

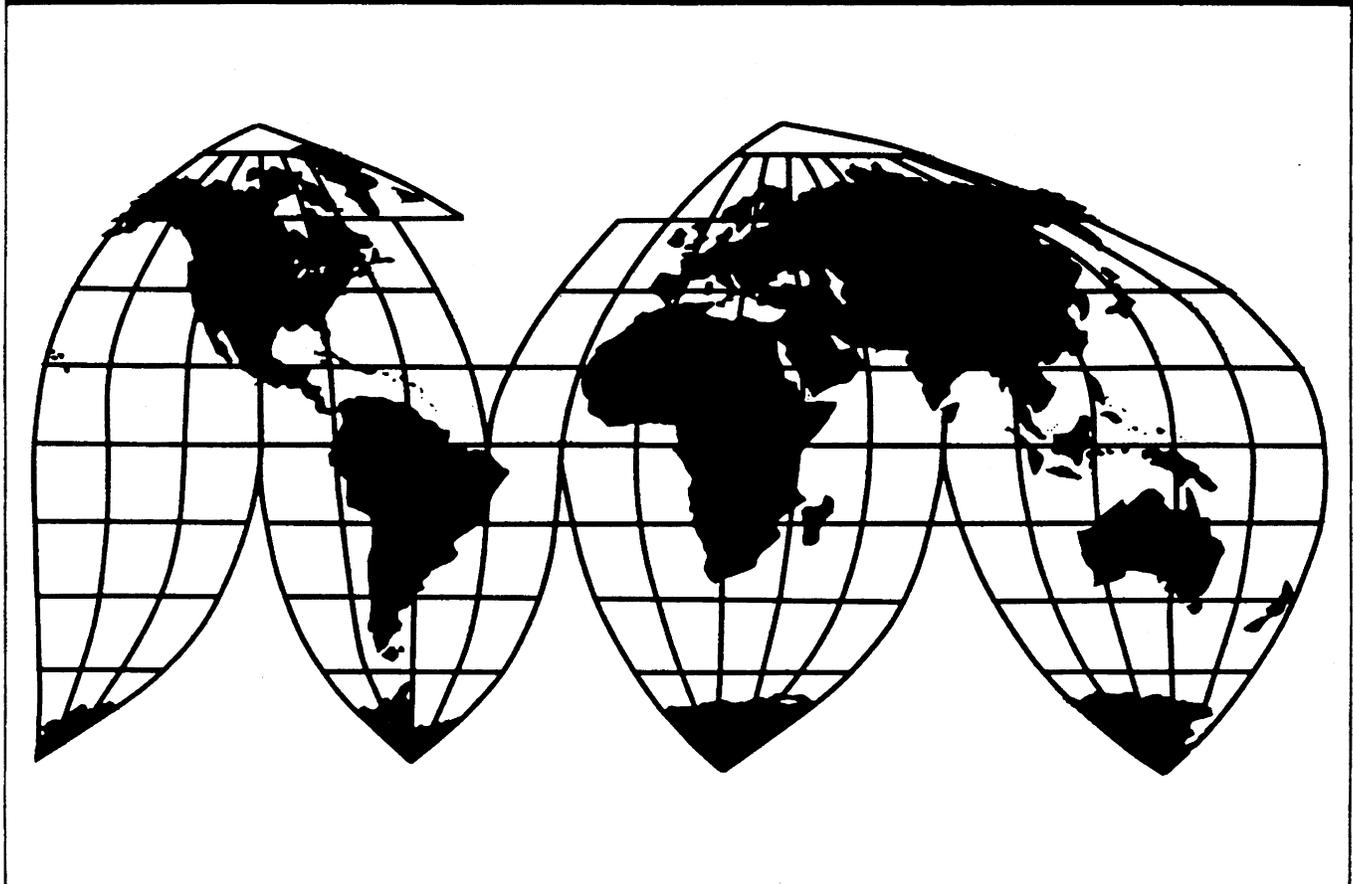
Fresh Atlantic Salmon From Chile **(Views on Remand)**

Investigation No. 731-TA-768 (Remand)

Publication 3244

October 1999

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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In July 1998, the United States International Trade Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that had been found by the Department of Commerce to be sold at less than fair value ("LTFV"). That determination was appealed to the U.S. Court of International Trade. On July 2, 1999, at the request of the Commission, the Court remanded the determination to the Commission. *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States International Trade Commission et al.*, Court No. 98-09-02759, Slip Op. 99-58 (July 2, 1999). The Court directed the Commission to "reopen the administrative record to verify the accuracy of its foreign production, shipments and capacity data" and to "take any action necessary after reexamining the foreign production, shipments and capacity data." On remand, the Commission again determines that the industry in the United States producing fresh Atlantic salmon is materially injured or threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that the Department of Commerce has determined are sold at LTFV.

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1. *Federal Register notice*

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COMMISSION'S DETERMINATION ON REMAND

In July 1998, the Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that had been found by the Department of Commerce to be sold at less than fair value ("LTFV").¹ That determination was appealed to the U.S. Court of International Trade.

On July 2, 1999, at the request of the Commission, the Court remanded the determination to the Commission. *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States International Trade Commission et al.*, Court No. 98-09-02759, Slip Op. 99-58 (July 2, 1999). The Court directed the Commission to "reopen the administrative record to verify the accuracy of its foreign production, shipments and capacity data" and to "take any action necessary after reexamining the foreign production, shipments and capacity data." On remand, the Commission again determines that the industry in the United States producing fresh Atlantic salmon is materially injured or threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that the Department of Commerce has determined are sold at LTFV.²

The views of Chairman Bragg and Vice Chairman Miller comprised the Commission's affirmative determination in the original investigation.³ The Commission submits Chairman Bragg's remand views to the Court as its "Views on Remand" in this proceeding. Vice Chairman Miller's affirmative determination was unaffected by the Court's remand order. Accordingly, she reaffirms her affirmative views in this investigation without additional explanation or analysis. In the original determination, Commissioner Crawford dissented, determining that the domestic industry was not materially injured or

¹ *Fresh Atlantic Salmon from Chile*, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 (July 1998)("Original Views").

² Commissioner Crawford dissenting.

³ Id.

threatened with material injury by reason of the subject imports.⁴ Commissioner Crawford's views are not on appeal before the Court. She reaffirms her original determination in this remand proceeding.

⁴ Original Views at 35-47.

