

UNITED STATES INTERNATIONAL TRADE COMMISSION

CANNED PINEAPPLE FRUIT FROM THAILAND

Investigation No. 731-TA-706 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3417, May 2001)

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CANNED PINEAPPLE FRUIT FROM THAILAND

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on canned pineapple fruit from Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on June 5, 2000 (65 F.R. 35666) and determined on September 1, 2000 that it would conduct a full review (65 F.R. 55047, September 12, 2000). Notice of the scheduling of the Commission's review 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* on November 1, 2000 (65 F.R. 67401). The hearing was held in Washington, DC, on March 13, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 8, 2001. The views of the Commission are contained in USITC Publication 3417 (May 2001, entitled *Canned Pineapple Fruit from Thailand: Investigation No. 731-TA-706 (Review)*).

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

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 Commissioner Jennifer A. Hillman is not participating in this five-year review.

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine¹ under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering canned pineapple fruit (“CPF”) from Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

The original investigation of CPF from Thailand was instituted based on a petition filed by Maui Pineapple Co. Ltd. and the International Longshoremen’s and Warehousemen’s Union on June 8, 1994. On June 29, 1995, the Commission determined that the domestic CPF industry in the United States was materially injured by reason of imports of CPF from Thailand, that were being sold at less than fair value (“LTFV”).² On July 18, 1995, Commerce issued its antidumping duty order on CPF from Thailand.³ On June 5, 2000, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on pineapple from Thailand would likely lead to continuation or recurrence of material injury.⁴

In five-year reviews, the Commission determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the Notice of Institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by each of two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁵ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In the instant review, the Commission received a joint response to the Notice of Institution from Maui Pineapple Company, Inc., a producer of the domestic like product, which accounts for the majority of domestic CPF, and the International Longshoremen’s and Warehousemen’s Union. The Commission also received a response from the Thai Food Processors’ Association and seven of its member companies.⁶

On September 1, 2000, the Commission determined that the domestic and respondent interested party group responses to the Notice of Institution were adequate. The Commission then voted unanimously to proceed with a full review with respect to CPF from Thailand pursuant to section 751(c)(5) of the Act.⁷

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

¹ Commissioner Jennifer A. Hillman did not participate in this determination.

² Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Final), USITC Pub. 2907 (June 1995) (“Original Determination”). There was no appeal of the Commission’s original determination.

³ 60 Fed Reg. 36775 (July 18, 1995).

⁴ 65 Fed. Reg. 35666 (June 5, 2000).

⁵ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁶ The Thai Pineapple Public Co., Ltd.; Thai Pineapple Canning Industry Corp., Ltd.; Vita Food Factory (1998) Co., Ltd.; Kuiburi Fruit Canning Co., Ltd.; Siam Food Products Public Co., Ltd.; Malee Sampran Public Co., Ltd.; and the Siam Agro Industry Pineapples and Others Public Co., Ltd.

⁷ Explanation of Commission Determination on Adequacy in Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Review).

A. Domestic Like Product

In making determinations under section 751(c), the Commission defines “the domestic like product” and the “industry.”⁸ 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 under this subtitle.”⁹

Commerce has defined the subject merchandise in this review as follows:

pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. The subject CPF is currently classifiable under subheading 2008.20.00 of the Harmonized Tariff Schedule of the United States (HTSUS).¹⁰

In the original investigation, the Commission defined the domestic like product as all CPF and declined to include fresh pineapple in the domestic like product.¹¹ No party has argued for a different result in this review and the record continues to indicate a clear dividing line between fresh pineapple and CPF.¹²

CPF is a shelf-stable¹³ food sealed in airtight cans prepared from mature fresh pineapple after removing the peel and core. CPF may be prepared with juice or syrup as rings, spears, tidbits, chunks, or crushed pineapple. CPF is generally sold at retail in 8 oz., 15 to 15.5 oz., and 20 oz. cans and in one gallon cans (number 10) for food service. There are four possible grades sold in the United States:¹⁴ U.S. Grade A (fancy); U.S. Grade B (choice); U.S. Grade C (standard); and Substandard.¹⁵ The grading criteria are based on factors such as color, size, shape, defects, flavor, and odor.¹⁶ CPF is used as a dessert, side dish, or an ingredient in other dishes.

