereof from Japan, Korea, and Taiwan, Invs. Nos. 731-TA-426-428 (Preliminary) USITC Pub. 2156, at 4-5; Light-Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles, from Japan, Inv. No. 731-TA-425 (Preliminary) USITC Pub. 2149 at 19, n.64 (January 1989); Certain Forged Steel Crankshafts from the Federal Republic of Germany and the United Kingdom, Invs. Nos. 731-TA-351 and 353 (Final) USITC Pub. 2014 (September 1987); 64K Dynamic Random Access Memory Components from Japan, Inv. No. 731-TA-270 (Final) USITC. Pub. 1862 (June 1986).

[28] Petition at 27.

[29] Id. at 30.

into a finished product required a separate manufacturing step with significant labor, and (2) a substantial amount of value added is required to transform the semi-finished good into the finished like product.[30]

There is little interchangeability of raw frozen cherries with the concentrated form. As noted, frozen pre-concentrated cherries are normally not marketable without concentration. Thus, it would be difficult, if not impossible, to substitute processed cherries for tart cherry concentrate.

The remaining criteria tend to support the inclusion of pre-concentrated cherries in the like product. A considerable majority of raw frozen cherries culled from the sorting process are used in the production of tart cherry juice concentrate. However, there is a limited market for pureed cherries which are run through a finisher.[31] Moreover, there is no question that the pre-concentrated, frozen tart cherries impart essential characteristics to tart cherry juice concentrate. The flavor, aroma, and color of the particular cherries are reflected in the concentrate and in the juice eventually made from the concentrate.

On balance, based on the extensive processing and costs involved in transforming pre-concentrated tart juice cherries into cherry juice

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[30] Fireplace Mesh Panels from Taiwan, Inv. No. 731-TA-49, USITC Pub. 1186 (Preliminary)(September 1981), at 3-4. Oil Country Tubular Goods from Argentina, Brazil, Korea, Mexico, and Spain, Invs. Nos. 731-TA-191-195 (Preliminary)(July 1984), at 6-7.

Conversely, the Commission has included semi-finished goods with the finished like product where the costs of finishing are relatively minor. See e.g. Certain Granite from Italy and Spain, Invs. Nos. 731-TA-381-382, USITC Pub. No. 2110 (Final)(August 1988), at 8-9. See also, 64K Dynamic Random Access Memory Components from Japan, Inv. No. 731-TA-270, USITC Pub. 1862 (Final)(June 1986), at 9-10 (single like product found based, in part, on the fact that significant amount of investment and labor were involved in both the semi-finished DRAM wafers and dice and the finished DRAMs).

[31] Petition at 84.

concentrate, and the lack of interchangeability between the two products, we find that pre-concentrated cherries are not "like" tart cherry juice concentrate made from Montmorency cherries.

DOMESTIC INDUSTRY

The Commission is required to determine whether a "domestic industry" is materially injured or threatened with material injury. 19 U.S.C. § 1673. In these investigations, petitioners assert that the domestic industry consists of U.S. growers, processors, and concentrators of tart cherry juice concentrate. Respondents agree that concentrators should be the domestic industry but object to the inclusion of growers and processors. Thus, two issues are presented. First, whether to include tart cherry growers in the domestic industry and, second, whether processors of tart cherries should be included in the domestic industry.

A. Growers

The 1988 Trade Act included several new provisions based on prior Commission practice outlining the circumstances in which growers of processed agricultural products may be included in the domestic industry. Section 1326(a) provides that if an investigation involves a processed agricultural product produced from a "raw agricultural product,"[32] the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if: (1) there is a single continuous line of production from the raw agricultural product to the processed product[33] and

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[32] This term is defined as "any farm or fishery product." See § 1326(a), inserting a new section 771(4)(E)(iv), codified at 19 U.S.C. § 1677(4)(E)(iv).

[33] The Senate Report indicates that this provision was intended to "codify Commission practice in prior cases in which a 'single continuous line of production' was found to exist, including Orange Juice, Lamb Meat, and (continued...)

(2) there is a substantial coincidence of economic interest between the producers or growers and the processors.[34]

Whether a "single, continuous line of production" exists is a function of two additional tests: (1) the raw agricultural product must be substantially or completely devoted to the production of the processed product, and (2) the processed product must be produced substantially or completely from the raw product.[35] The House and Senate Committee Reports to the 1988 Trade Act confirm that Congress did not expect this test to be met if the raw product is devoted to production of several different processed products, or if the processed product is produced from several different raw products.[36] In previous agricultural cases, the Commission has included growers in the domestic industry where there is a high degree of vertical integration in the industry with all parts contributing to the production of a

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[33](...continued)
Raspberries." S. Rep. 71, 100th Cong. 1st Sess. 109 (1987)(S.Rep. 71).

[34] To determine whether a substantial coincidence of economic interest exists between growers and processors of agricultural products, the 1988 Act directs the Commission to consider "relevant economic factors, which may include, in the discretion of the Commission, price, added market value, or other economic interrelationships . . . " See 19 U.S.C. § 1677(4)(E)(i)(II).

[35] See § 771(4)(E)(ii), codified at 19 U.S.C. § 1677(4)(E)(ii).

[36] The House Report further specifies that "substantially or completely" means "all or almost all." The Senate Report also indicates that "substantially or completely devoted" does not necessarily imply a fixed percentage but should be interpreted in light of the circumstances of each investigation. See H.R. Rep. 40, Part I, 100th Cong., 1st Sess. (1987)(H.R. Rep. 40, Part I) at 121; S. Rep. 71 at 109.

single end product.[37] The Commission has excluded growers where their output is used in the production of a variety of processed products.[38]

The record in these investigations indicates that no more than ten percent of the tart cherries produced in United States are used for the production of tart cherry concentrate.[39] The great majority of tart cherries are used instead for canning, individually quick frozen cherries, canned pie filling, and other uses.[40] Many Washington State and Oregon growers have sold all of their crops to tart cherry concentrators during the past several years because of the lack of processing facilities in the Northwest. However, the majority of growers, particularly in Michigan (which accounts for 70-75 percent of the U.S. tart cherry production), dedicate a fairly small percentage of their harvest to juice concentrate production.[41]

The Commission previously rejected inclusion of grape growers in the domestic table wine industry where only 55 percent of grapes were used for

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[37] Frozen Concentrated Orange Juice from Brazil, Inv. No. 701-TA-184 (Preliminary), USITC Pub. 1283 (September 1982); Lamb Meat from New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. No. 1191 (1981); Certain Fish and Certain Shellfish from Canada, Inv. No. 303-TA-9, USITC Pub. No. 966 (1979).

[38] Certain Table Wines from France and Italy, Invs. Nos. 701-TA-210-211 (Preliminary), USITC Pub. 1502 (March 1984); Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. No. 1259 (1982); Canned Hams and Shoulders from Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom, Invs. Nos. 701-TA-31-39 (Final), USITC Pub. No. 1082 (1980).

[39] Report at A-9.

[40] Id.

[41] Id. n. 29.

wine production, and the Commission found significant other uses for grapes, including fresh fruit and raisins.[42]

Similarly, in these investigations, the low percentage (10 percent) of tart cherries dedicated for use in cherry concentrate and the significant alternative uses for tart cherries compels the finding that growers of tart cherries do not constitute part of the domestic industry producing tart cherry concentrate.[43]

B. Processors

The second domestic industry issue is whether processors of raw tart cherries should be included in the domestic industry. In order for tart cherry processors to be part of an industry producing a processed agricultural product under 19 U.S.C. § 1677(E), they must be the "producers or growers of the raw agricultural product." The term "raw agricultural product" is defined as "any farm or fishery product."[44]

The record indicates that processors are not part of the domestic industry because they do not "produce" or "grow" tart cherries. Cherry processors purchase cherries from growers, or in many cases are owned by the grower cooperatives for the purpose not of growing tart cherries, but rather for initial processing. As discussed above in the Like Product section, processors play a minor role in the processing of tart cherries for use in

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[42] American Grape Growers Alliance v. United States, 604 F.Supp. 1245 (Ct. Int'l Trade 1985), dismissing appeal from Certain Table Wines from France and Italy, Invs. Nos. 701-TA-210, 211 (Preliminary), USITC Pub. No. 1502 (March 1984).

[43] Based on this finding, we need not decide the extent to which there is a substantial coincidence of economic interest between the growers and the concentrators.

[44] 19 U.S.C. § 1677(E)(iv).

concentrate.[45] Their primary activity is not in processing cherries for juice concentrate, but rather in processing cherries and other types of fruit for other uses.[46]

Moreover, even if processors were considered "growers" or "producers," the fact that only 10 percent of domestic tart cherries are used for the production of cherry juice concentrate precludes a finding that there is a "single continuous line of production."[47] Accordingly, we hold that processors are not included in the domestic industry comprising producers of tart cherry juice concentrate.

RELATED PARTIES

The related parties provision, 19 U.S.C. § 1677(4)(B), allows for the exclusion of certain domestic producers from the domestic industry. Under that provision, when a producer is related to exporters or importers of the product under investigation, or is itself an importer of that product, the Commission may exclude such producers from the domestic industry "in appropriate circumstances." Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case.[48]

The Commission generally applies a two-step analysis in determining whether to exclude a domestic producer from the domestic industry under the related parties provision. The Commission first considers whether the company qualifies as a related party under section 771(4)(B), and second whether in

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[45] Report at A-4, A-10 n.31.

[46] Id. at A-4.

[47] See discussion regarding growers, supra at 12-15.

[48] Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT)(1987).

view of the producer's related status there are "appropriate circumstances" for excluding the company in question from the definition of the domestic industry.[49] The Commission uses the related parties provision to avoid any distortion in the aggregate data bearing on the condition of the domestic industry that might result from including related parties whose operations are shielded from the effects of the subject imports.[50]

The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include:

(1) the percentage of domestic production attributable to related producers;

(2) the reason why importing producers choose to import the articles under investigation (viz., whether they import in order to benefit from the unfair trade practice or in order simply to be able to compete in the domestic market); and

(3) the competitive position of the related domestic producer vis-a-vis other domestic producers.[51]

The Commission has also considered whether the primary interests of the related producers lie in domestic production or in importation.[52]

The record indicates that during the period of investigation only one U.S. concentrator imported relatively small amounts of concentrate

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[49] See, e.g., Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (1989) at 15.

[50] Granular Polytetrafluoroethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 and 386 (Preliminary), USITC Pub. 2043 (1987) at 9.

[51] See, e.g., Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Japan, Malaysia and Taiwan, Invs. Nos. 701-TA-292, 731-TA-400, 402-404 (Final), USITC Pub. 2152 (1989); Granular Polytetrafluoroethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 and 386 (Final), USITC Pub. 2112 (1988); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (1986).

[52] See, e.g., Rock Salt from Canada, Inv. No. 731-TA-239, USITC Pub. 1798 (1986) at 12.

representing only a small fraction of total imports.[53] While such importation makes this concentrator a related party, these imports were necessary to fill customers' orders who specified tart cherry concentrate from the German-grown Morello cherry variety.[54] This concentrator accounted for a modest percentage of the U.S. domestic production of tart cherry juice concentrate,[55] and the imported concentrate represented only a small portion of its business. Moreover, there is no evidence on the record that this concentrator benefited in any substantial way from its importation of German tart cherry concentrate.

We therefore determine not to exclude the concentrator referred to above from the domestic industry.

NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

Under 19 U.S.C. § 1673b(a), the Commission must determine whether there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports. Material injury is "harm which is not inconsequential, immaterial or unimportant." 19 U.S.C. § 1677(7)(A). Commission determinations are not precedent, and rest on the record of each investigation.[56]

In making a preliminary determination in an antidumping investigation, the Commission is also charged with determining whether any material injury to the domestic industry is "by reason of" the imports under investigation.[57]

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[53] Report at 12 n.38.

[54] Id.

[55] Id. at 11.

[56] Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade (1988).

[57] 19 U.S.C. § 1673b(a).

The Commission may take into account information concerning other causes of harm to the domestic industry, but it is not to weigh causes.[58] The imports need only be a cause of material injury.[59] The Commission should consider all relevant factors and conditions of trade in making its determination.[60]

Condition of the Domestic Industry

We find that the record provides clear and convincing evidence that the tart cherry juice concentrate industry is not materially injured. Further we find that no likelihood exists that any contrary evidence will arise in a final investigation. These conclusions are supported by the evidence regarding, among other factors, domestic production, capacity, capacity utilization, shipments, inventories, employment, and financial performance.[61]

Both apparent consumption and U.S. shipments increased in each year during the period of investigation.[62] Apparent consumption rose 146 percent in 1989 and another 4 percent in 1990.[63] Domestic shipments more than tripled

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[58] Current law does not... contemplate that the effects from the subsidized [or LTFV] imports be weighted against the effects associated with other factors (e.g., the volume and prices of nonsubsidized [LTFV] imports, 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 and productivity of the domestic industry) which may be contributing to overall injury to an industry.
S. Rep. No. 249, 96th Cong. 1st Sess. 57-58, 74 (1979)

[59] Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988); Hercules,Inc. v. United States, 673 F. Supp. 454, 479 (1987).

[60] 19 U.S.C. § 1677(7)(C)(iii) (Supp. 1989).

[61] 19 U.S.C. § 1677(3)(C)(iii).

[62] Report at A-13.

[63] Id.

in 1989 and grew another 26 percent between 1989 and in 1990.[64] The unit value of domestic shipments rose considerably between 1988 and 1990, increasing by 12 percent in 1989 and by another 9 percent in 1990.[65] U.S. concentrators gained market share throughout the three years, rising from 55.3 percent in 1988 to 76.2 percent in 1989 to 82.1 percent in 1990, in quantity terms.[66] U.S. producers' inventories declined steadily from 1988 to 1990.

The Commission received certain information concerning the operating income margins of the U.S. concentrators. Some U.S. concentrators indicated that the limited portion of their operations dedicated to producing tart cherry concentrate was profitable, particularly during 1990 when prices for tart cherry concentrate increased.[67] Further, other concentrators indicated that rising prices in 1989 and 1990 motivated them to either commence or increase their production of tart cherry concentrate.[68] We infer from such actions that the operating income margins of U.S. concentrators relating to tart cherry juice production were sufficient for concentrators to continue and even expand their tart cherry concentrate operations during the period of investigation.

We note that there has been a serious lack of response to Commission questionnaires by most U.S. concentrators.[69] Many of these concentrators

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[64] Id. at A-15.

[65] Id.

[66] Id. at A-13.

[67] Id. at A-12 notes 38, 39.

[68] Id. at A-12, A-15.

[69] For example, while the Commission received six responses representing roughly 60 percent of the 1990 domestic production and received information (continued...)

refused to return the questionnaire, or provide complete questionnaire responses, even after repeated requests from Commission staff. As a result, data on the condition of the domestic industry is incomplete. Commission data on imports and pricing is substantially complete, however, and the Commission was able to supplement the lack of questionnaire responses with anecdotal information, including production, shipment and income information through telephone interviews with domestic producers.

In these investigations, the Commission's lack of data is the result of the refusal of the domestic industry to cooperate in the investigation, even by producers who said they support the industry's petition. In this situation, where the information that was submitted does not support a finding of material injury, we do not find it appropriate to continue the investigation to gather more information from these producers who failed to cooperate. Accordingly, the Commission draws an inference that any additional information from those producers who did not cooperate in responding to the Commission's questionnaires would support a finding of no material injury.[70]

Based on the forgoing[71], we conclude there is clear and convincing evidence that the domestic industry is not experiencing material injury,[72] and

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[69](...continued)
concerning production and shipment from six different firms, it received information regarding capacity from only two firms, and information concerning employment and financial from only one firm. See Report at A-16.

[70] See 19 U.S.C. § 1677e(c).

[71] Given the considerable increase in U.S. production, shipments and prices of concentrate between 1988-1990, we find that no likelihood exists that contrary evidence requiring a reversal of this decision will arise in a final investigation. American Lamb, 785 F.2d at 1001-14.

