

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-776 (Final)

CERTAIN PRESERVED MUSHROOMS FROM CHILE

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Chile of certain preserved mushrooms, provided for in subheadings 0711.90.40 and 2003.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective January 6, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by the Coalition for Fair Preserved Mushroom Trade and its members: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH.² The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain preserved mushrooms from Chile were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing 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

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

² On Mar. 9, 1998, the Commission received notice that Southwood Farms, Hockessin, DE, had joined the petitioning coalition.

August 19, 1998 (63 FR 44470). The hearing was held in Washington, DC, on October 15, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is materially injured by reason of imports of certain preserved mushrooms from Chile that have been found by the Department of Commerce (“Commerce”) to be sold at less than fair value (“LTFV”).

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.” Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”¹ In turn, the Act defines “domestic like product” 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.”²

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission applies the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.³ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁴ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁵ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise being sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁶

Commerce has defined the imported articles within the scope of this investigation as:

¹ 19 U.S.C. § 1677(4)(A).

² 19 U.S.C. § 1677(10).

³ *See, e.g., Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. *See id.* at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

The Commission employs a “semifinished products” analysis when analyzing whether a product at an earlier stage of its production process is “like” a finished or further processed product. Under this analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article, or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA 736-737 (Final), USITC Pub. 2988 at 6 n.23 (Aug. 1996).

⁴ *See, e.g., Nippon Steel*, 19 CIT at 454-55.

⁵ *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

⁶ *Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[C]ertain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered by the scope of this investigation are the species *Agaricus bisporus* and *Agaricus bitorquis*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.⁷

Commerce expressly excluded other species of mushrooms, fresh and chilled mushrooms, dried mushrooms, frozen mushrooms, and marinated, acidified or pickled mushrooms from the scope.⁸

There are two domestic like product issues in this final phase investigation. The first concerns whether fresh mushrooms should be included in the domestic like product. The second concerns whether marinated, acidified, or pickled mushrooms (“marinated mushrooms”) should be included in the domestic like product. As explained below, we define the domestic like product to encompass only the types of preserved mushrooms within Commerce’s scope definition.

1. Including Fresh Mushrooms in the Domestic Like Product

In the preliminary determinations, the Commission declined to include fresh mushrooms in the domestic like product under either a traditional or a semifinished products like product analysis. In this final phase investigation, some respondents have repeated their prior arguments that fresh mushrooms should be included in the domestic like product. The record does not contain any new facts that would warrant a different conclusion from that reached in the preliminary determinations.⁹

As in the preliminary determinations, we find that preserved mushrooms have substantially different characteristics than fresh mushrooms in terms of appearance, flavor, and shelf life; that there are distinct channels of distribution; that fresh and preserved mushrooms are produced using different production facilities, employees, and methods; that customers and producers perceive significant differences between fresh and preserved mushrooms; and that the prices for the products differ substantially. Thus, although there is some degree of interchangeability between the products, we conclude that under the traditional analysis, fresh mushrooms are not like preserved mushrooms. For the reasons provided in the preliminary determinations, we also reach the same result under the semifinished products analysis, principally because fresh mushrooms are not dedicated to the production of preserved mushrooms, and production of preserved mushrooms from fresh mushrooms requires significant and extensive additional operations.¹⁰ We accordingly have determined not to include fresh mushrooms in the domestic like product.

2. Including Marinated Mushrooms in the Domestic Like Product

⁷ 63 Fed. Reg. 56613 (Oct. 22, 1998).

⁸ *Id.* at 56613-14.

⁹ Confidential Report (“CR”) at I-5-7, Public Report (“PR”) at I-4-5.

¹⁰ See Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Inv. Nos. 731-TA-776-779 (Preliminary), USITC Pub. 3086 at 5-8 (Feb. 1998) (“Prelim. Det.”).

In its preliminary determinations, the Commission found that marinated mushrooms were not part of the domestic like product, but expressed its intent further to explore this issue during the final phase of the investigations.¹¹ Respondent Pillsbury supports, and petitioners oppose, including marinated mushrooms within the domestic like product.

Physical Characteristics and Uses. There is a limited overlap in the physical characteristics of marinated mushrooms and certain preserved mushrooms. The only physical characteristics shared completely by the two products are that they are made from the same species of mushroom and have long shelf lives.¹²

Marinated mushrooms have a distinct taste that is imparted by the marinade.¹³ The distinct taste of marinated mushrooms limits their end uses. Marinated mushrooms generally are used from the jar as appetizers, garnishes, and as side dishes.¹⁴ The record does not indicate that marinated mushrooms can be used by restaurateurs, institutions, or industrial concerns as ingredients in other products, which in the aggregate are the predominant uses for U.S.-produced preserved mushrooms.¹⁵

Interchangeability. There appears to be limited interchangeability between marinated and preserved mushrooms. Pillsbury asserts that whole, fancy preserved mushrooms can be used directly from the jar in the same manner as marinated mushrooms. Only a small fraction of preserved mushrooms, however, are sold as whole mushrooms.¹⁶ Moreover, there is no evidence in the record that the largest customers of preserved mushrooms, industrial food users and food service industries, can use marinated mushrooms for the same applications (*i.e.*, as an ingredient) as other preserved mushrooms, or even purchase marinated mushrooms in significant quantities.¹⁷

Channels of Distribution. The record indicates that marinated mushrooms are sold predominantly to the retail channel of distribution, with some sales to the food service channel.¹⁸ Preserved mushrooms are sold in the retail, industrial, and food service channels of distribution.¹⁹

Common Manufacturing Facilities, Employees, and Processes. During the period of investigation, 13 U.S. producers produced preserved mushrooms, and four produced marinated mushrooms.²⁰ Only two producers, one of which is no longer in business, produced both products.²¹ Production processes for preserved and marinated mushrooms are similar.²²

¹¹ Prelim. Det. at 10.

¹² See Pillsbury Prehearing Brief at 6-7; Tr. at 31, 33 (Newhard).

¹³ Pillsbury Prehearing Brief at 4; Tr. at 33 (Newhard). Although some preserved mushrooms of the type defined in the scope, most notably mushrooms preserved in butter sauce, arguably also have a distinct taste, such mushrooms constituted a very small proportion of all domestic shipments of preserved mushrooms in 1997. See Table I-1, CR at I-11, PR at I-7.

¹⁴ CR at I-6, PR at I-14.

¹⁵ Tr. at 33 (Newhard); Table I-2, CR at I-12, PR at I-8.

¹⁶ Only 770,000 pounds out of 75.5 million pounds of preserved mushrooms shipped by U.S. producers in 1997 were whole mushrooms of any form. Table I-1, CR at I-11, PR at I-7.

¹⁷ Tr. at 33 (Newhard).

¹⁸ *Id.*; see Petitioners' Prehearing Brief at 14.

¹⁹ Tr. at 41 (Fry).

²⁰ See CR at I-7, III-1, PR at I-4-5, III-1.

²¹ CR at I-7, PR at I-5. The producer that currently produces both preserved mushrooms and marinated mushrooms ***, and the former producer that produced both products did so at the same facility but using different production lines. CR at I-7 & n.22, PR at I-5 & n.22.

²² The production process for preserved mushrooms encompasses several different steps: washing, blanching, de-watering, packing in liquid, canning, sterilization, cooling, labeling, and boxing. Tr. at 26-27 (Ciarrocchi). The only distinction that petitioners contend exists in the production process for marinated mushrooms is that such mushrooms do not require the same degree of sterilization as preserved mushrooms. Petitioners' Prehearing Brief at 14.