VIEWS OF CHAIRMAN LYNN M. BRAGG

In accordance with the order of the U.S. Court of International Trade (“CIT”) in *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States International Trade Commission et al.*, Court No. 98-09-02759, Slip Op. 99-58 (July 2, 1999) (the “Order”), I have examined the record evidence developed in this remand proceeding and reconsidered my affirmative determination in *Fresh Atlantic Salmon from Chile*, Inv. No. 731-TA-768 (Final)⁵ in light of that evidence. For the reasons discussed below, I reaffirm my original determination that an industry in the United States producing fresh Atlantic salmon is threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that were found to be sold at less than fair value.

As an initial matter, I note that the scope of the Order is very limited. The Order directs the Commission to do only two things: “reopen the administrative record to verify the accuracy of its foreign production, shipments and capacity data” and to “take any action necessary after reexamining the foreign production, shipments and capacity data.” In my view, this language does not direct me to reconsider all of my findings or to address any issues not directly related to the issue of whether the Commission correctly calculated foreign production, capacity and shipments data in the original investigation. Accordingly, I have limited my reconsideration of my original determination to those matters directly related to the scope of the Order and the related arguments raised by the parties in this proceeding: i.e., whether it was necessary to revise the Commission’s foreign production, capacity and shipments data and whether the necessary revisions affected my affirmative determination.

In summary, I find that the record in this remand proceeding indicates that the Commission incorrectly included two sets of data for the Chilean producer Fiordo Blanco in its aggregation of production, shipments, and capacity for the subject producers in the original investigation. Using the

⁵ USITC Pub. 3116 (July 1998)(“Original Views”).

record evidence obtained in this proceeding, I adjusted the Commission's foreign production, shipments, and capacity data to eliminate the "double-counting" of Fiordo Blanco's data. Although these adjustments resulted in changes from the Commission's original calculations of the subject producers' foreign production, shipments, and capacity data, the changes were not significant. As discussed more fully below, I therefore reaffirm my original threat determination in this investigation.

I. PROCEDURAL HISTORY

Because I believe that the procedural background of this remand proceeding sheds some light on the matters considered herein, I first briefly summarize that history:

A. The Original Determination

In July 1998, the Commission made an affirmative final determination in the antidumping investigation involving fresh Atlantic salmon from Chile.⁶ The affirmative determination resulted from a 2-1 vote of the Commissioners then in office. Vice Chairman Miller determined that the domestic industry was materially injured by reason of the subject imports.⁷ Commissioner Crawford determined that the domestic industry was neither materially injured nor threatened with material injury by reason of the subject imports.⁸

I determined that the domestic industry was threatened with material injury by reason of the subject imports.⁹ In reaching this conclusion, I relied on the aggregate foreign production, capacity, and capacity utilization data contained in final staff report, among other things.¹⁰ As I described in my views, this record evidence indicated that, during the period of investigation, the subject producers had added

⁶ Original Views at 1.

⁷ Original Views at 27-34.

⁸ Original Views at 35-47.

⁹ Original Views at 17-25.

¹⁰ Original Views at 23-24.

substantial amounts of capacity during the period from 1995 to 1997.¹¹ This evidence also showed that the subject producers had been operating at high capacity use levels during the period but that they still had “significant unused capacity available.”¹² In this regard, I noted that the Chilean producers’ capacity utilization rate in 1997 (the last year of the period of investigation) had declined by five percentage points from the prior year and that their unused capacity in 1997 would be sufficient to produce an amount equal to two-thirds of total domestic production in 1997.¹³ In sum, I concluded that significant increases in the quantity of the subject imports were imminent as a result of the subject producers’ expanded capacity during the period and their ability to operate at higher levels of capacity.¹⁴

These findings were based, in significant part, on two charts in the Commission’s original report which set forth aggregate foreign production, shipments, and capacity data for the subject Chilean producers.¹⁵ Those charts were prepared by aggregating data submitted by five individual subject Chilean producers with data submitted on behalf of the remaining subject Chilean producers by the Asociacion de Productores de Salmon y Trucha de Chile AG (“Asociacion”), an association of Chilean salmon producers of fresh Atlantic salmon.¹⁶ The Asociacion and four of the five subject producers, as well as two producers who were ultimately found to be not dumping, were represented by the law firm of Arnold & Porter. The only participating subject Chilean producer not represented by Arnold & Porter was Fiordo Blanco, S.A. (“Fiordo Blanco”), which was represented by Mayer Brown & Platt (“Mayer Brown”).

At the beginning of the final investigation, the Commission issued foreign producers’ questionnaires to counsel for the Chilean producers. The cover letter forwarding the foreign producers’

¹¹ Original Views at 23.

¹² Original Views at 23.

¹³ Original Views at 23. Of course, these were not the only considerations that led me to conclude that the subject imports from Chile threatened the domestic industry with material injury.

¹⁴ Original Views at 24.

¹⁵ Final Staff Report, dated June 23, 1998 (“CR”) at Tables VII-1 & VII-2. The Public version of the report is cited hereinafter as “PR”.

¹⁶ CR and PR at Table VII-1 & VII-2, n.1.

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questionnaire to Arnold & Porter specifically asked the firm to have five individual Chilean producers that were represented by Arnold & Porter submit individual foreign producer responses to the Commission.¹⁷ The cover letter also asked Arnold and Porter to submit a “consolidated response” for “all other Chilean producers.”¹⁸ At the same time, a separate foreign producer questionnaire was sent to Fiordo Blanco’s counsel, Mayer Brown.

On April 13, 1998, Arnold and Porter submitted individual responses for six separate producers¹⁹ and a consolidated response on behalf of the Asociacion.²⁰ The consolidated response did not specifically identify which companies were included in the response.²¹ Two days later, on April 15, 1998, Mayer Brown provided Fiordo Blanco’s foreign producer response to the Commission. Mayer Brown served the response on Arnold and Porter on that same day.²²

On April 23, 1998, a supplemental questionnaire was issued to the Asociacion and certain individual producers represented by Arnold and Porter.²³ In that questionnaire, the Asociacion was asked to specify how many producers were represented in the consolidated response.²⁴ In its supplemental response to this second questionnaire, the Asociacion stated that the consolidated response:

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¹⁷ Letter from L. Featherstone to Arnold & Porter, dated March 5, 1998, at 1-2. The five producers in question were Aguas Claras S.A., Compania Pesquera Camanchaca S.A., Pesquera Eicosal Ltda., Pesquera Mares Australes Ltda. and Marine Harvest Chile S.A.

¹⁸ Letter from L. Featherstone to Arnold & Porter, dated March 5, 1998, at 1-2.

¹⁹ In addition to the five producers for which separate responses were requested by the Commission, Arnold & Porter also submitted an additional individual response for Antarfish, a company that was [[

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²⁰ Letter from Arnold & Porter to W. Timberlake, Commission investigator, dated April 13, 1998.

²¹ See Foreign Producers’ Questionnaire Response of the Asociacion, dated April 1998 (“Original Asociacion Response”).