[72] We also find pursuant to 19 U.S.C. § 1677(7)(D)(ii) that the subject imports will not result in any increased burden on government income or price
(continued...)

that there is no likelihood of contrary evidence if the investigations were to continue.

Causation

Even were we to conclude that the domestic industry is suffering material injury, we would not find that such injury is due to LTFV imports. There is clear and convincing evidence that the alleged LTFV imports are not presently injuring the domestic industry. First, the volume of the alleged LTFV imports has declined significantly during the period of investigation, both in absolute and relative terms.[73] Second, notwithstanding some evidence of underselling by the alleged LTFV imports in 1988-89, U.S. concentrate prices have increased significantly from 1989-90, and there does not appear to be any adverse price effect from LTFV imports.[74]

REASONABLE INDICATION OF THREAT OF MATERIAL INJURY

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[75]

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[72](...continued)
support programs. There is no evidence that concentrators of tart cherries are subject to any government income or price support program for any concentrators. Even assuming that FmHA loans and disaster relief grants are considered to be income or price support programs, there is no evidence that any of the subject imports have caused or will cause any concentrator to seek an FmHA loan or disaster relief grant. Cf. Globtrade Post-Conference Brief at Attachment 1 with Petitioners' Post-Conference Brief at 4-5.

[73] Report at A-23.

[74] Transcript at 133-34.

[75] The Commission must consider the following ten factors in a threat analysis:

(continued...)

When the Commission is considering threat of material injury to a domestic industry by reason of imports from several countries, the Commission

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[75](...continued)

(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 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 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, 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 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.

19 U.S.C. § 1677(7)(F)(i), as amended by 1988 Act §§ 1326(b), 1329.

In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. section 1677(7)(F)(iii), as amended by 1988 Act section 1329.

may, at its discretion, cumulate the price and volume effects of each country's imports.[76] The Court of International Trade has indicated that the Commission in certain circumstances may cumulatively assess the rate of increase in United States market by LTFV imports from more than one country. The Court has also indicated that the Commission may also consider the probability that cumulated imports of merchandise will enter the United States at prices that would have a depressing or suppressing effect on prices of the domestic like product.[77]

> The Court views cumulative analysis for threat purposes as feasible in certain circumstances. For example, if imports are increasing at similar rates in the same markets and have relatively similar margins of underselling, it is likely that cumulation could be undertaken. This does not mean that each country's imports need threaten injury by themselves . . . Here, the ITC found great disparity in the patterns of volume increases and decreases among imports from the various countries . . . Finally ITC notes that patterns of underselling, or lack thereof, varied greatly from one country to the next.[78]

A. Cumulation

We determine that German imports should not be cumulated with Yugoslav imports for the purpose of threat of injury analysis. German imports declined between 1988 and 1989 and dropped to zero in 1990.[79] By contrast, Yugoslav imports rose substantially in 1989 and remained the same in 1990.[80] During 1988 and 1989, the prices of German imports remained relatively stable while

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[76] 19 U.S.C. S 1677(7)(F)(iv); Metallverken Nederland, B.V. v. United States, 728 F.Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asocoflores, 693 F. Supp. at 1171-72 (Ct.Int'l Trade 1988) aff'd on remand, 704 F. Supp. 1068, 1070-71 (Ct. Int'l Trade 1988).

[77] Id.

[78] Asocoflores, 693 F. Supp. at 1072 (Ct. Int'l Trade 1988).

[79] Id. at A-23.

[80] Id.

the prices of Yugoslav imports rose significantly. Based on the substantial disparity in levels and trends regarding the volumes and prices of imports from Germany versus those from Yugoslavia during the period of investigation, we determine that German imports should not be cumulated with Yugoslav imports for purposes of our threat analysis.[81]

B. Threat Analysis

There is no evidence that there will be any significant increase in German imports of concentrate in the near future. U.S. imports from Germany have fallen dramatically since 1988. German production of tart cherries declined by 21 percent between 1988 and 1989, before rising slightly in 1990.[82] The EC consumes over 90 percent of Germany's exports of all processed tart cherries, and there is no indication that this strong EC demand will not continue.[83] Domestic market penetration by German imports has declined and accounted for zero percent in 1990. Inventories of German concentrate were zero in 1989 and 1990.[84] Moreover, there is no evidence in the record that the 100 percent tariff on German concentrate will be eliminated within the near future.

Similarly, there is no evidence that there will be any significant increase in Yugoslav imports of concentrate in the near future. Production of Yugoslav tart cherry juice concentrate rose between 1988 and 1989 and declined between 1989 and 1990.[85] Yugoslav imports were a small portion of total

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[81] See Asocoflores, 693 F.Supp. at 1072 (Ct.Int'l Trade 1988).

[82] Report at A-23.

[83] Id.

[84] Id.

[85] Id.

domestic consumption in 1989 and 1990, and prices of Yugoslav imports have increased in 1990. Inventories of tart cherry juice concentrate from Yugoslavia were relatively small.[86]

Additional factors which indicate that neither German nor Yugoslav LTFV imports are a threat to the domestic industry are the rapid increase in U.S. production of concentrate over the past two years, the entry of U.S. concentrators into the market during the past several years, and the apparent profitability of the domestic industry's tart cherry concentrate operations.[87]

Based on the foregoing, we find that there is no "actual" and "imminent" threat of either German or Yugoslav imports causing material injury to the U.S. industry.

CONCLUSION

Based on the information obtained in this preliminary investigation, we determine that there is no reasonable indication of material injury or threat of material injury by reason of imports of tart cherry juice and tart cherry juice concentrate from Germany and Yugoslavia that are alleged to be sold at less than fair value.

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[86] Id.

[87] We find pursuant to 19 U.S.C. § 1677(7)(i(IX), that there is no potential for product shifting in either Yugoslavia or Germany from other forms of processed tart cherries to concentrate given present levels of domestic consumption in those countries and the difference in price between concentrate (made from culled cherries) and other tart cherry end uses such as canned pie filling, fresh frozen cherries, and water packed canned cherries. See Report at A-9.

CONCURRING AND DISSENTING VIEWS OF ACTING CHAIRMAN ANNE BRUNSDALE
Tart Cherry Juice and Tart Cherry Juice Concentrate
from Germany and Yugoslavia

Invs. Nos. 731-TA-512 and 513 (Preliminary)

I agree with my colleagues that there is no reasonable indication on the record that imports of tart cherry juice concentrate from Germany are causing, or threatening to cause, material injury to a domestic industry. I join their discussion of like product, domestic industry, and related parties. However, I am writing separately because I do not agree with their decision to end the investigation of tart cherry juice concentrate from Yugoslavia, or with their reliance on the abstract "health" of the domestic industry to terminate the investigation of tart cherry juice concentrate imports from Germany.

I. Imports of Tart Cherry Juice Concentrate from Germany Are So Negligible As to Have No Impact on the Domestic Industry.

Section 1677(7)(C)(iv) of title 19 compels the Commission to cumulate dumped imports from two or more countries in deciding whether they are causing material injury. Section 1677(7)(C)(v), however, allows the Commission to disregard imports that are "negligible and have no discernable adverse impact on the domestic industry." If imports are negligible under this section, they are necessarily not causing or threatening material injury to the domestic industry.

Also important in this case is another facet of anti-

dumping law, the requirement of present injury. As I emphasized in an opinion only last month, "antidumping and countervailing duties 'are intended merely to prevent future harm to the domestic industry by reason of unfair imports that are presently causing material injury.'" Fresh and Chilled Atlantic Salmon From Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Final), USITC Pub. 2371 (Apr. 1991) at 32 (emphasis in original) (quoting Chapparal Steel Co. v. United States, 901 F.2d 1097, 1104 (Fed. Cir. 1990)). This means that the Commission must look to the present level of imports, and their present effect, in deciding whether they are injurious.

This focus makes my decision easy. Since January 1, 1989, all cherry juice from the European Community (EC) has been subjected to a punitive U.S. tariff of 100 percent ad valorem in retaliation for the EC's ban on imports of hormone-treated American beef. A-6 n.18; 52 Fed. Reg. 49131 (Dec. 30, 1987). This tariff has rendered imports from Germany not just negligible, but nonexistent. A-23.

Moreover, the record holds no evidence showing imports from Germany threatening to resume in the near future. The "temporary" tariff has now lasted more than two years, and there are no signs it will be lifted soon. In addition, there is strong demand for German tart cherry juice both in Germany and the rest of the EC, and the number of tart cherry trees in Germany has declined in the last few years,

Post-Conference Br. of Erntebrand Fruchtsaft GmbH et al. at 40 (and sources cited therein). The combination of a high tariff, growing alternative markets, and reduced supply is the clear and convincing evidence on the record as a whole that supports my conclusion that imports of tart cherry juice concentrate from Germany are not causing, or threatening to cause, material injury to the domestic industry.

II. There Is a Reasonable Indication that Imports of Tart Cherry Juice Concentrate from Yugoslavia Are Causing Material Injury.

In contrast to the negligible level of tart cherry juice concentrate imports from Germany, there is some indication in the record that imports of tart cherry juice concentrate from Yugoslavia, whether measured by value or volume, amount to well over the 2.4 percent of U.S. consumption that I recently found not negligible in Ball Bearings, Mounted or Unmounted, and Parts Thereof, From Argentina, Austria, Brazil, etc., Invs Nos. 701-TA-307 and 731-TA-498 through 511, USITC Pub. 2374 (Apr. 1991) at 53. See A-24. Thus, I cannot avoid a searching review of the complete record as it now exists in order to decide whether there is a reasonable indication of material injury by reason of dumped imports. I may not make a negative determination without clear and convincing evidence that the Yugoslav imports are not causing material injury.

In a preliminary investigation, I do not place a great deal of weight on the failure of most concentrators to answer our

questionnaire. Although their reticence does support an inference that they are not suffering material injury, it may also reflect a lack of resources or information to fill them out (many concentrators devote only a fraction of their business to tart cherry juice concentration), or it may be that there is too little time in a preliminary investigation for them to do so, or they may simply object to the imposition on their time that our questionnaires would cause. Whatever their reason, I cannot say that "no likelihood exists that contrary evidence will arise in a final investigation." American Lamb v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986). With our subpoena power and more time, we might well find the domestic industry more forthcoming.

Even though the existing record does show that the domestic industry is prosperous, however, I am still unable to dismiss this case. As I have written many times, the Commission may not legally limit the scope of the antidumping and countervailing duty laws to dead or dying industries. For example:

> An industry can be profitable or "healthy" and still be materially injured by dumped imports. For example, if an industry's sales have increased, but they would have increased much more and the industry would have employed many more workers had imports not been dumped in the U.S. market, then that industry is likely to be materially injured by reason of the dumped imports. Otherwise, relief from unfairly traded imports would be restricted to declining industries.

Ball Bearings, Mounted or Unmounted, and Parts Thereof, From Argentina, Austria, Brazil, etc., Invs Nos. 701-TA-307 and 731-TA-498 through 511, USITC Pub. 2374 (Apr. 1991) at 50-51.

Nowhere in Sections 1671 or 1673 did Congress set up "mater-

ial injury" as an independent criterion for the Commission to examine. Even if the language and structure of the law did not indicate this clearly enough, the legislative history of the 1988 amendments to title VII does. The Ways and Means Committee noted as early as 1987 that "the ITC should not examine the health or condition of an industry in any abstract sense. An industry's health should be determined in the context of the impact that imports are having on that industry." H. Rep. 100-40, 100th Cong., 1st Sess. at 128 (Apr. 1987). In this case, the absence of a clear and convincing evidence that the domestic tart cherry juice concentrate industry is not suffering material injury by reason of dumped imports is evident in the volume and prices of the tart cherry juice concentrate imports from Yugoslavia and from the reasonably probable effects those imports might have on the domestic industry's revenues.

A. Volume and Prices of the Imports from Yugoslavia. Because tart cherry juice concentrate is not a separate heading in the tariff schedules, we do not know how much tart cherry juice concentrate is being imported from Yugoslavia. At this preliminary stage, however, there is some evidence that imports from Yugoslavia might account for a significant fraction of the domestic consumption of tart cherry juice concentrate. A-24.

B. The Effect of Imports from Yugoslavia on Domestic Prices. There are several factors on the present record that I find particularly important in deciding whether the subject imports

may be causing material injury to the domestic tart cherry juice concentrate industry. First, the alleged dumping margin is very high. According to the petitioner's calculation, the margin is 113 percent, meaning that Yugoslav concentrate is being sold at less than half its fair value. Because this is a preliminary investigation, the petitioner's calculation is the best evidence now available, and I will use it in my analysis.

Second, as noted above in the discussion of the like product issue, there is evidence that tart cherry juice concentrate from Yugoslavia is considerably interchangeable with domestic tart cherry juice concentrate. Although Yugoslav concentrate is made from a different variety of tart cherry than the domestic like product, tart cherry juice concentrate is used not only in juices and other drinks (where the differences between the domestic and imported varieties might be noticeable and so reduce substitutability), but as an ingredient in jams, preserves, yogurt, and ice cream, see A-5, where the differences are presumably less noticeable. This degree of substitutability indicates that domestic consumers of tart cherry juice concentrate would readily switch to the domestic like product if the Yugoslav imports cost 113 percent more.

In addition, demand for tart cherry juice concentrate is probably not very sensitive to changes in price. Tart cherry juice concentrate is mostly used as an ingredient in other food products, and is probably only a minor cost in most of them. Moreover, it has no close substitutes as a flavoring ingredient.

As the record shows, even sweet cherry juice could be a viable substitute for some of the tart varieties' uses only "after extensive processing and the addition of [other] ingredients." A-5. On this evidence, any dumping of Yugoslav tart cherry juice concentrate is unlikely to have produced new sales and, standing alone, would probably only have suppressed the price domestic concentrators would otherwise have been able to obtain.

The record also contains some evidence that domestic concentrators could have increased their output of tart cherry juice concentrate if its price had been higher. Ten percent or less of domestic tart cherry production goes into making concentrate, and there is no indication that this share could not have increased. Indeed, the recent rise in tart cherry juice concentrate prices seems to have led some tart cherry growers to dedicate their entire crop to concentrate production. A-9 n.29. Moreover, concentration equipment appears to be usable for different kinds of fruit, A-15, so that concentrators themselves could have increased their output fairly easily. These factors indicate that an increase in the price of tart cherry juice concentrate from Yugoslavia would have increased the domestic industry's revenues, whether through greater domestic output or higher prices.

This lost revenue might well be substantial. The petitioner estimates it to be almost $5 million, Pet. at 36, which to an industry of this size would be material. I do not know if this increase in revenue would result from higher prices or increased

output, or even if it would happen at all. But, on the record as it presently exists, I cannot say that there is clear and convincing evidence that it would not. I therefore dissent from the majority's decision to end the investigation of tart cherry juice concentrate from Yugoslavia.

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

On March 19, 1991, the Cherry Marketing Institute, Inc., (CMI), Okemos, MI, filed a petition 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 being materially injured and is threatened with further material injury by reason of imports from Germany and Yugoslavia of tart cherry juice and tart cherry juice concentrate[1] that are allegedly sold in the United States at less than fair value (LTFV). Accordingly, effective March 19, 1991, the Commission instituted investigations Nos. 731-TA-512 and 513 (Preliminary) under section 733(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

The statute directs the Commission to make its preliminary determination within 45 days after receipt of the petition or, in these investigations, by May 3, 1991. Notice of the institution of the Commission's investigations was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on March 27, 1991 (56 F.R. 12743).[2] Commerce published its notice of initiation in the Federal Register of April 16, 1991 (56 F.R. 15326). The Commission held a public conference in Washington, DC, on April 9, 1991, at which time all interested parties were allowed to present information and data for consideration by the Commission.[3]

The Commission initiated a section 332 investigation, Red Tart Cherries, Economic and Competitive Factors Affecting the U.S. Industry (investigation No. 332-304) on November 19, 1990, following a request by the Committee on Ways and Means of the U.S. House of Representatives. On March 4, 1991, the Commission received a letter from the House Committee on Ways and Means requesting that the Commission forgo any further action on investigation No. 332-304 and terminate the investigation if Commerce initiated an antidumping investigation on imports of cherry juice concentrate. In accordance with this request, the Commission terminated investigation No. 332-304 after Commerce announced the institution of an antidumping investigation on imports of tart cherry juice and concentrate on April 9, 1991.