Producer and Customer Perceptions The record indicates that most producers and customers perceive marinated and preserved mushrooms as distinct products. Nine of 11 U.S. producers stated that there are no substitutes for preserved mushrooms. In addition, 17 of 25 purchasers surveyed stated there were no substitutes for preserved mushrooms, and only three of the remaining purchasers identified a group of products that included marinated mushrooms as a possible substitute.²³

Price. Average unit value data reflect considerable differences in the prices of marinated and preserved mushrooms. The average unit values of shipments of marinated mushrooms are approximately *** times the value of shipments of preserved mushrooms.²⁴

Conclusion. Although preserved mushrooms and marinated mushrooms share some common channels of distribution and production facilities, they have different tastes that limit marinated mushrooms' end uses, very limited interchangeability, are perceived to be different products by both producers and customers, and sell in different price ranges. We believe that the distinctions between preserved and marinated mushrooms establish a "clear dividing line." We consequently do not include marinated mushrooms in the domestic like product.

B. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product."²⁵ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.²⁶

There are two issues in this investigation concerning the definition of the domestic industry. The first concerns whether the domestic industry should be defined to encompass growers of fresh mushrooms in addition to processors of preserved mushrooms. The second concerns whether appropriate circumstances exist to exclude related party producers from the domestic industry.

1. Including Growers in the Domestic Industry

Petitioners contend that the domestic industry should be limited to domestic producers of certain preserved mushrooms. Respondents Nature's Farm Products ("NFP") and Mushroom Group of the Association of Food Industries ("AFI") contend that the special provision for processed agricultural products contained in section 771(4)(E) of the Act applies, and that growers of fresh mushrooms should be included within the industry producing certain preserved mushrooms. In cases involving processed agricultural products, section 771(4)(E) of the Act authorizes the Commission to include growers' agricultural input within the domestic industry producing the processed agricultural product if the processed agricultural

²³ CR at II-5-6, PR at II-4. We believe the Commission questionnaire data are more probative with respect to this issue than the consumer survey information presented by Pillsbury, which did not ask for comparisons between preserved and marinated mushrooms.

²⁴ CR at I-7, PR at I-5. Although Pillsbury contends that this price discrepancy is substantially reduced if marinated mushroom prices are compared exclusively with whole preserved mushrooms, we believe it is appropriate to focus on value distinctions between marinated and preserved mushrooms generally.

²⁵ 19 U.S.C. § 1677(4)(A).

²⁶ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

product is produced from the raw product²⁷ through a single continuous line of production, and there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors.²⁸ Under the Act, the processed product is considered to be processed from the raw product in a single continuous line of production if the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product, and the processed agricultural product is produced substantially or completely from the raw product.²⁹

The record indicates that the raw agricultural product here, fresh mushrooms, is not substantially or completely devoted to the production of the processed agricultural product, preserved mushrooms. In the most recent period for which data are available, only 23 percent of fresh mushrooms were processed in any manner. The remaining 77 percent were sold in the fresh mushroom market.³⁰ Consequently, as in the preliminary determination,³¹ we decline to include fresh mushroom growers in the domestic industry producing certain preserved mushrooms.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act.³² That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.³³

Two domestic producers of preserved mushrooms also import subject merchandise from countries that are the subject of antidumping investigations initiated on the same day as this investigation. Giorgio

²⁷ "Raw agricultural product" is defined as any farm or fishery product. 19 U.S.C. § 1677(4)(E)(iv).

²⁸ 19 U.S.C. § 1677(4)(E)(i).

²⁹ 19 U.S.C. § 1677(4)(E)(ii).

³⁰ See Table D-1, CR at D-3, PR at D-3.

³¹ See Prelim. Det. at 10-11.

³² 19 U.S.C. § 1677(4)(B).

³³ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason 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 producer 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, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

Foods and *** each imports preserved mushrooms from *** and therefore may be excluded from the domestic industry if appropriate circumstances exist.³⁴

Giorgio.³⁵ Several considerations entered our assessment as to whether to exclude Giorgio from the domestic industry in this investigation.³⁶ Giorgio is the largest domestic producer of preserved mushrooms, accounting for *** percent of 1997 production. Giorgio's market share that year was *** that of the second largest domestic producer.³⁷

Further, Giorgio clearly indicated that it ***. Giorgio also stated that it ***.³⁸ ***.³⁹ Consequently, the record indicates that Giorgio's primary interests are in domestic production and that it imported only to meet competition with LTFV imports.⁴⁰

Finally, while Giorgio's financial performance was ***, the company enjoyed *** financial performance than the industry average even in periods when the ratio of its imports to domestic production was relatively low. Moreover, at least one other domestic producer maintained *** operating results throughout much of the period examined. Giorgio's performance relative to its domestic competitors may also simply reflect economies of scale it can achieve relative to its much smaller competitors and the strength of its brand name. Thus, we are not persuaded that Giorgio is sufficiently shielded from the effects of the LTFV imports to warrant exclusion from the domestic industry.^{41 42} Based on the foregoing, we have determined that appropriate circumstances do not exist to exclude Giorgio from the domestic industry in this investigation.

³⁴ Petitioners oppose exclusion of Giorgio and ***. Pillsbury, Indonesian Producers (a group of four Indonesian producers and exporters of preserved mushrooms), and Chinese Respondents (a group of 12 Chinese producers and exporters of preserved mushrooms) oppose Giorgio's exclusion. AFI favors Giorgio's exclusion.

³⁵ Commissioner Crawford and Commissioner Askey have determined to exclude Giorgio from the domestic industry and do not join the following discussion. They find that Giorgio's importation is substantial, both in ***. Giorgio's subject imports declined from *** thousand pounds in 1995 to *** thousand pounds in 1996, and then increased to *** thousand pounds in 1997. Giorgio's subject imports were *** thousand pounds in interim (January-June) 1998, as compared to *** thousand pounds in interim 1997. Its ratio of imports to production was *** percent in 1995, *** percent in 1996, *** percent in 1997, *** percent in interim 1997 and *** percent in interim 1998. CR at III-2, PR at III-1. Giorgio's importation patterns, in conjunction with its ***, *see* CR at III-2, PR at III-2, indicate that importation is becoming more important to Giorgio than domestic production. Additionally, Giorgio opposed the petition on subject imports from India ***. CR at III-1, PR at III-1. These facts lead Commissioner Crawford to conclude that Giorgio's primary interest lies in importation, not domestic production and thus that appropriate circumstances exist to exclude Giorgio from the domestic industry.

Further, Commissioner Askey notes that Giorgio's financial performance indicates that the firm has benefitted from its importation of LTFV merchandise. Of the ten domestic producers that submitted financial data, only Giorgio ***. Giorgio ***. Table VI-2, CR at VI-5-6, PR at VI-3. This fact, together with those cited above, leads Commissioner Askey to conclude that appropriate circumstances exist to exclude Giorgio from the domestic industry.

³⁶ We note that petitioners have argued in favor of including Giorgio in the domestic industry, as has respondent Pillsbury, who stated that Giorgio is an "industry leader" whose performance drives industry trends. AFI is the sole party to advocate Giorgio's exclusion from the industry.

³⁷ CR at III-1, PR at III-1.

³⁸ CR at III-2, PR at III-2.

³⁹ CR at III-3 n.8, PR at III-2 n.8.

⁴⁰ We recognize that the ratio of Giorgio's imports to domestic production increased during the period examined. *See* CR at III-2, PR at III-1. This ratio fluctuated throughout the period, however, and does not reflect a consistent trend toward greater importation. The fact that the ratio was higher at the end of the period examined than at the beginning apparently reflects the fact that Giorgio closed one facility and increased its imports to compete in the U.S. market.