²² Letter from Mayer Brown to W. Timberlake, dated April 15, 1999.

²³ Letter from W. Timberlake to Arnold & Porter, dated April 23, 1998.

²⁴ Id.

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The response did not state what firms were included in the response specifically or whether Fiordo Blanco was included in the consolidated response, although Arnold and Porter had received Fiordo Blanco foreign producer's questionnaire response over one week earlier.²⁶

When preparing its prehearing and posthearing staff reports, the Commission's staff calculated the foreign production, capacity, and shipments data by aggregating all of the data contained in the consolidated response with the data contained in the individual foreign producer responses for the subject producers, including the data in the separate foreign producer response filed by Fiordo Blanco.²⁷

B. The Appeal and Remand Proceeding

In April 1998, the Asociacion appealed the Commission's affirmative determination to the CIT. In its opening brief, the Asociacion argued, among other things, that my affirmative threat determination was based on a faulty compilation of the Chilean producers' production, shipments, and capacity data. In particular, it argued that the foreign production, shipments, and capacity data of the Chilean producer Fiordo Blanco was double-counted in the Commission's compilation of aggregate data for the Chilean industry.

Upon receiving the Asociacion's brief in the pending appeal, the Commission staff examined the record to determine whether the Asociacion was correct in alleging that Fiordo Blanco's data had been double-counted. Staff discovered the record was unclear on this issue. As a result, the Commission filed a motion with the Court seeking a voluntary remand to determine whether the foreign production and capacity data of Fiordo Blanco was double-counted and, if necessary, to allow me to reconsider my affirmative threat determination.

²⁵ Letter from Arnold & Porter to W. Timberlake, dated April 28, 1998, at Att., p.1.

²⁶ Id.

²⁷ CR and PR at Tables VII-1 & VII-2, n.1.

On July 2, 1999, the Court granted the Commission's request and directed the Commission to reopen the record to "verify the accuracy of its foreign production, shipments and capacity data."²⁸

C. The Remand Investigation

On July 23, 1998, the Commission authorized the reopening of the record in the underlying investigation and approved a two-stage process for the remand proceeding.²⁹ During the first stage of the remand proceeding, the Commission directed the staff to obtain information to determine whether Fiordo Blanco's foreign production, shipments, and capacity data had been double-counted in the original staff report's foreign production, shipments, and capacity charts. The Commission also directed the staff to prepare a memorandum summarizing the results of its investigation on remand and requested that the parties submit comments specifically addressing the issue of whether Fiordo Blanco's data were double-counted.³⁰ The Commission also decided that, if the data obtained in the first stage of the proceeding indicated that Fiordo Blanco's data were double-counted, it would request a second round of comments from the parties addressing whether any revisions to the Commission's foreign production, shipments, and capacity data were necessary as a result of the remand proceeding, and whether any such revisions would affect the Commission's affirmative threat analysis.³¹

Pursuant to this schedule, on July 30, 1999, the staff forwarded a supplemental questionnaire to Arnold & Porter asking the Asociacion to provide information and documents to support its allegation that Fiordo Blanco's data had been double-counted during the original investigation.³² In particular, the supplemental questionnaire asked the Asociacion to provide the Commission with all supporting documentation used by the Asociacion to prepare its consolidated foreign producers' questionnaire

²⁸ Order at 1.

²⁹ See *Fresh Atlantic Salmon from Chile: Scheduling of Remand Proceedings*, 64 Fed. Reg. 42415 (August 4, 1999).

³⁰ 64 Fed. Reg. at 42415.

³¹ Id.

³² See Letter from L. Featherstone to Arnold & Porter, dated July 30, 1999.

response in the original investigation, especially those documents indicating that data for Fiordo Blanco was included in the response.³³ The questionnaire also asked the Asociacion to provide the Commission with an individualized break-out of the foreign production, shipments, and capacity data for each Chilean salmon producer covered by the consolidated response, including Fiordo Blanco.³⁴ The questionnaire further asked the Asociacion to respond to several other questions designed to clarify which companies were covered by the consolidated response and what data was included in that response.³⁵

On August 17, 1999, the Asociacion submitted its response to the Commission's supplemental questionnaire.³⁶ In that response, the Asociacion provided the Commission with the data used to prepare the production, shipments, and capacity data in its original consolidated response. It also provided, as requested, a listing of the producers covered by the response and an individualized break-out of the production, shipments, and capacity data for those companies.³⁷ It further provided, for the first time, a detailed narrative describing the methodology used to prepare the consolidated response.

In that narrative, the Asociacion first indicated that it failed to report all of its home market shipments or production of whole salmon.³⁸ In particular, it explained that it had only reported home market production and shipments of whole salmon that were further processed into cut salmon and did not report any internal transfers of whole salmon that were to be processed into frozen or smoked salmon.³⁹

³³ Id. at App., p. 1.

³⁴ Id.

³⁵ Id.

³⁶ Letter from Arnold & Porter, to W. Timberlake, dated August 17, 1999 ("Asociacion SR").

³⁷ As requested by the Commission, the Asociacion also provided a certification from the official who prepared the original consolidated response confirming that the data contained in the supplemental response had been used to prepare the Asociacion's response in the original investigation. Asociacion SR at App. E.

³⁸ Asociacion SR at 1-6.

³⁹ Asociacion SR at 2 ("[I]n the original submission, no data were provided for home market shipments other than for home market shipments for further processing into cut form."); Ex Parte Contact Memorandum from Neal J. Reynolds, attorney-adviser, dated Sept. 22 & 24, 1999 at 1. Although the Asociacion had stated in its original questionnaire response that it had not reported home market shipments of whole salmon for consumption, it did not indicate that it had failed to report internal transfers of whole salmon for processing into frozen and smoked salmon. On the contrary, the questionnaire stated that [[

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Because the record indicates that whole salmon that is processed into frozen or smoked salmon by the consolidated subject producers may account for between [[]] and 35 percent of their total whole salmon shipments in 1997, this omission appears to significantly understate the amount of whole salmon produced by the subject producers during the period of investigation.^{40 41}

In addition, the Asociacion also explained that it did not obtain actual production, shipments, mortality or capacity data directly from the consolidated subject producers when preparing its original response.⁴² Instead, it explained that it had relied on official Chilean government statistics for exports of

³⁹ (...continued)

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In this remand proceeding, counsel for the Asociacion stated that these numbers did not, in fact, include data for whole salmon that was further processed into frozen and smoked salmon. Ex Parte Contact Memorandum from Neal J. Reynolds, attorney-adviser, dated Sept. 22 & 24, at 1.