THE PRODUCT

Description

Tart cherry juice or sour cherry juice is the single-strength juice pressed from fruit of the genus Prunus Cerasus. It is dark red in color with a tart or sour taste. Most natural tart cherry juice has a brix value ranging

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[1] Tart cherry juice and tart cherry juice concentrate (and other cherry juice and cherry juice concentrate) are provided for in subheading 2009.80.60 of the Harmonized Tariff Schedule of the United States.

[2] Copies of cited Federal Register notices are presented in app. A.

[3] A list of the participants in the conference is presented in app. B.

from 10 degrees to 14.3 degrees.[4] Tart cherry juice concentrate[5] is the dehydrated juice made from tart cherries. Tart cherry juice concentrate is a semi-solid, even when frozen, because of the high sugar content. Most tart cherry juice concentrate is produced at 68 degrees brix in the United States.[6]

Manufacturing Processes

The production of juice and concentrate begins with the midsummer harvest of tart cherries. While some handpicking of cherries still occurs, most commercial growers rely on a highly mechanized picking operation.[7] A machine, known as a shaker, grasps the trunk of the tree, shakes it, and catches the falling cherries in an inverted canvas umbrella. A conveyor carries the cherries into a tank of water which workers deliver to on-site cooling pads, where cold well water chills the cherries. The grower then delivers the chilled cherries to a processor.[8]

The processor (or "first-handler") separates or culls the low-quality or blemished cherries from the high-grade cherries, washes the culled cherries, and freezes them in 55-gallon barrels that contain approximately 350 pounds of fruit (juice cherry feedstock).[9] Freezing the fruit allows the processor to hold the feedstock throughout the year and sell it to a concentrator when needed.

The concentrator purchases frozen feedstock from the processor or, in some instances, fresh cherries from growers, squeezes the cherries in a fruit press, collects the resulting liquid, then filters and pasteurizes it to obtain cherry juice. The concentrator then removes the water contained in the juice by running it through a series of heat-vacuum evaporators. The evaporators separate the water from the fruit solids and capture the cherry flavors and aromas from the vapor emission. The concentrator normally returns these essences to the final product either immediately or at a later time, depending on his customers' intended uses. The concentrator packs the concentrate in 55-gallon barrels (which contain approximately 52 gallons of

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[4] The brix scale measures the density or concentration of sugar in solution on a percentage basis--the higher the brix value, the higher the concentration of sugar solids.

[5] Tart cherry juice concentrate is generally a "six- or seven-strength" concentrate, meaning that it requires the addition of water in a six-to-one to a seven-to-one ratio to produce single-strength, ready-to-drink cherry juice.

[6] The standard degrees of brix for European concentrate is 65. All quantities of concentrate in this report have been converted to 68 degrees brix. App. C contains all the relevant conversion factors used in this report.

[7] See petition, pp. 13-15 and pp. 28-29.

[8] Cherries are not chilled in water in orchards whose harvest is specifically intended for juice production. To reduce harvesting costs and maintain a high brix level, the grower delivers the cherries directly to the processor or concentrator at ambient temperature.

[9] The processor produces a range of products from the high-quality cherries, as discussed below. Also, a processor may produce tart cherry juice directly from the culled cherries, although such production is uncommon.

concentrate), grades the juice,[10] and then places the juice concentrate in cold storage prior to shipment or use. Its long shelf life and its reduced bulk make concentrate an economical and convenient form of storage for tart cherry juice.

Uses

Tart cherry juice is found in a number of juice and drink products. Fruit or drink makers purchase commercial quantities of concentrate, reconstitute it, and blend it with, or add it to, other ingredients to produce their final products. Food manufacturers also use tart cherry juice as an ingredient in jam, preserves, yogurt, and ice cream.

Substitute Products

Although tart cherry juice competes to a degree with other fruit juices on price, perceived nutritional value, and taste, no other products act as direct substitutes for it. Its unique taste and coloration do not allow for direct replacement by another fruit juice or other product in, for example, a diluted fruit drink. If a drink manufacturer chose to substitute an alternative juice, such as sweet cherry juice, for tart cherry juice, the resulting product would not resemble the original in terms of pigmentation, flavor, and acidity. Only after extensive processing and the addition of ingredients would sweet cherry juice be a viable substitute for tart cherry juice in certain uses.[11]

The principal variety of tart cherry grown in the United States is the Montmorency.[12] In Europe, the primary varieties are the Morello and, especially in Yugoslavia, the Oblacinska. Concentrates made from the three types of tart cherries are similar; however, counsel for respondents allege that the Montmorency variety produces a more flavorful and aromatic juice concentrate,[13] while the European varieties yield a concentrate with a richer, darker pigmentation.[14] Petitioners allege that the bulk of end users purchase domestic and European concentrate interchangeably, according to price and availability.[15] Nonetheless, certain end users reportedly rely exclusively on one or the other because of the inherent qualitative differences noted above.[16]

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[10] See app. D for an example, provided by ***, of typical industry specifications for tart cherry juice concentrate. *** believes that there are no specific industry-wide standards, since concentrates may vary by region. Telephone conversation, Apr. 22, 1991.

[11] James Fulleton, Conference transcript (transcript), pp. 71-72.

[12] A CMI study found that 99.5 percent of Michigan tart cherry trees are of the Montmorency variety. CMI, "Michigan Tart Cherry Tree Survey," Jan. 18, 1991.

[13] Mark Cohen, counsel for Globtrade, transcript, p. 118.

[14] Radovan Pavelic, counsel for Voce, transcript, p. 105.

[15] Dick Johnston, CMI, transcript, pp. 136-137.

[16] Mark Cohen, counsel for Globtrade, transcript, p. 118.

U.S. Tariff Treatment

Tart cherry juice and tart cherry juice concentrate enter the United States under subheading 2009.80.60 of the Harmonized Tariff Schedule,[17] a basket category which contains all cherry juice, as well as berry juice and other nonenumerated single-fruit juices. The column-1 general rate of duty for this subheading of 0.8 cent per liter is applicable to imports from most-favored-nation sources, including Yugoslav imports. Imports from the European Community, including Germany, are temporarily subject to an ad valorem duty rate of 100-percent under HTS subheading 9903.23.30 due to the 1988 hormone retaliation.[18]

THE NATURE AND EXTENT OF SALES AT LTFV

In order to estimate dumping margins, petitioner compared the value of imports from Germany and Yugoslavia, based on U.S. Customs data, with constructed foreign market values. The foreign market values are composed of two items (1) the cost of tart cherry production and (2) the cost associated with concentrating tart juice cherry feedstock. Petitioner believes that almost all tart cherry juice imports are in the form of concentrate and that German juice concentrators rely on tart juice cherry feedstock from Yugoslavia for their production of tart cherry juice concentrate.[19] In the case of Germany, therefore, petitioner based the constructed value on estimated costs of Yugoslavian tart cherry feedstock production and an average of price quotations from U.S. concentrators on the cost of the concentrating process. For Yugoslavia, petitioner used a similar method, but reduced the Yugoslavian foreign market value by the difference in wage rates between Germany and Yugoslavia. Petitioners calculated a dumping margin of 163 percent for Germany and 123 percent for Yugoslavia.

THE U.S. MARKET

Growers, Processors, and Concentrators

Three types of firms are involved with supplying the domestic tart cherry juice and/or tart cherry juice concentrate: (1) growers, (2) processors, and (3) juice concentrators. This section provides background information on these segments and explains their relationship to the tart cherry juice concentrate market. (See app. E for a detailed discussion of the overall tart cherry market.)

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[17] Tart cherry juice and concentrate were provided for in item 165.55 of the former Tariff Schedules of the United States prior to Jan. 1, 1989, along with other juices not specially provided for.

[18] Effective Jan. 1, 1989, the European Community (EC) banned imports of meat from countries, including the United States, in which the use of certain growth-promoting hormones in raising meat animals is authorized. The United States determined the EC ban unjustifiable and, consequently, imposed a 100 percent ad valorem duty on imports of certain agricultural products, including cherry juice.

[19] Petition, pp. 20-21.

GROWERS

The U.S. Department of Commerce identified 2,613 tart cherry growers in the United States in 1987.[20] Michigan had the largest number of growers harvesting cherries in that year, with 1,119. Pennsylvania followed, with 284 growers; New York had 268; Oregon, 214; and Wisconsin, 152. Petitioner estimates the total number of tart cherry growers in the seven largest producing states at approximately 1,500 in 1990.[21] Most tart cherry farmers are diversified growers who raise a variety of crops, such as apples, peaches, plums, sweet cherries, and asparagus. Table 1 shows U.S. production of tart cherries, by state.

Table 1
Tart cherry production, by state, 1988-90

(In thousands of metric tons)

State	1988	1989	1990
Michigan	81.64	81.64	72.57
New York	9.97	14.06	7.48
Utah	4.98	10.88	7.03
Oregon	1.81	6.80	3.40
Wisconsin	4.03	3.44	2.17
Pennsylvania	4.08	2.72	1.58
Colorado	0.58	0.22	0.45
Total[1]	107.13	119.76	94.71

[1] Total contains data for minor producing states.

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

Source: Compiled from official statistics of the U.S. Department of Agriculture.

Michigan is by far the largest tart cherry producing state with roughly 70 to 75 percent of national production over the past 3 years. No other state accounts for a substantial share of U.S. output. The U.S. Department of Agriculture (USDA) places the value of total tart cherry production at $43.8 million in 1988, $35.3 million in 1989, and $29.6 million in 1990.[22]

Variations in weather conditions explain, to a large extent, the wide fluctuations in grower output. Frosts or freezes, high winds, and drought can severely cut back the tart cherry harvest in any particular year. The impact of weather on the cherry crop is particularly pronounced, since much of U.S. production takes place in Michigan, an area with highly variable weather.

[20] 1987 Census of Agriculture, U.S. Department of Commerce.
[21] Petition, p. 7. Petitioner believes that Commerce's figures overstate the number of growers by including many non-commercial tart cherry growers.
[22] Noncitrus Fruits and Nuts, 1990 Summary, USDA, January 1991.

The U.S. industry has faced overcapacity in recent years. According to the petitioners, "[t]he capacity of the U.S. tart cherry growers has undergone substantial expansion in recent years due to heavy plantings in the late seventies and early eighties."[23] High prices and strong export demand[24] at that time encouraged heavy plantings. Once planted, trees require 5 years before bearing marketable quantities of fruit. Cherry trees planted in the late seventies and early eighties are now reaching their prime bearing years and will continue to bear fruit for another 10-15 years. Dr. Donald Ricks, an economist at Michigan State University, testified in 1989 that the oversupply situation will persist:

> The U.S. tart cherry industry has been during the last five years in a situation of persistent overproduction. This is caused by excessive productive capacity (planted acreage) relative to slowly growing demand for tart cherries. The resulting surplus production causes very low prices to growers, substantial amounts left unharvested...and a large build-up of unsold inventories of processed cherries.
>
> During the next few years the U.S. tart cherry industry's excessive capacity is expected to increase further...The expected industry production of 390-410 million lbs. can be compared to recent aggregate demand for tart cherries of 230-250 million lbs. which is expected to grow to, at most, 270-280 million lbs. during the next few years.[25]

Since fresh tart cherries are highly perishable and too sour for most Americans' taste, fresh market sales of tart cherries represent a small portion of the total tart cherry market; roughly 2 to 3 percent of annual tart cherry production goes to the fresh market.[26] Growers deliver the rest to processors for manufacture into various tart cherry products.

The Commission queried 225 tart cherry growers from 8 states and received 99 responses, 95 of which were timely and usable. Based on 1990 production figures, these growers produced almost one-quarter of the entire U.S. tart cherry crop. Appendix F provides the production, employment, and financial data supplied in growers' questionnaire responses.

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[23] Petition, p. 39.

[24] "From a peak export volume of 35 million pounds [of tart cherry products] in the mid-1970s mostly to the EEC, exports dropped to 3.2 million in 1982 and to a nadir of 1.3 million pounds in 1984, largely due to restrictive trade practices instituted by the European Commission in 1981...These practices include minimum import prices, processor subsidies, sugar tariffs, and import licenses." Dick Johnston, CMI, transcript, pp. 11-12.

[25] Statement entered into the record in conjunction with the ITC Hearing on the "Probable Economic Effect on U.S. Industries and Consumers of Modification or Removal of Certain U.S. Nontariff Measures," investigation No. TA-131-14, pp. 1-2, Feb. 27, 1989. Dick Johnston of CMI commented that Dr. Ricks based his capacity estimate on an ideal crop year with "perfect" weather; such years never actually occur. Transcript, p. 134.

[26] See table E-2.

PROCESSORS

Processors manufacture a variety of products from raw tart cherries. These products include canned pie filling, canned cherries (water packed), 5+1 pack, individually quick frozen (IQF), frozen juice feedstock, and juice. The frozen products account for the largest share of tart cherries in initial processing. Juice production has consumed approximately 3 to 5 percent of total tart cherry production over the past three years at the initial processing stage, according to USDA statistics. These figures understate the amount of juice production, since a portion of the frozen cherry stock goes into later juice production.[27] The Commission's staff estimates that roughly 7 to 10 percent of the total tart cherry harvest ultimately becomes juice or concentrate. See appendix E.

Growers own a majority of processing facilities, either as cooperatives or as independent businesses. A few independent processors remain; however, cooperatives and grower groups have purchased many of them in the past few years. Regardless of the form of ownership, processors behave in a similar fashion: they receive tart cherries from growers, sort and grade the cherries,[28] process them into their assorted products, and pay growers upon sale of these products. From the price given growers, the processors deduct processing, marketing, and storage costs. This arrangement limits the price risk borne by the processor. Also, since processors pay growers after the sale of the processed fruit, growers may not receive full payment for their production for a year or more. A partial payment at harvest time is common.

A processing firm determines its product mix on the basis of anticipated prices and demand for the various products that it manufactures. A grower delivers his fruit to the processor with no input into this market-driven decision. Thus, a grower normally will not know the actual end use of his fruit. As a result, the processor usually reports an average price to the grower; a price breakdown by product type is not possible.[29]

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[27] Telephone conversation with Jim Brewster, USDA, Apr. 17, 1991.

[28] Processors grade cherries according to the number of defects, such as bruises, scars, immaturity, and disease, and rate them on a scale of 100. Processors generally will not accept fruit rated below 85 score. The processor factors this rating into the price that he ultimately pays the grower; higher grade fruit returns a higher price. Juice cherries tend to be culls--selected lower quality, bruised, or over-ripe fruit--since the appearance of the fruit is not important in juicemaking. As a result of the generally lower quality of the juice cherries, growers receive a lower price for them.

[29] Only in rare instances do growers grow tart cherries specifically for juice production. Petitioners report that a small number of growers in Washington and Oregon contracted with juice makers in 1989 and 1990 to dedicate their orchards to juice cherry production. The growers delayed harvesting, thereby raising the brix level of the cherries. Cherries with a high brix level are more suitable for juice production. As a result, these growers received prices at or above the primary market price. Petition, p. 48. James Fulleton, a Washington state grower, stated that in 1989 and 1990, Washington growers devoted 95 percent and 100 percent, respectively, of their

(continued...)