Commercial pineapple in the United States is grown from crowns that are gathered from the top of the fruit during harvest. A pineapple plant will grow for about 18 to 22 months, depending on the climate of the location and the planting material, from planting until the first harvest, and is called the plant crop. About a year after the first harvest, the plant will produce another crop called the first ratoon. A third crop, or second ratoon may also be produced.¹⁷ The flowering of the pineapple plants may be forced by use of an ethylating gas or agent that concentrates the maturation of the crop in a particular field. This procedure allows for harvesting throughout the year and minimizes the seasonality aspect of fresh fruit

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249, at 90-91 (1979).

¹⁰ 66 Fed. Reg. 8777 (Feb. 2, 2001).

¹¹ Original Determination at I-6-7.

¹² CR at I-13; PR at I-10.

¹³ CPF has a shelf life of about three years.

¹⁴ 7 CFR 52.1719.

¹⁵ CR at I-10; PR at I-8.

¹⁶ Id.

¹⁷ Id.

production. After the final harvest, the field is cleared of the remaining vegetation, plowed under and is left fallow for nine months before a new planting.

Pineapples may be grown differently depending on the specific intended end use. A grower interested in producing pineapple for the fresh market would be more concerned with producing uniformly sized and shaped fruit, whereas a grower who produces pineapples for processing would seek to maximize the total amount of fruit produced.¹⁸ Typically, a second ratoon would yield a larger number of pineapples that are not suited for the fresh market and might not be harvested by some growers.¹⁹

Harvesting methods may also differ according to the end use of the crop. Producers who grow pineapple for the fresh market use different machinery and specially trained personnel. The fresh market equipment is smaller and additional workers in the truck may place the fruit into trays immediately after picking to minimize damage to the fruit. As pineapples do not all ripen at the same time, workers must go through the same field several times to complete the harvest.²⁰ A pineapple harvested for processing is picked by hand and placed on a boom that conveys the fruit into a truck by workers who follow the truck through the fields.

In our view, there is no information in the record of this review to suggest that the circumstances in the domestic industry have changed since the original investigation in any way that would justify revisiting the existing like product definition or that a different like product definition is appropriate. In particular, we note that fresh and fresh-chilled pineapple have a more limited shelf life than CPF and contain the enzyme bromelain, which precludes their use in certain applications. The enzyme is deactivated by the heating and pasteurization process of CPF.²¹ Fresh and fresh-chilled pineapple are not sold in food service distribution, rather they are sold in the produce departments of grocery stores. CPF is sold at retail, in the dry goods section of grocery stores, and in food service.²² We therefore define the domestic like product in this review as all CPF, co-extensive with Commerce's scope.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the domestic “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.”²³ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.²⁴ The Commission bases its analysis on a firm's production-related activities in the United States.²⁵

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ CR at I-12; PR at I-9.

²¹ CR at II-17; PR at II-12; Original Determination at I-6-7.

²² Original Determination at I-6.

²³ 19 U.S.C. § 1677(4)(A).

²⁴ See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213, at 8-9 (July 1999); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.19 (Nov. 1995) (“the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry”). See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (CIT 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

²⁵ The Commission typically considers six factors: (1) the extent and source of a firm's capital investment; (2) the technical expertise involved in U.S. production activity; (3) the value added to the product in the United States;

In the original investigation, the Commission found that the domestic industry consisted of all domestic producers of CPF.²⁶ The Commission also found that pineapple growers were not members of the domestic industry because the record indicated that CPF is not produced from whole pineapple through a single continuous line of production and that whole pineapple is not substantially or completely devoted to the production of CPF.²⁷ No party has argued for including pineapple growers and the data do not support including pineapple growers in the domestic industry for this review.