⁴⁰ In the consolidated response, the Asociacion stated that, in 1997, sales of fresh Atlantic salmon accounted for [[]] percent of the consolidated producers' total sales while sales of frozen and smoked Atlantic salmon accounted for [[]] percent of their total 1997 sales, thus indicating that frozen and smoked salmon accounted for [[]] percent of their total sales of Atlantic salmon production in 1997 (i.e., [[]] + [[]] = [[]]; [[]]/[[]] = [[]] or [[]] percent). Original Asociacion Response at 2. In its supplemental response, dated August 17, 1999, the Asociacion indicated that home market shipments of salmon for consumption were negligible and that its exports of frozen and smoked salmon accounted for approximately [[]] percent of its total sales. Asociacion SR at 4.

⁴¹ Although it is true that the scope of this investigation specifically excludes frozen and smoked salmon from its coverage, the scope clearly covers all whole or cut salmon in its fresh form, even if that whole or cut salmon is eventually processed into frozen or smoked form. Accordingly, when the Commission directed the Asociacion to report volumes, capacity, and shipments data for whole salmon in its consolidated response, it had every reason to expect that the Asociacion would report all production of whole salmon production in Chile, even if that production were to be internally transferred for processing into frozen or smoked salmon. There is nothing in the foreign producer or other questionnaire instructions that directs the Asociacion not to report in the response production or shipments of whole salmon if that salmon was to be processed into frozen or smoked salmon. The Asociacion chose not to report this production, however, apparently upon the advice of counsel. Ex Parte Contact Memorandum from Neal J. Reynolds, attorney-adviser, dated Sept. 22 & 24, 1999 at 1.

I find this omission particularly troubling in light of the statutory threat factor concerning product shifting. 19 U.S.C. §1677(7)(F)(i)(VI). Whole salmon used for frozen and smoked salmon production can clearly be shifted into whole salmon or cuts salmon sales. Because I am required by the statute to address the possibility of product shifting from non-subject to subject merchandise as part of my threat analysis, 19 U.S.C. §1677(7)(F)(i)(VI), the Asociacion's failure to inform the Commission in a clear manner that it had not reported this production made it impossible for the staff in the original investigation to investigate how significant this production was and made it impossible for me to address accurately the possibility of production shifting with respect to this merchandise.

⁴² Asociacion SR at 1-4. In this regard, I note that the Asociacion did not obtain production and shipments data directly from the consolidated producers, or even from those producers that were its own members.

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Chilean salmon to estimate all of these numbers.⁴³ First, the Asociacion assumed that the Chilean producers' production and shipments of whole salmon were both equal to the total volume of fresh salmon exported by the Chilean producers in any given year.⁴⁴ This approach was, therefore, premised on the assumption that no Chilean producer made only home market shipments of whole salmon and that no Chilean producer sold whole or cut salmon for consumption in Chile.⁴⁵

In the same vein, the Asociacion further explained that the mortality loss rates and capacity data in the consolidated response were not based on the actual mortality or capacity experience of the subject producers covered by the response.⁴⁶ Instead, the Asociacion estimated mortality loss and capacity figures⁴⁷ for the subject producers by adopting a mortality loss estimate that had been calculated in 1992 and then calculating estimated mortality loss rates from the consolidated producers' annual export figures.⁴⁸

⁴³ This meant that the consolidated response contained no data on domestic shipments for consumption.

⁴⁴ Asociacion SR at 2.

⁴⁵ As I noted previously, the Asociacion did explain in its original questionnaire response that it had not reported home market shipments for consumption. Foreign Producer Questionnaire Response of the Asociacion, dated April 1998, at 4. However, it did not explain in that response that it had not obtained the reported data directly from the producers or that it had used official Chilean government export statistics to estimate total home market production. Id. While this might have been a reasonable means of estimating actual export shipments by the Chilean producers, the Asociacion should have explained to the Commission that it was using this methodology. In this regard, I note that the general questionnaire instructions for the Commission's questionnaires in this investigation specifically state that "[i]f information is not readily available from your record in exactly the form requested, furnish carefully prepared estimates -- designated as such by the letter "E" -- and explain the basis of your estimates. (emphasis added)." This instruction is a standard instruction in the Commission's questionnaires and was highlighted in bold in this investigation's questionnaires. As a final note on this matter, I add that the Asociacion's assumption that home market shipments for consumption were negligible flies in the face of its statement in the preliminary phase investigation that home market consumption of salmon was increasing with the widespread availability of fresh Atlantic salmon in restaurants and supermarkets in Chile. Postconference Brief of the Asociacion, dated July 9, 1997, at 50.

⁴⁶ Asociacion SR at 2-3.

⁴⁷ The Asociacion calculated its capacity figures (and, as a result, its capacity utilization figures) by adding the mortality rate and the production (i.e., the Chilean Government's export) data together for the subject producers.

⁴⁸ The Asociacion stated that it had conducted a survey of mortality losses in 1992 which showed industry average losses of [[]] percent as a percentage of smolts put into the water. Based on this number, and "factoring in improvements in technology and farm management" for the ensuing years, the Asociacion estimated industry-wide mortality losses of [[]] percent in 1994, [[]] percent in 1995, [[]] percent in 1996, [[]] percent in 1997 and [[]] percent in 1998. Asociacion SR at 2-3. The Asociacion added that it adjusted these numbers based on "discussions with individual producers." Id.

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The Asociacion then applied these estimated mortality rate percentages to the export data derived from the Chilean government export figures to derive a mortality loss volume⁴⁹ and, therefore, the capacity and capacity use rates of the consolidated producers.⁵⁰ Since the Commission requested mortality and capacity figures for the consolidated producers for each year during the period from 1994 to 1998, the Asociacion used mortality loss estimates to report these figures that were from two to six years older than the data that should have been supplied for those years. Moreover, when calculating its reported mortality loss levels and capacity figures, the Asociacion assumed that the consolidated producers' mortality loss rate would improve steadily throughout the period of investigation.⁵¹ Because the Asociacion reported capacity levels for all of the consolidated subject producers' as equaling the sum of its production and mortality experience for each year, this assumption resulted in the capacity use levels of the Asociacion automatically increasing each year during the period of investigation.⁵²

Finally, with regard to projected 1998 data, the Asociacion explained that it had estimated aggregate production volume for the consolidated producers by relying on an industry-wide production

⁴⁹ A mortality loss rate is an estimate of the number of fish that die in the water during any year, calculated as a percentage of a producer's total production.

⁵⁰ In this regard, it is important to note that the Asociacion did not report capacity in this investigation on the basis of available ocean cages or site capacity, as did [[[REDACTED]]] and two other Chilean salmon producers who provided individual responses. [[[REDACTED]]] Foreign Producer Questionnaire Response, dated April 15, 1998, at 4; [[[REDACTED]]] Foreign Producer Questionnaire Response, dated April 7, 1998, at 4; [[[REDACTED]]] Foreign Producer Questionnaire Response, dated April 2, 1998 at 4 (indicating that [[[REDACTED]]]).

