Fresh Garlic From China

Investigation No. 731-TA-683 (Preliminary)

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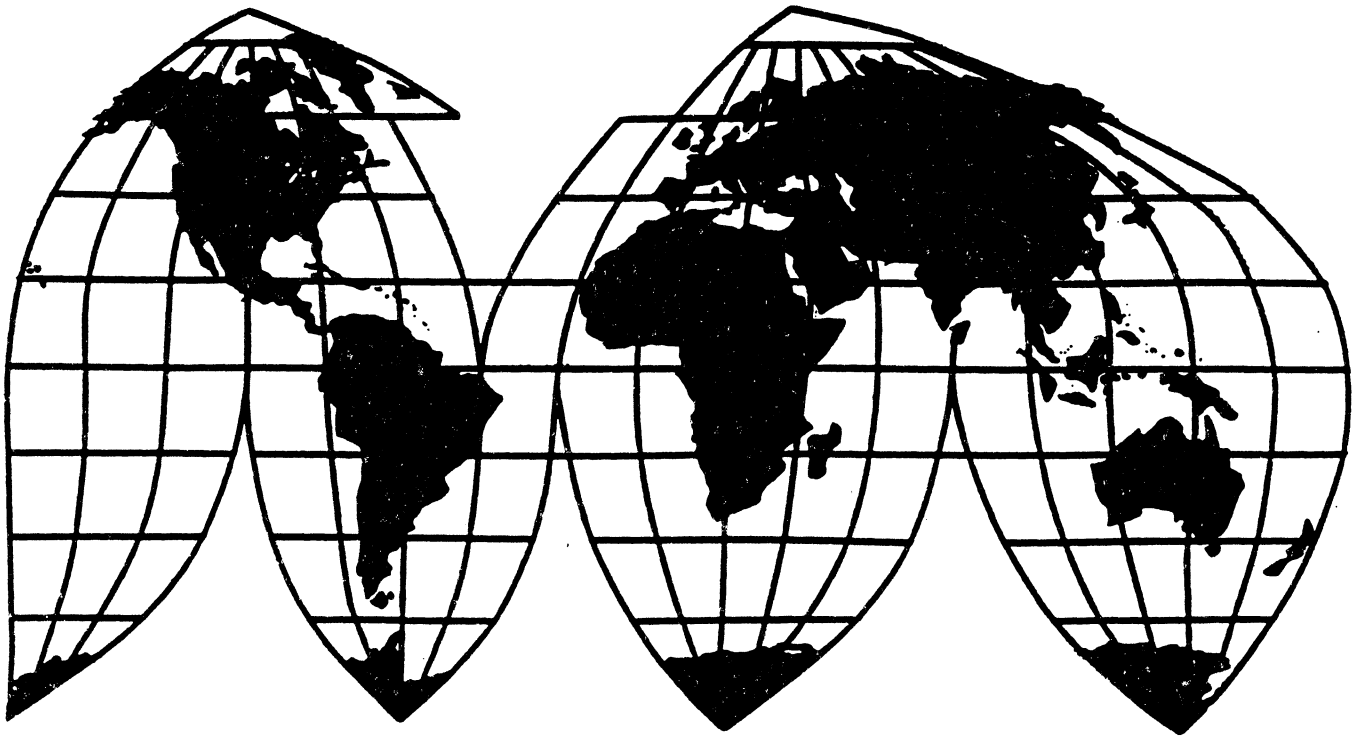

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PART I

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-683 (Preliminary)

FRESH GARLIC FROM CHINA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from The People's Republic of China (China) of fresh garlic, provided for in subheadings 0703.20.00, 0710.80.70, and 0710.80.97 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 January 31, 1994, a petition was filed with the Commission and the Department of Commerce by the Fresh Garlic Producers Association, consisting of the A&D Christopher Ranch, Gilroy, CA; Belridge Packing Co., Wasco, CA; Colusa Produce Corp., Colusa, CA; Denice & Filice Packing Co., Hollister, CA; El Camino Packing, Gilroy, CA; The Garlic Company, Shafter, CA; and Vessey and Company, Inc., El Centro, CA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of fresh garlic from China. Accordingly, effective January 31, 1994, the Commission instituted antidumping investigation No. 731-TA-683 (Preliminary).

Notice of the institution of the Commission's investigation 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 February 9, 1994 (59 FR 6043). The conference was held in Washington, DC, on February 22, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this preliminary investigation, we determine that there is a reasonable indication that the industry in the United States producing fresh garlic is threatened with material injury[1] by reason of imports of fresh garlic from the People's Republic of China ("China") that allegedly are sold in the United States at less than fair value ("LTFV").[2]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping duty investigations requires the Commission to determine, based upon the best information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly LTFV imports.[3] In applying this standard, the Commission weighs the evidence before it to determine whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of material injury; and (2) no likelihood exists that any contrary evidence will arise in a final investigation."[4] The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "accords with clearly discernible legislative intent and is sufficiently reasonable."[5]

II. LIKE PRODUCT

A. In General

To determine whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, we first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930, (the "Act"), defines the relevant industry 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 . . . ."[6] 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 . . . ."[7]

Our like product determinations are factual, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[8] [9] We look for

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[1] Commission Crawford finds that there is a reasonable indication that the domestic industry is materially injured by reason of allegedly LTFV imports from China. See Additional Views of Commissioner Crawford.

[2] 19 U.S.C. § 1673b(a). Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

[3] 19 U.S.C. § 1673b(a). See also American Lamb v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 386 (Ct. Int'l Trade 1992).

[4] American Lamb, 785 F.2d at 1001. See also Torrington Co. v. United States, 790 F. Supp. 1161, 1165 (Ct. Int'l Trade 1992).

[5] American Lamb, 785 F.2d at 1004.

[6] 19 U.S.C. § 1677(4)(A).

[7] 19 U.S.C. § 1677(10).

[8] See Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[9] The Commission generally considers a number of factors in analyzing like product issues, including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (continued...)

clear dividing lines between possible like products,[10] and have found minor distinctions to be an insufficient basis for finding separate like products.[11]

B. Domestic Product "Like" Imported Garlic

The Department of Commerce ("Commerce") has defined the imported products subject to this investigation as follows:

> all grades of fresh garlic, whether or not chilled or frozen, and includ[ing] whole garlic, whole garlic that has been separated into constituent cloves (cracked garlic), and peeled garlic (skin removed), whether or not packed in any substance. The differences between the grades are based on color, size, sheathing and level of decay.[12]

While the Commission must accept Commerce's determination as to which imported merchandise is within the class or kind of merchandise allegedly sold at less than fair value, the Commission determines what domestic product is like the imported articles identified by Commerce.[13]

Fresh garlic can be used for a variety of purposes, including as a spice or flavoring in its unprocessed form, as an input into further processed products containing garlic, or as seed stock for another crop of garlic.[14] [15] We considered whether the like product in this preliminary investigation should be divided along the lines of the intended use of fresh garlic. Petitioners argued that the like product consists only of garlic for fresh-use,[16] whereas respondents argued that the like product consists at least of all forms of fresh garlic, regardless of intended uses.[17] After examining the evidence of record, we determine that all forms of fresh garlic, regardless of intended uses, constitute one like product corresponding with the scope of investigation.

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[9] (...continued)
(4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and where appropriate, (6) price. See, e.g., Calabrian Corp. v. United States, 794 F. Supp. 377, (Ct. Int'l Trade 1992); Torrington Co. v. United States, 747 F. Supp. 744 (Ct. Int'l Trade 1990), aff'd. 938 F.2d 1278 (1991); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1170 n.8 (Ct. Int'l Trade 1988)(hereinafter Asocoflores). No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a given investigation.

[10] See, e.g., Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China, Inv. No. 731-TA-621 (Final), USITC Pub. 2671 (Aug. 1993).

[11] Asocoflores, 693 F. Supp. at 1169, S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979)("It is up to [the Commission] to determine objectively what is a minor difference.").

[12] 59 Fed. Reg. 9470 (Feb. 28, 1994).

[13] See, e.g., Algoma Steel Corp. v. United States, 688 F. Supp. 639 (Ct. Int'l Trade 1988) ("ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV."), aff'd, 865 F.2d 240 (Fed. Cir. 1989); Torrington v. United States, 747 F. Supp. 744 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[14] Confidential Version of Report ("CR") at I-4-5; Public Version of Report ("PR") at II-3 and II-4.

[15] We note that the parties in this investigation have employed different, and at times confusing, terminology to refer to the various types of fresh garlic products covered by the scope of investigation. Throughout this opinion, we refer to the domestic like product as "fresh garlic", and further specify the type of product by intended uses. For example, we refer to fresh garlic intended for fresh use as "fresh-use garlic" or "garlic for fresh use"; we refer to fresh garlic intended for non-fresh use (i.e., as an input into a processed product) as "non-fresh-use garlic" or "garlic for non-fresh-use"; and we refer to fresh garlic intended to be used for seed as "seed garlic" or "garlic for seed".

[16] Petitioners' Postconference Brief at 3-13.

[17] Respondents' Postconference Brief at 8-12.

We also considered whether the like product includes further processed products such as dehydrated or pureed garlic. Petitioners argued that the scope of investigation does not cover processed products and that the like product should not be expanded "downstream" to cover these products.[18] Respondents interpreted the language of Commerce's scope of investigation to cover processed products and argued that all processed products are within the same like product as fresh garlic.[19] Processed garlic products are not expressly covered by Commerce's scope of this investigation and we decline to expand our like product definition to include them. Each of these issues is discussed below.

1. Whether Fresh-Use Garlic, Non-Fresh-Use Garlic and Seed Garlic are One Like Product

Petitioners' argument that the proper like product in this investigation consists only of fresh-use garlic is inconsistent with the scope of investigation which covers "all grades of fresh garlic", regardless of intended use. We consistently have determined that we do not have authority to exclude from our like product determination merchandise included within the scope of investigation.[20] Our like product determinations are based on all articles that are like, or most similar in characteristics and uses with, the articles subject to investigation.[21] Thus, in this investigation, we find that all domestic fresh garlic is like fresh garlic imported from China. The more relevant inquiry, however, is whether this like product should be divided along the lines of the intended use of fresh garlic into three separate like products consisting of fresh-use garlic, non-fresh-use garlic, and seed garlic.[22]

We find that all fresh garlic shares the same essential physical characteristics of a raw agricultural product that may have a variety of end uses.[23] We recognize that the physical characteristics and uses of fresh garlic differ to some extent depending on cultivation and

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[18] Petitioners' Postconference Brief at 16-21.

[19] Respondents' Postconference Brief at 11-12.

[20] See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Invs. Nos. 303-TA-19 and 20 (Final) and 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989) at 37-39; Sandvik AB v. United States, 721 F. Supp. 1322, 1333 (Ct. Int'l Trade 1989)("This Court agrees that the ITC does not have the authority to exclude merchandise from the like product designation . . . The ITA controls the scope of the investigation, while the ITC determines whether there is material injury or the threat of material injury to the domestic industry producing the like product"), aff'd 904 F.2d 46 (Fed. Cir. 1990).

[21] 19 U.S.C. § 1677(10).

[22] We note that the different uses of the various types of garlic may be related to the grade of the product at issue. Petitioners stated that producers of garlic intended for fresh use strive to produce U.S.D.A. Grade No. 1 garlic and that roughly 70 percent of any given crop achieves that standard. "Residual off-grade" garlic can be sold as "fancy" garlic, sold to processors, or discarded as waste. The harvesting techniques employed by producers of garlic for non-fresh use generally prevent that product from achieving the U.S.D.A. Grade No. 1 standard. See Petitioners' Postconference Brief at 8. We invite the parties to comment during preparation of the questionnaires for any final investigation on whether we should collect separate data on the various grades of fresh garlic so that we could consider in our like product determination whether the various grades of fresh garlic constitute separate like products. We note in this regard, however, that the Commission has on several occasions declined to find more than one like product based on various grades of a product. See, e.g., Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela, Invs. Nos. 731-TA-671-674 (Preliminary), USITC Pub. 2714 (Dec. 1993) at I-7 (and investigations cited in n.16).

[23] CR at I-7; PR at II-4 and II-5.

harvesting techniques used on any particular garlic crop.[24] However, these different techniques and intended uses do not alter the fundamental similarity among all three types of garlic or prevent any one of the three forms from actually being used other than for its intended use. Indeed, fresh-use garlic is often sold for non-fresh-use, and both fresh-use and non-fresh-use garlic are often used as seed. Fresh-use and non-fresh-use garlic are used similarly, in that both serve as a flavoring in other food products. Evidence on the record shows, however, that non-fresh-use garlic is not used for fresh-use because its appearance is damaged by harvesting techniques. Further, seed garlic is generally not used for either fresh or non-fresh-use.[25]

We find that the various types of fresh garlic are somewhat interchangeable based on the use of all fresh garlic for a variety of purposes regardless of how it is grown. The above discussion illustrates, however, that interchangeability is not complete.[26] We also find that some degree of interchangeability of the various types of fresh garlic indicates that both consumers and producers perceive the products as similar for some uses.[27]

Channels of distribution for fresh-use, non-fresh-use, and seed garlic are generally different, but can overlap if fresh garlic is sold for other than its intended use.[28] For instance, garlic grown for fresh use may be sold in the same channels of distribution as garlic grown for non-fresh use if the fresh-use product is sold for further processing.

Production methods used to grow fresh-use, non-fresh-use and seed garlic overlap, in that a grower could plant the same garlic seed on the same garlic field to produce garlic for any of the three uses.[29] Additionally, because a field of garlic could be put to either fresh or non-fresh use up until the point at which irrigation is stopped,[30] a grower could change the intended use of the field up until shortly before harvest.[31] Once an initial decision is made to grow garlic for a particular use, cultivation and harvesting techniques may differ between garlic grown for fresh use and garlic grown for non-fresh use.[32] However, as discussed above, these differences do not necessarily dictate actual use. We also note that there is

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[24] CR at I-6 and I-7; PR at II-4 and II-5. For instance, fresh-use garlic is grown and harvested to maintain the freshness and attractive physical appearance of the bulb. Non-fresh-use garlic is grown and harvested to achieve a high volume of a dried product suitable for further processing. Seed garlic is grown to increase vigor and disease resistance of the bulb so that it is most suitable for reuse as stock for other garlic crops.

[25] CR at I-7 and I-13; PR at II-7 and II-8; Petitioners' Postconference Brief at 8-10 and 28; Tr. at 86, testimony of Jon Vessey, President of Vessey and Company.

[26] The Commission generally has not required complete interchangeability to include products in one like product. See Certain Paper Clips from the People's Republic of China, Inv. No. 731-TA-633 (Preliminary), USITC Pub. 2707 (Nov. 1993) at I-7, n.26 (and cases cited therein).

[27] See CR at I-7; PR at II-4 and II-5.

[28] Approximately three-fourths of U.S. produced fresh garlic is internally consumed in the production of other products. In the open market, fresh-use garlic generally is sold to wholesalers and distributors for resale to grocery stores or the food service industry. In contrast, non-fresh-use garlic generally is sold directly from producers to processors, and seed garlic generally is sold directly from growers to producers of fresh garlic. See CR at I-11; PR at II-7. Petitioners' Postconference Brief at 10-11 and Answers to Staff Questions at 8.

[29] CR at I-6 and I-7; PR at II-4 and II-5; Tr. at 174, testimony of Richard DeSmet, President, United Garlic Company.

[30] CR at I-6 and I-7; PR at II-4 and II-5; Tr. at 50 and 61, testimony of Mr. Rosenthal, counsel to petitioners.

[31] See, e.g., Tr. at 50, testimony of Mr. Rosenthal, counsel to petitioners.

[32] Cultivation techniques of the three types of garlic differ in terms of density of planting and irrigation schedules. See CR at I-6 and I-7; PR at II-4. Additional unique cultivation techniques are used on seed garlic to increase the plant's vigor and disease resistance. See Petitioners' Postconference Brief, Answers to Staff Questions at 8. Harvesting and post-harvest preparation of non-fresh-use garlic are mechanized but are accomplished primarily by hand for fresh-use garlic. See CR at I-6 and I-7; PR at II-4 and II-5. The record contains no specific information on harvesting techniques for seed garlic.

information on the record that at least one producer of fresh-use garlic also produces non-fresh-use garlic.[33] There is little information in this preliminary investigation, however, indicating whether this producer uses common manufacturing facilities or employees in the production of both types of garlic.