Very little of the tart cherry harvest goes directly into the production of single-strength juice.[30] Processors are nonetheless involved in juice concentrate production, as some produce tart juice cherry feedstock, the basic input into concentrate.[31] During the sorting process, handlers cull the low-grade from the high-grade fruit. Processors freeze the culled tart cherries as juice feedstock,[32] if the price for juice cherries is high enough to ensure an adequate return. When the market for juice cherries is not viable, processors dispose of the culled cherries as a waste product.[33] In other words, processors generally treat tart juice cherry feedstock as a by-product. In one year, a processor may produce several hundred thousand pounds of tart juice cherry feedstock and, in the next, produce no feedstock. The outlook for juice cherry prices drives the processor's decision to participate in the juice cherry market. The experience of *** is typical for the tart cherry processing industry:

"***."[34]

The Commission mailed a total of 69 questionnaires to processors in 9 states and received 31 responses. Fifteen questionnaire responses contained, in part or in whole, usable and timely information.[35] The lack of nationwide statistics on feedstock does not allow for an estimate of the data coverage. This report presents processor data in appendix G. These data include production and shipments of tart juice cherry feedstock, employment, and financial information for processors' overall operations, operations on all tart cherry products, and operations on tart juice cherry feedstock.

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[29] (...continued)
production to the manufacture of tart cherry juice concentrate. These growers contract immediately with concentrators for delivery of raw tart cherries. Transcript, pp. 32-33.

[30] *** industry sources and USDA data suggest that a limited number of processors produce some quantities of single-strength juice.

[31] The sorting, freezing, and other handling steps performed by the processor add only $0.20 per gallon to the value of 1 gallon of juice concentrate, whereas the pressing, concentrating, and other handling done by the concentrator add $7.26 of value added per gallon of concentrate. Petition, p. 30.

[32] If there is a strong market for juice cherries, processors may purchase low-quality tart cherries for direct use as juice feedstock. The growers and processors may eliminate or shorten steps in the harvesting and processing operations to reduce overall costs. Terry Morrison, General Manager, Cherry Growers, Inc., transcript, p. 85.

[33] Don Gregory, tart cherry grower, transcript, p. 29.

[34] ***.

[35] Three processors were unwilling to fill out the questionnaire; 13 reported no juice cherry feedstock production during 1988-90.

CONCENTRATORS

The bulk of juice trade occurs in concentrate form.[36] Therefore, the remainder of this report pertains exclusively to tart cherry juice concentrate.

The petition identified 10 producers[37] of tart cherry juice concentrate. Table 2 lists each firm, its position on the petition, and its share of reported U.S. production in 1990.

Table 2
Concentrators, their position on the petition, and their share of U.S. production in 1990

(in percent)

Company	Location	Position	Share of production[1]
Clermont Fruit Packers...	Hillsboro, OR	***	***
Egg Harbor Orchards.....	Egg Harbor, WI	***	***
Endurance, Inc.....	Wapato, WA	***	***
Great Lakes Concentrates Co.....	Paw Paw, MI	***	***
Kerr Concentrates, Inc...	Salem, OR	***	***
Milne Fruit Products.....	Prosser, WA	***	***
Morrison Orchards.....	Williamsburg, MI	***	***
Sabroso, Inc.....	Medford, OR	***	***
Sanofi Bio-Industries....	Wapato, WA	***	***
J.M. Smucker, Co.....	Woodburn, OR	***	***
			100

[1] In telephone conversations, Commission staff elicited 1990 production figures from those *** firms that did not return questionnaire responses, in order to determine the overall quantity of domestic production and derive an estimate of data coverage.

Note.--Because of rounding, percentages do not total 100.

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

The Commission received complete data from ***. *** supplied production and shipment information only. *** provided production, capacity, shipment, and pricing data. *** indicated a willingness to cooperate, but had not

[36] Petitioners and respondents agree that the primary product at issue is concentrate rather than single-strength juice. Transcript, pp. 129-130.
[37] The petition ***.

returned the questionnaires by the date of this report.[38] *** refused to fill out the Commission's questionnaire.[39]

In addition to tart cherry juice concentrate, *** produces other fruit and vegetable concentrates, fruit preparations for yogurt and cookies, and processed fruit. Sales of tart cherry juice concentrate represent *** percent of ***'s total sales.[40] *** manufactures tart cherry juice concentrate and other juice concentrates for use in beverages and candies. Tart cherry juice concentrate is only a small portion of ***'s total sales.[41] *** produces a range of preserves, jams, purees, fruit juices, and other formulated items. Tart cherry juice concentrate accounts for a very small percentage of ***'s production and an even smaller percentage of its sales, as ***.[42] *** dedicates approximately *** percent of its productive capacity to tart cherry juice concentrate. It also processes other fruits, including apples, peaches, and plums. ***'s customers use tart cherry juice concentrate in the manufacture of juice beverages and frozen fruit bars.[43] *** first began producing concentrate in ***.[44]

Apparent U.S. Consumption

Table 3 presents the two components of apparent U.S. consumption: U.S. shipments of domestic product and U.S. shipments of imports of tart cherry juice concentrate, between 1988 and 1990.

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[38] *** reported the following production (in gallons): 1988--***; 1989--***; 1990--***. He also noted that his firm *** and that tart cherry juice concentrate represents *** of ***'s business. ***. Telephone conversation, Apr. 23, 1991. *** mentioned that his firm began tart cherry juice concentrate production in ***. It produced ***. Telephone conversation, Apr. 24, 1991.

[39] *** commented that his firm reached its highest level of production in ***, when it produced *** tons (roughly *** gallons) of tart cherry juice concentrate. He stated that his firm ***. Telephone conversation, Apr. 16, 1991. *** indicated that his firm first began producing tart cherry juice concentrate in ***. It manufactured *** tons (approximately *** gallons) and sold its product for $***/gal. *** indicated that ***. Telephone conversation, Apr. 22, 1991.

[40] ***'s questionnaire response.

[41] Telephone conversations with *** and ***, Mar. 6 and Apr. 5, 1991.

[42] ***'s questionnaire response.

[43] ***'s questionnaire response.

[44] Telephone conversation with ***, Apr. 23, 1991.

Table 3
Tart cherry juice concentrate: U.S. shipments of domestic and imported product and apparent U.S. consumption, 1988-90

Item	1988	1989	1990
	Quantity (1,000 gallons)		
Producers' U.S. shipments . . .	63	214	239
U.S. shipments of imports . . .	51	67	52
Apparent consumption . . .	114	281	291
	Value (1,000 dollars)		
Producers' U.S. shipments . . .	958	3,468	4,041
U.S. shipments of imports . . .	712	913	844
Apparent consumption . . .	1,670	4,381	4,885
	Share of the quantity of U.S. consumption (percent)		
Producers' U.S. shipments . . .	55.3	76.2	82.1
U.S. shipments of imports . . .	44.7	23.8	17.9
Total	100.0	100.0	100.0
	Share of the value of U.S. consumption (percent)		
Producers' U.S. shipments . . .	57.4	79.2	82.7
U.S. shipments of imports . . .	42.6	20.8	17.3
Total	100.0	100.0	100.0

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

Both apparent consumption and U.S. producers' U.S. shipments increased in each of the years of the investigation. Apparent consumption rose by 146 percent in 1989 and by 4 percent in 1990, while domestic producers' shipments more than tripled in 1989 and grew another 12 percent in 1990.[45] Also, producers' U.S. shipments gained market share throughout the three years, rising from 55.3 percent in 1988 to 76.2 percent in 1989 and 82.1 percent in 1990, in quantity terms. The market share of imports declined correspondingly.

U.S. Importers

Imports of tart cherry juice concentrate are reported for U.S. statistical purposes under HTS statistical reporting number 2009.80.6010, which covers all "cherry juice." Until January 1, 1989, tart cherry juice imports entered under TSUS item 165.55, as "other juices." The Commission

[45] Note that ***.

sent importers' questionnaires to 22 firms that, ***, imported products from European countries under either of these items between 1988 and 1990.[46] Nine importers[47] provided usable data and 13 firms reported no imports during the period of investigation.[48] Collected data represent nearly all imports of tart cherry juice and concentrate, as the known universe of importers is quite small.

--a distributor and processor of fruit juice concentrate, natural colors, and related fruit products--is the *** importer of tart cherry juice concentrate. It imports Yugoslavian concentrate for blending with domestic tart cherry juice concentrate. The blended product capitalizes on the foreign concentrate's dark color and the domestic's intense flavor.[49] ***, the other principal importer, reports imports from Yugoslavia and *** in 1989 and 1990. *** sells these imports to its customers in the food manufacturing industry for use in flavorings and blended juices. Three firms----reported imports from Germany. *** used the imports as an input into a blended baby food product. Both *** and *** are trading companies who sold limited quantities to U.S. clients in ***. The other importers reported occasional, small-volume imports of concentrate over the period of investigation; none accounted for a large share of total imports.

*** is the only known importer of single-strength juice. In *** and ***, it imported modest quantities of a sparkling tart cherry juice from ***.[50]

Channels of Distribution

U.S. concentrators and importers appear to compete in similar markets for sales of tart cherry juice concentrate. The four domestic concentrators and four importers responding to this section of the Commission's questionnaire reported that tart cherry juice concentrate is rarely sold to end users for direct consumption. Rather, the majority of customers reported are food processors or beverage manufacturers who use concentrate as an ingredient in the production of other foods and beverages. Tart cherry juice concentrate is most often used in the production of jams and jellies and as a natural flavoring in a variety of soft drinks, wine coolers, and other fruit juices.

Production, importing, and marketing arrangements for tart cherry juice concentrate appear to be somewhat varied. Several domestic concentrators, ***, produce concentrate for internal consumption and sell on the spot market when surplus production is not needed. One importer, ***, reported importing tart cherry juice concentrate and blending it with other fruit juices for resale in the U.S. market. Sales are usually made directly from the concentrator or importer to the end user, though some end users use brokers. *** purchases the production of *** for resale to end users.[51]

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[46] The Commission additionally mailed importers' questionnaires to the 10 concentrators.

[47] One processing firm ***.

[48] *** reported ***. See footnote 38.

[49] ***, attachment to questionnaire response.

[50] *** imported ***.

[51] ***.

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

Six of the 10 known concentrators responded to part or all of the Commission's questionnaire. These six compose a large segment of the U.S. industry, approximately 59 percent, based on 1990 production figures.

U.S. Production, Capacity, and Capacity Utilization

Reported production, in thousands of gallons of concentrate for 1988-90, is shown in the following tabulation:[52]

Year	U.S. production
1988.....	96
1989.....	283
1990.....	312

***'s entry into the market for tart cherry juice concentrate explains much of the rise in 1989, while ***'s commencement of production in 1990 pushed overall production up further. Production almost tripled in 1989 and increased 10 percent the next year.

Only *** provided both usable production and capacity figures. ***. Concentrators have the ability to process a variety of fruits on equipment used in the production of tart cherry juice concentrate. Thus, production capacity for tart cherry juice concentrate often reflects the firm's product mix decisions, the availability and price of raw tart cherries or feedstock, and the expected demand for tart cherry concentrate.

U.S. Producers' Domestic Shipments, Company Transfers, and Export Shipments

Domestic shipments rose in each successive year--more than tripling between 1988 and 1989 and rising by 26 percent between 1989 and 1990 (table 4). The quantity of company transfers varied but remained between one-quarter and one-third of total shipments throughout the period. *** use a significant portion of their production in their firms' other products. The unit value of domestic shipments rose considerably between 1988 and 1990; it climbed by 12 percent in 1989 and rose another 9 percent in 1990.

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[52] Includes ***.

Table 4
Tart cherry juice concentrate: Shipments by U.S. producers, by type, 1988-90

Item	1988	1989	1990
	Quantity (1,000 gallons)		
Company transfers	20	70	57
Domestic shipments	43	144	182
Subtotal	***	***	***
Exports	***	***	***
Total	***	***	***
	Value (1,000 dollars)		
Company transfers	360	1,220	933
Domestic shipments	598	2,248	3,108
Subtotal	***	***	***
Exports	***	***	***
Total	***	***	***
	Unit value (per gallon)		
Company transfers	$18.00	$17.43	$16.37
Domestic shipments	13.91	15.61	17.08
Average	***	***	***
Exports	***	***	***
Average	***	***	***

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

U.S. Producers' Inventories

***. Table 5 presents their inventory data. The ratio of end-of-period inventories to U.S. production declined steadily from around *** percent in 1988 to slightly more than *** percent in 1990. Inventories as a percentage of total shipments averaged around *** percent between 1988 and 1990.

Table 5
Tart cherry juice concentrate: End-of-period inventories of U.S. producers, 1988-90

* * * * * * *

U.S. Employment, Wages, and Productivity

Table 6 presents ***'s employment data; ***.

Table 6
Average number of production and related workers producing tart cherry juice concentrate, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, 1988-90

* * * * * * *

Financial Experience of U.S. Producers

One concentrator (***), accounting for approximately *** percent of tart cherry juice concentrate production in 1990, supplied usable income-and-loss data on its overall operations and tart cherry juice concentrate operations.[53]

OVERALL OPERATIONS

Data on ***'s overall establishment operations are shown in table 7. Net sales *** from $*** in 1988 to $*** in 1989, and *** to $*** in 1990. The company realized *** in 1988, *** in 1989, and *** in 1990. *** were *** percent in 1988, *** percent in 1989, and *** percent in 1990. Tart cherry juice concentrate accounted for approximately *** percent of overall establishment net sales in 1990.

Table 7
Income-and-loss experience of *** on its overall establishment wherein tart cherry juice concentrate is produced, fiscal years 1988-90

* * * * * * *

OPERATIONS ON TART CHERRY JUICE CONCENTRATE

Income-and-loss data on ***'s tart cherry juice concentrate operations are shown in table 8. Net sales of tart cherry juice concentrate *** from $*** in 1988 to $*** in 1989, and $*** in 1990. *** was $*** in 1988, $*** in 1989, and $*** in 1990. *** each year from *** percent in 1988 to *** percent in 1989 and *** percent in 1990.

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[53] ***'s fiscal year ends December 31.

Table 8
Income-and-loss experience of *** on its operations producing tart cherry juice concentrate, fiscal years 1988-90

* * * * * * *

's income-and-loss experience on an average per-gallon basis is presented in table 9. Its average per-gallon sales value *** from $ in 1988 to $*** in 1989, and *** to $*** in 1990. As shown in table 9, ***. The *** is caused, in part, by ***. ***. The company controller stated that *** has ***. *** was $*** in 1988, $*** in 1989, and $*** in 1990.

Table 9
Income-and-loss experience (on a per-gallon basis) of *** on its operations producing tart cherry juice concentrate, fiscal years 1988-90

* * * * * * *

CAPITAL EXPENDITURES

*** did not report capital expenditures for the period of investigation.

INVESTMENT IN PRODUCTIVE FACILITIES

***'s end-of-period investment in overall facilities producing tart cherry juice concentrate is shown in table 10. ***'s controller stated that the company does not have equipment specifically assigned to the production of tart cherry juice concentrate. It produces tart cherry juice concentrate using equipment that also produces *** other concentrates.

Table 10
Value of property, plant, and equipment of ***, fiscal years 1988-90

* * * * * * *

RESEARCH AND DEVELOPMENT EXPENSES

*** reported that it ***.

IMPACT OF IMPORTS ON CAPITAL INVESTMENT

The Commission requested the concentrators to describe and explain the actual or anticipated negative effects, if any, of imports of tart cherry juice and tart cherry juice concentrate from Germany and Yugoslavia on their growth, development and production efforts, investment, and ability to raise capital.

*** responded that it ***. The company stated it anticipates "***" caused by future imports.

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[54]--
>
> > (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,

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[54] 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."

(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.[55]

No subsidies (item (I)) are alleged in these investigations. Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) 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 an Industry in the United States." Available information follows on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), (VIII) and (IX) above); any other

[55] 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 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."

threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

U.S. Importers' Inventories

Table 11 shows U.S. importers' ending inventories. *** held inventories of concentrate from Germany between 1988 and 1990. ***.