⁴¹ For example, Giorgio's ***. Table VI-2, CR at VI-6, PR at VI-3.

⁴² Chairman Bragg notes that inclusion of Giorgio will not skew the overall industry data.

***. *** is a relatively small domestic producer.⁴³ Although its ratio of imports to domestic production increased throughout the period of investigation,⁴⁴ ⁴⁵ *** stated that it ***,⁴⁶ suggesting that its primary interest is still in domestic production. *** did not submit financial data to the Commission. We conclude that *** maintains a significant domestic production presence, and that inclusion of its data will not skew the data for the domestic industry. Accordingly, we have determined that appropriate circumstances do not exist to exclude *** from the domestic industry.

Consequently, we define the domestic industry in this investigation to consist of all domestic producers of preserved mushrooms.⁴⁷ ⁴⁸

⁴³ It accounted for *** percent of 1997 domestic production. CR at III-1, PR at III-1.

⁴⁴ *** production declined from *** thousand pounds in 1995 to *** thousand pounds in 1996 and then to *** thousand pounds in 1997. Interim 1998 production of *** thousand pounds was higher than interim 1997 production of *** thousand pounds. Its imports from subject sources increased from *** in 1995 to *** thousand pounds in 1996 and then to *** thousand pounds in 1997. Interim 1998 imports from subject sources were *** thousand pounds, as compared to *** thousand pounds in 1998. *** ratio of subject imports to domestic production was *** percent in 1996, *** percent in 1997, *** percent in interim 1997 and *** percent in interim 1998. CR at III-2, PR at III-1

⁴⁵ Commissioner Crawford and Commissioner Askey do not join the remainder of the discussion on ***. They conclude that *** increasing volumes of subject imports and *** and increasing ratios of imports to domestic production support a conclusion that its primary interest lies in importation, not domestic production. They consequently conclude that appropriate circumstances exist to exclude *** from the domestic industry.

⁴⁶ See CR at III-1, PR at III-1.

⁴⁷ Chairman Bragg and Commissioner Hillman note that they would have reached the same determination in this investigation if they had excluded Giorgio and *** from the domestic industry.

⁴⁸ Commissioner Crawford and Commissioner Askey define the domestic industry in this investigation to consist of all domestic producers of preserved mushrooms except Giorgio and ***. Although these related parties are excluded from the domestic industry, they are not excluded from the market. Rather, they are an alternative source of supply in the U.S. market. See Extruded Rubber Thread from Indonesia, Inv. Nos. 701-TA-375, 731-TA-787, USITC Pub. 3106 at 10 (May 1998).

II. CUMULATION

A. In General

Section 771(7)(G)(i) of the Act requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.⁴⁹

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.⁵⁰

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.⁵¹ Only a “reasonable overlap” of competition is required.⁵²

⁴⁹ 19 U.S.C. § 1677(7)(G)(i). There are four exceptions to the cumulation provision. The sole exception applicable to the instant determination precludes cumulation of imports “with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those imports before the Commission’s final determination is made.” 19 U.S.C. § 1677(7)(G)(ii)(I). Accordingly, imports from those Indonesian producers that received *de minimis* preliminary margins from Commerce are ineligible for cumulation with the subject imports from Chile.

Had subject imports from Chile been negligible, the investigation with respect to them would have been terminated, rendering them ineligible for cumulation. *See* 19 U.S.C. § 1673d(b)(1); 19 U.S.C. § 1677(7)(G)(ii)(II). Imports from a subject country are negligible if they are less than three percent of the volume of such merchandise imported in the United States for the most recent 12-month period preceding filing of the petition for which data are available. 19 U.S.C. § 1677(24). Because subject imports from Chile constituted 4.5 percent of all imports for calendar year 1997, Table IV-1, CR at IV-4, PR at IV-3, they are not negligible. NFP’s argument to the contrary, *see* NFP Prehearing Brief at 20 & n.15, relies on the former negligible imports exception to cumulation that was repealed by the Uruguay Round Agreements Act (URAA).

⁵⁰ *See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int’l Trade), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

⁵¹ *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁵² *See Goss Graphic System, Inc. v. United States*, 22 CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) (“cumulation does not require two products to be highly fungible”); *Wieland Werke*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); *United States Steel Group v. United States*, 873 F. Supp. 673, 685-86 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

B. Discussion

The petition in the instant antidumping investigation was filed on the same day as the petition in companion antidumping investigations involving preserved mushrooms from China, India, and Indonesia. Accordingly, the first part of the statutory standard for cumulation is satisfied, and we are required to determine whether there is a reasonable overlap of competition between the subject imports from Chile and the domestic like product and between the subject imports from Chile, on the one hand, and those from China, India, and Indonesia, on the other.⁵³

1. Fungibility

With Domestic Like Product. All responding U.S. producers reported that preserved mushrooms from all sources are used interchangeably.⁵⁴ NFP, the sole importer of subject merchandise from Chile, reported that its imports from Chile competed with domestic preserved mushrooms for sales.⁵⁵ Indeed, six of seven purchasers that reported purchases of imports from Chile also purchased domestically-produced product.⁵⁶ The majority of responding purchasers (five of seven) reported that subject imports from Chile were moderate or good substitutes with the domestic like product.⁵⁷

With Other Subject Imports. All U.S. producers reported that imported preserved mushrooms from all subject sources were used interchangeably. Sixteen of 23 responding importers agreed.⁵⁸ A limited number of purchasers compared the substitutability of Chilean imports with the other subject imports. Three of four purchasers reported that Chilean and Chinese imports were at least moderate substitutes. The sole purchaser to compare Chilean and Indian imports reported that they were moderate substitutes, and one of two purchasers reported that Chilean and Indonesian imports were moderate substitutes, with the other purchaser responding that the two imports were not substitutable.⁵⁹

Respondent NFP argued that subject imports from Chile should not be cumulated with subject imports from China, India, or Indonesia because of quality differences and/or differences in the channels of distribution. The record does not support NFP's arguments that quality differences, particularly with respect to sanitation, render subject imports from Chile poor substitutes with subject imports from China or India. Even NFP's own witness acknowledged that all preserved mushrooms exported from China to the United States are subject to regulation by the U.S. Food and Drug Administration and "have to be vouched as safe before they enter the United States."⁶⁰ As indicated above, the questionnaire data do not reflect perceptions

⁵³ Petitioners contend that subject imports from all countries should be cumulated. NFP, Chinese Respondents, and Indonesian Producers respectively argue that subject imports from Chile, China, and Indonesia should not be cumulated with imports from any other subject country. Pillsbury argues that subject imports from Chile and Indonesia should not be cumulated. There was no party to the investigation representing producers or exporters of subject merchandise from India that submitted argument. For purposes of this determination, we address only those cumulation issues concerning subject imports from Chile.

⁵⁴ CR at II-8, PR at II-5.

⁵⁵ See NFP Posthearing Brief at 7.

⁵⁶ Table F-1, CR at F-3-4, PR at F-3-4.

⁵⁷ Table II-1, CR at II-9, PR at II-6.

⁵⁸ CR at II-13, PR at II-8.

⁵⁹ CR at II-13-14, PR at II-9.