Finally, limited information on the record suggests that fresh-use garlic is priced higher than non-fresh-use garlic and that seed garlic is priced higher than fresh-use garlic.[34]

Based on fundamental similarities in physical characteristics, uses, the means of production and some interchangeability of the products, we find that fresh-use garlic, non-fresh-use garlic, and seed garlic constitute one like product. We note, however, that in the event of any final investigation, we intend to revisit this issue after collecting additional data.

2. Whether the Like Product Includes Processed Products

We do not agree with respondents' contention that the scope of this investigation covers processed garlic products. Commerce's scope clearly states that it covers only "fresh" garlic.[35] Therefore, to consider whether processed garlic is a like product in this investigation, the Commission would have to define the like product to be broader than the scope of investigation.[36]

Application of the Commission's traditional six factor like product test shows that the like product should not include processed garlic.[37] The physical characteristics of processed garlic are different from fresh garlic in that fresh garlic is perishable and does not contain additives found in processed garlic.[38] The products have similar uses as flavoring in food products, and thus may be somewhat interchangeable.[39] However, the channels of distribution of fresh and processed garlic products are different,[40] the means of production are substantially

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[33] A&D Christopher Ranch is a major producer of both fresh-use and non-fresh-use garlic. See Petitioners' Postconference Brief at 19. There is conflicting evidence on the record concerning whether Basic Vegetable Products is also a producer of both fresh-use and non-fresh use garlic. Basic Vegetable Products reportedly sells garlic while still in the field to other garlic producers through its "Buy-A-Field" program. It is disputed whether Basic Vegetable Products sells only the garlic in the field, or will also cultivate and harvest the garlic and thereafter sell the harvested product to a customer. See Tr. at 95, testimony of Mr. Paul Rosenthal, counsel to petitioners, and Tr. at 201, testimony of Mr. Zia Fattahi, President of Global Trading. We intend to consider closely Basic Vegetable Products' status as a producer of garlic for fresh use in any final investigation.

[34] Petitioners' Postconference Brief at 12, and Answers to Staff Questions at 8.

[35] See 59 Fed. Reg. 9470 (Feb. 28, 1994).

[36] The Commission has defined the like product to be broader than the class or kind of articles identified as subject to Commerce's determination where the facts so warrant. See, e.g., Certain Electrical Fans from the People's Republic of China, Inv. No. 731-TA-473 (Final), USITC Pub. 2461 (Dec. 1991) at 8; see also Polyethlene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Invs. Nos. 458 and 459 (Final), USITC Pub. 2383 at 8, 15, and 16 (May 1991)("PET Film").

[37] In previous investigations, the Commission has determined not to expand a like product to include downstream products because of the divergent economic interests of upstream and downstream producers with respect to the subject imports. See, e.g., Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 (March 1991) at 7-9. Because U.S. processors are also fresh garlic producers and therefore not likely to have divergent interests, we rely instead on our traditional analysis in this investigation.

[38] Petitioners' Postconference Brief at 19.

[39] See Tr. at 123, testimony of Richard DeSmet, President of the Garlic Company; Tr. at 118-119, testimony of Mr. Perry.

[40] Fresh garlic is either distributed to produce sections of grocery stores, sold directly to processors, or consumed internally in the production of processed products. Processed garlic is sold through distributors to the dry goods section of grocery stores or to institutional users, such as restaurants. See Petitioners' Postconference Brief at 20.

different,[41] and the limited evidence available in this preliminary investigation suggests that prices of processed garlic and fresh garlic also differ substantially.[42] We therefore determine that processed garlic in all forms is not within the like product consisting of all fresh garlic.

III. DOMESTIC INDUSTRY AND RELATED PARTIES

In light of our like product determination, we find that there is a single domestic industry consisting of the domestic producers of fresh garlic, regardless of its intended use. The principal issues in defining the domestic industry in this preliminary investigation are: (1) whether crop tenders upon whose land fresh garlic is grown are members of the domestic industry; (2) whether independent peelers of fresh garlic are producers of the like product; and (3) whether appropriate circumstances exist to exclude from the domestic industry as related parties several domestic producers of fresh garlic who have imported or purchased Chinese garlic during the period of investigation.

We note at the outset that approximately three-fourths of all fresh garlic produced in the United States is internally consumed in the production of further processed products.[43] Both captive and open market production operations affect the condition of this industry, influencing their strategic decisionmaking as well as producers' bottom lines, and we therefore include captive production operations in our analysis. This conclusion is consistent with Commission practice.[44] The Commission, however, has considered the extent of captive consumption to be relevant as a condition of competition, since subject imports may not affect merchant market production and captive market production in the same way.[45] Therefore, we consider the extent of captive production to be a condition of competition in this industry.

1. Whether Crop Tenders are Members of the Domestic Industry

Petitioners and respondents have taken contrary positions on whether crop tenders are members of the domestic industry producing fresh garlic.[46] We determine that crop tenders are not members of the domestic industry based on their limited involvement in actual

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[41] Unlike producers of fresh garlic, processors use a variety of sophisticated dedicated machinery to produce wet and dry processed garlic. Certain producers of processed garlic also produce fresh garlic, although there is no evidence on the record suggesting that common facilities or employees are used in the production of both products. See Petitioners' Postconference Brief at 6 and 17-18; CR at I-8 and I-11; PR at II-5, II-6 and II-7.

[42] See Petitioners' Postconference Brief at 20.

[43] CR at I-11; PR at II-7.

[44] In previous investigations, the Commission has found that the domestic industry includes all U.S. producers regardless of whether their production is for captive or merchant market consumption and has considered all domestic production regardless of intended use. See, e.g., 19 U.S.C. § 1677(4)(A) & (D); Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-342, 344 and 347-353 and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 17 (Aug. 1993) ("Certain Flat-Rolled Steel").

[45] See, e.g., Stainless Steel Bar from Brazil, India, Italy, Japan, and Spain, Invs. Nos. 731-TA-678-682 (Preliminary), USITC Pub. 2734; Certain Flat-Rolled Steel, USITC Pub. 2664 at 15 and 17 (Aug. 1993).

[46] Tr. at 119, testimony of Mr. Perry, counsel to respondents; Respondents' Postconference Brief at 14-19 (arguing that crop tenders should be included in the domestic industry) and Tr. at 69-72, testimony of various witnesses for petitioners; Petitioners' Postconference Brief at 22-25 (arguing that crop tenders are not members of the domestic industry producing fresh garlic).

production of garlic and a lack of coincidence of economic interest with producers of fresh garlic.

Evidence shows that crop tenders contract land to garlic producers, and agree to irrigate, fertilize, and weed such fields on behalf of the garlic producers.[47] The garlic producers buy the garlic seed, plant it with their own equipment, instruct crop tenders when to irrigate, and harvest the garlic themselves, again with their own equipment and laborers.[48] Crop tenders are paid for the use of their fields based on the amount of garlic harvested, rather than the market price of that garlic.[49] There is little evidence of interlocking ownership between crop tenders and producers of fresh garlic.[50] [51]

The domestic industry definition turns on the meaning of who contributes to the "collective output" of fresh garlic production.[52] In previous investigations involving agricultural products, the Commission has addressed the relationship between growers of a product and other entities that may be involved in its production or distribution.[53] In such cases, we have considered whether the growers of a raw agricultural product should be included as part of the domestic industry that produces a processed or other downstream product from the fresh product by examining whether there is a continuous line of production and an economic coincidence of interest between the grower and the processor.[54] [55] Although the Commission's analysis in previous investigations involving processed agricultural products

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[47] Tr. at 69, testimony of Mr. Rosenthal, counsel to petitioners.

[48] Id.

[49] Id. Petitioners state that fresh garlic producers do not grow garlic on their own land because garlic is a rotational crop that cannot be planted on the same field more than once every four to six years. Crop tenders are in a better position to rotate their crops than are producers of garlic that do not also produce other agricultural products. See Petitioners' Postconference Brief at 23.

[50] Petitioners' Postconference Brief at 24.

[51] For the purposes of this preliminary investigation, we do not consider crop tenders operating under such an arrangement to be "toll producers" of fresh garlic because they do not actually produce the crop, but rather lease facilities to a producer and provide minor tending services to the producer during the growing season.

The Commission has previously described toll arrangements as contracts under which a customer delivers raw material to a toll producer, who then manufactures the product, and returns it to the customer for a fee. Typically, a toll producer never takes title to the raw or finished material. The Commission has generally considered toll producers to be members of the domestic industry. See Stainless Steel Wire Rod from Brazil and France, Invs. Nos. 731-TA 636 and 637 (Final), USITC Pub. 2721 (Jan. 1994); Sulfur Dyes from China, India, and the United Kingdom, Invs. Nos. 731-TA-548, 550 and 551 (Preliminary), USITC Pub. 2514 (May 1992). We request the parties in any final investigation to address whether crop tenders are considered to be toll producers.

[52] See 19 U.S.C. § 1677(4)(A).

[53] These issues primarily have been analyzed in the context of the relationship between growers of a product and packers or handlers thereof. See, e.g., Fresh Kiwifruit from New Zealand, Inv. No. 731-TA-516 (Preliminary), USITC Pub. 2394 (June 1991) at 6; Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 (July 1985).

[54] See, e.g., Tart Cherry Juice and Tart Cherry Juice Concentrate from Germany and Yugoslavia, Invs. Nos. 731-TA-512-513, USITC Pub. 2378 (May 1991); Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (April 1991); Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. 1970 (April 1987); Certain Red Raspberries from Canada, Inv. No. 731-TA-196 (Final), USITC Pub. 1717 (June 1985).

[55] The 1988 amendments to Section 771 of the Act codified the Commission's practice with respect to those cases. Section 771(4)(E) now provides guidance for considering, "in an investigation involving a processed agricultural product from any raw agricultural product," whether the growers of the raw product should be included in the domestic industry. 19 U.S.C. § 1677(4)(E). Under these guidelines, the Commission first determines whether there is a single continuous line of production and, second, whether there is a substantial coincidence of economic interest. In addressing coincidence of economic interest, the Commission may, at its discretion, consider price, added market value, or other economic interrelationships. 19 U.S.C. § 1677(4)(E)(i).

is not completely applicable in this investigation of a raw agricultural product, we nonetheless find the analysis useful in determining whether crop tenders, who perform some production related activities, are members of the domestic industry.

While crop tenders may be considered to be part of a continuous line of production of fresh garlic, their role in production is limited.[56] We find that crop tenders' economic interests are not completely coincident with those of fresh garlic producers because their fees are negotiated at arms-length, based on the amount of crop harvested rather than the ultimate market price of the product. Further, there is little, if any, vertical integration between crop tenders and fresh garlic producers. As a result, while crop tenders may be somewhat adversely affected by declines in domestic production of garlic,[57] they would not be affected by price fluctuations that do not cause declines in production. Based on these facts, we find insufficient coincidence of economic interest between the crop tenders and the fresh garlic producers, and we therefore decline to include crop tenders in the domestic industry producing fresh garlic.[58] [59] [60]

2. Related Parties

Although no party to this investigation has argued that any producer should be excluded from the domestic industry as a related party, information on the record indicates that at least one producer has imported Chinese garlic during the period of investigation and that two other producers have purchased imported Chinese garlic. If a company is a related party

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[56] Whereas a grower of a raw agricultural product is not always a part of a continuous line of production of a further processed product, it is clear that a crop tender and producer of fresh garlic are part of the same line of production of the raw agricultural product. Thus, a relevant inquiry in this analysis is whether there is a coincidence of economic interest between crop tenders and growers of fresh garlic.

[57] Because garlic is a rotational crop and crop tenders typically rent their land to growers of other crops in three out of four years, the extent to which they would be adversely affected by a downturn in garlic production is unclear.

[58] This result is consistent with other determinations in which we have employed the economic interest test to distinguish cases in which growers are merely suppliers of a product to processors with divergent economic interests from those cases in which growers are more directly involved in production of the product. See, e.g., Certain Fresh Atlantic Groundfish from Canada, Inv. No. 701-TA-257 (Final), USITC Pub. 1844 (Sept. 1986); Frozen, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (April 1991); Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 (July 1985); Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. 1970 (April 1987); Certain Red Raspberries from Canada, Inv. No. 731-TA-196 (Final), USITC Pub. 1707 (June 1985).

[59] There is certain limited information on the record indicating that some growers of seed garlic operate in ways similar to crop tenders and thus a question may arise as to their status as members of the domestic industry. We intend to further consider this issue in any final investigation.

[60] Respondents have urged the Commission to include independent peeling operations in the domestic industry. We have been unable to gather data on this issue independently and, despite our specific requests, neither party provided the Commission with information sufficient for us to analyze this issue in this preliminary investigation. We therefore do not find that any independent peeling operations are domestic producers in this preliminary investigation. We intend to revisit this issue in any final investigation.

under section 771(4)(B) of the Act,[61] the Commission determines whether "appropriate circumstances" exist for excluding the producer in question from the domestic industry.[62] [63]

A&D Christopher Ranch reported importing Chinese garlic for sale to various customers and for use as seed stock.[64] Based on these importations, we find Christopher Ranch to be a related party.

In determining whether appropriate circumstances exist to exclude Christopher Ranch from the domestic industry, we considered that Christopher Ranch is [***] producer of garlic for fresh use in the United States with [***] percent of total production for fresh use.[65] It is also the [***] producer of all fresh garlic, regardless of intended use.[66] Christopher Ranch's testimony that it imported Chinese garlic because it was cheaper than selling its own product (when it had sufficient domestic product in stock) indicates that it may have imported to take advantage of low priced Chinese garlic rather than out of necessity. Additionally, we note that its financial performance is [***] of the producers of fresh-use garlic.[67] However, its status in the industry and evidence of limited importations to meet specific customer needs (or to consume imports internally as seed stock) suggest that its primary interests lie in producing rather than importing. We therefore determine not to exclude this company from the domestic

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[61] Under section 771(4)(B), producers who are related to exporters or importers, or who are themselves importers of dumped or subsidized merchandise, may be excluded from the domestic industry in appropriate circumstances. 19 U.S.C. § 1677(4)(B).

[62] The rationale for excluding related parties is the concern that the overall industry data may be skewed by inclusion of the related parties who are shielded from any injury that might be caused by the subject imports. See Torrington v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade), aff'd without opinion 991 F.2d 809 (Fed. Cir. 1993); Sandvik AB v. United States, 721 F. Supp. 1322, 1331 (Ct. Int'l Trade 1989)(related party appeared to benefit from dumped imports), aff'd without opinion 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1353-54 (Ct. Int'l Trade 1987)(An analysis of "[b]enefits accrued from the relationship as a major factor in deciding whether to exclude a related party held to be a "reasonable approach in light of the legislative history. . . ").

[63] 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 the importing producer;

(2) the reason why the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and

(3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992) aff'd without opinion 991 F.2d 809 (Fed. Cir. 1993)(Court upheld the Commission's practice of examining these factors in determining that appropriate circumstances did not exist to exclude related party); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1353 (Ct. Int'l Trade 1987). The Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., PET Film, USITC Pub. 2383 at 17-18 (May 1991).

[64] CR at I-10; PR at II-7; Tr. at 34 and 88, testimony of Jim Provost, East Coast Sales Manager of A&D Christopher Ranch (stating that Christopher Ranch imported Chinese garlic to maintain its customer base when customers indicated that they would purchase inexpensive Chinese garlic through another source if Christopher Ranch would not supply it). A&D Christopher Ranch's questionnaire responses indicate that during the period of investigation, [***] of its shipments (including internal consumption) were accounted for by imports from China. Approximately [***] of this amount was consumed internally.

[65] CR at I-10, Table 1; PR at II-6, Table 1.

[66] Id.

[67] CR at I-19, Table 4; PR at I-12, Table 4. The Commission received no financial data from other producers of garlic for non-fresh uses.

industry in this preliminary determination. We will, however, revisit this issue in any final investigation.