Inventories of tart cherry juice concentrate from Yugoslavia changed slightly over the three years and averaged roughly *** gallons per year. *** accounted for *** percent, *** percent, and *** percent of these inventories in 1988, 1989, and 1990, respectively. *** held these inventories for use in its own blending operations.

Table 11
Tart cherry juice concentrate: End-of-period inventories of U.S. importers, by source, 1988-90

* * * * * * *

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other than the United States

GERMANY

According to counsel for the German producers, the bulk of demand for tart cherry juice in Germany is in the form of single-strength juice, since "***."[56] Accordingly, table 12 contains German industry data for single-strength juice at 13 degrees brix, as provided by counsel for the German producers.

Table 12
Tart cherry juice: Production, imports, and shipments in Germany, 1988-90 and projected, 1991-92

* * * * * * *

As the table shows, Germany satisfies the majority of its demand for tart cherry juice through ***. In 1988, 1989, and 1990, respectively, *** of tart cherry juice accounted for *** percent, *** percent, and *** percent of total shipments.

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[56] Foreign producer questionnaire response, p. 5.

Reported exports to the United States have *** since 1988. Exports *** between 1988 and 1989 and *** in 1990. Dividing the U.S. export figures by 6 gives an approximation of the concentrate equivalent of these exports. This estimate is *** gallons in 1988; *** gallons in 1989; and *** gallons in 1990. The respondents expect *** in 1991 or 1992, noting that "***"[57] Exports to other destinations have *** over the period of investigation. These exports *** in 1988 and 1989. However, in 1990, they ***. The respondents project *** in exports to other markets in 1991 and 1992.

Information supplied by the Foreign Agricultural Service (FAS) of the USDA in Bonn broadly confirms these market trends.[58] Production of tart cherries declined from 229 million pounds to 182 million pounds, or by 21 percent, between 1988 and 1989 and then rose slightly, to 186 million pounds, in 1990, representing an increase of 2 percent. The FAS report also notes that "FRG exports [of juice and concentrate] to the United States are near zero...FAS/Bonn does not expect the level of FRG shipments to the United States to rise in the future."[59] Currently, the EC consumes over 90 percent of Germany's exports of all processed tart cherries.

YUGOSLAVIA

*** is a major tart cherry juice concentrator located in Croatia. Table 13 presents data on its operations.

Table 13
Tart cherry juice concentrate:[1] ***'s production capacity, production, and shipments, 1988-90 and projected, 1991-92

* * * * * * *

Data provided to the American Embassy in Belgrade by the Yugoslavian Association of Fruit Processing Industry show that ***'s share of total Yugoslavian production of tart cherry juice concentrate *** from roughly *** in 1988 to *** in 1989 and 1990.[60] ***'s actual production of tart cherry juice concentrate *** from 1988 to 1989 and *** in 1990. *** ships most of its production of tart cherry juice concentrate to ***. Exports to the United States accounted for *** in 1988 and *** in 1989, as the quantity of these

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[57] Foreign producer questionnaire response, p. 4.

[58] USDA, Foreign Agricultural Service, Red Tart Cherry Juice and Juice Concentrate--USITC Investigation, Request for Assistance, Bonn, Apr. 12, 1991. The report estimates total German production of tart cherry juice at 1.77 million gallons in 1989. Respondents accounted, therefore, for about *** percent of all production in that year.

[59] Ibid., p. 5.

[60] U.S. Department of State telegram, "USITC Investigation of Red Tart Cherries", Belgrade, reference No. 59350, April 1991.

exports ***. In 1990, exports bound for the U.S. market ***. Exports to all other markets ***.

A clearly discernible trend is the steadily *** share of ***'s shipments destined for ***. *** between 1988 and 1989 and *** between 1989 and 1990. The estimate for 1991 predicts ***.

Overall Yugoslavian production of tart cherry juice concentrate rose 23 percent between 1988 and 1989 and declined 6 percent between 1989 and 1990.[61] Export statistics identifying individual cherry products are not available, although the primary export markets for tart cherry juice are known to be Germany, Austria, and the Soviet Union.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

Table 14 gives the import data gathered from importers' questionnaire responses. Imports from Germany dropped *** percent in 1989 and fell to zero in 1990. Imports from Yugoslavia rose slightly more than *** percent in 1989 and remained the same in 1990. Imports from other sources jumped more than *** in 1989 and decreased *** percent in 1990. Relatively large imports from *** in 1989 and 1990 explain the higher level of imports in those years.

The unit value of imports from Germany and Yugoslavia remained fairly steady from 1988 to 1989. However, in 1990, the unit value of imports from Yugoslavia increased substantially, by *** percent.

Table 14
Tart cherry juice concentrate: U.S. imports, by sources, 1988-90

* * * * * * *

U.S. Market Shares

Table 15 contains information on U.S. market shares. U.S. producers' shipment data come from the questionnaire responses of 6 of the 10 known domestic concentrators. Commission staff estimates that these six produce nearly 60 percent of total U.S. output. Commission questionnaire responses are also the source for importers' U.S. shipments. All known importers responded to the Commission's questionnaire; therefore, the import figures approach 100 percent of total importer shipments.

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[61] Production of tart cherry juice concentrate (converted to 68 degrees brix) equalled approximately 245,642 gallons in 1988, 302,328 gallons in 1989, and 283,433 gallons in 1990. Ibid.

U.S. producers captured an increasing share of the domestic market in each successive year, while market penetration of total imports decreased steadily from 44.8 percent in 1988 to 24.0 percent in 1989 and 18.0 percent in 1990, on a quantity basis. Germany's market share dropped from approximately *** percent in 1988 to *** in 1990. Shipments of Yugoslavian imports fell from *** percent of consumption in 1988 to *** percent in 1989 and *** percent in 1990. The import penetration of product from other sources remained between *** percent and *** percent. Market penetration ratios based on value showed similar trends.

Table 15
Tart cherry juice concentrate: U.S. producers' U.S. shipments, U.S. shipments of imports, and apparent U.S. consumption, 1988-90

Item	1988	1989	1990
	Quantity (1,000 gallons)		
Producers' U.S. shipments	63	214	239
Importers' U.S. shipments:			
* * *	* *	* *	
Total	51	67	52
Apparent consumption	114	281	291
	Value (1,000 dollars)		
Producers' U.S. shipments	958	3,468	4,041
Importers' U.S. shipments:			
* * *	* *	* *	
Total	712	913	844
Apparent consumption	1,670	4,381	4,885
	Share of the quantity of U.S. consumption (percent)		
Producers' U.S. shipments	55.2	76.0	82.0
Importers' U.S. shipments:			
* * *	* *	* *	
Total	44.8	24.0	18.0
	Share of the value of U.S. consumption (percent)		
Producers' U.S. shipments	57.4	79.2	82.7
Importers' U.S. shipments:			
* * *	* *	* *	
Total	42.6	20.8	17.3

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

Prices

MARKET CHARACTERISTICS

Both domestic and imported tart cherry juice concentrate are sold by the gallon in the U.S. market. The imported product is generally sold with a sugar content of 65 degrees brix, while the domestic product is generally sold at 68 degrees brix. However, representatives for both domestic firms and importers testified that they have no difficulty adjusting the brix content of the concentrate to meet a customer's needs.[62]

Tart cherry juice concentrate is sold on a spot basis as well as on a contract basis by both importers and concentrators. In 1990, concentrators reporting pricing data made *** percent of total sales (measured in gallons at 68 degrees brix) on a contract basis and *** percent on a spot basis. Importers reporting pricing data made *** percent of sales in 1990 (measured in gallons at 68 degrees brix) in the spot market. Both concentrators and importers reported that inland transportation costs for concentrate are not an important factor in the customer's sourcing decisions. Two concentrators reported selling the majority of their product to customers located more than 500 miles away from their facilities, while 2 other concentrators and 4 importers reported sales to a much more localized market. Average lead times between order and delivery to the customer were reported as between 10 and 14 days for concentrators, 5 to 10 days for the imported concentrate at its U.S. shipping point, and 45 to 60 days for concentrate ordered from the foreign supplier.

Concentrators and importers differ regarding quality comparisons between the domestic and foreign tart cherry juice concentrate. Two concentrators stated in their questionnaire responses that the domestic and foreign concentrate are used interchangeably; however, one stated that there are no quality differences between the two products, while the other stated that the domestic product is superior in color and haze. A third concentrator, which consumes most of its concentrate internally and sells only its excess production, stated that it has never used imported tart cherry juice concentrate and described the foreign and domestic products as not substitutable as inputs to its end products. Among importers responding to the question of interchangeability, one reported that the domestic and foreign products are not used interchangeably, while one reported that they are. Importers addressing the question on quality reported that quality differences do exist between the two products; differences noted include a better flavor and a deeper color for the foreign product. All 4 importers reported that no quality differences exist between tart cherry juice concentrate from Germany and Yugoslavia.

QUESTIONNAIRE PRICE DATA

The Commission requested 10 U.S. concentrators and 22 importers to provide quarterly pricing data for the period January 1988-December 1990 for their largest single quarterly sale of tart cherry juice and tart cherry juice concentrate to unrelated U.S. customers on both a spot and a contract basis. Five concentrators[63] and 4 importers provided usable price data for spot and

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[62] Transcript, pp. 81, 132.

[63] ***.

contract sales of tart cherry juice concentrate.[64] Tart cherry juice concentrate from Yugoslavia was the imported product for which a majority of the price data were reported.[65] Prices reported for both domestic and imported products were net f.o.b. at U.S. shipping point.

Price Trends

Prices for spot sales of U.S.-produced tart cherry juice concentrate fluctuated between $*** and $*** per gallon during most of the investigation period, with a general upward trend (table 16).

Table 16
Tart cherry juice concentrate: Weighted-average net f.o.b. prices and total quantities sold for contract and spot sales to U.S. customers reported by U.S. concentrators and importers, and margins of underselling (overselling), by quarters, January 1988-December 1990

* * * * * * *

Between the third and fourth quarters of 1990, prices increased by *** percent from $*** to $*** per gallon. *** stated that prices generally increased at the end of 1990 due to a supply shortage of concentrate in the U.S. market. Fewer instances of contract sales were reported by concentrators. For the seven quarters for which contract sale prices were reported between the third quarter of 1988 and the fourth quarter of 1990, prices increased by roughly *** percent.

Spot prices for concentrate imported from Yugoslavia fluctuated with no apparent trend between $*** and $*** per gallon from the third quarter of 1988 through the second quarter of 1990. Prices increased sharply in the third and fourth quarters of 1990 to $*** and $*** per gallon, respectively.[66]

Contract sales of tart cherry juice concentrate imported from Yugoslavia were reported by one importer at a price of $*** per gallon in the second and fourth quarters of 1989. The quantity of each sale was *** gallons. The same

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[64] Concentrators reported selling tart cherry juice concentrate at 68 degrees brix; importers reported selling concentrate at 65 degrees brix. For conversion factors, see app. C.

[65] *** reported sales of tart cherry juice over the investigation period. Industry sources claim that sales of single-strength juice are uncommon in the U.S. market. In addition, no pricing or related information was received for spot sales in the United States of tart cherry juice concentrate imported from Germany. One importer, ***, reported small contract sales of concentrate imported from both Germany and Yugoslavia in 1988 and 1989. Another firm, ***, reported imports of *** gallons of concentrate from Germany in 1988 and *** gallons in 1989; however, the entire volume in each year was blended with other juices and resold.

[66] One importer stated that this price increase was due to a very short crop in Yugoslavia in 1990. Telephone conversation with ***, Apr. 18, 1991. Another importer stated that the shortage of supply in the U.S. market is also due to a recent increase in demand for tart cherry juice concentrate in Europe, which includes domestic shipments in the Yugoslavian market. Telephone conversation with ***, Apr. 18, 1991.

importer also reported contract sales of concentrate from Germany in the first and second quarters of 1988 at a price of $*** per gallon, and the fourth quarter of 1988 at a price of $*** per gallon. Quantities for these sales were *** and *** gallons respectively in the first two quarters of 1988, and *** gallons in the fourth quarter of 1988.

Price Comparisons

The available price data resulted in a total of 7 quarterly price comparisons for spot sales of tart cherry juice concentrate produced domestically and imported from Yugoslavia. In the third quarter of 1988, concentrate from Yugoslavia was priced 0.9 percent higher than domestic concentrate. The Yugoslavian product then undersold the domestic product by margins ranging from 2.6 to 21.9 percent in the four comparisons between the second quarters of 1989 and 1990. In the third and fourth quarters of 1990, the Yugoslavian concentrate was priced 16.7 and 32.5 percent higher than the domestic product, respectively. Although price increases for both countries were noted during 1990, these margins are apparently due to a sharper price increase for Yugoslavian tart cherry juice concentrate.

One price comparison was possible for concentrate sold on a contract basis. In the second quarter of 1989, the Yugoslavian product was priced *** percent higher than the domestic product.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of the two countries subject to this investigation fluctuated widely in relation to the U.S. dollar over the period from January-March 1988 through October-December 1990 (table 17).[67] The nominal value of the German currency appreciated by 11.7 percent whereas the Yugoslavian currency depreciated by 98.7 percent. When adjusted for movements in producer price indexes in the United States and the specified countries, the respective values of the German and Yugoslavian currencies appreciated by 4.2 percent and 63.8 percent during the periods for which data were collected.

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[67] International Monetary Fund, International Financial Statistics, March 1991.

International Trade Administration

[A-428-809]

Initiation of Antidumping Duty Investigation: Tart Cherry Juice and Tart Cherry Juice Concentrate From Germany

AGENCY: Import Administration, International Trade Administration, Department of 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 tart cherry juice and tart cherry juice concentrate from Germany 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 tart cherry juice and tart cherry juice concentrate from Germany 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 May 3, 1991. If that determination is affirmative, we will make our preliminary determination on or before August 26, 1991.

EFFECTIVE DATE: April 16, 1991.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Brad Hess, 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) 377-3965 or (202) 377-3773, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 19, 1991, we received a petition filed in proper form by the Ad Hoc Committee of Producers of Tart Cherry Juice on behalf of the U.S. industry producing tart cherry juice and tart cherry juice concentrate. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that imports of tart cherry juice and tart cherry juice concentrate 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) 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), or (F) 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.

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 19 CFR 353.14.

United States Price and Foreign Market Value

For it's estimate of United States price (U.S. price), petitioner used Department of Commerce import statistics to calculate the average unit value of imports of cherry juice, F.O.B. German port. These import statistics are based on entries under a specific Harmonized Tariff Schedule (HTS) item number (2009.80.60.10) which was established in 1989 at the request of the U.S. industry to track imports of tart cherry juice and tart cherry juice concentrate. Petitioner asserts that there are virtually no imports of sweet cherry juice and that practically all of the imports classified under HTS item number 2009.80.60.10 are of tart cherry juice and tart cherry juice concentrate.

Petitioner based foreign market value (FMV) on constructed value. Petitioner states that cherries from Yugoslavia are used to produce tart cherry juice and tart cherry juice concentrate exported from Germany. Therefore, constructed value was based on U.S. producers' costs adjusted for differences in Yugoslavian cherry costs and German cherry juice concentrate production costs. Petitioner obtained basic Yugoslavian wage rates from the U.N. Industrial Statistical Yearbook. German wage rates were obtained from the Bureau of Labor Statistics, U.S. Department of Labor. The cherry costs

for U.S. producers were based on a cost study published in the Michigan State University Cooperative Extension Bulletin. Information on the Yugoslavian cherry industry was provided by the Agricultural Attache, Foreign Agricultural Service, United States Department of Agriculture, Belgrade. Information on the German cherry juice industry was included in a market research report. Petitioner also added the statutory minimums of ten percent for general expenses and eight percent for profit in accordance with 19 CFR 353.56.