⁶⁰ Tr. at 258 (Cocotas).

of significant quality differences between Chilean imports, on the one hand, and Chinese or Indian imports, on the other.⁶¹

Indeed, NFP has submitted no statements from its purchasers that would support the argument of its counsel that purchasers of its Chilean product will not purchase preserved mushrooms from China or India because they believe the Chinese or Indian products pose safety concerns.⁶² To the contrary, questionnaire responses indicate that five of the seven purchasers that reported purchasing subject merchandise from Chile also reported purchases from other subject sources. All five of these purchasers reported purchases of imports from China, and one also reported purchases of imports from India.⁶³ Indeed, data NFP itself has submitted indicate that *** of the *** principal purchasers of Chilean preserved mushrooms during the period of investigation also purchased from NFP preserved mushrooms imported from China.⁶⁴

2. Common Geographic Markets

Six of the 11 responding domestic producers and 17 of the 28 responding importers reported selling their preserved mushrooms nationwide.⁶⁵ Imports from each subject country were entered in numerous ports across the country.⁶⁶

3. Common Channels of Distribution

⁶¹ Moreover, Chinese Respondents specifically contested the argument that imported preserved mushrooms from China are inferior in quality or safety, or not acceptable to chain restaurants or industrial users. Chinese Respondents Posthearing Brief at 5-6. Similarly, respondent Liberty Gold, an importer of subject merchandise from China, emphasizes in its marketing literature that “[o]ur growers and packers have a reputation for consistency and their high tech facilities are monitored by our own FDA approved food technicians.” Liberty Gold Posthearing Brief, attachment at 5.

⁶² While one NFP purchaser, Nestle USA, did submit a letter that was placed in the Commission’s public file indicating that it purchases NFP product from Chile “specifically for quality reasons,” it did not further specify what those reasons are. Letter from Nestle USA to Chairman Lynn M. Bragg (Oct. 14, 1998). Another letter NFP placed in the public file from the National Restaurant Association stated that preserved mushrooms from Chile meet high standards of sanitation and quality but did not state that imports from the other subject countries fail to meet such standards. Letter from National Restaurant Association to Donna R. Koehnke (Oct. 14, 1998).

NFP also argues that quality differences between subject imports from Chile, on the one hand, and subject imports from China and India, on the other, are reflected in pricing premiums for the Chilean product. In light of the questionnaire data on product interchangeability and substitutability, we do not conclude that whatever pricing differentials existed were a reflection of perceived quality differences between the imports.

⁶³ Table F-1, CR at F-3-4, PR at F-3-4.

⁶⁴ NFP Posthearing Brief, Exhibit 1, Table 1 at 1. Purchasers that made substantial purchases of both Chinese and Chilean product from NFP throughout the period of investigation include ***. *Id.* NFP in fact asserted that common customers of the preserved mushrooms it imports from Chile and those it imports from China account for *** of its volume. NFP Posthearing Brief at 3. Consequently, we do not agree with NFP that its data merely show “occasional” incidence of common sales. NFP cites the CIT opinion in Marsuda-Rogers Int’l v. United States, 719 F. Supp. 1092 (Ct. Int’l Trade 1989), *rev’d without opinion*, 923 F.2d 871 (Fed. Cir. 1990), for the “well settled” proposition that occasional sales do not satisfy the “reasonable overlap” standard. *See* NFP Posthearing Brief at 6. NFP neglects to include in its citation, however, the fact that the CIT opinion in Marsuda-Rogers was reversed by the Federal Circuit.

⁶⁵ CR at V-1, PR at V-1. *** all stated that they market their imported preserved mushrooms nationwide. *See* Importers Questionnaire Responses.

⁶⁶ CR at I-9, PR at I-6.

Preserved mushrooms are sold to industrial users, food service customers, and retailers. Industrial users typically purchase product in 68-ounce cans for use in producing packaged foods. Food service customers, which consist of restaurants and institutional customers as well as distributors to such firms, also typically purchase product in 68-ounce cans. Retail customers, which are principally grocery stores, most often purchase product in four or eight-ounce cans or jars.⁶⁷

Domestically-produced preserved mushrooms are distributed in all three channels of distribution. In 1997, 26.9 percent of U.S. producers' shipments were distributed to industrial users, 28.7 percent were distributed to food service users, and 44.4 percent were distributed to retail users.^{68 69}

A predominant *** percent of subject imports from Chile were distributed to food service users. Most of the remaining Chilean product was distributed to industrial users (*** percent), with only a small share, *** percent, being distributed to retail users.⁷⁰

The majority of subject imports from China, 68.3 percent, also were distributed to food service users. Most of the remaining Chinese imports (30.1 percent) were distributed to retail users, with 1.5 percent being shipped to industrial users.⁷¹

Subject imports from India predominantly were distributed to retail users. Specifically, a large share, *** percent, of Indian imports entered this channel of distribution, with most of the remaining share, *** percent, distributed to food service users, and a small share, *** percent, distributed to industrial users.⁷²

In contrast to the subject imports from Chile, subject imports from Indonesia were overwhelmingly shipped to retail users, with *** percent entering this channel. The small remaining share, *** percent, entered the food service channel, and none entered the industrial user channel.⁷³

4. Simultaneous Presence in Marketplace

⁶⁷ CR at II-1, PR at II-1.

⁶⁸ Table I-2, CR at I-12, PR at I-8.

⁶⁹ Commissioner Crawford and Commissioner Askey excluded the related party producers from the domestic industry, and thus analyze the channels of distribution as follows. The preserved mushrooms sold by non-related party domestic producers are still distributed in all three channels of distribution, but there is a marked concentration in the industrial and food service segments. In 1997, *** percent of non-related U.S. producers' shipments was sold to industrial users, *** percent was sold to food service users, and only *** percent was sold to retail users. *See* Table I-3, CR at I-13, PR at I-9. Therefore, for this determination concerning subject imports from Chile, there is a significant overlap in sales to the industrial and food service segments between the mushrooms sold by the domestic industry consisting of the non-related party producers and the subject imports from Chile, China, and India. Commissioner Crawford and Commissioner Askey note that this analysis does not affect the lack of a sufficient overlap in competition between the subject imports from Chile and the subject imports from Indonesia, as discussed *infra*.

⁷⁰ Table I-2, CR at I-12, PR at I-8.

⁷¹ Table I-2, CR at I-12, PR at I-8.

⁷² Table I-2, CR at I-12, PR at I-8.

⁷³ Table I-2, CR at I-12, PR at I-8. Petitioners contend that the data in the staff report indicating the overwhelming concentration of Indonesian subject imports in retail shipments are irreconcilable with official import statistics indicating that approximately 25 percent of total imports from Indonesia were sold in containers larger than the sizes most often sold at retail. We find petitioners' objections to the staff report data unavailing. At the hearing, a witness for Pillsbury, the *** importer of subject merchandise from Indonesia, *see* CR at IV-2, PR at IV-1, responded that "[a]ll of our large cans are only sold at retail, primarily through warehouse or club stores, such as Cos[t]co or B.J.s or Sam[']s." Tr. at 178 (La Penotiere). Pillsbury's testimony is ***. *See* *** Questionnaire.

Both the domestic like product and imports from each subject source were present in the U.S. market in each month of 1997 and the first half of 1998.⁷⁴

5. Conclusion

The record unequivocally indicates that all of the subject imports and the domestic like product are distributed nationwide and were simultaneously present in the marketplace throughout the period of investigation. It also indicates that subject imports from Chile compete with the domestic like product. Questionnaire data indicate that purchasers perceive the Chilean and domestic product as generally comparable in characteristics and at least moderate substitutes for each other; most purchasers that purchased imports from Chile also purchased domestically-produced product; and majorities of both the Chilean and domestically-produced product are distributed in the industrial and food service channels of distribution. The issues in this investigation have centered around whether the factors of fungibility and common channels of distribution support a finding of competition between subject imports from Chile, on the one hand, and those from China, India, and Indonesia, on the other.