Evidence on the record also shows that Vessey and Company and Colusa Produce Corporation purchased Chinese garlic during the period of investigation.[68] Although the evidence is limited, it appears that neither firm actually imported Chinese garlic, and that each firm's purchases were limited to a few incidents.[69] There is no evidence on the record that either firm has any form of special relationship with an importer of record or otherwise controls the purchase of large volumes of imports. We thus determine that neither firm is a related party for the purposes of this preliminary investigation. If warranted by record evidence, we will revisit this issue in any final investigation.

IV. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is determinative, and we consider all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[70]

In examining the condition of the domestic fresh garlic industry, we recognize that approximately three-fourths of all domestic fresh garlic production is internally consumed in the production of other products containing garlic.[71] As discussed above, we have followed our practice of including captive production and shipments in our analysis of the condition of the domestic industry.[72] Nonetheless, we consider as a condition of competition in this industry the fact that imports do not compete with captive shipments in the same way and to the same extent that they compete with open market shipments. While the subject imports arguably have an indirect effect on domestic producers' captive production, three-fourths of the production in this industry is shielded to some extent from potential adverse effects of alleged LTFV imports. Accordingly, while we base our analysis on the condition of the

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[68] Tr. at 86, testimony of Mr. Vessey, stating that Vessey and Company principally used the Chinese garlic it acquired for seed because "[i]t ended up being the only outlet that I could come out with the garlic."; see also Tr. at 87, testimony of Mr. Wallace, stating that it put its own garlic in storage and purchased Chinese garlic for resale because of the low cost of the Chinese product compared to the cost of production of its own product; see also CR at I-10, n.10; PR at II-7, n.10.

[69] The Commission has previously determined that it was not appropriate to adopt a narrow definition of the term "importer" as used in the related party provision of the statute. See Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2528 (June 1992)(Commission determined that the related party provision may apply to all domestic producers who have a special relationship with the importer of record or otherwise control the purchase of large volumes of imports by the importers of record.)

[70] 19 U.S.C. § 1677(7)(C)(iii).

[71] CR at I-11; PR at II-7.

[72] We note, however, that we received very little usable financial data concerning internal consumption by individual producers. As a result, usable financial data on the record relate almost exclusively to open-market sales of fresh garlic. We have not considered reaching adverse inferences against nonresponding producers in this preliminary investigation. The parties should now be fully aware of the Commission's requirements and the scope of this investigation, and we give notice that all fresh garlic producers are to fully complete all portions of questionnaires sent to them in any final investigation.

industry as a whole, we also have considered, where appropriate, the condition of U.S. producers' merchant market (i.e., principally fresh-use garlic) operations.

We also note that seasonality of production and various storage techniques may have certain effects on the condition of the domestic fresh garlic industry.[73] Domestic producers have traditionally operated in a market supplied with imports from Mexico and South America during portions of the year when domestic garlic is unavailable.[74] The crop year in China coincides more closely with the crop year in the United States, thus resulting in more direct competition between the domestic like product and Chinese imports than between the domestic like product and other imports. However, the increasing use of controlled atmosphere storage makes it possible for domestic producers to maintain high quality fresh garlic throughout the year,[75] thus potentially reducing these seasonal effects.[76] The availability of cold or controlled atmosphere storage is important to producers of fresh-use garlic given the need to maintain freshness and an attractive appearance of the product. In contrast, these types of storage facilities are less important to producers of garlic for non-fresh uses whose garlic is consumed in the production of further processed products. Thus, benefits and costs associated with various storage techniques affect producers of garlic for fresh use more directly than producers of non-fresh-use garlic.

Finally, evidence on the record suggests that new sources of demand for fresh garlic have been created in recent years and that demand from all sources has increased. New and increased demand apparently results from successful advertising campaigns on the health benefits of garlic and a new awareness of the variety of uses to which fresh garlic can be applied.[77]

These conditions of competition provide the context in which we examine the indicators of the condition of the domestic industry. Apparent U.S. consumption of fresh garlic by quantity increased by 25.3 percent from 1991 to 1993, by 22.9 percent from 1991 to 1992, and by 2.0 percent from 1992 to 1993. It was also 11.6 percent higher in interim (June - December) 1993 than in the same period of 1992. In quantity terms, it rose from 294 million pounds in 1991 to 361 million pounds in 1992, and to 368 million pounds in 1993.[78] In terms of value, apparent consumption rose by 19.6 percent from 1991 to 1993, rising by

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[73] U.S. producers typically plant fresh garlic in the fall and harvest crops in the second quarter of the following year. Domestic product is then brought to market in June through January, with some product sold out of cold storage in the first quarter of the following year. See CR at I-27 and I-28; PR at II-16.

[74] CR at I-5 and I-6; PR at II-4.

[75] Id. Without any form of storage, fresh garlic will normally remain free of deterioration for three months after harvest. Fresh garlic may be kept in cold storage for up to six months after harvest. Controlled atmosphere storage, which removes oxygen from the storage environment, allows garlic to be stored for up to eleven months after harvest. See CR at I-6 and I-28; PR at II-4 and II-17.

[76] Petitioners imply that they have had to incur the cost of controlled atmosphere and cold storage as a result of increased imports from China. See, e.g., Tr. at 22, testimony of Jon Vessey, President of Vessey and Company. In any final investigation, we will consider whether the producers' ability to offer product throughout the year (and thereby potentially reduce cyclical price movements corresponding to increased or decreased supply) offers benefits to producers that may outweigh increased costs. Further, we note that the trend towards increased use of such facilities appears to pre-date any large presence of imports from China.

[77] See, e.g., Tr. at 19, testimony of Jon Vessey, President of Vessey and Company.

[78] CR at C-3, Table C-1; PR at C-3, Table C-1. All data (exclusive of financial data) discussed herein are reported on a crop year basis beginning in June of the previous year and ending in May of the year shown. Financial data are presented on a fiscal year basis. See CR at I-12; PR at II-8. We also note that interim periods in this investigation, June - December 1992 and June - December 1993, are not portions of crop years 1992 and 1993, but instead reflect data collected for the second half of those calendar years.

24.9 percent from 1991 to 1992 and falling by 4.3 percent from 1992 to 1993. In interim 1993, it was 1.2 percent lower than in interim 1992. In terms of dollar amount, it rose from $351.2 million in 1991 to $438.6 million in 1992, but then fell to $420.0 million in 1993. As is evident from the following discussion, other indicia of the domestic industry's condition generally follow trends similar to apparent consumption of garlic.

Domestic production[79] of all fresh garlic increased by 32.9 percent from 1991 to 1993, rising by 28.4 percent from 1991 to 1992 and by 3.4 percent from 1992 to 1993. It was 1.1 percent higher in interim 1993 than in interim 1992. In quantity terms, production rose from 260 million pounds in 1991 to 334 million pounds in 1992, and to 345 million pounds in 1993.[80] Domestic production of fresh garlic suitable for fresh use also increased throughout the period, starting at 42 million pounds in 1991, rising to 61 million pounds in 1992, and rising again to 73 million pounds in 1993. Domestic production suitable for fresh use was 5.8 percent higher in interim 1993 than in interim 1992 and rose by 44.6 percent from 1991 to 1992 and by 20.1 percent from 1992 to 1993.[81]

Capacity to produce all fresh garlic[82] also increased by more than 23.0 percent during the period of investigation, rising by 20.2 percent from 1991 to 1992 and by 2.3 percent from 1992 to 1993. It was 0.5 percent higher in interim 1993 than in interim 1992. In quantity terms, capacity was 368 million pounds in 1991, rose to 442 million pounds in 1992, and to 453 million pounds in 1993. Capacity of producers who grow garlic intended for fresh use also increased throughout the period, starting at 75 million pounds in 1991, rising to 95 million pounds in 1992, and rising further to 104 million pounds in 1993. Fresh-use garlic production capacity was also slightly higher in interim 1993 than in interim 1992.[83]

With production rising faster than capacity, the domestic industry's rate of capacity utilization for all fresh garlic production also rose over the period, starting at 70.7 percent in 1991, rising to 75.5 percent in 1992 and to 76.3 percent in 1993. Capacity utilization was 0.5 percentage points higher in interim 1993 compared to interim 1992.[84] Similarly, capacity utilization of growers who produce garlic intended for fresh use rose from 65.3 percent in 1991 to 75.4 percent in 1992 and to 83.0 percent 1993. Capacity utilization also rose from 77.5 percent in interim 1992 to 95.1 percent in interim 1993.[85] [86]

The domestic industry's U.S. shipments of all fresh garlic by quantity also increased, rising from 250 million pounds in 1991 to 323 million pounds in 1992 and to 325 million pounds in 1993. Shipments increased by 29.0 percent from 1991 to 1992, and rose again by 0.7 percent from 1992 to 1993, for a 29.9 percent increase overall. Shipments were 2.0 percent lower in interim 1993 compared with interim 1992. The value of U.S. shipments of

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[79] The production data gathered in this preliminary investigation do not include seed stock. See CR at I-13, n.12; PR at II-8 n.12. In the event of any final investigation, we invite the parties to suggest appropriate methodology for collecting and assessing data on production of garlic for seed stock in a manner that best minimizes the possibility of double counting that production.

[80] CR at C-3, Table C-1; PR at C-3, Table C-1.

[81] Id.

[82] We requested that firms responding to our producers' questionnaires measure capacity by taking into account acreage available for planting, machinery and equipment for planting and harvesting, and facilities for cleaning, grading sorting and packing. See CR at I-13 n.11; PR at II-8, n.11. In the event of any final investigation, we invite the parties to brief the question of what factors and data are appropriate to measure capacity and capacity utilization in this industry.

[83] CR at I-14, Table 2; PR at II-9, Table 2.

[84] Cr at C-3, Table C-1; PR at C-3, Table C-1.

[85] Id.

[86] Vice Chairman Watson and Commissioner Nuzum note that they placed little weight on the evidence concerning capacity utilization in this investigation and generally consider capacity utilization to be less useful in analyzing agricultural industries.

all fresh garlic also rose. U.S. shipments were valued at $328.0 million in 1991, $417.0 million in 1992, and $398.3 million in 1993. The value of shipments increased by 27.1 percent between 1991 and 1992, and decreased by 4.5 percent from 1992 to 1993, for an overall increase of 21.4 percent. The value of U.S. shipments was 4.3 percent lower in interim 1993 than in interim 1992.[87] Shipments of garlic for fresh use also rose over the period, starting at 34 million pounds in 1991, rising to 54 million pounds in 1992, and rising slightly to 59 million pounds in 1993. Domestic shipments of garlic for fresh use were 35 million pounds in interim 1992 and 28 million pounds in interim 1993.[88] The share of production of fresh-use garlic that was actually sold for fresh use also declined. From interim 1992 to interim 1993, the ratio of fresh-use shipments to fresh-use production fell from 50.1 to 37.8 percent. From crop year 1992 to crop year 1993, it fell from 89.8 percent to 81.6 percent.[89]

The domestic industry held no inventories of fresh garlic in 1991 and 1992, but had 363,000 pounds of inventory by year end 1993. Inventories rose from 28 million pounds in interim 1992 to 30 million pounds in interim 1993 for an increase of 7.3 percent overall.[90] Most of these inventories were held by producers of garlic for fresh use.[91] [92] Employment indicators, including the number of production workers, hours worked, hourly total compensation and total compensation, also rose throughout the period both with respect to all fresh garlic and fresh garlic for fresh use.[93]

As noted above,[94] the domestic industry provided only limited financial data to the Commission in this preliminary investigation.[95] [96] [97] These limited data show that although responding firms were profitable throughout this period, there were declines in some financial indicators. Net sales by value of garlic for fresh use rose by 40 percent from 1991 to 1993. Net sales value of garlic for all other uses declined by 71 percent from 1991 to 1992 but increased more than fivefold from 1992 to 1993.[98] Net income before taxes declined from $1.9 million, or 4.8 percent of net sales, in 1991 to $1.65 million, or 3.5 percent of net sales, in 1992, and declined further still to $1.60 million, or 2.9 percent of net sales, in 1993. The ratio of net income to sales decreased by 2.0 percentage points between 1991 and 1993. Operating expenses increased by 44.4 percent from 1991 to 1993 and the ratio of operating expenses to net sales rose by 2.0 percentage points between 1991 and 1993.[99] Selling, general

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[87] Cr at C-3, Table C-1; PR at C-3, Table C-1.
[88] CR at I-14, Table 2; PR at II-8, Table 2.
[89] CR at I-13; PR at II-8.
[90] CR at C-4, Table C-1; PR at C-4, Table C-1.
[91] Id.
[92] We intend to explore more fully in any final investigation allegations concerning major dehydration facilities' inventory shortages.
[93] CR at I-14, Table 2 and C-4, Table C-1; PR at II-8, Table 2 and C-4, Table C-1.
[94] See supra n.72.
[95] See CR at I-15; PR at II-8. Five producers of fresh garlic provided usable financial data on their fresh garlic operations for crop years 1991 through 1993, accounting for approximately 93 percent of reported U.S. shipments of fresh garlic for fresh use, but only approximately 23 percent of all U.S. production of fresh garlic. Because of the low response rate, it is not possible to determine whether trends in the data are reflective of the condition of the fresh garlic industry as a whole.
[96] All financial data are reported on a fiscal year basis and thus do not necessarily correspond to production and shipment data, which are on a crop year basis.
[97] Vice Chairman Watson notes that a major domestic producer reports its accounting data on a cash basis while other domestic producers report their accounting data on an accrual basis. He therefore placed less reliance on the aggregate financial figures at this point. He invites the parties to clarify the financial data for any final investigation. CR at I-17, Table 3; PR at II-11, Table 3.
[98] CR at I-16 and C-3, Table C-1; PR at II-10 and C-3, Table C-1.
[99] See CR at C-4, Table C-1; PR at C-4, Table C-1.

and administrative expenses remained at 13.6 percent of total net sales in 1991 and 1992, and declined to 13.2 percent of total net sales in 1993.[100] Finally, the domestic industry's capital expenditures decreased by 2.1 percent between 1991 and 1993, first rising by 29.3 percent between 1991 and 1992, and then falling by 24.3 percent between 1992 and 1993.[101] [102]

V. THREAT OF MATERIAL INJURY[103]

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." The Commission cannot base such a determination on mere conjecture or supposition.[104]

The Commission must consider ten factors in its threat analysis, including: (1) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports; (2) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level; (3) 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; (4) any substantial increase in inventories of the merchandise in the United States; (5) the presence of underutilized capacity for producing the merchandise in the exporting country; and (6) 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.[105] The presence or absence of any single threat factor is not necessarily dispositive.[106] In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry.[107]

In this preliminary investigation we find a reasonable indication that the domestic industry is threatened with material injury by reason of the allegedly LTFV imports.

Because Chinese producers have not participated in this preliminary investigation, we have no specific data on Chinese production, capacity and capacity utilization. Petitioners alleged that China is the world's largest producer of fresh garlic, accounting for 1.5 billion tons, or 20 percent of aggregate world output in 1991 and that Chinese production increased

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[100] CR at I-16, PR at II-10.

[101] CR at C-4, Table C-1; PR at C-4, Table C-1.

[102] Based upon examination of the relevant statutory factors, particularly increasing inventories, declining net income, and increasing operating expenses, Chairman Newquist and Commissioner Rohr conclude that there is a reasonable indication that the domestic industry producing fresh garlic is not currently experiencing material injury, but that it is in a vulnerable condition.

[103] Commissioner Crawford does not join this section of the Views of the Commission. See Additional Views of Commissioner Crawford.

[104] 19 U.S.C. § 1677(7)(F)(ii).

[105] 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Since this antidumping investigation does not involve any allegations that a subsidy has been provided, Factor I is not applicable. Factor VIII is not an issue in this investigation because there have been no allegations that foreign manufacturers of garlic produce any other products currently under investigation or subject to an order. Although this investigation does involve an agricultural product, Factor IX is not applicable because there is one like product in this investigation and thus no potential for product shifting between processed and unprocessed like products. Further, the fresh garlic industry is a mature agricultural industry with little or no development and production of derivative products. Therefore Factor X also is not significant in this investigation.