Based on a comparison of the U.S. price and FMV, petitioner calculated dumping margins to be 164 percent. However, we noted certain discrepancies in petitioner's calculations of U.S. price and FMV. For U.S. price, petitioner had calculated an average unit value for a 15-month period ending September 1990. However, because the basis for FMV most closely represents average yearly costs for 1990, we recalculated U.S. price using import statistics for the calendar year 1990. For FMV, we noted that petitioner's calculation of constructed value included U.S. real estate taxes and incorrect Yugoslavian labor rates. In addition, certain cost estimates were not adequately documented. After adjusting for these discrepancies, we calculated a dumping margin of 117 percent.

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 imposition of a duty under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on tart cherry juice and tart cherry juice concentrate from Germany 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 tart cherry juice and tart cherry juice concentrate from Germany 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 26, 1991.

Scope of Investigation

The product covered by the this petition is tart cherry juice, whether or not concentrated, whether or not containing added sugar or other sweetening matter, unfermented and not containing added spirit. This product is produced from tart cherries (prunus cerasus). Juice from sweet cherries (prunus avium), whether or not concentrated, is not included in the scope of this investigation. Also not included in scope of this investigation is cherry syrup, an unfrozen viscous liquid containing over 50 percent of added sugars in addition to the natural sugars. Tart cherry juice and tart cherry juice concentrate are currently classifiable under Harmonized Tariff Schedule (HTS) item 2009.80.60.10. The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

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 non-privileged and non-proprietary 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, Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 3, 1991, whether there is a reasonable indication that imports of tart cherry juice and tart cherry juice concentrate from Germany are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. Otherwise, the Department will make its preliminary determination on or before August 26, 1991.

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

Dated: April 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-8815 Filed 4-15-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-803]

Initiation of Antidumping Duty Investigation: Tart Cherry Juice and Tart Cherry Juice Concentrate From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Department of 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 tart cherry juice and tart cherry juice concentrate from Yugoslavia 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 tart cherry juice and tart cherry juice concentrate from Yugoslavia 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 May 3, 1991. If that determination is affirmative, we will make our preliminary determination on or before August 26, 1991.

EFFECTIVE DATE: April 16, 1991.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Brad Hess, 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) 377-3965 or (202) 377-3773, respectively.

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Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9) 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), or (F) 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.

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 19 CFR 353.14.

United States Price and Foreign Market Value

For its estimate of United States price (U.S. price), petitioner used Department of Commerce import statistics to calculate the average unit value of imports to tart cherry juice concentrate, F.O.B. Yugoslavian port. These import statistics are based on entries under a specific Harmonized Tariff Schedule (HTS) item number (2009.80.60.10) which was established in 1989 at the request of the U.S. industry to track imports of tart cherry juice and tart cherry juice concentrate. Petitioner asserts that there are virtually no imports of sweet cherry juice and that practically all of the imports classified under HTS item number 2009.80.60.10 are of tart cherry juice and tart cherry juice concentrate.

Petitioner based foreign market value (FMV) on constructed value. Constructed value was based on U.S. producers' costs adjusted for differences in Yugoslavian costs. Petitioner obtained basic wage rates from the U.N. Industrial Statistical Yearbook. The cherry costs for U.S. producers were based on a cost study published in the Michigan State University Cooperative Extension Bulletin. Information on the Yugoslavian cherry industry was provided by the Agricultural Attache, Foreign Agricultural Service, United States Department of Agriculture, Belgrade. Petitioner also added the statutory minimums of ten percent for general expenses and eight percent for profit in accordance with 19 CFR 353.56.

Based on a comparison of the U.S. price and FMV, petitioner calculated dumping margins to be 123 percent. However, we noted certain discrepancies in petitioner's calculations of U.S. price and FMV. For U.S. price, petitioner had calculated an average unit value for a 15-month period ending September 1990. However, because the basis for FMV most closely represents average yearly costs for 1990, we recalculated U.S. price using import statistics for the calendar year 1990. For FMV, we noted that petitioner's calculation of constructed value included U.S. real estate taxes and incorrect Yugoslavian labor rates. In addition, certain cost estimates were not adequately documented. After adjusting for these discrepancies, we calculated a dumping margin of 43 percent.

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 imposition of a duty under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on tart cherry juice and tart cherry juice concentrate from Yugoslavia 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 tart cherry juice and tart cherry juice concentrate from Yugoslavia 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 26, 1991.

Scope of Investigation

The product covered by this petition is tart cherry juice, whether or not concentrated, whether or not containing added sugar or other sweetening matter, unfermented and not containing added spirit. This product is produced from tart cherries (prunus cerasus). Juice from sweet cherries (prunus avium), whether or not concentrated, is not included in the scope of this investigation. Also not included in the scope of this investigation is cherry syrup, an unfrozen viscous liquid containing over 50 percent of added sugars in addition to the natural sugars. Tart cherry juice and tart cherry juice concentrate are currently classifiable under HTS item 2009.80.60.10. The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

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 non-privileged and non-proprietary 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, Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 3, 1991, whether there is a reasonable indication that imports of tart cherry juice and tart cherry juice concentrate from Yugoslavia are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. Otherwise, the Department will make its preliminary determination on or before August 26, 1991.

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

Dated: April 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-8814 Filed 4-15-91; 8:45 am]

BILLING CODE 3510-DS-M

[Investigations Nos. 731-TA-512 and 513 (Preliminary)]

Tart Cherry Juice and Tart Cherry Juice Concentrate From Germany and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notices of the institution of preliminary antidumping investigations Nos. 731-TA-512 and 513 (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 Germany and Yugoslavia of tart cherry juice, whether or not concentrated, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter, provided for in subheading 2009.80.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. As provided in sectin 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 3, 1991.

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

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge (202-252-1183), 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 March 19, 1991, by the Cherry Marketing Institute, Inc., Okemos, MI.

Participation in the investigations.—Persons wishing to participate in these 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 appearance. 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 Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on April 9, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jeff Doidge (202-252-1183) not later than April 5, 1991, to arrange for their appearance. Parties in support of the imposition of 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 April 11, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rule (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due April 12, 1991. 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 April 15, 1991. Such additional comments must be limited to comments on business prorietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due April 16, 1991.

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).

Issued: March 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-7191 Filed 3-26-91; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX B

WITNESSES APPEARING AT THE STAFF CONFERENCE

LIST OF WITNESSES

Investigations Nos. 731-TA-512 & 513 (Preliminary)

TART CHERRY JUICE AND TART CHERRY JUICE CONCENTRATE
FROM GERMANY AND YUGOSLAVIA

Those listed below appeared at the United States International Trade Commission conference on April 9, 1991, in connection with the subject investigations.

In support of the imposition of antidumping duties:

C.R. Johnston, Managing Director, Cherry Marketing Institute, Inc., Okemos, MI

Prof. Donald Ricks, Michigan State University, East Lansing, MI

Richard Bogard, V.P. Finance, Cherry Central Cooperative, Inc., Traverse City, MI

Mike Henshell, Plant Manager, Smeltzer Orchards, Inc., Frankfort, MI

Terry Morrison, President, Cherry Growers, Inc., Traverse City, MI

James Fulleton, Tart Cherry Grower, Wenatchee, WA

Donald Gregory, Tart Cherry Grower, Suttons Bay, MI

Gordon Tulgestke, Branch Manager, Farm Credit Services, Traverse City, MI

In opposition to the imposition of antidumping duties:

Coudert Brothers
Washington, DC
on behalf of

Ernteband Fruchstsaft GmbH; Dinter GmbH; Brunia, Altlander Fruchtsaefte Gebrueder Braun GmbH and Co. KG; Firma Bayernwald; Lindavia; Firma Kurt Janske GmbH and Co. KG; Mainfrucht Obstverwertung GmbH; Centrale Marketinggesellschaft Der Deutschen Agrarwirtschaft mbH; and Verband der Deutschen Fruchtsaft-Industrie e.V., Germany

Milo G. Coerper)
Matthew P. Jaffe) --OF COUNSEL

LIST OF WITNESSES--Continued

In opposition to the imposition of antidumping duties--Continued:

Pavelic & Levites P.C.
New York, NY
on behalf of

Voce, Zagreb, Yugoslavia

Radovan S. Pavelic--OF COUNSEL

Windels, Marx, Davies & Ives
Washington, DC
on behalf of

Globtrade U.S.A., Inc., New York, NY

Bojan Bevc, President

Mark A. Cohen--OF COUNSEL

APPENDIX C

CONVERSION FACTORS USED IN THIS REPORT

CONVERSION FACTORS USED IN THIS REPORT

Brix conversion formula (65-->68):

Gallons (65) X [(Lbs of solids/gallon (65))/Lbs of solids/gallon (68))] = Gallons (68)

Gallons (65) X [(7.135)/(7.568)[1]] = Gallons (68)

Gallons (65) X (.9428) = Gallons (68)

Price conversion formula (65-->68):

Price (65) X 1/(.9428) = Price (68)

Price (65) X 1.0607 = Price (68)

Unit conversion (pounds-->gallons):

Pounds (68)/(11.130 Lbs/gallon)[1] = Gallons (68)

[1] See attached table.

OF SUGAR (SUCROSE) SOLUTIONS AT 20° C.

This table is based on the density value of Plato for solutions of cane sugar. The Baume values are from the table of Bates and Bearce. The weights are for brass weights, density 8.4. One U.S. gallon, 231 cubic inches. One pound av. 453.5924 grams. One U.S. gallon of water weighs 3778.649 grams (8.33049 pounds av.) in vacuo.

Percent of Sucrose by Weight BRIX	Weight in Pounds Per		Solids (Brix) Per		Degrees Baume (Modulus 145)	Specific Gravity at 20°/20° C.
	GALLON	CUBIC FOOT	GALLON	CUBIC FOOT		
63.9	10.921	81.69	6.972	52.202	34.48	1.31200
64.0	10.926	81.73	6.985	52.307	34.53	1.31260
64.1	10.931	81.77	7.000	52.414	34.58	1.31320
64.2	10.936	81.81	7.015	52.520	34.63	1.31381
64.3	10.941	81.84	7.030	52.627	34.68	1.31441
64.4	10.946	81.88	7.045	52.733	34.74	1.31502
64.5	10.952	81.92	7.060	52.840	34.79	1.31563
64.6	10.957	81.96	7.075	52.946	34.84	1.31623
64.7	10.962	82.00	7.090	53.053	34.89	1.31684
64.8	10.967	82.03	7.105	53.159	34.94	1.31745
64.9	10.972	82.07	7.120	53.266	34.99	1.31806
65.0	10.977	82.11	7.135	53.372	35.04	1.31866
65.1	10.982	82.15	7.149	53.479	35.09	1.31927
65.2	10.987	82.19	7.164	53.586	35.14	1.31988
65.3	10.992	82.22	7.178	53.693	35.19	1.32049
65.4	10.997	82.26	7.192	53.800	35.24	1.32110
65.5	11.002	82.30	7.207	53.908	35.29	1.32171
65.6	11.007	82.34	7.221	54.015	35.34	1.32232
65.7	11.012	82.38	7.235	54.122	35.39	1.32293
65.8	11.017	82.41	7.249	54.229	35.45	1.32354
65.9	11.022	82.45	7.264	54.336	35.50	1.32415
66.0	11.027	82.49	7.278	54.443	35.56	1.32476
66.1	11.032	82.53	7.293	54.551	35.60	1.32538
66.2	11.037	82.57	7.307	54.659	35.65	1.32599
66.3	11.043	82.60	7.322	54.767	35.70	1.32660
66.4	11.048	82.44	7.336	54.875	35.75	1.32722
66.5	11.053	82.48	7.351	54.983	35.80	1.32783
66.6	11.058	82.52	7.365	55.091	35.85	1.32844
66.7	11.063	82.56	7.380	55.199	35.90	1.32906
66.8	11.069	82.59	7.394	55.307	35.95	1.32967
66.9	11.074	82.63	7.409	55.415	36.00	1.33029
67.0	11.079	82.87	7.423	55.523	36.05	1.33090
67.1	11.084	82.91	7.438	55.632	36.10	1.33152
67.2	11.089	82.95	7.452	55.742	36.15	1.33214
67.3	11.094	82.99	7.467	55.851	36.20	1.33275
67.4	11.099	83.03	7.481	55.961	36.25	1.33337
67.5	11.105	83.07	7.496	56.070	36.30	1.33399
67.6	11.110	83.10	7.510	56.179	36.35	1.33460
67.7	11.115	83.14	7.525	56.289	36.40	1.33523
67.8	11.120	83.18	7.539	56.398	36.45	1.33584
67.9	11.125	83.22	7.554	56.508	36.50	1.33646
68.0	11.130	83.26	7.568	56.617	36.55	1.33708
68.1	11.135	83.30	7.583	56.727	36.61	1.33770
68.2	11.140	83.34	7.598	56.837	36.66	1.33832

APPENDIX D

TART CHERRY JUICE CONCENTRATE INDUSTRY SPECIFICATIONS

TART CHERRY JUICE CONCENTRATE INDUSTRY SPECIFICATIONS

A. Chemical Characteristics	Limit	Method
* * *	* * *	*

B. Physical Characteristics	Limit	Method
* * *	* * *	*

C. Microbiological Characteristics	Limit	Method
* * *	* * *	*

APPENDIX E

DISCUSSION OF THE OVERALL TART CHERRY MARKET

INTRODUCTION

Over the last 30 years, the U.S. tart cherry industry has undergone numerous changes. In the early 1960s, the domestic industry was in an over-supply position resulting in low grower prices.[1] By the early 1970s, the industry had adjusted through reduced plantings to an equilibrium position between supply and demand, resulting in moderate grower prices. The next 6 years (1976-81) saw domestic supplies lower than demand with high grower prices, as reduced bearing acreage and severe weather affected domestic supplies. The period 1982-84 saw domestic supply and demand in balance with moderate grower prices. However, this period also was a time in which growers increased new plantings because of the high grower prices in the late 1970s. Beginning in 1985, the U.S. industry was again facing expanding supplies and, by the late 1980s, supply again exceeded demand with falling grower prices and reduced plantings.

STRUCTURE

Growers

In 1987, there were 2,613 tart cherry growers in the United States.[2] Michigan had the largest number of growers harvesting cherries in that year, with 1,119. Pennsylvania followed, with 284 growers; New York had 268; Oregon had 214; and Wisconsin had 152.

Table E-1 provides data on the bearing area (in hectares) of tart cherry trees in the major producing states in recent years.

Table E-1
Tart cherries: Bearing hectares in leading producing states, 1987-90

(In hectares)

Producing state	1987	1988	1989	1990
Michigan	13,760	13,476	13,476	13,314
New York	2,104	2,104	2,023	1,902
Wisconsin	1,133	1,133	1,174	1,174
Oregon	728	728	809	850
Pennsylvania	728	728	728	728
Other[1]	1,802	1,774	1,737	1,737
Total	20,255	19,943	19,947	19,705

[1] Data include estimates for Colorado and Utah.

Source: Compiled from official statistics of the U.S. Department of Agriculture.

[1] The U.S. Tart Cherry Subsector, Staff Paper No. 85-60, Donald Ricks and Larry Hamm, Department of Agricultural Economics, Michigan State University, May 1985.

[2] U.S. Department of Commerce, Census of Agriculture, 1987.

Bearing area peaked in 1987 at 20,255 hectares following an expansion program undertaken by growers between 1976 and 1981. Bearing acreage has declined irregularly since 1987, to 19,705 hectares in 1990, as growers have experienced declining prices, excess production, and no market for some of their tart cherry production.

Vertical integration has increased over the last several decades in the tart cherry industry. Many growers have joined cooperative processing firms or have established their own processing operations. They have pursued this strategy because it provides them with storage for their fruit during bumper crop years and partially insulates them from fluctuating prices.

Most tart cherry growers are diversified to some degree. Many growers produce other horticultural crops or are engaged in other agricultural activities. Many cherry growers now supplement their farm income with non-farm work. In general, the importance of fresh tart cherry production relative to other agricultural products varies significantly among producers.