We conclude that subject imports from Chile compete with subject imports from China. As explained above, NFP's contentions that Chinese and Chilean preserved mushrooms differ in quality and are sold to different types of customers are not evidenced in the record. If anything, the record suggests that the majority of purchasers of subject imports from Chile also purchase subject imports from China for the same uses.⁷⁵

We also conclude that subject imports from Chile compete with subject imports from India. Questionnaire data indicate that these products are relatively fungible, and there is at least *** common purchaser.⁷⁶ There is some distinction in channels of distribution, with the majority of the Indian product going into the retail market, where the Chilean presence is small. Nevertheless, significant proportions of subject imports from both India (*** percent) and Chile (*** percent) are distributed to food service users. Based on fungibility and this commonality in channels of distribution, we conclude the record shows a reasonable overlap in competition between subject imports from China and India.

Questionnaire data on interchangeability suggest that subject imports from Chile are somewhat fungible with subject imports from Indonesia. The record, however, indicates that any actual competition between these imports is extremely attenuated. The overwhelming majority of the subject Indonesian imports, *** percent, is distributed in the retail channel of distribution, where only *** percent of the Chilean imports is distributed. Conversely, virtually all the Chilean imports are distributed in the industrial or food service channels, where there is respectively no and only *** percent participation by subject imports from Indonesia.⁷⁷ The record does not indicate that any purchaser has purchased both Chilean and Indonesian product.⁷⁸ Thus, the record shows only a minimal overlap between the subject imports from Chile and

⁷⁴ CR at I-10, PR at I-6.

⁷⁵ NFP's argument that the "food service" customers served by its subject imports from Chile are distinguishable from those served by its subject imports from China cannot be reconciled with this evidence of a common customer base. Moreover, the fact that subject imports from China are much larger in volume than subject imports from Chile is not an appropriate basis to defeat cumulation for analysis of material injury by reason of subject imports. See *Granges Metallverken v. United States*, 716 F. Supp. 17, 24 (Ct. Int'l Trade 1989).

⁷⁶ Consequently, there is not a clear distinction between the types of food service customers served by subject imports from Chile and those served by subject imports from India, as argued by NFP.

⁷⁷ Table I-2, CR at I-12, PR at I-8.

⁷⁸ No purchaser that responded to the Commission's questionnaires reported purchasing subject imports from both
(continued...)

Indonesia in the various channels of distribution, which we find to be insufficient to satisfy the “reasonable overlap” standard. We consequently conclude that subject imports from Indonesia do not compete with subject imports from Chile.

Consequently, for purposes of the instant determination on Chile, we have cumulated subject imports from Chile with subject imports from China and India. We have not cumulated subject imports from Chile with subject imports from Indonesia.

III. MATERIAL INJURY BY REASON OF DUMPED IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the dumped imports under investigation.⁷⁹ ⁸⁰ In making these determinations, the Commission must consider the volume of the dumped imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁸¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸² In assessing whether the domestic industry is materially injured by reason of dumped imports, we consider all relevant economic factors that bear on the

⁷⁸ (...continued)

Chile and Indonesia. Table F-1, CR at F-3-4, PR at F-3-4. ***. *Compare* *** Questionnaire Response with NFP Posthearing Brief, Table 1 at 1. ***. *Compare* *** Questionnaire Response with NFP Posthearing Brief, Table 1 at 1. *** also imported subject merchandise from China. The third importer known to have imported subject merchandise from Indonesia, ***, did not identify its ten largest purchasers in its questionnaire response.

⁷⁹ 19 U.S.C. § 1673d(b).

⁸⁰ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is materially injured “by reason of” LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports.” S. Rep. No. 96-249 at 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 96-317 at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74. Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 100-71 at 116 (1987) (emphasis added); *Gerald Metals v. United States*, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see *Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela*, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and *Steel Concrete Reinforcing Bars from Turkey*, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. *United States Steel Group v. United States*, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

⁸¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination,” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁸² 19 U.S.C. § 1677(7)(A).

state of the industry in the United States.⁸³ No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁴

For the reasons discussed below, we determine that the domestic preserved mushroom industry is materially injured by reason of dumped imports from Chile.

A. Conditions of Competition

One condition of competition relevant to our analysis in this investigation is that in recent years apparent U.S. consumption of fresh mushrooms has increased while apparent U.S. consumption of preserved mushrooms has declined. Apparent U.S. consumption of preserved mushrooms declined from 232.1 million pounds in 1995 to 212.6 million pounds in 1996 and then to 196.2 million pounds in 1997; apparent U.S. consumption in interim 1998 was 106.6 million pounds, as opposed to 102.7 million pounds in 1997.⁸⁵ By contrast, U.S. Department of Agriculture statistics indicate that U.S. sales of fresh mushrooms to the fresh mushroom market have increased from 537.1 million pounds in 1995-96 to 553.8 million pounds in 1996-97, and to 621.5 million pounds in 1997-98.⁸⁶ One of petitioners’ witnesses opined that “shift[s] in lifestyle” have motivated some purchasers to shift from preserved to fresh mushrooms.⁸⁷ An industry witness for respondent Pillsbury similarly testified that there has been a general shift in consumer tastes from preserved to fresh vegetables, and that this shift has been particularly noticeable in the market for mushrooms.⁸⁸

Another condition of competition is that there are three major types of purchasers of preserved mushrooms, each of which is associated with a different channel of distribution. Purchasers are divided between consumers who purchase preserved mushrooms for retail sale, such as grocers; food-service users such as restaurants and schools; and industrial users, typically large food companies that use mushrooms as ingredients in processed foods.⁸⁹ Several domestic producers focus on a single distribution channel.⁹⁰ The most common sizes of container sold at retail are four and eight-ounce cans and jars, while industrial and food service users typically purchase only one-pound cans that contain 68 ounces drained weight of preserved mushrooms.⁹¹ In all channels of distribution, preserved mushrooms are predominantly sold in the form of stems and pieces.⁹²

B. Volume of Subject Imports

⁸³ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁵ Table IV-2, CR at IV-5, PR at IV-4. Apparent consumption of preserved mushrooms was higher in interim 1998 than in interim 1997, but the parties were not able to ascertain the reason for this. Tr. at 97-98 (Kerwin), 207 (Reilly).

⁸⁶ Table D-1, CR at D-3, PR at D-3. Additionally, the proportion of fresh mushrooms sold into the processing market has declined since 1970. *Id.*

⁸⁷ Tr. at 71 (Kazemi).

⁸⁸ Tr. at 171 (LaPenotiere).

⁸⁹ See CR at II-1, PR at II-1; Tr. at 35-36 (Kazemi).

⁹⁰ See Table I-3, CR at I-13, PR at I-9; Tr. at 124 (Kerwin).

⁹¹ CR at II-1, PR at II-1.

⁹² See Table I-1, CR at I-11, PR at I-7; CR at II-1, PR at II-1.

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁹³

The quantity of cumulated subject imports from Chile, China, and India declined from 92.2 million pounds in 1995 to 84.2 million pounds in 1996, and then increased to 86.5 million pounds in 1997. Cumulated subject import quantity in interim 1998, 56.2 million pounds, was higher than the 47.3 million pounds imported in interim 1997. The value of cumulated subject imports declined from \$107.3 million in 1995 to \$81.0 million in 1996 and then to \$74.6 million in 1997. Interim 1998 cumulated subject import value of \$45.9 million exceeded interim 1997 cumulated subject import value of \$40.4 million.⁹⁴

Cumulated subject import quantity declined at a lower rate over the period of investigation than did U.S. apparent consumption. Consequently, cumulated subject import market penetration rose over the period of investigation. Cumulated subject import market penetration, measured by quantity, declined slightly from 39.7 percent in 1995 to 39.6 percent in 1996, and then rose to 44.1 percent in 1997. Interim 1998 cumulated subject import market penetration, 52.7 percent, was greater than the interim 1997 figure of 46.0 percent.^{95 96}

In light of their market penetration levels, we find the volumes of cumulated subject imports to be significant. We also find the increase in cumulated subject import market penetration over the period of investigation to be significant.⁹⁷

C. Price Effects of Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁹⁸

The record indicates that price is an important factor in purchasing decisions for preserved mushrooms. Twenty-six of 30 purchasers named price as one of the three most important factors in their purchasing decisions.⁹⁹ Although purchasers named quality as the most important factor in their purchasing

⁹³ 19 U.S.C. § 1677(7)(C)(i).