)). Instead, the Asociacion contended that "no company can produce in any year more fresh Atlantic salmon than it already has in the water of harvestable weight in that year," Asociacion SR at 3, and therefore reported as production capacity for the consolidated producers the sum of the consolidated producers total production and mortality losses in any year (i.e., capacity = production + mortality losses). Original Asociacion Response at 4, n.1, & 5, n.1. Since the Asociacion's capacity data were directly derived from its mortality loss estimates, that data shares the same difficulties as the mortality loss figures reported by the Asociacion.

⁵¹ Asociacion SR at 2-3.

⁵² Id. Again, although the latter two calculation methodologies may have been reasonable ways of estimating this data, particularly if the Asociacion had no other reasonable way of obtaining the data, the Asociacion should have clearly explained to the Commission that it was using these estimates and the reasons it was necessary to do so.

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projection that it had made in early 1997.⁵³ After deleting projected production data for 1998 reported by the six non-consolidated producers from this estimate,⁵⁴ the Asociacion explained that it reported the remainder as the projected total production volumes for the consolidated subject producers.⁵⁵ It then calculated projected 1998 export volumes for these producers by reducing the reported total production numbers by 35 percent based on the assumption that 35 percent of this total production would be exported as frozen or smoked salmon, rather than fresh salmon.⁵⁶ During the prior year, however, it had reported that only [[]] percent of total Atlantic salmon sales by members of the Asociacion had been sales of frozen or smoked salmon.^{57 58}

In light of the foregoing, I believe that the record in this remand indicates that there are significant questions with respect to the completeness and reliability of the data submitted on behalf of the consolidated subject producers. In particular, the record developed on remand indicates that the methodology and assumptions used by the Asociacion understate the consolidated subject producers' ability

⁵³ Asociacion SR at 4.

⁵⁴ These are the six producers who filed individual foreign producer responses that were represented by Arnold & Porter.

⁵⁵ Asociacion SR at 3-4.

⁵⁶ Id. I note, however, that the data reported by the Asociacion is not consistent with this explanation. Although the narrative appears to state that the reported projected data for 1998 includes whole salmon that would be processed into salmon cuts and frozen and smoked salmon, Asociacion SR at 4, the data reported by the Asociacion indicate that all of the projected production for this year was expected to be exported as whole salmon or processed and exported as cuts. See Questionnaire Response of the Asociacion at 4-5 (indicating that Asociacion projected total production of [[]] million pounds of whole salmon in 1998, of which [[]] million was projected to be processed and exported as cuts and [[]] million was projected to be exported as whole salmon). This would leave no production available for frozen or smoked shipments, if indeed the Asociacion had reported all of its projected whole salmon production (including that used to produce frozen and smoked salmon) in the response.

⁵⁷ I also note that the Asociacion assumed that the consolidated producers' projected 1998 U.S. shipments would account for 75 percent of their total 1998 export shipments, despite the fact that they had accounted for approximately [[]] percent of these shipments in 1997. Asociacion SR at 5; Original Asociacion Response at 4-5.

⁵⁸ Asociacion SR at 6-10. The staff issued a second supplemental questionnaire to the Asociacion on August 20, 1999, requesting that the Asociacion provide actual hard copies of the official data and export statistics that formed the basis of the consolidated response. By letter dated August 25, 1999, the Asociacion explained that it was impossible to provide hard copies of the data in question because the Asociacion downloads the information from a computerized database. Letter from Arnold & Porter to W. Timberlake, dated August 25, at 1-2.

to increase exports within the imminent future. I have not, however, attempted to revise these figures to reflect what may be more realistic estimates of the subject producers' production, shipments, and capacity data, primarily because it would be difficult to make such an estimate accurately given the data issues created by the Asociacion's reporting methodology. Accordingly, I have used the data reported by the Asociacion to assess the production and capacity levels of the consolidated subject producers in this remand investigation.⁵⁹

On August 23, 1999, the parties submitted comments to the Commission addressing whether Fiordo Blanco's data had been double-counted during the original investigation. In these comments, petitioners argued that the Asociacion had not clearly established that Fiordo Blanco's data had been double-counted, given that the consolidated response relied on so many unfounded assumptions and estimates.⁶⁰ The Asociacion argued, on the other hand, that the record on remand clearly demonstrated that Fiordo Blanco's data had been double-counted.⁶¹

On September 2, 1999, I determined that the data collected by the staff indicated that Fiordo Blanco's production data had been "double-counted" during the original investigation and requested that the parties should submit comments on this matter to the Commission. Accordingly, by letter dated September 3, 1999, the Secretary informed the parties that they:

should submit written briefs to the Commission to address the issue of whether and how the Commission's original foreign production, shipments and capacity data should be revised in view of the data obtained in this remand investigation and how the new information should affect the threat analysis in this proceeding, if at all.

⁵⁹ In this regard, I believe that the statute generally suggests that I should to use information submitted by a party to the extent possible, if the information is not so incomplete that it cannot serve as a reliable basis for reaching my determination. See 19 U.S.C. §1677m(e). I would add, however, that this provision of the statute also states that the interested party should be able to demonstrate "that it acted to the best of its ability in providing the information and meeting the requirements established by the ... Commission with respect to the information." Id.

⁶⁰ Petitioners Comments, dated August 23, 1999, as revised on September 1, 1999.

⁶¹ Asociacion Comments, dated August 23, 1999.

On September 17, 1999, the Asociacion and petitioners both submitted comments to the Commission in accordance with these instructions. I address the relevant arguments of the parties below.

II. DOMESTIC LIKE PRODUCT, DOMESTIC INDUSTRY, CONDITIONS OF COMPETITION, AND NO MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

My original findings concerning the domestic like product and domestic industry, conditions of competition in the U.S. salmon market, and material injury by reason of the subject imports, were not directly implicated by the Court's remand order. I therefore reaffirm my original views on these matters for the purposes of this remand proceeding.

III. THREAT OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS OF FRESH ATLANTIC SALMON FROM CHILE

To determine whether a U.S. industry is threatened with material injury by reason of the subject imports, section 771(7)(F) of the Act directs me to assess whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”⁶² I may not make such a determination “on the basis of mere conjecture or supposition,” and I must consider the threat factors “as a whole in making a determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.”⁶³ As part of reconsidering my determination in this proceeding, I have considered all relevant statutory threat factors.⁶⁴

⁶² 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

⁶³ Id.