[106] See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

[107] 19 U.S.C. § 1677(7)(F)(iii)(I).

by 5 percent from 1989 to 1991.[108] They also proffered testimony that Chinese producers have made significant improvements in production, cold storage, and distribution techniques in recent years.[109] Respondents indicated that capacity has increased in 1993 due to relaxed export controls by the Chinese government which brought small farmers into the market for the first time.[110] Based on this limited information, we find that there is a reasonable indication that Chinese capacity to produce garlic has increased during the period of investigation.

There has been a rapid increase in United States market penetration by Chinese imports.[111] Although the volume of imports from China declined slightly from crop year 1991 to 1992, volume rose by over 200 percent from crop year 1992 to 1993. Further, when comparing interim 1992 to interim 1993, volume rose by almost 628 percent. In quantity terms, the volume of imports was 4.7 million pounds in 1991, 2.8 million pounds in 1992, 8.7 million pounds in 1993, 7.2 million pounds in interim 1992 and 52.4 million pounds in interim 1993.[112] Similarly, the share of apparent domestic consumption held by Chinese garlic was fairly low from crop year 1991 through crop year 1992, but then rose sharply from 2.2 percent in June - December 1992 to 14.4 percent in June - December 1993.[113] [114] Based on these import trends and increasing production capacity in China, we find a reasonable indication that imports will increase to injurious levels.

We also note information on the record that several foreign export markets have banned imports of fresh garlic from China. Mexico closed its market to Chinese garlic in July, 1993, based on a finding that Chinese garlic carried certain diseases that could contaminate Mexican garlic crops.[115] There is some evidence that Taiwan also banned direct imports of Chinese garlic as of July of 1993.[116] [117] These market closures make it likely that Chinese exporters will divert imports intended for these markets to third countries, including the United States, to some extent, and support our finding of a reasonable indication that import penetration will increase to an injurious level.

These large increases in absolute volume and market share of imports from China coincide with downturns in the performance of the domestic industry. As our discussion of

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[108] Petitioners' Postconference Brief at 46; Petition at 22, citing data gathered by the Food and Agriculture Organization.

[109] See Tr. at 28-30, testimony of Jim Wallace, President of Colusa Produce Corporation, on personal visit to Chinese production facilities.

[110] Respondents' Postconference Brief at 39.

[111] CR at I-24 and C-3, Table C-1; PR at II-15 and C-3, Table C-1.

[112] CR at C-3, Table C-1; PR at C-3, Table C-1.

[113] Id.

[114] Both petitioners and respondents have made allegations that census data do not accurately reflect the volume of imports from China that are sold on the U.S. market. Petitioners claim that a significant amount of Chinese garlic is transshipped through third countries. See Petition at 5. Respondents allege that a significant amount of Chinese garlic imported into the United States is actually reexported to Mexico or destroyed. See Tr. at 138, testimony of Mr. Fattahi, President of Global Trading Company. Neither party provided substantiating evidence to support these allegations to allow the Commission to adequately consider either claim. We invite the parties to more fully address these issues in any final investigation.

[115] See Petition at exhibit 9.

[116] See Petitioners' Postconference Brief at 46 and exhibit 12. The ban appears to be directed at avoiding direct competition between Taiwanese product and Chinese product.

[117] Petitioners also stated that the European Union ("EU") temporarily denied import licenses to Chinese garlic from September through January of 1993 and that the EU is likely to reimpose that ban, or impose safeguard measures under Article XIX of the GATT, in 1994. They also state that the South Korean government placed Chinese garlic on a watch list of "low-priced" products subject to "import evaluation." See Petitioners' Postconference Brief at 45 and 46. We find these allegations of possible future actions to be speculative and therefore decline to consider them in our threat analysis.

the condition of the domestic industry shows, most indicators reveal that the domestic industry performed well in the early part of the period of investigation, but that performance weakened during crop year 1993 and interim 1993. In contrast to the weakened performance of the domestic industry, however, consumption increased significantly from interim 1992 to interim 1993 and imports from China grew more rapidly than consumption.[118] Based on this data, we find it likely that further increases in imports from China would have an injurious effect on the domestic industry.

The Commission collected pricing data in this preliminary investigation on sales to wholesalers or distributors of three forms of U.S.D.A. Grade No. 1 fresh garlic and one form of peeled fresh garlic.[119] Reported prices of imported Chinese garlic reflect underselling by the Chinese product in thirty of thirty-four comparisons.[120] Margins of underselling on all products on which prices were collected ranged from 3.1 percent to 65.5 percent.[121] Margins of underselling also generally increased during the second half of 1993 when there was the greatest surge in imports from China.[122]

In light of increasing consumption of fresh garlic and rising operating expenses,[123] we would have expected to see some degree of price increases. Instead, the domestic industry's prices were irregular throughout the period of investigation, but did not rise appreciably.[124] At the same time, profitability of producers of garlic intended for fresh use actually declined.

Additionally, information on the record shows that producers were unable to sell all garlic produced for fresh use into that market and, as a result, they made increasingly large sales of their product to dehydrators over the period of investigation.[125] Petitioners presented unrefuted evidence that in crop years 1991 and 1992, sales of fresh-use garlic to dehydrators represented approximately [***] percent of the total quantity of shipments of garlic intended for fresh use. In contrast, in June through December of 1993, these types of shipments represented approximately [***] of domestic shipments of fresh-use garlic. Average unit values on sales to dehydrators were reported to be significantly lower than average unit values on sales for fresh use, thus decreasing overall returns on sales of fresh garlic. [126] [127] It is

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[118] Id.

[119] CR at I-29; PR at II-17.

[120] CR at I-30; PR at II-18.

[121] CR at I-40; PR at II-19. In the four instances in which the Chinese product oversold the domestic product, margins of overselling ranged from 1.5 percent to 19.1 percent.

[122] CR at I-31 - I-34, Tables 6-9 and at C-3, Table C-1; PR at II-18, Tables 6-9 and at C-3, Table C-1.

[123] See discussion of Condition of Domestic Industry supra.

[124] See, e.g., CR at I-35 - I-38, Figures 1-4; PR at II-19, Figures 1-4.

[125] There is conflicting information on the record concerning the degree of competition between imports from China and domestic garlic produced for fresh use. Certain information indicates that the majority of imports from China qualify for fresh use. See CR at I-11; PR at II-7. However, respondents testified that the majority of garlic they import from China is not substitutable with California garlic grown for fresh use and that it is generally sold into a "second tier" market. See Tr. at 185-190, testimony of various witnesses for respondent. See also Tr. at 126, testimony of Mr. DeSmet, President of United Garlic Company, stating that as much as 50 percent of fresh garlic from China "never entered the fresh market . . ." In any final investigation, we intend to further explore alleged quality differences that may affect pricing and distribution of domestic fresh garlic versus imports from China.

[126] See, e.g., Petitioners' Postconference Brief at 28 and exhibit 6. The Commission intends to collect complete pricing data on sales to dehydrators and other non-fresh uses in the event of any final investigation and will explore further any shift in sales to dehydrators.

[127] See, e.g., CR at 13; PR at II-8, stating that from interim 1992 to interim 1993, the ratio of fresh-use shipments to fresh-use production fell from 50.1 to 37.8 percent, and from crop year 1992 to crop year 1993, the ratio fell from 89.8 percent to 81.6 percent. See also CR at I-14, Table 2; PR at II-

(continued...)

therefore likely that increasingly large sales of fresh-use garlic to dehydrators affected these producers' profitability.[128]

Based on the combination of underselling at increasing margins by Chinese garlic imports, a shift in sales of fresh-use garlic from a higher-valued use to a lower-valued use, and declining profitability of producers of fresh garlic, all at a time when demand is expanding, we find that there is a reasonable indication that future imports of garlic from China will enter the United States at prices that will have depressing or suppressing effects on domestic prices.

There is limited information on the record concerning increases in inventories of Chinese garlic in the United States. However, the record does show that at least three importers of Chinese garlic have access to cold storage that allows them to maintain inventories of product for a longer period of time.[129] One importer also stated that it has current inventories of garlic imported from China in 1993.[130] We do not find this limited information to be sufficient to allow us to conclude that there has been any substantial increase in inventories of the merchandise in the United States.

There is also very limited evidence, consisting solely of petitioners' allegations, on the presence of underutilized or existing unused capacity for producing fresh garlic in China. Petitioners argue that China's liberalization of its export policies and the resulting entrance into the market of many small farmers indicates that previously unused capacity is being increasingly dedicated to production of garlic.[131] As the best information available in this preliminary investigation, we find this evidence to provide a reasonable indication that there is underutilized or unused capacity in China to produce garlic.

With respect to other demonstrable adverse trends, we note that inventories of domestic producers have increased over the period of investigation. Domestic producers held no inventories at the end of crop year 1991 or 1992, but did retain inventories at the end of crop year 1993. Additionally, inventories increased by 7.3 percent from interim 1992 to 1993.[132] We find this evidence of increased inventories of domestic product to provide a reasonable indication that importation of Chinese garlic will cause actual injury to the domestic industry.

Our analysis of increasing foreign capacity and unused or underutilized capacity, the rapid increase in volume and market share of imports, and the likelihood that imports from China will enter the United States at prices that will suppress or depress domestic prices, leads us to conclude that there is a reasonable indication that the domestic fresh garlic industry is

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[127] (...continued)
9, Table 2, showing consistently lower unit values of sales of garlic for non-fresh use versus sales for fresh use.

[128] Chairman Newquist notes that the Commission received useable financial data from only approximately 23 percent of the domestic industry and that such a response rate might itself provide a basis for an affirmative determination under American Lamb. Nonetheless, Chairman Newquist bases his affirmative determination that there is a reasonable indication of threat of material injury to the industry on the available data.

[129] Tr. at 165 and 166, testimony of Mr. Zia Fattahi, President of Global Trading, Inc. and of Mr. Richard DeSmet, President of United Garlic Company, stating that Global Trading, Inc., United Garlic Company, and A&D Christopher Ranch were the only importers with access to cold storage facilities.

[130] Tr. at 184, testimony of Mr. Zia Fattahi. Mr. Fattahi also stated that some of his inventories of Chinese garlic are no longer of suitable quality for resale. See also Respondents' Postconference Brief at 37-38, stating that inventories of Chinese garlic held in the United States and China are of limited significance as a threat factor in the Commission's analysis because of the perishability of the product. We note, however, that it would make little economic sense for producers or importers to incur inventory costs if they did not believe that they could resell their product before it spoiled.

[131] Petitioners' Postconference Brief at 48.

[132] CR at C-4, Table C-1; PR at C-3, Table C-1.

threatened with material injury by reason of the subject imports. With respect to those factors on which we currently have limited or no evidence, we also find that: (1) the record as a whole does not contain clear and convincing evidence that there is no material injury or threat of material injury; and (2) there is a likelihood that contrary evidence will arise in a final investigation. Thus, based on the record and all the reasons set forth above, we determine that there is a reasonable indication that the domestic industry producing fresh garlic is threatened with material injury by reason of the subject imports.

ADDITIONAL VIEWS OF COMMISSIONER CAROL T. CRAWFORD

FRESH GARLIC FROM THE PEOPLE'S REPUBLIC OF CHINA

INV. NO. 731-TA-683 (PRELIMINARY)

I concur in the discussion of my colleagues with respect to like product, the domestic industry, and the condition of the domestic industry. Based on the record, I determine that there is a reasonable indication that the domestic industry producing fresh garlic is materially injured by reason of allegedly dumped imports from the People's Republic of China.

I. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

A. Volume of the Allegedly LTFV Imports

The market share of subject imports increased substantially during the period of investigation, rising to 14.4% in the first half of crop year 1994. I find that the 14.4% market share is significant.

B. Effect of Allegedly LTFV Imports on Domestic Prices

To analyze the price effects of subject imports on domestic prices of the like product, I consider a number of factors relating to the industry and the nature of the products. These factors include the degree of substitutability between the LTFV imports and the domestic like product, and the presence of fairly traded imports. In this investigation, I find that the subject imports had no significant price effects.

The record includes evidence that there are quality differences between domestic garlic and subject imports that reduce the degree of substitutability. However, the record also indicates that purchasers use both the subject imports and the domestic product for the same purposes and that there is competition for sales to the same customers. Therefore, for purposes of this preliminary investigation, I find that the domestic product and subject imports are reasonably good substitutes. As a consequence, purchasers are likely to switch from subject imports to the domestic product in response to an increase in the price of subject imports.

Even though the alleged dumping margins are nothing more than the petitioners' estimates, these margins represent the best information available. In this investigation, the alleged dumping margins are so high that it is unlikely that any LTFV imports would have entered the domestic market if they had been fairly priced. As a result, it would have been necessary for purchasers to find alternative sources of supply. Nonsubject imports are generally available for purchase only during the spring, which is the growing season for both the domestic product and subject imports. This seasonal nature of garlic harvesting and selling means that nonsubject imports would not have been available in the summer and fall, when domestic garlic and subject imports are harvested and sold. Therefore, nonsubject imports are not a viable alternative source of supply available to limit domestic price increases.

There is, however, sufficient excess domestic capacity to replace the subject imports and meet the demand that has been supplied by subject imports. Moreover, the domestic industry is competitive, consisting of 10 U.S. grower/packers and the dehydrator/processors producing the product during the period of investigation. Therefore, attempts by any producer

to increase prices would have been beaten back by its competitors, that is, prevented due to competition from other producers.

For these reasons, I find that subject imports had no significant effects on domestic prices.

C. Impact on the Domestic Industry

In assessing the impact of allegedly LTFV imports on the domestic industry, I consider, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development. These factors either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

As is discussed above, it is likely that few subject imports would have entered the domestic market at fairly traded prices. Because of competition in the U.S. market and available domestic capacity, it is unlikely that domestic prices would have increased had the subject imports not been present in the market. As a result, any impact of subject imports on the domestic industry would have been on the volume of the domestic industry's output and sales.

The impact on the domestic industry would have been manifested in increased sales to fill the demand supplied by the subject imports. The increased sales could have increased the domestic industry's market share by up to approximately 14 percent. Thus, domestic sales, revenues, and market share could have increased significantly if subject imports had been priced fairly. Therefore I find that the domestic industry would have been materially better off if subject imports had been fairly traded.

II. CONCLUSION

Based on the record evidence and the analysis above, I find that the domestic industry would have been materially better off if the allegedly dumped imports of garlic had been fairly traded. Therefore, I determine that there is a reasonable indication that the domestic industry is materially injured by reason of allegedly dumped imports of fresh garlic from the People's Republic of China.

PART II

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On January 31, 1994, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by the Fresh Garlic Producers Association, consisting of seven California firms,[1] alleging that imports of fresh garlic from The People's Republic of China (China) are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, effective January 31, 1994, the Commission instituted antidumping investigation No. 731-TA-683 (Preliminary) under section 733(a) of the Tariff Act of 1930 (the Act) (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 threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* on February 9, 1994 (59 F.R. 6043).[2] The public conference was held in Washington, DC, on February 22, 1994,[3] and the vote was held on March 14, 1994. Fresh garlic has not been the subject of any other investigation conducted by the Commission.[4]

NATURE AND EXTENT OF THE ALLEGED LTFV SALES

There is no information relating to the nature and extent of the alleged LTFV sales other than the allegations of the petitioners. On the basis of a constructed value for Chinese garlic production (based on similar production in India) and offerings of garlic totaling about *** pounds to ***, the petitioners calculated dumping margins of 266.73 percent (*** pounds at $*** per pound) and 376.67 percent (*** pounds at $*** per pound). It should be noted, however, that the purchaser in question, ***, is one of a type of garlic processors, known as dehydrators, to whom prices have traditionally been the lowest in the U.S. market, and most sellers of fresh garlic consider any sales to such processors as "distressed". (Dehydrators fulfill most of their needs with their own production). Further discussions of *** and other institutional components of the U.S. market and industry are included in following sections.