⁹⁴ Table IV-1, CR at IV-4, PR at IV-3.

⁹⁵ Table IV-3, CR at IV-6, PR at IV-5. The market penetration of fairly traded imports (including imports from Indonesia that received *de minimis* margins in Commerce’s preliminary determination), measured by quantity, was 17.2 percent in 1995, 14.9 percent in 1996, 14.5 percent in 1997, 14.3 percent in interim 1997 and 11.5 percent in interim 1998. *Id.*

⁹⁶ Commissioner Crawford notes that the market penetration of imports from Indonesia subject to Commerce’s preliminary affirmative determination, measured by quantity, increased from 2.0 percent in 1995 to 2.3 percent in 1996 and to 3.4 percent in 1997. The market penetration of such imports was lower in interim 1998 (2.9 percent) than in interim 1997 (3.4 percent). Table IV-3, CR at IV-6, PR at IV-5.

⁹⁷ Commissioner Crawford makes her finding on the significance of volume in the context of the price effects and the impact of the dumped imports. For the reasons discussed below, she finds that the volume of subject imports is significant in this investigation.

⁹⁸ 19 U.S.C. § 1677(7)(C)(ii).

⁹⁹ CR at II-8, PR at II-5. Liberty Gold, an importer of subject merchandise from China, submitted an affidavit stating that one of the most popular preserved mushroom products is “generally very sensitive to price trends in the market

(continued...)

decisions more often than they mentioned price,¹⁰⁰ they did not tend to perceive significant quality distinctions between the domestic like product and subject imports from Chile, China, and India. Three of five purchasers found the Chilean and U.S. products to be comparable in quality, 13 of 21 purchasers found the Chinese and U.S. products to be comparable in quality, and two of three purchasers found the Indian and U.S. products to be comparable in quality.¹⁰¹ Additionally, majorities of purchasers found the subject imports from Chile, China, and India to be at least moderate substitutes with domestically-produced preserved mushrooms.¹⁰² Accordingly, we find that the cumulated subject imports are moderate substitutes with the domestic like product.¹⁰³

The Commission collected pricing data on three products: stems and pieces (other than those packed in butter or butter sauce) sold in four-ounce cans, stems and pieces (other than those packed in butter or butter sauce) sold in 68-ounce cans, and sliced mushrooms (other than those packed in butter or butter sauce) sold in four-ounce cans. Although we have considered all three of these products in our analysis, we have given particular focus to the second product.¹⁰⁴ This is because preserved mushrooms are sold in the U.S. market predominantly as stems and pieces not packed in butter or butter sauce and the second product reflects sales in both the food service and industrial channels of distribution, where the most significant competition between the domestic like product and the cumulated subject imports occurred. Additionally,

⁹⁹ (...continued)

because customers tend to make their purchasing decisions almost exclusively on the basis of price.” Liberty Gold Prehearing Brief, Exhibit A, ¶ 2. NFP, *** importer of subject merchandise from China in 1997, stated that “the preserved mushroom market from China is a commodity market that is price-driven.” NFP Posthearing Brief at 3.

¹⁰⁰ CR at II-7-8, PR at II-5.

¹⁰¹ CR at II-11-12, PR at II-7-8.

¹⁰² Table II-1, CR at II-9, PR at II-6.

¹⁰³ Commissioner Crawford concurs that the subject imports and the domestic like product are moderate substitutes for each other. However, she has excluded the related party producers, Giorgio and ***, from the domestic industry, which could change the degree of substitution found by the majority because the composition of the firms within the domestic industry differs. The *** of Giorgio’s production is sold in the retail market segment, while non-related party producers sell only a small amount in this segment. Thus, Giorgio’s sales account for the *** of total sales of non-related party and related party producers in the retail segment. Therefore, by excluding Giorgio as a related party the *** of the domestic industry’s production is sold in the industrial and food service market segments, with only small amounts sold in the retail segment. As discussed above, the majority of subject imports from Chile also are sold in the industrial and food service market segments. Thus, the significant overlap of market segments, along with information from purchasers comparing the domestic product and the subject imports from Chile, indicates that the two are at least moderate substitutes for each other. Similarly, there is a significant overlap of market segments for the domestic product and the subject imports from China and India, which also indicates that the subject imports from these countries and the domestic product are at least moderate substitutes for each other. Based on this analysis, Commissioner Crawford also finds that the cumulated subject imports and the domestic like product are moderate substitutes for each other, even though she has excluded the related parties from the domestic industry. Furthermore, consistent with the majority’s finding, she finds that the subject imports, the domestic product, and the product produced by the related parties are moderate substitutes for each other. However, the exclusion of Giorgio does affect the substitutability between the product produced by the domestic industry consisting of non-related party producers, the product produced by Giorgio and the imports from Indonesia. Only a small amount of the domestic industry’s production is sold in the retail segment, while the imports from Indonesia and Giorgio’s production are sold *** in that market segment. Consequently, Commissioner Crawford finds that imports from Indonesia and Giorgio’s products are good substitutes for each other, while the domestic product is not a very good substitute for either imports from Indonesia or Giorgio’s product.

¹⁰⁴ Commissioner Askey did not focus primarily on the price of the second product in her pricing analysis. She examined closely and reviewed all of the pricing comparisons for all products.

this product provided the greatest number of pricing comparisons between the domestically-produced product and subject imports from Chile, China, and India.¹⁰⁵

The cumulated subject imports undersold the domestic like product in 51 out of 94 quarterly comparisons.^{106 107} With respect to the 68-ounce stems and pieces product, the cumulated subject imports undersold the domestic like product in 24 of 32 quarterly pricing comparisons, with there being multiple instances of underselling by each of the cumulated subject countries.^{108 109} Given that the cumulated subject imports are moderate substitutes with each other and with the domestic like product and that price is an important factor in purchasing decisions, we find that the underselling has been significant.¹¹⁰