Processors

The majority of the cherry processors are located in Michigan. Data published by the Michigan Agricultural Cooperative Marketing Association, Inc., (MACMA) and the American Agricultural Marketing Association (AAMA) indicate that there were 30 processors in Michigan in 1990, 9 in Wisconsin, 7 each in Utah and Oregon, 11 in New York, 2 in Washington, and 1 each in Colorado, Montana, and Pennsylvania.

As noted previously, the processing industry has undergone substantial changes. Most of the present processing facilities are cooperatives or are grower-owned. Of the 30 processing plants in Michigan, 7 are cooperatives and account for the majority of the cherries processed. There are also 15 grower/processors in Michigan. Nearly all of the independent processors in Michigan have gone out of business or have been purchased by cooperatives or growers.

Some cherry processors are diversified and pack other fruits and vegetables. However, a substantial portion of the grower-owned processors handle cherries only.

PRODUCTION

Table E-2 provides production figures for U.S. tart cherry production in 1987-90.

U.S. farm output of tart cherries expanded during much of the 1980's and culminated in 1987 with a crop of 162,880 tons, valued at $22.4 million. With the exception of 1964, this harvest was the largest in the last 50 years. Output in 1990 was 94,710 tons, 42 percent lower than in 1987; its estimated value was $29.6 million.

Table E-2
Tart cherries: U.S. production and utilization, by major producing states, 1987-90

(In thousands of metric tons)

Item	1987	1988	1989	1990
Production:				
Lake States:				
Michigan	120.20	81.64	81.64	72.57
New York	15.87	9.97	14.06	7.48
Pennsylvania	2.49	4.08	2.72	1.58
Wisconsin	6.35	4.03	3.44	2.17
Total	144.91	99.72	101.86	83.80
Western States:				
Utah	13.15	4.98	10.88	7.03
Oregon	3.62	1.81	6.80	3.40
Colorado	1.13	.58	.22	.45
Total	17.80	7.37	17.90	10.88
Grand total[1]	162.84	107.13	119.79	94.71
Utilization:				
Fresh:				
Lake States:				
Michigan	2.26	1.36	1.36	1.36
New York	.90	.13	.22	.13
Pennsylvania	.40	.36	.31	([2])
Wisconsin	.13	.13	.18	.04
Total	3.69	1.98	2.07	1.53
Western States:				
Utah	.09	.04	.04	.04
Oregon	.27	.22	.90	.40
Colorado	([4])	([4])	([4])	([2])
Total	.36	.26	.94	.44
Grand total[1]	4.12	2.26	3.03	2.26
Processed:				
Lake States:				
Michigan	99.79	80.28	75.75	71.21
New York	10.16	9.61	9.97	5.89
Pennsylvania	1.72	3.71	2.26	([3])
Wisconsin	2.08	3.76	2.94	1.95
Total	113.75	97.36	90.92	79.05
Western States:				
Utah	8.98	4.30	10.16	6.12
Oregon	2.54	1.58	5.89	2.99
Colorado	([4])	([4])	([4])	([3])
Total	11.52	5.88	16.05	9.11
Grand total[1]	125.60	103.64	107.18	89.76
Total utilization, all forms[1]	129.72	105.91	110.22	92.03

[1] Grand totals include data for minor producing states.
[2] Included in grand total for fresh utilization.
[3] Included in grand total for processed utilization.
[4] Data are not available.

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

Source: Compiled from official statistics of the U.S. Department of Agriculture.

The Lake States produce the majority of tart cherries, with Michigan accounting for the preponderance of output. New York ranks a distant second. Utah is the principal producing state outside of the Lake States, while Oregon produces a significant amount in certain years.[3]

Domestic production of fresh tart cherries fluctuates widely, as table E-3 shows. Production, however, has generally been on the increase.

Weather is probably the single most important factor in determining the supply of tart cherries in the U.S. market. A late spring frost or freeze can significantly cut crop size, especially in light of the concentration of tart cherry production in Michigan. In certain years, severe weather or unfavorable market conditions forced growers to abandon production before harvest. For example, in 1987 excellent weather in the Lake States spurred a bumper crop which drove the market price down to a point where some growers became unable to cover harvest costs with revenue from tart cherry sales. As a consequence, many growers abandoned a portion of their cherry crop to avoid incurring the cost of harvesting.

Table E-3
Tart cherries: U.S. production, abandonment, and utilization, 1981-90

Year	Annual production	Production abandonment	Fresh utilization	Processed utilization
	1,000 metric tons (raw product equivalent)			
1981.....	61.1	0.2	1.8	59.1
1982.....	141.0	16.3	3.4	121.3
1983.....	70.1	0.5	2.4	67.2
1984.....	122.9	7.0	3.6	112.3
1985.....	129.8	2.7	3.4	123.7
1986.....	101.7	2.6	2.5	96.6
1987.....	162.6	33.1	4.1	125.4
1988.....	107.1	1.2	2.3	103.6
1989.....	119.8	9.6	3.0	107.2
1990.....	94.7	2.7	2.3	89.7
	Share of total (percent)			
1981.....	100.0	0.3	2.9	96.8
1982.....	100.0	11.6	2.4	86.0
1983.....	100.0	0.7	3.4	95.9
1984.....	100.0	5.7	2.9	91.4
1985.....	100.0	2.1	2.6	95.3
1986.....	100.0	2.6	2.5	94.9
1987.....	100.0	20.4	2.5	77.1
1988.....	100.0	1.1	2.1	96.8
1989.....	100.0	8.0	2.5	89.5
1990.....	100.0	2.9	2.4	94.7

Source: Compiled from official statistics of the U.S. Department of Agriculture.

[3] Petitioners believe that the USDA statistics do not include roughly 8 million pounds of annual production in Washington state. Transcript, pp. 32 and 138.

Because of the perishable nature of fresh tart cherries and consumers' preference for processed cherries, growers sell only a small percentage of their fresh cherries to retail consumers. During 1987-90, fresh market sales never exceeded 2.5 percent of output. The vast majority of tart cherry production is destined for the processed cherry products market, which encompasses several distinct segments, such as frozen cherries, canned cherries (in water and pie filling), and cherry juice, and numerous minor segments, such as dried cherries.

Table E-4 shows domestic production of processed cherries by major categories.

Table E-4
Tart cherries: Processed utilization by initial handlers, 1981-90

(1,000 metric tons, raw product equivalent)

Year	Total processed utilization	Frozen	Canned	Juice	Other[1]
1981.....	59.1	39.7	9.0	1.0	13.3
1982.....	121.3	72.9	9.8	2.4	22.6
1983.....	67.2	47.8	4.0	2.6	12.9
1984.....	112.3	75.6	8.1	2.7	25.9
1985.....	123.7	93.9	8.1	2.2	19.5
1986.....	96.6	72.3	5.3	4.3	14.7
1987.....	125.4	85.4	9.9	7.7	22.4
1988.....	103.6	73.3	9.1	5.1	16.2
1989.....	107.2	79.9	3.4[2]	4.3	19.6[2]
1990.....	89.7	54.4	([3])	3.1	32.2[2]

[1] Includes canned cherry pie filling, wine cherries, and other miscellaneous uses. It is believed that the vast majority of the cherries included herein go into canned pie filling.
[2] Estimated.
[3] Included in "other."

Source: Compiled from official statistics of the U.S. Department of Agriculture, and 1990 Red Tart Cherries, Crop Statistics & Market Analysis, MACMA-AAMA.

The frozen segment of the tart cherry market is the largest, accounting for approximately two-thirds of product movement in most years. Food manufacturers use frozen tart cherries primarily as ingredients in the production of pies and other prepared cherry desserts. Mrs. Smith, Sara Lee, and Pillsbury are examples of large-volume frozen tart cherry users. Bakeries represent another large source of demand for frozen tart cherries.

Canned tart cherries come in two main forms: canned cherry pie filling and canned cherries in water. Canned pie filling and canned cherries account for 25 percent and 10 percent, respectively, of the tart cherry market. Canned cherry pie filling is marketed to wholesale and retail grocery firms

who usually purchase retail-size cans for sale to consumers. Some canned pie filling is also marketed to institutional users and food service outlets for use in pies and other cherry desserts.

The market for canned cherries is similar to that for pie filling. Hotels, bakeries, and other food service outlets account for the majority of purchases. They use canned cherries principally to make pies and other cherry desserts.

The market for cherry juice is a minor but growing outlet for tart cherries. Between 1988 and 1990, cherry juice accounted for 4.2 percent of the movement of domestically processed tart cherries at the initial handling stage. On average, roughly 4.5 percent of frozen cherries (or 2.4 percent of all utilized cherries) produced by processors serves as input into tart cherry juice concentrate production.[4] In addition, Washington growers reportedly annually produce 8 million pounds of juice cherries[5] for which USDA figures do not account.[6] These 8 million pounds represent approximately 3.5 percent of U.S. utilized production. In total, the juice market absorbs approximately 7 percent to 10 percent of processed tart cherry output per year.

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[4] Staff estimates based on data provided in National Agricultural Statistics Service, USDA, "Fruit and Tree Nuts, Situation and Outlook Report," March 1991, p. 23.

[5] James Fulleton, tart cherry grower, transcript, p. 32.

[6] Dick Johnston, CMI, transcript, p. 138.

APPENDIX F

GROWERS' QUESTIONNAIRE DATA

GROWER'S QUESTIONNAIRE DATA

Table F-1 provides the acreage, production, shipments, and employment data collected from tart cherry growers in these investigations. Ninety-five of the 99 growers' questionnaires received contained usable information.

Financial experience

Sixty-eight growers provided usable income-and-loss data on overall (Tables F-2 through F-4) and tart cherry (Tables F-5 through F-7) operations. The growers also provided unusual and nonrecurring expenses and causes of loss of income and impact of imports. Of the 95 grower questionnaires returned, 68 contained usable financial data; these 68 accounted for approximately 18 percent of the entire U.S. tart cherry crop in 1990.

As shown in table F-5, the partners and proprietors have not realized a net income before taxes and distributions to partners and proprietors from tart cherry operations in any of the three years. Although corporations realized net income before taxes in two of the three years, as shown in table F-6, the combined operations for all tart cherry growers, as shown in table F-7, reflected the losses shown by partners and proprietors in all of the three years. Any incremental amount received from additional sales or increases in the price of tart cherry juice concentrate would probably have a direct effect on net income before taxes and distributions to partners and proprietors for those farms who have harvested cherries sent to processors. The expenses of growing and harvesting would have been incurred by the farmers; any reduction in revenue caused by non-use of cherries for feedstock may have a direct effect on the profitability or the magnitude of loss of the farm operation.

Forty-four growers (13 corporations and 31 partnerships and proprietorships) provided assets, liabilities, and equity for overall farm operations, as shown in table F-8. The reporting growers realized a positive return on overall farm operations in 1988 and 1990 but incurred a negative return in 1989.

Fifty growers (16 corporations and 34 partnerships and proprietorships) provided capital expenditures for overall operations, as shown in table F-9. Forty-six of these growers (14 corporations and 32 partnerships and proprietorships) also provided capital expenditures for tart cherries. Capital expenditures for all growers for all products and tart cherry products decreased from 1988 to 1989 and, then, increased in 1990 to a level exceeding the 1988 capital expenditures.

Comments on Unusual and Nonrecurring Events

The growers were asked if they had incurred any unusual or nonrecurring events which may have resulted in additional expenses or loss of income. The growers were asked to indicate these events for specific items and to provide other occurrences not specifically requested. The number of growers, from the

68 growers providing usable financial data, indicating unusual or nonrecurring events by item was:

Start-up or shutdown expenses	1
Change in accounting principles	1
Material write-off of assets	3
Material effects of lack of labor	4
Plant diseases	5
Weather damage (frost, wind, heavy rain, drought, etc.)	45
Loss of chemical registration	13
Replanting and pruning of weather damaged orchards	6
Planting trees on new land	8

Other events mentioned by the growers included increases in the cost of chemicals and fertilizers, removing unprofitable trees, and infestation of the cherry fruit fly.

Some of the growers quantified the estimated additional expenses or lost revenue caused by weather damage for each year. There were 9 growers losing $340,000 in 1988, 14 growers losing $445,000 in 1989, and 13 growers losing $391,000 in 1990. However, three growers stated that the surplus of tart cherries would have been even higher without the weather damage and would have depressed market prices further.

Impact of Imports

The Commission requested the growers to describe and explain the actual and anticipated negative effects, if any, of imports of tart cherry juice and tart cherry juice concentrate from Germany and Yugoslavia on their growth, investment, development and production efforts, and ability to raise capital.

Actual Negative Effects

Fifty-three of the 68 growers providing usable financial data stated that they incurred actual negative effects caused by imports from Germany and/or Yugoslavia. Eleven of the growers stated that they did not incur any actual negative effects as a result of imports. Three of the growers stated that they could not assess if the negative effects were the cause of imports and one grower did not respond to the question. The growers were asked to indicate negative effects for specific items and to provide other negative effects not specifically requested. The number of growers indicating actual negative effects caused by imports by item was:

Cancellation or rejection of expansion projects	31
Denial or rejection of investment proposal	8
Reduction in the size of capital investments	34
Rejection of bank loans for current operations	16
Rejection of bank loans for long term financing	6
Lowering of credit rating	15
Selling of assets to pay debt obligations	20
Obtaining FmHA emergency disaster loans	10
Capitalization of operating losses	15
Increase in debt obligations	31
Obtaining other or additional employment	17

Other actual negative effects mentioned by the growers were loss of equity; small or no profit margins; reduction of employees; no cash flow; unable to meet debt obligations; can barely make interest payments; low prices; when juice cherries drop in price so does the cherry market; tart cherry juice market prices have fallen more than non juice cherry prices; lost revenue; without a juice market the grower has no market for weather damaged cherries; need juice market for overproduction; oversupply-imports not needed; cannot afford to raise cherries-have to reduce farm labor to pay farm expenses; the loss of Alar means more cherries for juice but there is a limited market at low prices; perpetual loss situation; cannot plant new cherry trees; not replacing old machinery; cherries graded below A or B are rejected-no secondary market; and can't sell juice cherries because the market is so weak.

Assets sold to pay debt obligations included retirement plans, land, and machinery. One grower stated that he is considering subdividing part of the farm to pay debt obligations.

Anticipated negative effects

Sixty-three of the 68 growers indicated that they anticipate negative effects as the result of imports from Germany and/or Yugoslavia. Four growers stated that they did not anticipate any negative effects as a result of imports and one grower stated that he could not assess any anticipation of negative effects. Comments provided by the growers included: lost revenue; potential loss of farming operations; increased imports-lower prices; investment being taken from cherries and put in other crops creating a surplus in them; no market will result in dumping of juice cherries; increased debt obligations; no market or low prices for wind damaged cherries; processors will not buy cherries from growers; imports can only harm already depressed market; juice cherries will be left in the field because of low return; cut back on updating equipment; surplus of cherries for juice and new orchards is only made worse by imports; lower prices for juice cherries will have a negative impact on other cherry products; not profitable to harvest juice cherries; although cherry juice sales may be a small part of the business it is needed at a profitable price to stay in business; force growers to sell assets to remain in business; and not maintaining acreage levels will cause overhead costs to rise resulting in lower profits.

Table F-1
Tart cherries: Certain salient data of U.S. growers, 1988-90

Item	1988	1989	1990
Farm acreage:			
Total farm acreage	38,500	37,669	38,591
Tart cherry acres:			
Bearing and nonbearing	10,515	9,985	9,964
Bearing	8,835	8,427	8,513
Abandoned and/or not harvested	462	281	245
Production (1,000 pounds)	44,623	43,651	48,468
Shipments:			
Sold for processing:			
Quantity (1,000 pounds)	44,599	43,625	48,449
Value (1,000 dollars)	7,398	6,140	[1]6,478
Unit value (cents per pound)	16.6	14.1	15.8
Sold on the fresh market:			
Quantity (1,000 pounds)	24	26	19
Value (1,000 dollars)	10	11	11
Unit value (cents per pound)	40.3	42.9	57.1
Total shipments:			
Quantity (1,000 pounds)	44,623	43,651	48,468
Value (1,000 dollars)	7,407	6,151	[1]6,489
Unit value (cents per pound)	16.6	14.1	15.8
Hours worked by production and related workers (PRWs)	311,466	329,759	319,548
Total compensation paid to PRWs (1,000 dollars)	1,896	2,011	1,971
Hourly total compensation paid to PRWs	$6.28	$6.28	$6.35
Productivity (pounds per hour)	133.5	125.2	145.8
Unit labor costs (cents per pound)	4.8	5.0	4.3

[1] Does not include the value of production for 17 growers whose 1990 proceeds were not yet available.