THE PRODUCT

Description and Uses

The product subject to the petitioners' complaint is fresh or frozen[5] garlic, whole or in individual cloves, peeled (skins removed) or unpeeled. Fresh garlic is either (1) used directly as a food product (fresh-use market, about 25 percent of U.S. consumption), (2) processed into other food

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[1] A&D Christopher Ranch, Gilroy, CA; Belridge Packing Co., Wasco, CA; Colusa Produce Corp., Colusa, CA; Denice & Filice Packing Co., Hollister, CA; El Camino Packing, Gilroy, CA; The Garlic Company, Shafter, CA; and Vessey and Company, Inc., El Centro, CA.

[2] Copies of the Commission's and Commerce's notices of institution are shown in app. A.

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

[4] A related product, dehydrated garlic, has been the subject of several of the Commission's GSP (Generalized System of Preferences) investigations, most recently in 1991-92.

[5] Although fresh garlic is often chilled or cooled in storage to maintain its freshness prior to shipment, it is rarely, if ever, frozen, and no further mention of frozen garlic will be made throughout the remainder of this report. Petitioners included "frozen" garlic in the scope of their petition for the sole purpose of preventing the circumvention of any future antidumping-duty order on "fresh" garlic.

products, such as garlic seasoning, garlic purees, pickled garlic, and relish (non-fresh-use or processing market, about 75 percent of U.S. consumption), or (3) used as seed stock for the following year's production.[6]

In the Western Hemisphere, fresh garlic for both fresh use and non-fresh use is primarily grown in the sunny, relatively dry climates of California, Mexico, Argentina, and Chile. Garlic for seed stock, at least in North America, is primarily grown in Nevada and eastern Oregon. Like many vegetables, garlic grows beneath the soil's surface, expanding from individual cloves (used as seed stock) to mature compound bulbs in about 9 months. One crop is grown per year, and land cannot be used again for this purpose for at least 4 years. The time of planting and harvesting largely depends on the latitude of the growing area--the lower the latitude the earlier the planting and harvesting. In California, garlic is planted during the fall and harvested during the following summer; in Mexico, garlic is planted during the summer and harvested in the following spring. In Argentina and Chile, where the seasons are reversed from those of North America, planting takes place in March-May for harvest in the following December-February. The result of such staggered crop years is that fresh garlic has traditionally been available from one source or another in the Western Hemisphere throughout the entire year, and no two sources have seriously impacted one another in the market place. The crop year in China, however, coincides with that in California, and imports of fresh garlic from China largely coincide with the harvesting of the U.S.-produced product. Because fresh garlic will normally only remain free of deterioration within 3 months of harvesting, it has generally been shipped and consumed within this time. In recent periods, however, importers and producers have invested in cold-storage and controlled-atmosphere facilities that effectively extend the life of fresh garlic to 10 or 11 months--well into the next crop year. The result is that importers and producers are able to spread shipments over a longer period, albeit at additional cost.

In the United States, as in other parts of the world, the crop year begins with the acquisition of seed stock, the selection and allocation of acreage, field preparation, and planting. The density of planting depends on the intended use of the garlic. Garlic for fresh use is planted at 130,000 to 200,000 seeds per acre; garlic for non-fresh use (processing) is planted at 240,000 to 300,000 seeds per acre. (The lower density in the former instance facilitates hand harvesting, used to minimize damage). Cultivating the garlic consists of irrigation, weed control, fertilization, and windrowing. These activities are basically similar for both fresh-use and non-fresh-use garlic. But, as in the case of planting, the methods used to harvest and further handle the garlic differ according to the garlic's intended use.

For non-fresh-use garlic--most of which is dehydrated before being further processed--irrigation is stopped at least 3-4 weeks prior to harvest to accelerate the bulbs' natural drying process. The harvesting of garlic intended for non-fresh use, at least in the United States, is totally mechanized. After harvesting, it is transported to special facilities for cleaning and either directly processed or shipped in bulk for similar purposes. Such garlic accounts for about 70 percent of U.S. production.

For fresh-use garlic, about 30 percent of U.S. production, water shut-off occurs no more than 3 weeks before harvest to insure that the crop will be sufficiently moist. Special machinery is then used to undercut the bulb and loosen the soil. The actual harvesting is done by hand. Following the harvest, such garlic is transported to special facilities for cleaning, grading, sorting, and packing. Only

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[6] The petitioners' complaint and arguments in this investigation all concern "fresh garlic;" however, petitioners use different definitions of fresh garlic according to (1) their scope, which is the scope defined by Commerce, and (2) the position they take with respect to like-product. For purposes of the investigation's scope, "fresh garlic" includes that suitable for fresh use, non-fresh use, and seed stock; for purposes of petitioners' like-product argument, "fresh garlic" includes only that suitable for fresh use. The all-inclusive nature of the scope is designed to prevent any circumvention of an antidumping duty. Although fresh garlic suitable for fresh use must generally meet certain standards in appearance, there is some flexibility in these standards, and in any case the distinction is not so clear as to presuppose garlic's suitability for a specific use upon inspection.

two grades, defined by the U.S. Department of Agriculture (USDA), are relevant for fresh-use sales in the United States: USDA Grade No. 1 and all other, or commercial grade. USDA grade No. 1 garlic must be whole and meet minimum standards for size (not less than 1-1/2 inches in diameter), color variation, maturity, compactness, plumpness, and damage; for the most part, buyers of garlic for fresh use demand similar characteristics. Of the garlic grown in the United States for fresh use, between 80 and 85 percent qualifies as such after grading. The remainder is sold or used for further processing, either as such or peeled, i.e., the cloves are separated from the bulb, if not already separated, and the individual skins are removed. Garlic that qualifies for fresh use is then sorted and packed according to size, ranging from 1-1/2 inches in diameter through 1/4-inch increments to 2-3/4 inches in diameter and more. (Large diameter garlic, sometimes known as "elephant" garlic, is not recognized as a separate variety by the USDA). Most imported garlic qualifies for fresh use and, like the U.S.-produced product, generally ranges in size from 1-1/2 inches to 2-1/2 inches in diameter. Garlic's fresh-use qualification, however, does not guarantee that it will be sold for this purpose. In deference to prevailing market conditions, garlic suitable for fresh use may often be sold for non-fresh use, or even for seed stock, as will be discussed in the following sections.

U.S. Tariff Treatment

The subject product (other than frozen garlic) is specifically provided for in subheading 0703.20.00 of the Harmonized Tariff Schedule of the United States (HTS). The column 1-general (most-favored-nation) rate of duty for this subheading, applicable to imports from China, is 1.7 cents per kilogram (about 0.77 cent per pound). (Frozen garlic is provided for in subheadings 0710.80.70 and 0710.80.97, subheadings that encompass unspecified frozen vegetables not enumerated elsewhere. The column 1 rates of duty for these subheadings are 25 percent and 17.5 percent ad valorem, respectively).

U.S. PRODUCERS

At least 16 firms are known to have produced fresh garlic during the period for which data were collected, each providing for its own seed stock and each concentrating its production for an intended use, i.e., either for fresh use or for further processing. They include at least 10 grower/packers, including the petitioners,[7] which produce mostly fresh-use garlic for open-market consumption; and 4 processors (of a type known as "dehydrators" because they dehydrate the garlic before further processing), which produce non-fresh-use garlic and almost exclusively for internal consumption.[8] Their respective shares of U.S. garlic production, open-market shipments, and shipments for fresh use for the 1993 crop year (June 1992 through May 1993) are shown in table 1. Like the dehydrators, most grower/packers also internally consume some of the garlic they produce in processing other products, but only in small quantities. Likewise, from time to time dehydrators may sell garlic on the open market, but for non-fresh use only--their irrigation and harvesting methods, as well as the equipment they use to harvest the garlic, by and large render it unqualified for fresh use.[9]

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[7] The non-petitioners include Joseph Gubser Co., Gilroy, CA; Thomson International Co., Bakersfield, CA; and George Chiala Farms, Morgan Hill, CA. Two other relatively small grower/packers, Dalgety Produce Co., Salinas, CA, and Consol Pak, Five Points, CA, ceased production in 1991. Dalgety's packing facility is now owned and operated by one of the petitioners (***).

[8] The dehydrators include Basic Vegetable Products, Hanford, CA; Gilroy Foods, Inc., Gilroy, CA; Rogers Foods, Inc., Turlock, CA; and De Francesco Brothers, Firebaugh, CA.

[9] From time to time dehydrators sell or trade part of their garlic acreage to a grower/packer before harvesting. If harvested using the grower/packer's methods, much of the crop will qualify for fresh use.

Table 1
Fresh garlic: U.S. producers and respective shares of domestic production for consumption (i.e., total production less production for seed stock), domestic open-market shipments, and shipments for fresh use (by quantity), by firms, crop year 1993

Firm	Share (*percent*) of domestic production	Share (*percent*) of domestic open-market shipments[1]	Share (*percent*) of shipments for fresh use[1]
Grower/packers:			
Petitioners:			
A&D Christopher	***	***	***
Belridge Packing	***	***	***
Colusa Produce	***	***	***
Denice & Filice	***	***	***
El Camino Packing	***	***	***
The Garlic Co	***	***	***
Vessey & Co	***	***	***
Subtotal	26.2	79.6	100.0
Non-petitioners:			
G. Chiala Farms[3]	***	***	***
Joseph Gubser Co.[3]	***	***	***
Thomson Intl[4]	***	***	***
Subtotal	2.9	(2)	(2)
Dehydrators:			
Basic Vegetable[5]	***	***	***
De Francesco Bros[3]	***	***	***
Gilroy Foods[5]	***	***	***
Rogers Foods[5]	***	***	***
Subtotal	71.0	20.4	0

[1] The data do not include El Camino Packing and the non-petitioning grower/packers.
[2] Unknown.
[3] ***.
[4] ***.
[5] ***.

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

In general, U.S. producers neither own nor are resident on the land used for fresh garlic production. Each year they enter into contractual arrangements with local farmers (referred to by the petitioners as "crop tenders") for this purpose by which they provide the seed stock, specify cultivating procedures, provide labor and equipment for planting and harvesting (to varying degrees), and agree to pay the farmer a certain price per pound of garlic harvested irrespective of market price. The same type of arrangements are made with other growers in Oregon and Nevada for seed stock. After harvesting, U.S. producers transport the garlic to separate facilities they own or lease for any cleaning, grading, sorting, peeling, packing, storing, and/or further processing. There are no known firms, other than perhaps a few peelers, performing any of the operations of fresh garlic production that are not

owned and/or contractually controlled by the listed firms. Most U.S. producers produce vegetable and/or fruit products other than garlic; however, garlic is important, if not primary, to their overall operations.

U.S. IMPORTERS

At least 12 firms, including one of the petitioners (A&D Christopher), import fresh garlic from China--either directly from Chinese companies that control the distribution and export of garlic (and other products), or indirectly from private Hong Kong companies through which much of the Chinese garlic is shipped.[10] Although Chinese garlic comes into several ports throughout the United States, most of the importers are located on the West Coast. None adds significant value to the imported product: for the most part the imported product enters the United States graded, sorted, and packed; and most qualifies for fresh-grade use. As indicated previously, however, some of the importers own or lease cold-storage facilities where garlic may be stored and effectively preserved for extended periods of time.

U.S. MARKET AND CHANNELS OF DISTRIBUTION

About three-fourths of U.S.-produced fresh garlic is internally consumed by U.S. producers (mainly the dehydrators) in the production of other food products. The bulk of the remainder is either sold indirectly to the fresh-use market (supermarkets, grocery stores, and restaurants) through brokers, wholesalers, and distributors; or directly to the non-fresh-use market, including dehydrators and other food processors. The overall consumption of fresh garlic has increased steadily since 1991, reaching levels of nearly 370 million pounds and over $400 million annually (see the section of this report entitled "U.S. Consumption and Market Penetration").

Despite the basic structure of fresh-garlic distribution and its market, buying and selling patterns can vary considerably from year to year. Like most agricultural products, fresh garlic is subject to local variations in climate and other factors that can cause wide variations in production quantity and quality from acreage to acreage and producer to producer. The result is a certain degree of price instability and a high degree of intercompany buying and selling as firms endeavor to rid themselves of any excess or make up for any shortfall under existing price conditions. Producers may buy from (or sell to) importers and other producers, and importers may buy from (or sell to) producers and other importers in an effort to maximize returns (or minimize losses) under the circumstances. Despite their variability, prices have generally remained stratified by market--the highest prices paid by distributors to the fresh-use market, the lowest prices paid by processors and dehydrators.

[10] In addition to A&D Christopher, another petitioner (Vessey and Co.) stated at the conference that it had acquired (either through direct importation or purchases from an importer) some Chinese garlic, principally for use as seed. A third petitioner, Colusa Produce, testified that it had purchased (but not directly imported) some Chinese garlic for resale to its customers. (Conference transcript (Transcript), pp. 33-34 and 84-86.)

CONSIDERATION OF THE ALLEGED MATERIAL INJURY

Data on U.S. producers' operations on all fresh garlic are shown in appendix C. Other than for employment and financial performance, the data reflect about 95 percent of U.S. production (data for four small producers--one petitioner and three other grower/packers--were not available). Employment and financial data represent only that for six and five of the petitioners, respectively--about 23 percent of U.S. production. Except for financial data, all information is shown on a crop-year basis, beginning in June of the previous year and ending in May of the year shown. Financial data are shown on a fiscal-year basis.

U.S. Production, Capacity, Capacity Utilization, Shipments, Inventories, and Employment

The data show overall steady increases in capacity,[11] production,[12] capacity utilization, and employment, but a slight decline in total shipments in June-December 1993 resulting from a drop in internal consumption--which represents more than 75 percent of total shipments. Total domestic shipments and exports increased throughout the period. The value of these shipments, however, increased disproportionately so that average unit values declined. For domestic shipments alone, the average unit value fell from $0.94 per pound in crop year 1991 to $0.75 per pound in June-December 1993, undoubtedly contributing to the declining net returns of grower/packers as shown in the following section on financial performance. End-of-period inventories were small or negligible for the crop years shown, largely a consequence of this time being the beginning of the new crop's harvest, when virtually all remaining stocks of the previous crop would have been sold or alternately disposed of. From the end of December 1992 to the end of December 1993, however, inventories increased by 7.3 percent. Also noteworthy is the declining share of production for fresh use that was actually sold for fresh use. From June-December 1992 to June-December 1993, the ratio of fresh-use shipments to fresh-use production fell from 50.1 to 37.8 percent (from crop-year 1992 to crop-year 1993, it fell from 89.8 to 81.6 percent).

Similar data for U.S. grower/packers alone are shown in table 2. For the most part the trends in these data reflect those for the aggregate--steadily increasing production, capacity, capacity utilization, domestic shipments, inventories, and employment, but declining unit values overall. For domestic fresh-use shipments, the average unit value fell from $0.84 per pound in crop year 1991 to $0.67 per pound in June-December 1993.

Financial Experience of U.S. Producers

Five producers[13] of fresh garlic provided usable financial data on their fresh garlic operations. These producers accounted for about 93 percent of reported U.S. shipments of fresh garlic for fresh use (or about 23 percent of U.S. production of all fresh garlic) in crop year 1993 (see table 1). Three firms operated their business as a corporation, reporting their data on an "accrual basis" accounting method, whereas two firms operated their business as a partnership, one reporting data on an "accrual basis" and the other reporting on a "cash basis."

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[11] Capacity takes into account acreage available for planting, machinery and equipment for planting and harvesting, and facilities for cleaning, grading, sorting, and packing. Most of the planting and harvesting equipment is specific to garlic production.

[12] The data do not include seed stock, as its production is generally imbedded in the following year's production for consumption. It takes 1 pound of garlic to grow about 7 pounds of garlic.

[13] These producers are ***.