¹⁰⁵ Commissioner Crawford does not find that the subject imports are having significant effects on domestic prices, and thus does not join the remainder of this discussion. To evaluate the effects of dumping on domestic prices, Commissioner Crawford compares the domestic prices that existed when the imports were dumped with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In this investigation, the final dumping margin for Chile is very large, 148.51 percent, and the preliminary margins for China and India are also large, ranging from 168.72 to 198.63 percent for China and from 2.75 to 243.87 percent for India. Thus, prices for the subject imports likely would have increased significantly if they had been priced fairly, and a very large portion of the demand for them likely would have shifted away from the subject imports. In this investigation, there are three alternative sources of preserved mushrooms in the U.S. market: nonsubject imports, fairly-traded imports from Indonesia, and mushrooms produced by Giorgio and ***, the related party producers that have been excluded from the domestic industry. Nonsubject imports and fairly traded imports from Indonesia supplied 14.5 percent of the market in 1997, while Giorgio and *** supplied an additional *** percent. Therefore, a large portion of domestic demand, nearly *** percent, is satisfied by these alternative sources of supply. As noted previously, the subject imports, the domestic product, and the product produced by the excluded related parties are all at least moderate substitutes for each other, and thus demand for the subject imports would have shifted to all of these sources. On the other hand, imports from Indonesia and Giorgio's product are not very good substitutes for the domestic product, and thus it is likely that most, if not all, of the demand for the subject imports sold in the retail segment likely would have shifted to these sources, and not to the domestic product. Nonetheless, a substantial portion of the demand for the subject imports likely would have shifted to the domestic product. Because the cumulated market share of the subject imports is so large, 44.1 percent in 1997, the shift in demand toward the domestic product would have been significant had the subject imports not been dumped. However, the significant shift in demand would not have allowed the domestic industry to raise its prices. The three alternative sources of supply have a large presence in the market, and thus represent substantial competition for the domestic industry. In addition, there is significant competition within the domestic industry, particularly in the industrial and food service market segments. The domestic industry's capacity utilization was *** percent in 1997, and therefore it had substantial unused production capacity available, as well as substantial inventories, that would have been available to satisfy the increase in demand. Thus, available capacity and inventories, competition within the domestic industry, and competition from the three alternative sources of supply would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the extensive competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of these subject imports. Consequently, Commissioner Crawford finds that subject imports from Chile, China, and India are not having significant effects on prices for domestic certain preserved mushrooms.

¹⁰⁶ See Tables V-1-3, CR at V-8-13, PR at V-5-10.

¹⁰⁷ Commissioner Askey notes that for all three products, cumulated subject imports undersold the domestic like product in 63 of 94 quarterly comparisons with the non-related party producers. Staff Price Worksheets.

¹⁰⁸ See Table V-2, CR at V-10-11, PR at V-7-8.

¹⁰⁹ Commissioner Askey notes that this comparison is also applicable for non-related party domestic producers. See Staff Price Worksheets.

¹¹⁰ We also observe that there were several instances of confirmed lost revenues to the domestic industry attributable to the cumulated subject imports. These involved competition with subject imports from China. See CR at V-19, 26, PR at V-14-15.

Moreover, prices for each of the products generally declined over the period of investigation.¹¹¹ The price declines were particularly noteworthy for the 68-ounce stems and pieces product. For the domestically-produced product, prices declined by 27.4 percent between the first quarter of 1995 and the second quarter of 1998.^{112 113} During this same period, prices for this product declined by *** percent for imports from Chile and by 34.1 percent for imports from China. Between the second quarter of 1996 (the earliest period for which such data were reported) and the second quarter of 1998, prices for this product declined by *** percent for imports from India.¹¹⁴

These price declines occurred when domestic producers' costs also declined. Nevertheless, prices declined at a greater rate than cost of goods sold (COGS). The decline in net unit sales values was greater than the decline in unit COGS over the period of investigation.^{115 116} In light of the substitutability of the domestic like product and the cumulated subject imports and the substantial volumes of the subject imports, we find that there is a causal nexus between the declines in prices for the cumulated subject imports and the declines in prices for the domestic like product. We accordingly conclude that the subject imports had significant price-depressing effects.

¹¹¹ Tables V-1-3, CR at V-8-13, PR at V-5-10; *see also* Staff Price Worksheets (providing data on prices for non-related-party U.S. producers for Commissioner Askey's analysis). Prices did not decline for product 1 from Chile or product 3 from India, and there was only one quarter's pricing observation for product 3 from Chile.

¹¹² CR at V-6, PR at V-11.

¹¹³ Commissioner Askey notes that for non-related party domestic producers, the price decline was 26.2 percent. *See* Staff Price Worksheets.

¹¹⁴ CR at V-7, V-16, PR at V-12.

¹¹⁵ Average unit sales values declined by 32 cents from 1995 to 1997 and were two cents lower in interim 1998 than in interim 1997. By contrast, unit COGS declined by 26 cents from 1995 to 1997 and were three cents higher in interim 1998 than interim 1997. *See* Tables VI-2, VI-3, CR at VI-6-7, PR at VI-3.

We also acknowledge that the price declines were coincident with a period of reduced U.S. demand for preserved mushrooms, as respondents assert. Nevertheless, reduced demand is not necessarily a satisfactory explanation for significant price declines for a product for which demand is relatively price inelastic. *See* CR at II-5-7, II-16, PR at II-4, II-10. Moreover, as discussed above, there was significant underselling by the cumulated subject imports. Cost declines and reduced demand do not explain the significant underselling.

¹¹⁶ Commissioner Askey notes that for non-related party domestic producers, average unit sales values declined by *** from 1995 to 1997 and were *** higher in interim 1998 than interim 1997. By contrast, unit COGS declined by *** from 1995 to 1997 and were *** during the interim periods. *See* Table C-4, PR at C-4, CR at C-4.

D. Impact of Subject Imports^{117 118}

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹¹⁹ 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.¹²⁰

As stated previously, the cumulated subject imports maintained a significant market share during the period of investigation and depressed domestic prices to a significant degree. As a result, the domestic industry's performance showed declines in many key indicators during the period of investigation, although some indicators were better for interim 1998 than for interim 1997.

¹¹⁷ As part of its consideration of the impact of imports, the statute as amended by the URAA specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The URAA Statement of Administrative Action (SAA) indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA, H.R. Rep. 316, 103d Cong., 2d Sess., vol. I at 850. Section 771(35)(C) of the Act, 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a final determination as the last margin or margins published by Commerce prior to the closing of the administrative record in the Commission's investigations. With respect to Chile, the margin Commerce has most recently published prior to the closing of the administrative record is the one in its final determination. Commerce assigned a 148.51 percent weighted-average dumping margins to all exporters. 63 Fed. Reg. 56613, 56623 (Oct. 22, 1998). The most-recently published margins for China and India appear in the preliminary determinations. Preliminary margins for China range from 176.78 percent to 198.63 percent. 63 Fed. Reg. 41794, 41801 (Aug. 5, 1998). Preliminary margins for India range from 2.75 percent to 243.87 percent. 63 Fed. Reg. 41789, 41793 (Aug. 5, 1998).

¹¹⁸ Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

¹¹⁹ 19 U.S.C. § 1677(7)(C)(iii).

¹²⁰ Commissioner Crawford finds that the subject imports from Chile, China, and India are having a significant impact on the domestic industry. In her analysis of material injury by reason of dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g., employment, wages, etc.) is derived from this impact. As she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had the subject imports been priced fairly. Therefore, any impact of the dumped imports on the domestic industry would have been on the domestic industry's output and sales. Even though there is competition from nonsubject imports, fairly traded imports from Indonesia and products produced by the related party producers, a significant amount of the demand satisfied by the subject imports from Chile, China, and India would have shifted to the domestic industry's product had the subject imports not been dumped. The increase in demand for the domestic product would have been substantial, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for the subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped. Therefore, the domestic industry would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that the domestic industry is materially injured by reason of the dumped imports from Chile.