⁶⁴ 19 U.S.C. § 1677(7)(F). As I noted in my original determination, Factor I is inapplicable because Commerce made a negative finding in its countervailing duty investigation of fresh Atlantic salmon from Chile. Factor VII regarding raw and processed agriculture products is inapplicable because I included both whole and cut salmon within the same domestic like product. Factor V regarding inventories of the merchandise is inapplicable because producers and importers are unable to maintain substantial inventories of fresh salmon due to the product's perishability. Further, at the time of my original determination, Chile had not been subject to any antidumping findings or remedies in any WTO member countries. CR and PR at VII-1. See 19 U.S.C. § 1677(7)(F)(iii)(I).

A. Determination on Remand

As with my findings on domestic like product, domestic industry, conditions of competition, and material injury, the Order does not directly implicate my original finding that the domestic industry is vulnerable to the threat of material injury by reason of the subject imports. Accordingly, for the reasons set forth in my original views, I reaffirm my original finding that the domestic industry is vulnerable to the threat of material injury by reason of the subject imports.

Before addressing the statutory threat factors that are affected by the information obtained in this remand investigation, I first discuss the adjustments that were made to the original foreign production, capacity, and shipments data in light of the record in this remand proceeding. During the course of this remand proceeding, the Asociacion provided the Commission with a detailed listing of the producers covered by its consolidated response and an explanation of the methodology used to report those producers' capacity, production, and shipments data in that response.⁶⁵ After reviewing the Asociacion's filing and other record information in this proceeding, I determined that the Asociacion had indeed reported data for the Chilean producer Fiordo Blanco in its original consolidated response.⁶⁶ I therefore concluded that the Commission had included two separate sets of production, shipments, and capacity data for Fiordo Blanco in its original aggregation of the subject producers' foreign production, shipments, and capacity data.⁶⁷ Accordingly, I have reviewed the record evidence to determine the most reasonable way of eliminating the "double-counting" of Fiordo Blanco's data in this proceeding, taking into account the parties' comments on the issue.

When aggregating the foreign shipments, production, and capacity data in this remand investigation, the staff chose to rely on the data provided by Fiordo Blanco in its own individual response

⁶⁵ Asociacion SR at 1-9 & Annexes.

⁶⁶ Id.

⁶⁷ See INV-W-201, dated August 30, 1999, at 2 and supporting data.

rather than the data provided by the Asociacion.⁶⁸ Thus, the staff corrected the double-counting error contained in the Commission's original foreign production, capacity, and shipments data by deleting the estimated data reported for Fiordo Blanco from that data.⁶⁹ In effect, the staff combined the production, shipments, capacity, and mortality data of the subject producers that supplied individual responses with the data provided in the consolidated response (after deleting the estimated data included in that response for Fiordo Blanco).⁷⁰ In my view, the staff's proposed methodology is a careful and reasonable means of adjusting the foreign production, capacity, and shipments data to adjust for the double-counting of Fiordo Blanco's data.

In this proceeding, the Asociacion proposed several different methodologies for eliminating the double-counting problem.⁷¹ Moreover, the Asociacion insisted that it would be inappropriate to aggregate Fiordo Blanco's capacity data with that of the consolidated producers because of the differences in the reporting methodology for the two data sets.⁷² I believe, however, that it is generally more reasonable to rely on data submitted by an individual producer with respect to its operations, given that each individual producer is clearly in a better position to report accurately its own production, shipments, and mortality levels than a third party, and to provide what it believes are the most accurate statements of its capacity levels and utilization rates. Particularly in the context of the instant proceeding, I believe that it is appropriate to rely on Fiordo Blanco's own data, including its reported capacity and mortality rates, given the problems presented by the Asociacion's data which have only come to light in this proceeding.

I note that a producer's capacity level in a particular year is constrained by the number of harvestable fish that were in the water at the beginning of any particular year and that therefore a

⁶⁸ INV-W-201 at 2.

⁶⁹ INV-W-201 at 2.

⁷⁰ INV-W-201.

⁷¹ Asociacion Brief, dated September 17, 1999, at 3-10.

⁷² Asociacion Brief at 5-6 & 8.

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producer's capacity for that particular year is arguably equal to its production for the year plus the number of harvestable fish that died during that year, as the Asociacion asserts. However, the fact that a producer has only a particular number of harvestable fish in the water at the beginning of any year does not necessarily indicate how many harvestable fish the producer will have in the water in the following year, especially if the producer has added additional capacity during prior years. For example, a producer may be constrained in its ability to rapidly increase production by adding facilities because it will take some time for these facilities to become fully operational in light of the three-year production cycle.⁷³ Nonetheless, the capacity data reported by several of the Chilean producers indicates that adding additional facilities does allow a producer to increase its production relatively rapidly within the three year production cycle after adding that capacity.⁷⁴

Given this, for purposes of my threat analysis in this remand proceeding, I believe that the best measure of a producer's capacity is indicated by the level of its available production facilities, not simply an examination of the production and mortality rates of the producer in the prior year. Unfortunately, these data are not available from the consolidated producers because of the manner in which they reported

⁷³ It was for this reason I recognized in the original determination that the three-year production cycle constrains salmon producers' ability to increase their production rapidly.

⁷⁴ For example, [[]] indicated that it had added nearly [[]] million pounds of additional facility capacity in 1997, as it reported capacity levels increased from [[]] million pounds of capacity in 1996 to [[]] million pounds in 1997 and 1998. Consistent with the fact that production increases are constrained by the three-year production cycle, [[]] reported an increase of only [[]] million pounds of production in 1997, the year that additional capacity was added. It then reported, however, that it projected a substantial increase in its production levels for 1998 (more than [[]] million pounds), thus indicating that it expected to be able to take advantage of the additional production capacity added in 1997, despite the fact that only one year had passed since the capacity increase. [[]] Questionnaire, dated April 14, 1999. Moreover, the record indicates that other producers who reported capacity levels on the basis of investments in facilities were able to ramp up production significantly within a period of one to two years after increasing capacity levels, as well. See [[]] Foreign Producers' Questionnaire Response at 4; see [[]] Foreign Producers' Questionnaire Response at 4. This suggests to me that producers who reported capacity levels using the size of production facilities as their basis were reporting capacity that would be available in the short-term future in their response, not simply their existing theoretical capacity.

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capacity.⁷⁵ Thus, for purposes of my threat analysis, I have had to rely in this remand proceeding on less than instructive capacity levels reported for the consolidated subject producers and several of the other individually reporting subject producers.⁷⁶

When revised as described above, the subject producers' aggregate production, shipments, and capacity data do not change significantly from the data set I relied on in the original investigation. In particular, I note the following changes:

⁷⁵ The Asociacion and [[]] of the subject producers did not report production capacity on the basis of available production facilities. Instead, they reported capacity as equaling mortality plus production.