As was the case at the time of the original investigation, petitioner Maui still accounts for virtually all domestic CPF production.²⁸ Consistent with our like product definition, and absent any contrary argument, or additional information on the record, we define the domestic industry in this review as all producers of CPF.²⁹

III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur; and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³⁰ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”³¹ Thus, the likelihood standard is prospective in

(4) employment levels; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production of the like product. See Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final), USITC Pub. 3273, at 8-9 (Jan. 2000).

²⁶ Original Determination at I-8.

²⁷ The Commission will include growers/processors of a raw agricultural product within the domestic industry producing the processed agricultural product if: (1) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and (2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based on relevant economic factors. 19 U.S.C. § 1677(4)(E)(i). The processed agricultural product is considered to be processed from a raw product through a single continuous line of production if: (1) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and (2) the processed agricultural product is produced substantially or completely from the raw product. 19 U.S.C. § 1677(4)(E)(ii); Id. at I-8-9.

²⁸ Original Determination at I-8; CR at I-13; PR at I-10.

²⁹ There are no related parties issues in this review.

³⁰ 19 U.S.C. § 1675a(a).

³¹ SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination” (material injury, threat of material injury, or material retardation of an industry).

nature.³² The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”³³ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing investigations].”^{34 35}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”³⁶ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.^{37 38}

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.³⁹ We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is

³² While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [*sic*] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

³³ 19 U.S.C. § 1675a(a)(5).

³⁴ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

³⁵ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³⁶ 19 U.S.C. § 1675a(a)(1).

³⁷ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

³⁸ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to this review.

³⁹ 19 U.S.C. § 1675(e).

obligated to consider all evidence relating to each of the statutory factors, and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁴⁰ We have relied on the facts available in this review, which consist primarily of the evidence in the record from the Commission’s original investigation, the information collected by the Commission since the institution of this review, and information submitted by interested parties in this review.

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.⁴¹ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁴²

In evaluating the likely price effects of subject imports if the order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁴³

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁴⁴ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁴⁵ As instructed by the statute, we have considered the

⁴⁰ SAA at 869.

⁴¹ 19 U.S.C. § 1675a(a)(2).

⁴² 19 U.S.C. § 1675(a)(2)(A)-(D).

⁴³ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁴⁴ 19 U.S.C. § 1675a(a)(4).

⁴⁵ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In the final results of its five year review of CPF from Thailand, Commerce published the following rates: Dole Thailand, 1.73 percent; TIPCO, 38.68 percent; SAICO, 51.16 percent; Malee, 41.74 percent; and all others, 24.64 percent. 66 Fed. Reg. 8777 (Feb. 2, 2001).

extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁴⁶

For the reasons stated below, we determine that revocation of the antidumping duty order on CPF from Thailand would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴⁷

Several conditions of competition, existing at the time of the original investigation continue to affect the domestic industry in this review. The Commission determined that the four-year pineapple production cycle limited a domestic producer’s ability to respond to changes in demand for CPF or in alternate sources once a crop had been planted because the first pineapple crop would harvest eighteen months later.⁴⁸ Neither the four year production cycle of pineapple nor the volatility of Thai production have changed since the original investigation. The Thai pineapple industry still consists of thousands of small farms and is largely unintegrated.⁴⁹ The production of fresh pineapple in Thailand reached a peak in 1993 that was almost 40 percent above the 1990 levels of about 185,000 metric tons, dropped to below 1990 levels in 1998, then rebounded to 20 percent above 1990 levels in 1999 and 2000.⁵⁰ The growth cycle and its impact on export prices created supply and price volatility during the period of review, from record high prices in 1998 to minimum price floors for fresh pineapple established by Thai government intervention, and supportive loans granted to financially troubled Thai canneries in early 1999.⁵¹

The Commission also found in the original determination that a number of the domestic industry’s sales were to the U.S. government and therefore subject to “Buy America” requirements, but those sales were usually made at market prices.⁵² As in the original determination, the record in this review indicates that Maui’s “Buy America” sales to the U.S. government do not shield it from the effects of dumped subject CPF because the sales are generally made at market price. Furthermore, “Buy America” sales only accounted for a range of 8.5 percent to 13.1 percent of Maui’s sales between 1990 and 1999.⁵³

The three-tiered market structure consisting of national brands, private labels, and regional brands was also found to be an important condition of competition at the time of the original investigation.⁵⁴ The Commission determined that a significant portion of Thai CPF sold as private label brands directly

⁴⁶ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁴⁷ 19 U.S.C. § 1675a(a)(4).