Note.--Ratios are calculated using data provided by firms supplying both numerator and denominator information.

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

Table F-2
Income-and-loss experience of partnership and proprietorship growers on the overall operations of their farms where tart cherries are produced, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Tart cherry sales	3,316	2,901	3,358
Other farm product sales	5,275	5,239	5,321
Other farm income	1,057	1,537	974
Total farm income	9,648	9,677	9,653
Growing and operating expenses:			
Labor hired	2,061	2,089	2,076
Machine work	231	225	186
Depreciation	1,296	1,199	1,079
Rent	188	195	139
Salaries	44	45	45
Purchases for resale	170	269	221
Interest expense	955	931	831
Other	4,142	4,176	4,415
Total	9,087	9,129	8,992
Net farm income before income taxes and distributions to proprietors and partners	561	548	661
Cash flow[1]	1,857	1,747	1,740
	Ratio to total farm income (percent)		
Tart cherry sales	34.4	30.0	34.8
Growing and operating expenses	94.2	94.3	93.2
Net farm income before income taxes and distributions to proprietors and partners	5.8	5.7	6.8
	Number of firms reporting		
Net farm losses	18	18	14
Data	51	51	51

[1] Cash flow is defined as net income or loss plus depreciation.

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

Table F-3
Income-and-loss experience of corporate growers on the overall operations of their farms where tart cherries are produced, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Tart cherry sales	2,210	2,216	2,620
Other farm product sales	4,826	4,668	6,464
Other farm income	344	647	576
Total farm income	7,380	7,531	9,660
Growing and operating expenses:			
Labor hired	1,998	2,239	2,783
Machine work	338	372	354
Depreciation	690	639	712
Rent	508	581	548
Officers' salaries	611	660	735
Other salaries	147	125	192
Purchases for resale	8	0	1
Interest expense	411	334	513
Other	2,436	3,015	3,457
Total	7,147	7,965	9,295
Net farm income or (loss) before income taxes	233	(434)	365
Cash flow[1]	923	205	1,077
	Ratio to total farm income (percent)		
Tart cherry sales	29.9	29.4	27.1
Growing and operating expenses	96.8	105.8	96.2
Net farm income or (loss) before income taxes	3.2	(5.8)	3.8
	Number of firms reporting		
Net farm losses	5	6	8
Data	16	16	17

[1] Cash flow is defined as net income or loss plus depreciation.

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

Table F-4
Income-and-loss experience of all growers on the overall operations of their farms where tart cherries are produced, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Tart cherry sales	5,526	5,117	5,978
Other farm product sales	10,101	9,907	11,785
Other farm income	1,401	2,184	1,550
Total farm income	17,028	17,208	19,313
Growing and operating expenses:			
Labor hired	4,059	4,328	4,859
Machine work	569	597	540
Depreciation	1,986	1,838	1,791
Rent	696	776	687
Officers' salaries	611	660	735
Other salaries	191	170	237
Purchases for resale	178	269	222
Interest expense	1,366	1,265	1,344
Other	6,578	7,191	7,872
Total	16,234	17,094	18,287
Net farm income before income taxes and distributions to proprietors and partners	794	114	1,026
Cash flow[1]	2,780	1,952	2,817
	Ratio to total farm income (percent)		
Tart cherry sales	32.5	29.7	31.0
Growing and operating expenses	95.3	99.3	94.7
Net farm income before income taxes and distributions to proprietors and partners	4.7	.7	5.3
	Number of firms reporting		
Net farm losses	23	24	22
Data	67	67	68

[1] Cash flow is defined as net income or loss plus depreciation.

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

Table F-5
Income-and-loss experience of partnership and proprietorship growers on their operations producing tart cherries, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Tart cherry sales:			
Fresh market sales	8	9	11
Sales to processors	3,308	2,892	3,347
Total net sales	3,316	2,901	3,358
Growing and operating expenses:			
Labor hired	666	663	636
Machine work	127	121	95
Depreciation	620	529	477
Rent	80	79	61
Salaries	35	36	36
Purchases for resale	0	0	8
Interest expense	479	447	390
Other	1,787	1,845	1,833
Total	3,794	3,720	3,536
Net (loss) before income taxes and distributions to proprietors and partners	(478)	(819)	(178)
Cash flow[1]	142	(290)	299
	Ratio to net sales (percent)		
Sales to processors	99.8	99.7	99.7
Growing and operating expenses	114.4	128.2	105.3
Net (loss) before income taxes and distributions to proprietors and partners	(14.4)	(28.2)	(5.3)
	Number of firms reporting		
Net losses	32	29	24
Data	51	51	51

[1] Cash flow is defined as net income or loss plus depreciation.

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

Table F-6
Income-and-loss experience of corporate growers on their operations producing tart cherries, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Tart cherry sales:			
Fresh market sales	0	0	0
Sales to processors	2,210	2,216	2,620
Total net sales	2,210	2,216	2,620
Growing and operating expenses:			
Labor hired	481	524	515
Machine work	110	153	91
Depreciation	246	258	246
Rent	209	190	168
Officers' salaries	150	186	192
Other salaries	5	5	10
Purchases for resale	0	0	0
Interest expense	97	87	102
Other	887	1,141	1,171
Total	2,185	2,544	2,495
Net income or (loss) before income taxes	25	(328)	125
Cash flow[1]	271	(70)	371
	Ratio to net sales (percent)		
Sales to processors	100.0	100.0	100.0
Growing and operating expenses	98.9	114.8	95.2
Net income or (loss) before income taxes	1.1	(14.8)	4.8
	Number of firms reporting		
Net losses	6	9	7
Data	16	16	17

[1] Cash flow is defined as net income or loss plus depreciation.

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

Table F-7
Income-and-loss experience of all growers on their operations producing tart cherries, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Tart cherry sales:			
Fresh market sales	8	9	11
Sales to processors	5,518	5,108	5,967
Total net sales	5,526	5,117	5,978
Growing and operating expenses:			
Labor hired	1,147	1,187	1,151
Machine work	237	274	186
Depreciation	866	787	723
Rent	289	269	229
Officers' salaries	150	186	192
Other salaries	40	41	46
Purchases for resale	0	0	8
Interest expense	576	534	492
Other	2,674	2,986	3,004
Total	5,979	6,264	6,031
Net (loss) before income taxes and distributions to proprietors and partners	(453)	(1,147)	(53)
Cash flow[1]	413	(360)	670
	Ratio to net sales (percent)		
Sales to processors	99.9	99.8	99.8
Growing and operating expenses	108.2	122.4	100.9
Net (loss) before income taxes and distributions to proprietors and partners	(8.2)	(22.4)	(.9)
	Number of firms reporting		
Net losses	38	38	31
Data	67	67	68

[1] Cash flow is defined as net income or loss plus depreciation.

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

Table F-8
Value of assets and return on assets of 45 U.S. growers' farms where tart cherries are produced, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Corporations:			
Total assets	13,371	11,932	12,009
Total liabilities	7,561	6,587	7,423
Equity	5,810	5,345	4,586
Partnerships and proprietorships:			
Total assets	24,609	23,669	22,727
Total liabilities	11,517	11,080	11,253
Equity	13,092	12,589	11,474
All growers:			
Total assets	37,980	35,601	34,736
Total liabilities	19,078	17,667	18,676
Equity	18,902	17,934	16,060
	Return on total assets (percent)[1] [2]		
Corporations	0.7	(4.5)	3.1
Partnerships and proprietorships	2.6	1.5	1.7
All growers	1.9	(0.5)	2.2

[1] Defined as net farm income or loss divided by total asset value.
[2] Computed using data from only those growers who supplied both asset and income-and-loss information and, as such, may not be derivable from data shown.

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

Table F-9
Capital expenditures by U.S. growers of tart cherries, fiscal years 1988-90

(In thousands of dollars)

Item	1988	1989	1990
Corporations:			
All products	511	559	834
Tart cherries	125	163	367
Partnerships and proprietorships:			
All products	1,058	870	1,453
Tart cherries	488	438	393
All growers:			
All products	1,569	1,429	2,287
Tart cherries	613	601	760

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

APPENDIX G

PROCESSORS' QUESTIONNAIRE DATA

PROCESSORS'S QUESTIONNAIRE DATA

Table G-1 presents the production, shipment, and employment data of the 15 processors that supplied the Commission with usable data on their tart juice cherry feedstock operations.

Financial experience

Eleven processors provided usable financial data. Six of the processors (4 corporations and 2 cooperatives) supplied income-and-loss data on overall operations (tables G-2 and G-5). Eight of the processors (6 corporations and 2 cooperatives) provided income-and-loss data on all tart cherry products (tables G-3 and G-6). Seven of the processors (5 corporations--not more than four in any one year--and 2 cooperatives) provided income-and-loss data on tart juice cherry feedstock (tables G-4 and G-7). Processors not providing data on tart juice cherry feedstock stated that they do not account separately for feedstock and/or that it is considered a by-product of tart cherry products.

End-of-period investment in facilities, reported by five processors (non-cooperatives) producing tart cherry products, is presented in table G-8. Table G-9 presents the value of assets for the two processors (cooperatives).

Table G-10 shows capital expenditures reported by seven processors (5 non-cooperatives and 2 cooperatives). Reported capital expenditures for tart juice cherry feedstock were $*** in 1988 and $*** in 1990.

Impact of Imports

The Commission requested the processors to describe and explain the actual and anticipated negative effects, if any, of imports of tart cherry juice and tart cherry juice concentrate from Germany and Yugoslavia on their growth, investment, development and production efforts, and ability to raise capital. The processors were also asked if the scale of capital investments undertaken had been influenced by the presence of imports of tart cherry juice or tart cherry juice concentrate from Germany and Yugoslavia. Their responses are shown below:

Actual Negative Effects--Non-Cooperatives

* * * * * * *

Anticipated Negative Effects--Non-Cooperatives

* * * * * * *

Influence on Scale of Capital Investments--Non-Cooperatives

* * * * * * *

Actual Negative Effects--Cooperatives

* * * * * * *

Anticipated Negative Effects--Cooperatives

* * * * * * *

Influence on Scale of Capital Investments--Cooperatives

* * * * * * *

Table G-1
Tart juice cherry feedstock: Certain salient data, 1988-90

Item	1988	1989	1990
Production (1,000 pounds)	2,956	3,869	5,667
End-of-period capacity (1,000 pounds)	9,956	10,347	11,058
Capacity utilization (percent)	29.7	37.4	51.2
Shipments:			
Company transfers:			
Quantity (1,000 pounds)	243	131	777
Value (1,000 dollars)	19	2	35
Unit value (cents per pound)	7.8	1.5	4.5
Domestic shipments:			
Quantity (1,000 pounds)	2,813	3,724	4,903
Value (1,000 dollars)	234	334	377
Unit value (cents per pound)	8.3	9.0	7.7
U.S. shipments:			
Quantity (1,000 pounds)	3,056	3,855	5,680
Value (1,000 dollars)	253	336	412
Unit value (cents per pound)	8.3	8.7	7.3
Inventories (1,000 pounds)	0	25	12
Ratio of inventories to--			
Production (percent)	0	0.6	0.2
U.S. shipments (percent)	0	.6	.2
Total shipments (percent)	0	.6	.2
Number of production and related workers (PRWs)	62	90	199
Hours worked by PRWs	10,773	15,176	38,126
Wages paid to PRWs	$46,051	$67,444	$152,432
Total compensation paid to PRWs	$55,502	$78,075	$162,406
Hourly wages paid to PRWs	$4.27	$4.44	$4.00
Hourly total compensation paid to PRWs	$5.15	$5.14	$4.26
Productivity (pounds per hour)	242.2	228.8	114.8
Unit labor costs[1] (cents per pound)	2.1	2.2	3.7

[1] On the basis of total compensation paid.

Note.--Ratios are calculated using data provided by firms supplying both numerator and denominator information.

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

Table G-2
Income-and-loss experience of U.S. processors (non-cooperatives) on the overall operations of their establishments wherein tart cherry products are produced, fiscal years 1988-90

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Table G-3
Income-and-loss experience of U.S. processors (non-cooperatives) on their operations producing all tart cherry products, fiscal years 1988-90

* * * * * * *

Table G-4
Income-and-loss experience of U.S. processors (non-cooperatives) on their operations producing tart juice cherry feedstock, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Net sales	38	62	84
Cost of goods sold	94	105	75
Gross profit or (loss)	(56)	(43)	9
Selling, general, and administrative expenses	1	2	1
Operating income or (loss)	(57)	(45)	8
Interest expense	0	2	5
Other income, net	0	0	0
Net income or (loss) before income taxes	(57)	(47)	3
Depreciation and amortization	42	32	18
Cash flow[1]	(15)	(15)	21
	Ratio to net sales (percent)		
Cost of goods sold	247.4	169.4	89.3
Gross profit or (loss)	(147.4)	(69.4)	10.7
Selling, general, and administrative expenses	2.6	3.2	1.2
Operating income or (loss)	(150.0)	(72.6)	9.5
Net income or (loss) before income taxes	(150.0)	(75.8)	3.6
	Number of firms reporting		
Operating losses	3	3	2
Net losses	3	3	2
Data	4	4	4

[1] Cash flow is defined as net income or loss plus depreciation and amortization.

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

Table G-5
Income-and-loss experience of U.S. processors (cooperatives) on the overall operations of their establishments wherein tart cherry products are produced, fiscal years 1988-90

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Table G-6
Income-and-loss experience of U.S. processors (cooperatives) on their operations producing all tart cherry products, fiscal years 1988-90

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Table G-7
Income-and-loss experience of U.S. processors (cooperatives) on their operations producing tart juice cherry feedstock, fiscal years 1988-90

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Table G-8
Value of assets and return on assets of 5 U.S. processors' (non-cooperatives) establishments wherein tart cherry products are produced, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Overall establishment:			
Fixed assets:			
Original cost	15,910	17,652	14,701
Book value	5,439	6,505	5,672
Total assets[1]	22,465	29,179	29,535
Tart cherry products:			
Fixed assets:			
Original cost	2,925	3,452	3,260
Book value	1,157	1,259	1,191
Total assets[2]	3,675	3,633	4,350
Tart juice cherry feedstock:			
Fixed assets:			
Original cost	95	96	90
Book value	70	88	94
Total assets[2]	0	0	0
	Return on total assets (percent)[3]		
Overall establishment:			
Operating return[4]	6.8	9.6	11.3
Net return[5]	6.8	6.6	10.7
Tart cherry products:			
Operating return[4]	8.3	17.9	24.7
Net return[5]	7.6	13.0	21.6
Tart juice cherry feedstock:			
Operating return[4]	-	-	-
Net return[5]	-	-	-

[1] Defined as book value of fixed assets plus current and noncurrent assets.
[2] Total establishment assets are apportioned, by firm, to product groups on the basis of the ratio of the respective book values of fixed assets.
[3] Computed using data from only those firms supplying both asset and income-and-loss information, and as such, may not be derivable from data presented.
[4] Defined as operating income or loss divided by asset value.
[5] Defined as net income or loss divided by asset value.

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

Table G-9
Value of assets of 2 U.S. processors' (cooperatives) establishments wherein tart cherry products are produced, fiscal years 1988-90

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Table G-10
Capital expenditures by U.S. processors of tart cherries, fiscal years 1988-90

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