Table 2
Fresh garlic: U.S. production, average practical capacity, capacity utilization, company transfers, domestic shipments, exports, and end-of-period inventories of grower/packers, crop years 1991-93, June-Dec. 1992, and June-Dec. 1993[1]

Item	1991	1992	1993	June-December-- 1992	June-December-- 1993
Production (*1,000 pounds*)	48,858	71,283	86,596	71,366	88,938
Production suitable for fresh use (*1,000 pounds*)	41,935	60,646	72,808	69,011	73,019
Capacity (*1,000 pounds*)	74,780	94,508	104,292	92,038	93,517
Ratio of total production to capacity (*percent*)	65.3	75.4	83.0	77.5	95.1
Transfer shipments:[2]					
Quantity (*1,000 pounds*)	2,553	597	3,801	3,548	3,471
Value (*1,000 dollars*)	760	179	1,140	1,064	1,041
Domestic fresh-use shipments:					
Quantity (*1,000 pounds*)	34,196	54,440	59,454	34,544	27,609
Value[3] (*1,000 dollars*)	28,819	40,899	43,822	24,392	18,589
Unit value (*per pound*)	$0.84	$0.75	$0.74	$0.71	$0.67
Domestic non fresh-use shipments:					
Quantity (*1,000 pounds*)	4,599	5,166	7,361	4,256	13,422
Value[3] (*1,000 dollars*)	1,491	1,656	1,339	987	2,710
Unit value (*per pound*)	$0.32	$0.32	$0.18	$0.23	$0.20
Exports:					
Quantity (*1,000 pounds*)	3,739	4,746	8,731	6,941	10,829
Value[3] (*1,000 dollars*)	2,771	3,044	5.566	4,235	5,957
Unit value (*per pound*)	$0.74	$0.64	$0.64	$0.61	$0.55
Total shipments:					
Quantity (*1,000 pounds*)	45,087	64,949	79,347	49,289	55,331
Value[3] (*1,000 dollars*)	33,841	45,778	51,867	30,678	28,297
Inventories (*1,000 pounds*)	0	0	363	21,051	28,161
Ratio of inventories to total shipments during the period (*percent*)	-	-	2.3	42.7	50.9
Employment of production and related workers					
Average number	460	653	901	856	982
Hours worked (*1,000*)	739	980	1,122	858	1,023

[1] The data include 6 of the 10 known grower/packers, representing at least 80 percent of the garlic produced in the United States that is suitable for fresh use.
[2] Internal consumption for processing.
[3] Net sales value, i.e., gross value less all discounts, allowances, rebates, and the value of returned goods.

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

The Commission collected financial data from each firm on a fiscal-year basis. As mentioned previously, garlic for fresh use is generally planted in the fall of each year, harvested and packed in the summer months of June through August, and sold starting in June and extending into the following year, as some of the crop is kept in cold storage for up to about 10 to 11 months. Because the period from planting to selling of the same crop covers more than 12 months, it is difficult to get data which will provide matching revenues and expenses of the same crop. Producers stated in the conference that they do not keep such matching data for each crop.[14] The data on an "accrual basis" of accounting method reflect the financial performance for each fiscal year.

Income-and-Loss Experience

The financial data for the responding grower/packers are presented in table 3. Total net sales increased by 41 percent from $39.7 million in 1991 to $56.2 million in 1993. The net sales value of garlic for fresh use rose by 40 percent from 1991 to 1993. The net sales value of garlic for all other uses declined by 71 percent from 1991 to 1992 but increased more than fivefold from 1992 to 1993.

Net income before income taxes declined from $1.9 million, or 4.8 percent of net sales, in 1991 to $1.6 million, or 2.9 percent of net sales, in 1993. Seeds, growing, harvesting, and packing costs accounted for most of the costs. They ranged from about 75 percent of total net sales in 1991 to about 77 percent in 1993. Harvesting and packing costs rose during 1991-93. Storage costs increased from 1.5 percent of total net sales in 1991 to 2.0 percent in 1992 and 1993. Selling, general, and administrative expenses remained at 13.6 percent of total net sales in 1991 and 1992 and slightly declined to 13.2 percent of total net sales in 1993. Key financial data, by firms, are presented in table 4.

Capital Expenditures and Investment in Fresh Garlic Operations

All five responding producers provided data on their capital expenditures and total assets employed in fresh garlic operations, as presented in table 5. Capital expenditures increased from $1.8 million in 1991 to $2.3 million in 1992 and then declined to $1.7 million in 1993. Total assets rose from $26.2 million in 1991 to $31.1 million in 1993. Net return on total assets before income taxes dropped from 7.3 percent in 1991 to 5.2 percent in 1993.

Impact of Imports on Capital and Investment

Comments received from U.S. producers of fresh garlic on the impact of imports of garlic from China on their growth, investment, ability to raise capital, and development and production efforts are shown in appendix D.

[14] Transcript, pp. 92-93.

Table 3
Income-and-loss experience of U.S. grower/packers on their operations producing fresh garlic, fiscal years 1991-93[1]

Item	1991	1992	1993
	Value (*1,000 dollars*)		
Net sales:			
Sold for fresh use	38,278	47,152	53,618
Sold for all other uses	1,425	410	2,555
Total	39,703	47,562	56,173
Operating expenses:			
Seeds, materials, and supplies	4,444	5,507	6,045
Purchased garlic (other than seed) and planting/growing costs	10,920	12,782	14,818
Harvesting costs	4,698	6,216	7,512
Hauling, sorting, and packing costs	9,605	11,694	14,788
Storage costs	589	936	1,145
Other overhead costs	1,685	1,735	2,274
Partners' and officers' salaries	352	409	383
Selling, general, and administrative expenses	5,383	6,468	7,440
Interest expenses	114	170	167
Total	37,790	45,917	54,572
Net income before income taxes	1,913	1,645	1,601
Depreciation	962	1,195	1,339
Cash flow[2]	2,875	2,840	2,940
	Ratio to net sales (*percent*)		
Operating expenses:			
Seeds, materials and supplies	11.2	11.6	10.8
Purchased garlic (other than seed) and planting/growing costs	27.5	26.9	26.4
Harvesting costs	11.8	13.1	13.4
Hauling, sorting, and packing costs	24.2	24.6	26.3
Storage costs	1.5	2.0	2.0
Other overhead costs	4.2	3.6	4.0
Partners' and officers' salaries	.9	.9	.7
Selling, general, and administrative expenses	13.6	13.6	13.2
Interest expenses	.3	.4	.3
Total	95.2	96.5	97.1
Net income before income taxes	4.8	3.5	2.9
	Number of firms reporting		
Operating losses	0	2	3
Net losses	0	2	3
Data	5	5	5

[1] These producers, their fiscal yearend, and accounting method are ***.
[2] 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 4
Income-and-loss experience of U.S. grower/packers on their operations producing fresh garlic, by firms, fiscal years 1991-93

* * * * * * *

Table 5
Capital expenditures, value of assets, and return on assets of grower/packers' operations producing fresh garlic, fiscal years 1991-93

Item	1991	1992	1993
Capital expenditures (*1,000 dollars*) .	1,755	2,270	1,719
Total assets (*1,000 dollars*)	26,240	30,355	31,070
Net return[1] (*percent*)	7.3	5.4	5.2

[1] 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.

CONSIDERATION OF THE ALLEGED THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Act (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 the merchandise, the Commission shall consider, among other relevant economic factors[15]--
>
> > (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,

[15] 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."

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

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

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

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

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 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)(i) 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.[16]

Available 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 the Alleged LTFV Imports 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 appendix D. Available information on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); and any other threat indicators, if applicable (item (VII) above), is discussed below.

At least one U.S. importer (***), representing over *** percent of imports, reported a substantial inventory of Chinese garlic (over *** pounds) as of December 31, 1993; however, it, like many importers, did not import in substantial quantities until 1993, and in any case very little is

[16] 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."

known about importers' operations. Responses to the Commission's data collection forms account for only about 38 percent of total imports from China and much of those data are incomplete.

Little is known at this time of Chinese production, capacity, or shipments other than those to the United States.[17] In 1993 China relaxed national export controls and regulation of garlic exports passed from the China National Cereals, Oils, and Foodstuffs Import and Export Corp., a government organization, to the China Chamber of Commerce of Imports and Exports of Foodstuffs, Native Produce, and Animal By-Products, an association of member export companies. According to a faxed letter from Mr. Hexiang Sha, formerly in charge of garlic exports at China National and now in charge of organizing exporters as Chief of Foodstuffs at the China Chamber of Commerce, Chinese garlic production increased to a record amount of over 3 billion pounds in 1993 because of good weather. China consumes about 95 percent of the garlic it produces. The Chamber of Commerce intends to work with the government and exporters to restrict exports in 1994 in an effort to increase prices.

So far as it is known, imports of Chinese-produced garlic are not subject to any antidumping duties in any foreign country. At least one country, however, has banned such imports altogether. Mexico was a large consumer and importer of garlic from China. In 1993, prompted by industry complaints of two viruses carried on Chinese garlic that were thought to be a threat to native garlic, the Mexican government prohibited all such imports into Mexico. Pending studies into the actual risk Chinese garlic poses to the Mexican industry, Mexico remains officially closed to Chinese garlic. Certain import restrictions in Europe also reportedly retarded Chinese exports. In January of this year, however, a European licensing system was established which, according to some sources, should ease exports into that region for the next harvest.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN THE ALLEGED LTFV IMPORTS AND THE ALLEGED MATERIAL INJURY

Imports

The bulk of foreign-produced garlic entering the United States in recent periods has come from China, Argentina, Chile, and Mexico--Mexico alone accounted for well over half of total imports from June 1990 to May 1993 (appendix table C-1). Total imports remained relatively constant in this period. From June-December 1992 to June-December 1993, however, imports more than tripled--and virtually all of the increase was in imports from China. From 7.2 million pounds (or 33 percent of total imports) in June-December 1992, imports from China rose more than sixfold to 52.4 million pounds (or 80 percent of total imports) in June-December 1993. Several reasons have been put forth for this rapid increase, including the decentralization of agricultural and export controls in China, import restrictions in Europe and the prohibition of Chinese imports into Mexico in 1993, and local shortages of some dehydrators. The garlic market, like the market for many other commodities, is susceptible to price fluctuation. It is likely that importers, with large quantities of relatively inexpensive garlic available from China in 1993, sought to capitalize on this market.

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[17] According to data contained in the petitioners' postconference brief (exh. 2, tables 4-5), China is the world's largest producer of garlic, accounting for 647,000 metric tons, or 21.5 percent of aggregate world output of 3.0 million metric tons in 1989 (apparently the last year for which data were available). The United States, with production of 150,000 metric tons, ranked as the world's 6th largest producer and had 5.0 percent of total world output in 1989. The other largest producers and their shares of 1989 output were (in percent): Korea (13.3), India (9.8), Spain (7.6), and Egypt (6.6).

U.S. Consumption and Market Penetration

Apparent U.S. consumption of fresh garlic increased by 25 percent from crop year 1991 to crop year 1993 and by 12 percent from June-December 1992 to June-December 1993 (appendix table C-1). The latter increase was at least in part due to the availability of large quantities of relatively cheap U.S.-produced and imported garlic. As a share of consumption, imports from China remained at less than 3 percent through June-December 1992, but then rose to over 14 percent in June-December 1993. From crop year 1992 onwards, the U.S. producers' share declined.

U.S. open-market consumption (total consumption less internal consumption (company transfers)) and respective shares of imports and U.S. producers are shown below:

Item	Crop year-- 1991	1992	1993	June-December-- 1992	1993
Open-market consumption (*1,000 pounds*)	97,505	113,023	126,906	75,975	123,969
U.S. producers' share (*percent*)	55.6	66.4	66.2	71.3	47.0
Total imports' share (*percent*)	44.4	33.6	33.8	28.7	53.0
Imports' from China share (*percent*)	4.8	2.5	6.9	9.5	42.3

Like overall consumption, open-market consumption increased throughout the period and the ratio of imports from China to such consumption increased markedly in June-December 1993. About 65 percent of U.S. producers' open-market shipments and most imports in this period were for fresh use.

U.S. consumption of garlic for fresh use, approximated by combining imports with that portion of grower/packers' production (about 80 percent) suitable for fresh use, is shown below:

Item	Crop year-- 1991	1992	1993	June-December-- 1992	1993
Consumption of garlic suitable for fresh use (*1,000 pounds*)	85,269	98,659	115,729	90,782	138,787
U.S. producers' share (*percent*)	49.2	61.5	62.9	76.0	52.6
Total imports' share (*percent*)	50.8	38.5	37.1	24.0	47.4
Imports' from China share (*percent*)	5.5	2.9	7.5	7.9	37.8

Prices

Market Characteristics

The market for fresh garlic includes U.S. producers and importers which sell product predominantly to wholesalers, distributors, and food brokers. U.S. producers and importers may also sell lesser quantities to food processors, dehydrators, and retail stores. Demand for fresh garlic depends mainly on the level of demand in end-use markets (such as restaurant chains, grocery stores, and food processing sectors) that either resell the product or utilize it for further processing. The majority of domestic producers and importers indicated increasing demand for garlic products during

the period for which data were collected in this investigation, due in part to increased awareness of the health benefits associated with fresh garlic use.[18]

Six domestic producers and five importers provided information relevant to their selling practices for fresh garlic in the U.S. market. Nearly half of the responding producers and importers reported distributing price lists. However, the majority of these firms indicated that price lists serve only as a guideline and that prices are negotiated based on prevailing market conditions. Three producers and two importers reported providing volume discounts on their sales of fresh garlic.[19] Prices for sales of domestic and Chinese fresh garlic are predominantly quoted on an f.o.b. basis from either a cold-storage or packing facility with inland shipping charges paid by the purchaser. *** also sell on a delivered basis. ***'s delivered sales are restricted to ***.[20] According to questionnaire responses, all importers and five of six producers indicated that transportation costs are an important factor in their customers' purchase decisions. Transportation costs as a percentage of total delivered cost for the subject product varied widely, ranging from 1 to 12 percent.[21] U.S. producers' lead times between order and delivery to a customer range from 1-3 days for West Coast shipments to 3-7 days for other domestic destinations. Lead times for importers of Chinese fresh garlic range between 3 and 7 days for shipments from U.S. inventory and from 1 to 4 months for shipments of orders that cannot be filled by existing inventory in the United States.

U.S. producers' domestic sales of whole fresh-garlic bulbs are predominantly shipped in 30-pound cartons,[22] while sales of peeled fresh garlic are frequently shipped in 5-pound plastic bags or jars. Chinese fresh garlic imports are sold both in 22-pound and 30-pound cartons, with sales of the latter increasingly more common. Imports of peeled fresh Chinese garlic are most frequently sold in 5-pound plastic bags or jars.

U.S. producers typically plant fresh garlic in the fall (October-November) and harvest product in the second quarter (June) of the following year.[23] Generally, domestic product is brought to market during the 6 months following harvest, with some product sold out of storage facilities during the first quarter of the following year.[24] [25] However, some U.S. producers plant Chinese garlic seed which matures a month earlier than domestic seed, enabling growers to ship product to the market a month earlier.[26] Chinese fresh garlic, which is planted and harvested slightly earlier than U.S. product, also appears on the U.S. market during the latter 6 months of any given year. Consequently, the marketing period for U.S.-grown and Chinese garlic overlaps, resulting in direct competition. Since the market will not absorb all the domestic or imported product at the time of harvest, both U.S. producers and importers maintain a certain portion of their fresh-grade garlic in storage facilities.[27] Due to its semi-perishable nature, fresh garlic may be kept in cold-storage facilities for only up to about 6 months.[28] [29]

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[18] *** indicated that increases in industrial applications, the popularity of peeled product for the food service sector, abundant supplies, an increase in the Asian population in the United States, and national publicity of the Gilroy Garlic Festival have also contributed to increased demand for garlic.

[19] ***.

[20] Producers' questionnaire responses.

[21] Most producers and importers indicated that the majority of their fresh garlic sales are transported 500 miles or greater.

[22] *** U.S. producers indicated some shipments of fresh garlic bulbs in bulk bin containers (approximately 1,800 pounds) during the period examined.

[23] U.S. producers may harvest a smaller late crop in the fourth quarter. (Vessey, Transcript, p. 22.)

[24] Petition, pp. 19-20.

[25] Testimony of Mr. John Vessey, Vessey and Co., Inc. (Transcript, pp. 20-21.)

[26] Testimony of Mr. John Vessey, Vessey and Co., Inc. (Transcript, pp. 85-86.)

[27] Petition, p. 16.

[28] Petition, p. 16, and Transcript, pp. 160-166.