⁴⁸ Original Determination at I-10.

⁴⁹ CR at II-8; PR at II-4. See also Tr. at 101 (Rosenthal).

⁵⁰ CR at II-9; PR at II-6 ; CR and PR at Figure II-2.

⁵¹ Petitioners’ Prehearing Brief at 13-14 and Exhibit 7.

⁵² Original Determination at I-10.

⁵³ CR at II-18; PR at II-12.

⁵⁴ Original Determination at I-9.

competed with domestic CPF and that Thai CPF sold in other tiers impacted sales of domestic CPF through inter-tier competition. Products in all three tiers were often displayed together on store shelves. The Commission also determined that neither perceived quality differences nor brand differences were sufficient to insulate the domestic industry from the effects of competition from subject imports.⁵⁵

Both at the time of the original investigation and currently, Maui sells most of its product into the second tier of the market, or the first private labels. The Thai subject merchandise was, at the time of original investigation, proportionally sold to all tiers, with a slight emphasis (***) percent) in the third tier of the market. In contrast, in 1999, the Thai subject merchandise was sold primarily (***) percent) into the first tier of the market, or to the national brands.⁵⁶ As at the time of the original investigation, most responding purchasers reported that price competition continues to exist between and among tiers as well as within them.⁵⁷ In 1999, sales to retail purchasers accounted for *** percent of all U.S. shipments of domestically produced CPF and 78.6 percent of reported U.S. shipments of subject imports, on a quantity basis.⁵⁸ In sales to retailers, national brands, domestic first private label CPF, and subject import first private label CPF prices moved *** in nine of the twelve quarters between January 1998 and September 2000.⁵⁹

Thai government support for the pineapple industry constitutes an additional condition of competition not present in the original determination. Thai government attempts to stabilize the CPF industry in Thailand act to destabilize international markets because, under some of the Thai government programs, loan recipients pay minimum prices for fresh fruit that the canneries cannot ordinarily afford, and are then required to sell their CPF products within a few months, which forces the canneries to dump CPF on the world market, including the United States.⁶⁰ There have been numerous government aid programs to the Thai pineapple industry⁶¹ and Thai government support is likely to continue because of the importance of the agricultural sector to Thai society.⁶²

The majority of responding producers, importers, and purchasers reported that demand for CPF in the United States has been flat or increased only slightly since 1995 and that no large change in demand is anticipated.⁶³ Domestic supply is relatively inelastic because the only significant domestic producer is vertically integrated and grows its own fresh pineapple and processes it into CPF.⁶⁴ Imports of non-subject CPF from Indonesia, China, and the Philippines replaced subject imports to some extent during the period of review. From 1995 to 1999, imports of CPF from Thailand increased by 1.2 million case equivalents and non-subject imports increased by 2.1 million case equivalents. In 1999, imports from Thailand accounted for 34.0 percent of all imports of CPF, the Philippines accounted for 36.3 percent, Indonesia for 19.2 percent, and China for 4.0 percent.⁶⁵

⁵⁵ Original Determination at I-13.

⁵⁶ CR at V-4; PR at IV-3.

⁵⁷ Tr. at 186 (Koplan).

⁵⁸ CR and PR at Tables III-6 and IV-3.

⁵⁹ CR and PR at Tables V-1 through V-4.

⁶⁰ Tr. at 40 (Magrath).

⁶¹ CR at II-8; PR at II-5.

⁶² Tr. at 39, 41.

⁶³ CR and PR at II-1.

⁶⁴ Id.

⁶⁵ CR at II-13; PR at II-9.

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within a reasonably foreseeable time.