The cumulated subject imports increased their market share at the expense of the domestic industry.¹²¹ Measured by quantity, the domestic industry's market share increased from 41.0 percent in 1995 to 43.2 percent in 1996, but declined to 38.0 percent in 1997. Interim 1998 market share of 32.9 percent was lower than interim 1997 market share of 36.2 percent.¹²²

Coincident with the loss of market share to the cumulated subject imports, domestic producers' production and U.S. shipments fell. Production declined from 107.7 million pounds in 1995 to 84.9 million pounds in 1996 and then to 74.7 million pounds in 1997. Production was lower in interim 1998 (42.4 million pounds) than in interim 1997 (46.8 million pounds).^{123 124} The quantity of U.S. shipments declined from 95.3 million pounds in 1995 to 91.9 million pounds in 1996 and then to 74.6 million pounds in 1997. The 35.0 million pounds of U.S. shipments in interim 1998 was lower than the 37.2 million pounds in interim 1997. The value of U.S. shipments declined from \$142.0 million in 1995 to \$121.1 million in 1996 and then to \$90.3 million in 1997. Interim 1998 U.S. shipment value of \$42.0 million was lower than interim 1997 U.S. shipment value of \$45.6 million.^{125 126}

Capacity utilization declined from 50.1 percent in 1995 to 38.0 percent in 1996 and to 36.7 percent in 1997. Interim 1998 capacity utilization of 52.6 percent was higher than interim 1997 capacity utilization of 42.8 percent.^{127 128}

The size of the domestic workforce shrank by approximately one-fifth between 1995 and 1997 and by approximately another one-fifth in interim 1998 as compared to interim 1997.¹²⁹ The number of production and related workers declined from 518 in 1995 to 476 in 1996 and then to 421 in 1997. Interim 1998 employment of 357 was lower than interim 1997 employment of 450. Hours worked declined from 1.1 million in 1995 to 978,000 in 1996 and then to 804,000 in 1997. The 417,000 hours worked in interim 1998

¹²¹ Commissioner Askey notes that the market share of the non-related-party domestic producers remained relatively flat over the period of investigation. Table C-4, CR at C-10, PR at C-10. She notes, however, that the other financial indicators of the industry declined as a result of competition from the cumulated subject imports, as explained in the text below.

¹²² Table IV-3, CR at IV-6, PR at IV-5.

¹²³ Table III-1, CR at III-6, PR at III-4.

¹²⁴ Commissioner Askey's analysis does not focus on domestic producers' loss of market share. She notes that, for non-related-party producers, production declined from *** pounds in 1995 to *** pounds in 1996 and then to *** pounds in 1997. Production was higher in interim 1998 (*** pounds) than in interim 1997 (*** pounds). Table C-4, CR at C-10, PR at C-10.

¹²⁵ Table III-2, CR at III-6, PR at III-4.

¹²⁶ Commissioner Askey notes that, for non-related party producers, the quantity of U.S. shipments declined from *** pounds in 1995 to *** pounds in 1996 and then to *** pounds in 1997. The *** pounds of U.S. shipments in interim 1998 was higher than the *** in interim 1997. The value of U.S. shipments declined from *** in 1995 to *** in 1996 and then to *** in 1997. Interim 1998 U.S. shipment value of *** was higher than interim 1997 U.S. shipment value of ***. Table C-4, CR at C-10, PR at C-10.

¹²⁷ Table III-1, CR at III-6, PR at III-4. Capacity was lower in interim 1997 than interim 1998, partially as a result of ***. CR at III-3, PR at III-2.

¹²⁸ Commissioner Askey notes that, for the non-related-party producers, capacity utilization declined from *** percent in 1995 to *** percent in 1996 and to *** percent in 1997. Interim 1998 capacity utilization of *** percent was higher than interim 1997 capacity utilization of *** percent. Table C-4, CR at C-10, PR at C-10.

¹²⁹ The large workforce reduction was spread across the industry, as several producers reduced employment. Compare Table III-4, PR at III-7, CR at III-5 with Table C-3, CR at C-8, PR at C-8.

was less than the 470,000 hours worked in interim 1997.^{130 131} Three domestic producers ceased operations entirely in 1997.¹³²

The combination of declining output and falling prices had negative consequences for the domestic industry's operating performance. Sales revenues declined on both an aggregate and a per-unit basis. To a lesser extent, COGS also declined on both an aggregate and per unit basis, due to declines in raw materials costs. Selling, general, and administrative expenses (SG&A) remained essentially constant on a unit basis.¹³³

Because unit sales values declined at a greater rate than unit COGS,¹³⁴ operating income declined on a per-unit basis. Operating margins declined from 5.3 percent in 1995 to 3.7 percent in 1996 and to 1.3 percent in 1997. The 2.6 percent operating margin in interim 1998 was lower than the 5.7 percent operating margin in interim 1997. Operating income declined from \$7.5 million in 1995 to \$4.5 million in 1996 and to \$1.2 million in 1997. Interim 1998 operating income of \$1.1 million was lower than interim 1997 operating income of \$2.6 million.^{135 136} During 1997 and both interim periods, at least half of the domestic producers sustained operating losses.¹³⁷

We have examined whether the domestic industry's operating difficulties might be attributable to causes other than the cumulated subject imports. We cannot conclude that any of the alternative causes advanced by respondents, such as declines in demand or imports other than the cumulated subject imports, provide a satisfactory explanation, either individually or in the aggregate, for the declines in the domestic industry's performance.¹³⁸ Instead, because of their significant volumes and price-depressing effects, we find a causal nexus between the subject imports and the domestic industry's sales, employment, and revenue

¹³⁰ Table III-4, PR at III-7, CR at III-5.

¹³¹ Commissioner Askey notes that, for the non-related-party producers, the number of production and related workers declined from *** in 1995 to *** in 1996 and then to *** in 1997. Interim 1998 employment of *** was lower than interim 1997 employment of ***. Hours worked declined from *** in 1995 to *** in 1996 and then to *** in 1997. The *** hours worked in interim 1998 was greater than the *** hours worked in interim 1997. Table C-4, PR at C-10, CR at C-10.

¹³² CR at III-1 n.1, PR at III-1 n.1.

¹³³ Table VI-1, CR at VI-3, PR at VI-2; Table C-4, PR at C-10, CR at C-10 (for Commissioner Askey's analysis).

¹³⁴ We have considered respondents' arguments that the unit COGS figures for the latter portion of the period of investigation were inflated by increases in the unit costs of other factory overhead. The reason that unit factory overhead costs increased, however, is because producers were forced to spread fixed overhead costs over a smaller quantity of production. In turn, these production declines were a function of the subject imports. Consequently, the increase in unit factory overhead costs is not a cause of the domestic producers' difficulties independent from the cumulated subject imports.

¹³⁵ Table VI-1, CR at VI-3, PR at VI-2.

¹³⁶ Commissioner Askey notes that, for non-related-party producers, operating margins declined from *** percent in 1995 to *** percent in 1996 and then to *** percent in 1997. The *** percent operating margin in interim 1998 was higher than the *** percent operating margin in interim 1997. These producers had operating *** of *** in 1995, and operating *** of *** in 1996, *** in 1997, *** in interim 1997, and *** in interim 1998. Table C-4, CR at C-10, PR at C-10.

¹³⁷ Six producers reported operating losses in 1997, seven in interim 1997, and five in interim 1998. Table VI-2, CR at VI-5, PR at VI-3.

¹³⁸ As previously stated, the subject imports were able to increase their U.S. market penetration over the period of investigation at the expense of the domestic industry, notwithstanding declines in apparent U.S. consumption.

Imports other than the cumulated subject imports had considerably lower market penetration than did the cumulated subject imports. Table IV-1, CR at IV-4, PR at IV-3. Moreover, the declines in average unit sales value over the period of investigation were considerably higher for the cumulated subject imports than for fairly traded imports. *See id.*

Commissioner Askey does not join the first sentence of this footnote.

declines and consequent poor operating performance. We therefore conclude that the cumulated subject imports had a significant impact on the domestic preserved mushroom industry. Accordingly, we have reached an affirmative determination in this investigation.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing preserved mushrooms is materially injured by reason of dumped imports from Chile.