[29] According to ***, fresh garlic may also be placed in dry storage for shorter periods of time.

U.S. producers and importers with access to controlled atmosphere[30] storage facilities may inventory fresh garlic for up to about 11 months.[31] Thus, U.S. producers and importers can extend the selling period of their fresh garlic through the use of cold-storage facilities. In some instances, fresh garlic may be stored from one harvest season to the next.[32] According to producer and importer questionnaire responses, storage costs as a percentage of the total delivered price of fresh garlic range from 1 to 20 percent.[33]

Questionnaire Price Data[34]

The Commission requested U.S. producers and importers to report net U.S. f.o.b. selling prices for sales of fresh garlic to unrelated wholesalers/distributors, as well as the total quantity shipped and the total net f.o.b. value shipped in each month to all unrelated U.S. wholesalers/ distributors. Monthly price data were requested for the largest single sale and for total sales of the products specified, from October 1991 through December 1993. The products for which pricing data were requested are as follows:

Product 1: USDA Grade No. 1, fresh garlic, white, (whole bulb), 2-inch diameter, packed in 30-pound or 22-pound cartons, sold to wholesalers/distributors.

Product 2: USDA Grade No. 1, fresh garlic, white, (whole bulb), 2-1/4-inch diameter, packed in 30-pound or 22-pound cartons, sold to wholesalers/distributors.

Product 3: USDA Grade No. 1, fresh garlic, white, (whole bulb), 2-1/2-inch diameter, packed in 30-pound or 22-pound cartons, sold to wholesalers/distributors.

Product 4: Peeled fresh garlic cloves, white, packed in 5-pound plastic bags or plastic jars, sold to wholesalers/distributors.

Six domestic producers and five importers[35] provided pricing data for sales of the requested products in the U.S. market, although not necessarily for all products or all months over the period examined. In general, U.S. producers' weighted-average price trends for all products were similar in the 1992-93 marketing seasons, the two seasons for which full pricing cycles were available. Prices for U.S.-grown fresh garlic were lower during the first 3-5 months following summer harvest as product comes to market, and generally higher thereafter until the ensuing year's harvest (tables 6-9). Quantities sold by U.S. producers were generally highest during the 6 months subsequent to harvest and lowest preceding harvest.[36] Importers' prices for products 1-4 from China were limited; they were reported for 34 of the 108 months examined. However, such imports undersold the

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[30] Controlled-atmosphere storage removes oxygen from the storage environment, extending the shelf life of fresh garlic.

[31] Staff interview with ***, Mar. 1, 1994, and Provost, Transcript, p. 31.

[32] *** (staff interview with ***, Mar. 1, 1994.) Also, testimony of Mr. John Layous, The Garlic Co., Transcript, pp. 89-90.

[33] Mr. John Layous, The Garlic Co., stated that storage costs are approximately $0.01 per pound per month. (Transcript, pp. 89-90.)

[34] Prices were requested only for selected fresh garlic products sold for fresh use on the open market. Fresh garlic sold for fresh use comprises approximately 25 percent of U.S. apparent garlic consumption. Nearly 75 percent of U.S. apparent consumption is used captively by the food processing market. (See "Description and Uses")

[35] *** reported prices for imports of Chinese fresh garlic.

[36] "By October, the market is usually saturated with garlic from summer harvest, so price stagnates and movement is slow...Harvest promotions often kick in at this time to pull the product through the channel, and pricing starts then on the upswing." (Testimony of Ms. Betty Alexander, AgResources International, Transcript, p. 152.)

Table 6
Product 1: Weighted-average net f.o.b. prices and quantities for sales to wholesalers/distributors reported by U.S. producers and importers, and margins of under/(over)selling, by months, Oct. 1991-Dec. 1993

* * * * * * *

Table 7
Product 2: Weighted-average net f.o.b. prices and quantities for sales to wholesalers/distributors reported by U.S. producers and importers, and margins of under/(over)selling, by months, Oct. 1991-Dec. 1993

* * * * * * *

Table 8
Product 3: Weighted-average net f.o.b. prices and quantities for sales to wholesalers/distributors reported by U.S. producers and importers, and margins of under/(over)selling, by months, Oct. 1991-Dec. 1993

* * * * * * *

Table 9
Product 4: Weighted-average net f.o.b. prices and quantities for sales to wholesalers/distributors reported by U.S. producers and importers, and margins of under/(over)selling, by months, Oct. 1991-Dec. 1993

* * * * * * *

comparable U.S. products in 30 of the 34 possible price comparisons. In 4 instances the U.S. product was priced lower than the comparable Chinese product.

U.S.-grown fresh garlic.--Weighted-average prices for domestic 2-inch diameter bulbs (product 1) were highest approaching the marketing seasons of 1992 and 1993 (*** per pound in April 1992 and *** per pound in January 1993), and generally declined until the third or fourth quarter, near the end of the marketing season. Quantities sold peaked during the fourth quarters of 1992 and 1993, *** and *** pounds during December 1992 and October 1993, respectively (figures 1-4). Prices for 2-1/4-inch diameter bulbs (product 2) were highest at *** and *** per pound during April 1992 and January 1993, respectively. Prices were lowest during August at *** and *** per pound during 1992 and 1993, respectively. Domestic 2-1/2-inch diameter bulb (product 3) prices were highest during April 1992 (*** per pound) and February 1993 (*** per pound). During September 1992 and August 1993, prices were lowest at *** and *** per pound, respectively. Peeled fresh garlic cloves (product 4) followed similar price trends, peaking at *** per pound 2-3 months prior to harvest in 1992.

Chinese fresh garlic.--Weighted-average prices for Chinese 2-inch diameter bulbs (product 1) were reported for 16 of the 27 months examined. Reported prices for October 1991-December 1992 ranged between *** and *** per pound. During 1993 prices were highest during January-February (*** per pound), then generally declined thereafter. Corresponding quantities were highest during

Figure 1
Weighted-average net f.o.b. prices for sales of products 1 and 2 to wholesalers/distributors reported by U.S. producers and importers, by months, Oct. 1991-Dec. 1993

* * * * * * *

Figure 2
Weighted-average net f.o.b. prices for sales of products 3 and 4 to wholesalers/distributors reported by U.S. producers and importers, by months, Oct. 1991-Dec. 1993

* * * * * * *

Figure 3
Quantities sold of products 1 and 2 to wholesalers/distributors reported by U.S. producers and importers, by months, Oct. 1991-Dec. 1993

* * * * * * *

Figure 4
Quantities sold of products 3 and 4 to wholesalers/distributors reported by U.S. producers and importers, by months, Oct. 1991-Dec. 1993

* * * * * * *

August (*** pounds) and October (*** pounds) during 1993.[37] Prices for 2-1/4-inch diameter bulbs (product 2) were reported for July 1992 and August-December 1993, ranging from *** to *** per pound. Corresponding quantities purchased ranged from *** pounds during July 1992 to *** pounds during August 1993. Prices for 2-1/2-inch diameter bulbs (product 3) were reported for 3 months of 1992 and the last 6 months of 1993. Prices were constant at *** per pound during August-October 1992, and ranged between *** and *** per pound during July-December 1993. Corresponding quantities sold peaked at *** pounds during August 1993. Chinese peeled fresh garlic cloves (product 4) ranged between *** and *** per pound during September-November 1993, the only months for which prices were reported.

Price comparisons were possible between domestic and Chinese fresh garlic sold to wholesalers/distributors in 34 of the 108 months of the period examined for products 1-4. In 30 out of 34 instances for the specified products, the Chinese product was priced below the domestic product. In 12 instances margins of underselling for 2-inch diameter bulbs ranged from 7.6 percent to 65.5 percent. In four instances Chinese imports were priced higher than the U.S. product by margins ranging from 1.5 percent to 19.1 percent. In each of the six possible price comparisons for 2-1/4-inch diameter bulbs, the Chinese product was priced below the domestic product with margins ranging from 3.1 to 62.3 percent. Margins of underselling for 2-1/2-inch diameter bulbs ranged between 26.3 and 63.1 percent in nine instances. In the three instances of price comparisons for peeled fresh garlic cloves, the Chinese product was priced below the domestic product by 30.5, 40.6, and 48.4 percent.

[37] ***.

Lost Sales and Lost Revenues

Six of the seven domestic petitioning producers indicated lost sales and revenues due to fresh garlic imported from China in this preliminary investigation. However, only *** provided specific information pertaining to their alleged lost sales and/or lost revenues.[38] *** submitted lost revenue allegations totaling *** and ***, respectively. *** and *** alleged lost sales totalling *** and ***, respectively. The following are reports of the conversations between Commission staff and those purchasers who could be reached and were willing to discuss price competition between U.S. and Chinese fresh garlic in this preliminary investigation.

*** was cited as a source of lost sales and lost revenues due to competition from imported Chinese fresh garlic. *** reported *** instances *** of lost sales during June-August 1992 and 1993 involving *** and *** cited *** instances of lost revenues during July 1993. ***, spokesperson for the firm, could not confirm or deny any of the specific sales cited in these allegations. *** stated that during the past 2 years *** has sourced both domestic and Chinese garlic, with both products being of comparable quality. In addition to its competitive price, *** indicated purchasing Chinese fresh garlic to establish another possible long-term supply relationship other than those with U.S. growers and packers. *** attempts to diversify its sources, both domestic and foreign, to reduce dependency on any given source and insure supply stability during the various marketing seasons of domestic and imported fresh garlic.

*** reported one instance of *** in lost revenues due to competition from imported Chinese fresh garlic on *** involving ***. ***, spokesperson for ***, could not confirm the specific sale cited in the allegation. *** confirmed purchasing both domestic and Chinese garlic during ***, but indicated that the alleged price seemed high. *** further stated that the price and quality of Chinese garlic is typically lower than domestic garlic. Given accepted levels of quality, price remains the main factor in *** purchases of Chinese garlic. The lower priced Chinese garlic has enabled *** to expand its customer base, supplying firms that previously did not purchase domestic garlic.

*** was also cited by *** in an instance of alleged lost revenues of *** during August-September 1993 for *** due to lower priced Chinese imports. *** confirmed purchasing the domestic product at the alleged price and quantity. ***, who typically prefers to source domestic product, stated that during August-September 1993 Chinese garlic of comparable quality was abundantly available at $0.32 per pound. *** indicated that during the latter part of 1993, several customers began buying Chinese garlic from competitors due to its attractive price and during this period *** purchased Chinese garlic in order to maintain these customers.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan depreciated by 18.5 percent in relation to the U.S. dollar during the period January-March 1990 through October-November 1993 (figure 5). Producer price index information for China is unavailable, thus real exchange rates cannot be calculated.

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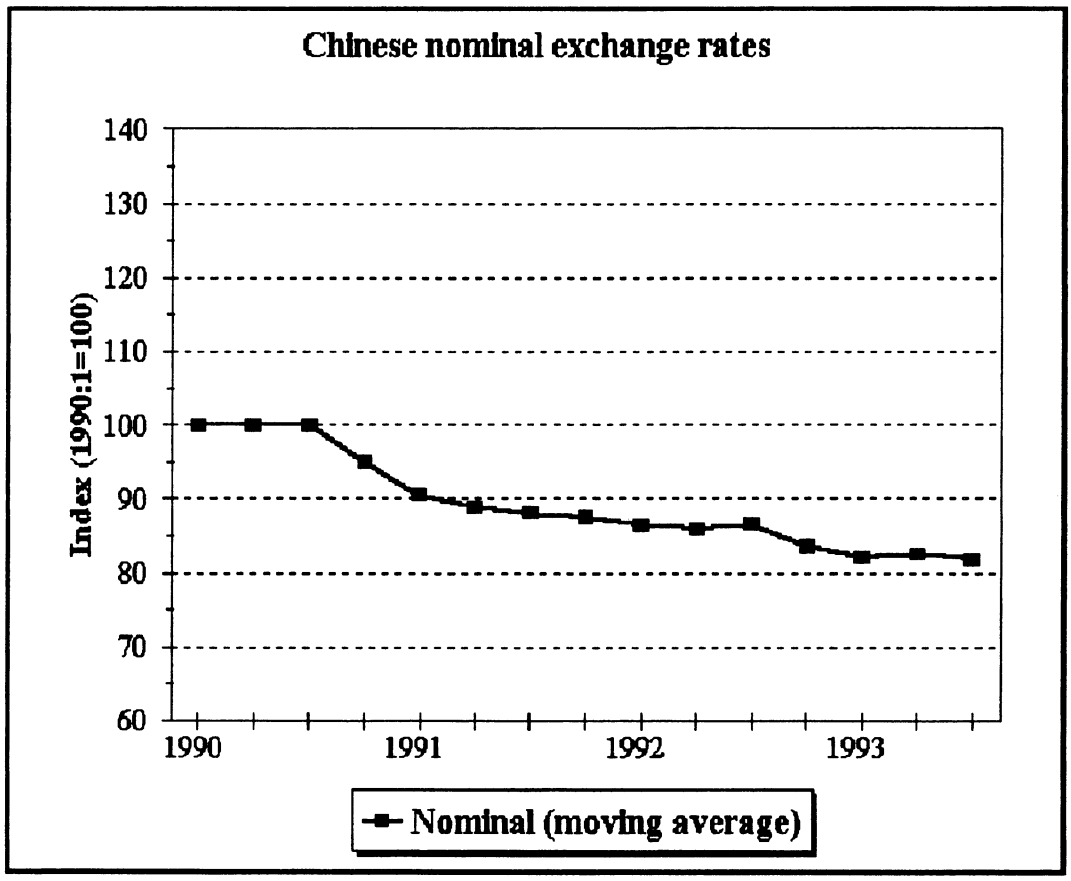
[38] *** reported lost sales and revenues of fresh garlic owing to competition from Chinese fresh garlic over the period examined but could not provide sufficient details to investigate these allegations. In order to investigate such allegations, the Commission requests information such as the accepted and rejected price quotes, or the dates and quantities involved in each transaction. In addition, *** reported selling *** pounds of fresh garlic to *** for *** per pound, considerably less than ***, owing to competition from Chinese fresh garlic.

Figure 5
Exchange rates: Indexes of nominal exchange rates between the U.S. dollar and Chinese yuan, by quarters, Jan.-Mar. 1990 through Oct.-Nov. 1993



Source: International Monetary Fund, *International Financial Statistics*, February 1994.

APPENDIX A

FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-683 (Preliminary)]

Fresh Garlic From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-683 (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 The People's Republic of China of fresh or frozen garlic or cloves thereof, whether or not peeled (skins removed), provided for in subheadings 0703.20.00, 0710.80.70, and 0710.80.97 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 17, 1994.

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

EFFECTIVE DATE: January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-205-3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on January 31, 1994, by the Fresh Garlic Producers Association, consisting of the A&D Christopher Ranch, Gilroy, CA; Belridge Packing Co., Wasco, CA; Colusa Produce Corp., Colusa, CA; Denice & Filice Packing Co., Hollister, CA; El Camino Packing, Gilroy, CA; The Garlic Company, Shafter, CA; and Vessey and Company, Inc., El Centro, CA.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is 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 BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on February 22, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-205-3185) not later than February 18, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation 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. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 25, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is 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.

Issued: February 2, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-2980 Filed 2-8-94; 8:45 am]

BILLING CODE 7020-02-P

[A-570-831]

Initiation of Antidumping Duty Investigation: Fresh Garlic From the People's Republic of China

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

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner or Diane Mazur, 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) 482-1673 or 482-3534, respectively.

Initiation of Investigation

The Petition

On January 31, 1994, we received a petition filed in proper form by the member companies of the Fresh Garlic Producers Association (collectively petitioner). In accordance with 19 CFR 353.12, the petitioner alleges that fresh garlic from the People's Republic of China (PRC) is being, or is 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 materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product 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, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The products covered by this investigation are all grades of fresh garlic, whether or not chilled or frozen, and include whole garlic, whole garlic that has been separated into constituent cloves (cracked garlic), and peeled garlic (skin removed), whether or not packed in any substance. The differences between the grades are based on color, size, sheathing and level of decay.