⁷⁶ I have not taken into account the data error described by the Asociacion at page 6 of its supplemental response. Asociacion SR at 6. This remand proceeding was instituted to determine whether Fiordo Blanco's data had been double-counted in the original investigation; it was not instituted for the purpose of accepting other corrections in the data from the Asociacion. Moreover, I note that the error in question understated the consolidated producers' production and shipments numbers. Asociacion SR at 6. Accordingly, not addressing this issue did not prejudice the Asociacion.

I further note that I have not adjusted the Commission's original data for projected 1998. The Asociacion did not submit any information in this remand proceeding indicating what 1998 production, shipments or capacity data for Fiordo Blanco was included in the consolidated response. I believe that trying to make an adjustment to this data would be speculative at best, particularly given the fact that [[

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| <u>YEAR</u> | <u>CAPACITY</u> ⁷⁷ | <u>PRODUCTION</u> ⁷⁸ | <u>CAP. UTILIZATION</u> |
|-------------|-------------------------------|---------------------------------|-------------------------|
| 1994 | | | |
| Original | [[]] | [[]] | [[]] percent |
| Revised | [[]] | [[]] | [[]] percent |
| 1995 | | | |
| Original | [[]] | [[]] | [[]] percent |
| Revised | [[]] | [[]] | [[]] percent |
| 1996 | | | |
| Original | [[]] | [[]] | [[]] percent |
| Revised | [[]] | [[]] | [[]] percent |
| 1997 | | | |
| Original | [[]] | [[]] | [[]] percent |
| Revised | [[]] | [[]] | [[]] percent |

I have reconsidered those aspects of my affirmative threat analysis that were affected by the double-counting of Fiordo Blanco's foreign production, capacity, and shipments data. I again find that the record indicates that the subject producers have existing unused and imminent substantial increases in capacity that indicate the likelihood of substantially increased imports of the subject merchandise into the United States. In this regard, I note that revised data indicate that the subject producers added very substantial amounts of capacity during the period from 1995 to 1997.⁷⁹ Given that the Chilean salmon industry is export-driven,

⁷⁷ In thousands of pounds of dressed weight.

⁷⁸ In thousands of pounds of dressed weight.

⁷⁹ The subject producers consistently increased their capacity from [[]] million pounds in 1995 to [[]] million pounds in 1996 and [[]] million pounds in 1997, for an increase of nearly [[]] percent. INV-W-201 at Tables A-2-A-4. The subject producers reported a projected capacity level of [[]] million in 1998. CR and PR at Table VII-1.

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with the U.S. being by far the largest market for subject imports,⁸⁰ and given that demand for salmon in the United States is expected to continue growing in the future,⁸¹ I expect that the subject Chilean producers will continue these trends by increasing their capacity levels in the imminent future and using this expanded capacity to increase their export shipments to the United States significantly in the imminent future. In this regard, I note that the aggregated data in this review indicate that the overall capacity and production levels of the subject producers were projected to increase significantly in 1998 over their 1997 levels.⁸²

Moreover, although the subject Chilean producers reported operating at relatively high capacity utilization rates throughout the period of investigation,⁸³ the revised data still indicate that they have significant unused capacity available.⁸⁴ In 1997, their aggregate capacity utilization rate for whole salmon (most of which is eventually shipped to the U.S. in the form of cuts)⁸⁵ declined by over five percentage points from the prior year.⁸⁶ Given that this decline reflected a significant level of available production⁸⁷ and that the subject producers projected that their aggregate capacity use rates would increase in 1998,⁸⁸ I believe that this indicates that the subject producers will be likely to use any excess available capacity to increase their shipments significantly to the United States in the imminent future.

⁸⁰ The U.S. is by far the largest market for Chilean salmon, accounting for [[]] percent of shipments of subject cuts and [[]] percent of shipments of subject whole salmon in 1997. INV-W-201 at Tables A-4 & A-8. In addition, the majority of subject whole salmon shipments are processed into cuts or other finished products, most of which are shipped to the United States. Id.

⁸¹ See, e.g., Prehearing Brief of the Chilean Respondents, dated May 28, 1998, at App. 6, p. iii, 61, 68 & 101 ("The Current Status and Future Outlook of Global Salmon Markets," E. Kenney, November 1996) and App. 19, p. 4 ("The Salmon Industry: Twenty-Five Predictions for the Future," G. Knapp, November 1997).

⁸² The capacity of the subject producers was projected to increase, based on reported capacity, by [[]] million pounds in 1998 over 1997 levels. Compare INV-W-201 at Table A-4 with CR and PR at Table VII-1.

⁸³ The subject producers operated at capacity utilization rates of [[]] percent, [[]] percent, and [[]] percent during 1995, 1996, and 1997, respectively. INV-W-201 at Tables A-2-A-4.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ This decline represents approximately [[]] million pounds of salmon production in 1997.

⁸⁸ CR and PR at Table VII-1. The aggregate capacity and production data for the subject producers indicated that they projected that they would increase their capacity utilization rate to [[]] percent in 1998 from [[]] percent in 1997. Id.; INV-W-201 at Table A-4.

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In this regard, I have viewed with some skepticism the claims of the Asociacion that the overall capacity, production, and export levels of the consolidated subject producers would decline in 1998 from their 1997 levels. First, as I discussed above, the consolidated subject producers significantly understated their production and capacity levels. Accordingly, I believe that the consolidated production and capacity levels reported by those producers, including their projected data, are somewhat misleading.

Moreover, I note that, of the four subject companies that reported individual production and capacity levels for 1997 and 1998 in the original investigation, [[]] producers projected increases in capacity levels or production levels in 1998.⁸⁹ For example, [[]]

]]⁹⁰ and [[]]

]].⁹¹ [[]] of the four

individually reporting subject producers projected that their overall production and total export levels would increase in 1998 over 1997 levels.⁹² Given this, and given the fact that the consolidated subject producers reported significant increases in capacity and production levels during the period from 1995 to 1997, I find that the record indicates that it is more likely that the consolidated subject producers would not reduce their production and capacity levels in 1998, as they have reported, but would instead significantly increase these levels within the imminent future.⁹³ Accordingly, on the whole, I believe that the record data available with

⁸⁹ [[]] Foreign Producers' Questionnaire at 4; [[]] Foreign Producers' Questionnaire at 4; and [[]] Foreign Producers' Questionnaire at 4.

⁹⁰ [[]] projected an increase in production in 1998 of over than [[]] million pounds in 1998. [[]] Foreign Producer Questionnaire at 4.

⁹¹ [[]] reported that it was converting additional capacity to salmon and [[]] reported an increase in capacity from [[]] million pounds in 1997 to [[]] million pounds in 1998. *Id.* at 2; [[]] Foreign Producers Questionnaires at 4.

⁹² [[]] Foreign Producers' Questionnaire at 4; [[]] Foreign Producers' Questionnaire at 4; & [[]] Foreign Producers' Questionnaire at 4.

⁹³ I recognize that the Asociacion contends that the production and capacity declines reported by the Asociacion can be explained by the fact that the [[]]

]]. Asociacion Questionnaire Response, dated April 28, 1998 at 2. In light of the data problems discussed above, increasing demand for salmon in the U.S. and world markets, and the available record
(continued...)

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respect to the foreign producers' capacity, production, and shipments levels indicates that the subject producers will increase their U.S. shipments significantly in the imminent future.

I have also taken into account in my analysis the potential for product-shifting in this case because the Chilean producers also produce non-subject merchandise (i.e., frozen and smoked salmon) from whole salmon in their home market. As discussed above, the record suggests that the Chilean producers produce substantial volumes of frozen and smoked salmon from whole salmon. Because the record of this investigation indicates that these producers can readily shift this production into whole or cut salmon production, I believe that the record in this remand proceeding indicates that there is a likelihood that product shifting will occur to meet demand for these products in the U.S. market. In this regard, the record indicates that fresh salmon commands a price premium over frozen salmon,⁹⁴ thus providing a clear incentive to the subject producers to shift significant volumes of whole salmon production from frozen sales. In addition, as I noted in my original determination, I also find that there is evidence that the subject producers have potential to shift their production from other non-salmon seafood products to salmon, and shift exports from other markets to the United States.⁹⁵

⁹³ (...continued)

evidence with respect to projected capacity increases in Chile, I choose not to place great reliance on these statements.

⁹⁴ Although the record data with respect to the price of frozen and smoked salmon is limited, I note that the economic consultants for the Chilean respondents stated in their submission to the Commission that the fresh product commands a higher price than frozen due to "a U.S. consumer preference for fresh fish and lower transport and handling costs." Prehearing Brief of Chilean Respondents, dated May 28, 1998, at App.2, p.21 ("LECG Economic Report", A. Wechsler & P Stern, dated May 28, 1998). In addition, the consultants indicated that the Chilean respondents could readily shift between these products based on their relative profitability. *Id.* at p. 21 & 62.

⁹⁵ A number of subject firms produce seafood products other than salmon, and [[]] has reported that it is converting its operations to [[]] percent salmon production. CR at VII-3, PR at VII-2.

C. Conclusion

As I noted above, I have limited my reconsideration in this remand proceeding to those issues raised in the Remand Order and by the parties in this remand. Accordingly, I reaffirm without further discussion my other findings in the original determination with respect to the volume trends of the subject imports, the likely impact of the subject imports on domestic prices, and the impact of the subject imports on the profitability, investments, and operations of the domestic industry.⁹⁶ Because this remand proceeding has not resulted in a data set that is materially different from the data set I relied upon in the original investigation, and based upon all of the foregoing, I reaffirm my determination that the domestic industry producing fresh Atlantic salmon is being threatened with material injury by reason of the subject imports from Chile.

⁹⁶ More specifically, I reaffirm all of my remaining findings in the threat portion of my analysis from the paragraph beginning with the sentence “As noted previously, the volume of the subject imports has increased dramatically over the period examined...” through the end of my analysis. Confidential Views at 24-25. I except only the paragraph beginning “Although it is reasonable to expect that increases in shipments...” from my reaffirmance of these views. The analysis in this paragraph was based on a chart entitled “Fresh Atlantic Salmon: Total U.S. Imports from Chile by months January 1995 to April 1998.” As the Asociacion points out in its September 17th comments in this remand proceeding, it is not clear that this chart, or the data in it, was released to the parties for comment prior to the record close date in the original investigation. Accordingly, I have chosen not to rely on this chart in my analysis in this remand proceeding.

APPENDIX 1
FEDERAL REGISTER NOTICE

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-768 (Final Remand)]

Fresh Atlantic Salmon From Chile; Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping investigation No. 731-TA-768 (Final).

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake, Office of Investigations, telephone 202-205-3188 or Neal J. Reynolds, Office of General Counsel, telephone 202-205-3093, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1999, the Court of International Trade remanded to the Commission its final determination in *Fresh Atlantic Salmon from Chile*, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 (July 1998).¹ In its order, the Court directs the Commission to "reopen the administrative record to verify the accuracy of its foreign production, shipments and capacity data" and to "take any action necessary after

¹ The Commission made an affirmative determination by a 2-1 vote in July 1998. Chairman Bragg determined that the domestic industry was threatened with material injury by reason of the subject imports and Vice Chairman Miller determined that the industry was materially injured by reason of the subject imports. Commissioner Crawford dissented, finding that the industry was neither materially injured nor threatened with material injury by reason of the subject imports.

reexamining the foreign production, shipments and capacity data." It also directs the Commission to issue a remand determination within ninety days of the date of the order, i.e., by September 30, 1999.

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to verify the accuracy of its foreign production, capacity and shipments data and to permit parties to file comments on whether that data should be revised. If necessary, the Commission will permit the parties to file additional briefs on whether any such revisions should affect the Commission's threat analysis in the investigation.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (i.e., persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order ("APO") in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the *Federal Register*. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

Each party who is an interested party in this remand proceeding may submit comments to the Commission. These comments must be concise and must be limited specifically to the issue of whether the foreign production, capacity and shipments data of Fiordo Blanco S.A., a Chilean producer of salmon, was double-counted during the

original investigation, based on data submitted during that investigation and in this remand proceeding. Any material in these comments that does not address this limited issue will be stricken from the record. These comments shall be limited to ten (10) pages, and must be filed no later than the close of business on August 23, 1999.

If the Commission finds that it double counted Fiordo Blanco's data in the original investigation, each party who is an interested party in this remand proceeding will also be permitted to submit a written brief to the Commission. Briefs should be concise and thoroughly referenced to information on the record in the original investigation or information obtained during the remand investigation. Briefs will be strictly limited to the issue of whether any revisions to the original foreign production, capacity, and shipments data that occur as a result of this remand investigation affect the Commission's threat analysis in this proceeding. Any material in the briefs that does not address this limited issue will be stricken from the record. Written briefs shall be limited to fifteen (15) pages, and must be filed no later than the close of business on September 17, 1999. Parties will be informed as to whether these briefs are necessary by September 2, 1999. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also 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 action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: July 30, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-20047 Filed 8-3-99; 8:45 am]

BILLING CODE 7020-02-P