Fresh garlic is used principally as a food product and for seasoning. Fresh garlic, whether or not chilled or frozen, is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, and 0710.80.9750 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on October 1993 invoices from U.S. importers of the subject merchandise from the PRC. In calculating USP, petitioner deducted amounts for the following: U.S. duties, ocean freight, marine insurance, foreign inland freight expenses, brokers' commission, harbor maintenance and U.S. merchandise processing fees, and commissions charged by the U.S. importers.

Petitioner alleges that the PRC is a non-market economy (NME) country within the meaning of section 773(c) of the Act. The Department has determined the PRC to be an NME, within the meaning of section 771(18)(A) of the Act, in previous cases (see e.g., Final Determination of Sales at Less than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the PRC, 58 FR 37908 (July 14, 1993). In accordance with 771(18)(C) of the Act, that determination continues to apply for purposes of this initiation. In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue.

Further, because of the extent of central government control in an NME, the Department considers that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters are free of central government ownership and can demonstrate an absence of central governmental control with respect to the pricing of exports, both in law and in fact, will they be considered eligible for separate, owner-specific deposit rates. (See Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China, 58 FR 46833 (September 20, 1993) for a discussion of the information the Department considers appropriate to warrant calculation of separate rates.)

Petitioner based foreign market value on the PRC's factors of production for producing the subject merchandise. To value the factors of production, petitioner used India as a surrogate country. Petitioner argues that India is a country at a comparable level of economic development as the PRC and India is a significant producer of comparable merchandise pursuant to section 773(c)(4) of the Act. Further, India's garlic production is labor intensive and relies on rudimentary agricultural techniques similar to agricultural methods used in the PRC. For purposes of this initiation, we have accepted India as an appropriate surrogate country selection. There appear to be no other countries with comparable economies to the PRC that produce the subject merchandise. In addition, the Department has used India as an appropriate surrogate country selection in other investigations involving merchandise from the PRC. (See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 29705, July 6, 1992).

Petitioner first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production using the U.S. industry's costs, where it was determined that this provided a reasonable basis upon which to value certain factors of production. Petitioner valued the factors of production of the subject merchandise in the PRC as follows:

- For material costs (seed and fertilizer), petitioner relied on Indian factors based on its foreign market research, using public information whenever possible.
- For most labor costs (seed cracking, field preparation, planting, weed control, fertilization, irrigation, digging, windrowing and harvesting), petitioner relied on an industry expert's estimate of Chinese factors which was based on the expert's knowledge of the Chinese industry and the expert's own experience with nonmechanized garlic production, using public information whenever possible. Petitioner valued such labor costs on the basis of Indian production experience as developed in its foreign market research. For other labor costs related to hauling, sorting, grading, inspecting, and shrinkage, petitioner relied on the U.S. industry's cost-per-pound for these operations.

- Petitioner added an amount for all other manufacturing costs and related overhead equal to 10 percent of direct material and labor costs.
- Petitioner added an amount for shrinkage loss of 7 percent of the cost of production, based on U.S. experience.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of production.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A.
- Petitioner added an amount for packing based on the average, actual experience of the U.S. industry.

Based on petitioner's calculations, the dumping margins range from 266.73 to 376.67 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on fresh garlic and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of fresh garlic from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by March 17, 1994, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of fresh garlic from the PRC. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: February 22, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-4503 Filed 2-25-94; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

PARTICIPANTS AT THE COMMISSION'S CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference:

Subject	:	FRESH GARLIC FROM THE PEOPLE'S REPUBLIC OF CHINA
Inv. No.	:	731-TA-683 (Preliminary)
Date and Time	:	February 22, 1994 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room of the United States International Trade Commission, 500 E St., SW, Washington, DC.

In support of Imposition of
Antidumping Duties:

Collier, Shannon, Rill & Scott
Washington, D.C.
On behalf of

A&D Christopher Ranch, Gilroy, CA
Belridge Packing Co., Wasco, CA
Colusa Produce Corp., Colusa, CA
Denice & Felice Packing Co., Hollister, CA
El Camino Packing, Gilroy, CA
The Garlic Company, Shafter, CA
Vessey and Company, Inc., El Centro, CA

Jon Vessey, President, Vessey and Company, Inc.

Michael Thomas, Garlic Manager, Belridge Packing Co.

James Wallace, President, Colusa Produce Corp.

James Provost, East Coast Div. Mgr, A&D Christopher Ranch

John Layous, Owner/partner, The Garlic Co.

Mark Love, Vice President, Economic Consulting Services, Inc.

Paul C. Rosenthal)
Michael J. Coursey)--OF COUNSEL
Kathleen W. Cannon)

In Opposition to the Imposition of
Antidumping Duties:

Ober, Kaler, Grimes & Shriver
Washington, D.C.
On behalf of

United Garlic Co., Capitola, CA
Global Trading, Los Angeles, CA
Grupo Siva, U.S.A.
Pepper House International, City of Industry, CA
Total Protection International Trading, Alhambra CA
Continental Spice, Inc., Alhambra, CA

Richard De Smet, President, United Garlic Co.

Zia Fattahi, President, Global Trading

Betty Alexander, AgResources International

William E. Perry)--OF COUNSEL

APPENDIX C

SELECTED DATA RELATED TO THE ALLEGED MATERIAL INJURY AND THE CAUSAL RELATIONSHIP BETWEEN THE ALLEGED LTFV IMPORTS AND THE ALLEGED MATERIAL INJURY

Table C-1
Fresh garlic: Summary data concerning the U.S. market, crop years[1] 1991-93, June-Dec. 1992, and June-Dec. 1993

(Quantity=*1,000 pounds*; value=*1,000 dollars*; unit values, unit labor costs, and unit COGS are *per pound*; period changes=*percent*, except where noted)

Item	Reported data			June-Dec.–		Period changes			June-Dec.
	1991	1992	1993	1992	1993	1991-93	1991-92	1992-93	1992-93
U.S. consumption quantity:									
Amount	293,632	360,905	367,993	326,808	364,726	+25.3	+22.9	+2.0	+11.6
Producers' share[2]	85.2	89.5	88.3	93.3	82.0	+3.1	+4.2	-1.1	-11.4
Importers' share:[2]									
China	1.6	0.8	2.4	2.2	14.4	+0.8	-0.8	+1.6	+12.2
Argentina	2.7	1.4	1.4	.1	(3)	-1.3	-1.3	-0.1	-0.1
Chile	1.0	.6	.6	(3)	(3)	-0.3	-0.4	+0.1	(4)
Mexico	7.0	6.3	6.8	3.8	3.0	-0.2	-0.7	+0.5	-0.9
Other sources	2.5	1.5	.5	.5	.7	-2.0	-1.0	-1.0	+0.2
Total	14.8	10.5	11.7	6.7	18.0	-3.1	-4.2	+1.1	+11.4
U.S. consumption value:									
Amount	351,240	438,641	419,950	410,071	405,258	+19.6	+24.9	-4.3	-1.2
Producers' share[2]	93.4	95.1	94.8	97.7	94.6	+1.5	+1.7	-0.2	-3.1
Importers' share:[2]									
China	0.6	0.2	0.8	0.6	3.8	+0.2	-0.3	+0.6	+3.2
Argentina	1.7	.8	.8	(3)	(3)	-1.0	-0.9	-0.1	(4)
Chile	.7	.4	.5	(3)	(3)	-0.3	-0.3	+0.1	(4)
Mexico	2.6	2.8	2.9	1.5	1.3	+0.3	+0.2	+0.1	-0.1
Other sources	1.0	.6	.2	.2	.2	-0.7	-0.3	-0.4	(5)
Total	6.6	4.9	5.2	2.3	5.4	-1.5	-1.7	+0.2	+3.1
U.S. importers' imports from–									
China:									
Imports quantity	4,695	2,851	8,710	7,202	52,422	+85.5	-39.3	+205.5	+627.9
Imports value	1,939	1,056	3,357	2,614	15,515	+73.1	-45.5	+217.9	+493.5
Unit value	$0.41	$0.37	$0.39	$0.36	$0.30	-6.7	-10.4	+4.1	-18.5
Argentina:									
Imports quantity	7,886	5,147	5,024	252	40	-36.3	-34.7	-2.4	-84.1
Imports value	6,106	3,627	3,241	176	8	-46.9	-40.6	-10.6	-95.5
Unit value	$0.77	$0.70	$0.65	$0.70	$0.20	-16.7	-9.0	-8.5	-71.0
Chile:									
Imports quantity	2,826	2,018	2,264	18	19	-19.9	-28.6	+12.2	+5.6
Imports value	2,634	1,813	1,946	30	27	-26.1	-31.2	+7.3	-10.0
Unit value	$0.93	$0.90	$0.86	$1.69	$1.47	-7.8	-3.6	-4.3	-13.0
Mexico:									
Imports quantity	20,615	22,721	25,058	12,569	10,764	+21.6	+10.2	+10.3	-14.4
Imports value	9,222	12,499	12,203	5,991	5,445	+32.3	+35.5	-2.4	-9.1
Unit value	$0.45	$0.55	$0.49	$0.48	$0.51	+8.9	+23.0	-11.5	+6.1
Other sources:									
Imports quantity	7,312	5,276	1,865	1,731	2,522	-74.5	-27.8	-64.7	+45.7
Imports value	3,351	2,678	886	783	909	-73.6	-20.1	-66.9	+16.1
Unit value	$0.46	$0.51	$0.47	$0.45	$0.36	+3.6	+10.8	-6.5	-20.4
All sources:									
Imports quantity	43,334	38,013	42,921	21,771	65,768	-1.0	-12.3	+12.9	+202.1
Imports value	23,252	21,673	21,634	9,594	21,903	-7.0	-6.8	-0.2	+128.3
Unit value	$0.54	$0.57	$0.50	$0.44	$0.33	-6.1	+6.3	-11.6	-24.4
U.S. producers'–									
Average capacity qty	367,908	442,244	452,547	439,774	441,767	+23.0	+20.2	+2.3	+0.5
Production quantity	260,016	333,975	345,457	344,058	347,802	+32.9	+28.4	+3.4	+1.1
Production quantity suitable for fresh use	41,935	60,646	72,808	69,011	73,019	+73.6	+44.6	+20.1	+5.8

Footnotes on page C-5.

Table C-1--Continued
Fresh garlic: Summary data concerning the U.S. market, crop years[1] 1991-93, June-Dec. 1992, and June-Dec. 1993

(Quantity=*1,000 pounds*; value=*1,000 dollars*; unit values, unit labor costs, and unit COGS are *per pound*; period changes=*percent*, except where noted)

Item	Reported data			June-Dec.--		Period changes			June-Dec.
	1991	1992	1993	1992	1993	1991-93	1991-92	1992-93	1992-93
U.S. producers'--									
Capacity utilization[2]	70.7	75.5	76.3	78.2	78.7	+5.7	+4.8	+0.8	+0.5
Company transfers:									
Quantity	196,127	247,882	241,087	250,833	240,757	+22.9	+26.4	-2.7	-4.0
Value	276,939	353,480	330,829	354,365	339,730	+19.5	+27.6	-6.4	-4.1
Unit value	$1.41	$1.43	$1.37	$1.41	$1.41	-2.8	+1.0	-3.8	-0.1
Domestic shipments sold for fresh use:									
Quantity	34,196	54,440	59,454	34,544	27,609	+73.9	+59.2	+9.2	-20.1
Value	28,819	40,899	43,822	24,392	18,589	+52.1	+41.9	+7.1	-23.8
Unit value	$0.84	$0.75	$0.74	$0.71	$0.67	-12.5	-10.9	-1.9	-4.6
Domestic shipments sold for other than fresh use:									
Quantity	19,975	20,570	24,531	19,660	30,592	+22.8	+3.0	+19.3	+55.6
Value	22,230	22,589	23,665	21,720	25,036	+6.5	+1.6	+4.8	+15.3
Unit value	$1.11	$1.10	$0.96	$1.10	$0.82	-13.3	-1.3	-12.2	-25.9
Domestic shipments:									
Quantity	54,171	75,010	83,985	54,204	58,201	+55.0	+38.5	+12.0	+7.4
Value	51,049	63,488	67,487	46,112	43,625	+32.2	+24.4	+6.3	-5.4
Unit value	$0.94	$0.85	$0.80	$0.85	$0.75	-14.7	-10.2	-5.1	-11.9
U.S. shipments:									
Quantity	250,298	322,892	325,072	305,037	298,958	+29.9	+29.0	+0.7	-2.0
Value	327,988	416,968	398,316	400,477	383,355	+21.4	+27.1	-4.5	-4.3
Unit value	$1.31	$1.29	$1.23	$1.31	$1.28	-6.5	-1.5	-5.1	-2.3
Export shipments:									
Quantity	7,759	8,868	13,537	11,063	15,635	+74.5	+14.3	+52.6	+41.3
Exports/shipments[2]	3.0	2.7	4.0	3.5	5.0	+1.0	-0.3	+1.3	+1.5
Value	7,163	7,801	11,042	8,992	11,433	+54.2	+8.9	+41.5	+27.1
Unit value	$0.92	$0.88	$0.82	$0.81	$0.73	-11.6	-4.7	-7.3	-10.0
Total shipments:									
Quantity	258,057	331,760	338,609	316,100	314,593	+31.2	+28.6	+2.1	-0.5
Value	335,151	424,769	409,358	409,469	394,788	+22.1	+26.7	-3.6	-3.6
Unit value	$1.30	$1.28	$1.21	$1.30	$1.25	-6.9	-1.4	-5.6	-3.1
Ending inventory qty	0	0	363	28,051	30,111	[6]	0	[6]	+7.3
Inventory/shipments[2]	0	0	0.1	5.2	5.6	+0.1	0	+0.1	+0.4
Production workers	460	653	901	856	982	+95.9	+42.0	+38.0	+14.7
Hrs worked (*1,000s*)	739	980	1,122	858	1,023	+51.8	+32.6	+14.5	+19.2
Total comp. (*$1,000*)	4,949	7,352	8,418	6,310	7,641	+70.1	+48.6	+14.5	+21.1
Hourly total comp	$6.70	$7.50	$7.50	$7.35	$7.47	+12.0	+12.0	[7]	+1.6
Productivity (*pounds per hour*)	68.6	72.7	77.2	93.4	86.9	+12.5	+6.0	+6.1	-6.9
Unit labor costs	$0.10	$0.10	$0.10	$0.08	$0.09	[8]	+6.1	-5.7	+9.1
Net sales value	39,703	47,562	56,173	[9]	[9]	+41.5	+19.8	+18.1	[9]
Operating expenses	37,790	45,917	54,572	[9]	[9]	+44.4	+21.5	+18.8	[9]
Net income before income taxes	1,913	1,645	1,601	[9]	[9]	-16.3	-14.0	-2.7	[9]
Capital expenditures	1,755	2,270	1,719	[9]	[9]	-2.1	+29.3	-24.3	[9]
Operating expenses/ sales[2]	95.2	96.5	97.1	[9]	[9]	+2.0	+1.4	+0.6	[9]
Net income/sales[2]	4.8	3.5	2.9	[9]	[9]	-2.0	-1.4	-0.6	[9]

Footnotes on page C-5.

Footnotes to table C-1.

[1] Financial data are on fiscal-year basis.
[2] "Reported data" are in percent and "period changes" are in percentage points.
[3] Positive figure, but less than significant digits displayed.
[4] A decrease of less than 0.05 percentage points.
[5] An increase of less than 0.05 percentage points.
[6] Not applicable.
[7] An increase of less than 0.05 percent.
[8] A decrease of less than 0.05 percent.
[9] Not available.

Note.--Period changes are derived from the unrounded data. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

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

APPENDIX D

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF GARLIC FROM CHINA ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND DEVELOPMENT AND PRODUCTION EFFORTS

The Commission requested producers to describe and explain the actual and anticipated negative effects, if any, of imports of fresh garlic from China on their growth, investment, ability to raise capital, the scale of capital investments, or production efforts.

Actual Negative Effects

The producers were asked to indicate negative effects for specific listed items and to describe other negative effects not specifically listed. Six producers, accounting for about 82 percent of U.S. production of garlic for fresh used reported by grower/packers, responded to this request.

* * * * * * *

Anticipated Negative Effects

* * * * * * *