C. Likely Volume of Subject Imports

In the original determination, the Commission found that imports from Thailand retained a large share of a declining U.S. market throughout the period of investigation, notwithstanding declines in volume and market share.⁶⁶ Thailand is the world's largest producer of fresh pineapple and CPF.⁶⁷ A relatively small volume of pineapple is consumed as fresh fruit in Thailand; the remainder of the crop is processed into CPF, mostly for the export market.⁶⁸ Some Thai government programs require CPF producers to export their production within a certain time.⁶⁹ This requirement links exports to production and inventory rather than to foreign demand. The quantity of fresh pineapple available for processing and production of CPF in Thailand are nearly equal.⁷⁰ Capacity to produce CPF increased 8.7 percent between 1995 and 1999.⁷¹ Capacity utilization reached a high of only 76.7 percent in 1999.⁷² Thai excess capacity was approximately twice the size of U.S. production of CPF in 2000.⁷³ In addition, Thai producers currently hold *** cases of subject merchandise in inventory, with an additional *** cases of subject merchandise held in importers' inventories.⁷⁴ In total, inventories available for sale in the U.S. market are approximately equal in quantity to 1999 domestic production or 10-15 percent of apparent U.S. consumption.⁷⁵

The Thai CPF industry is export oriented. In 1999, 99.3 percent of all Thai production was exported, primarily to the United States, Germany, the Netherlands, and Japan.⁷⁶ The respondents' trade association, the Thai Food Processors Association, projects that Thai production will increase from 35 million cases in 1999 to 36 million cases in 2002 and 2003.⁷⁷ We note that these would be the same levels achieved by Thai production in 1992-1994, the period which preceded the filing of the original petition.⁷⁸ The volume of subject imports has dropped as a result of the antidumping duty order, from *** percent of importers' shipments of regional brands in the pre-order period to *** percent of importers' shipments in 1999.⁷⁹ Nonetheless, we find it notable that the United States is a sufficiently important market such that

⁶⁶ Original Determination at I-13.

⁶⁷ CR at II-7; PR at II-4.

⁶⁸ CR at II-9; PR at II-5-6.

⁶⁹ Transcript ("Tr.") at 40 (Magrath).

⁷⁰ CR at II-9; PR at II-6.

⁷¹ CR at II-10; PR at II-7.

⁷² CR at II-11; PR at II-7.

⁷³ CR and PR at Table C-2 and Table IV-5.

⁷⁴ Respondents stated that, because of consumer preference in the United States, approximately half of Thai CPF inventory cannot be shipped to the U.S. market. Respondents' Posthearing Brief at 5-6, and n.13; CR and PR at Table I-1.

⁷⁵ Petitioners' Final Comments at 7; CR and PR at Table I-1.

⁷⁶ CR at II-12; PR at II-7. See CR and PR at Table II-3.

⁷⁷ Petitioners' Posthearing Brief at 14 and Exhibit 7.

⁷⁸ CR and PR at Figure II-1.

⁷⁹ Petitioners' Posthearing Brief at 11.

the subject imports retain a continued and significant presence in the domestic market notwithstanding the existence of the order.⁸⁰

Overall, we conclude that the likely volume of subject imports would be significant both in absolute terms and relative to consumption in the United States if the order is revoked. We base this conclusion on a number of factors, including: the ability of producers in Thailand to increase their share of U.S. apparent consumption; the increased volume of subject imports during the latter part of the period of review; the existence of Thailand's very large capacity to produce CPF; the dramatic increase of subject merchandise inventories; the demonstrated export-orientation of the Thai industry; and the attractiveness of the U.S. market as an outlet for Thai production.

D. Likely Price Effects of the Subject Imports

The original determination found that subject imports, which significantly undersold the domestic like product depressed and/or suppressed prices of the like product to a significant degree.⁸¹ The original investigation also revealed that sales of subject CPF sold into the first private label tier were consistently priced 10 to 15 percent below national brands, and that second private label sales were priced consistently below first private labels and regional brands.⁸² The Commission found that subject imports were generally substitutable for domestic product and that more than 20 percent of Thai CPF competed in the same tier as the domestic product, private label brands.⁸³

The three-tiered pricing system increases the domestic industry's vulnerability to dumped imports because there is significant price competition between domestic and subject CPF both in head-to-head and inter-tier competition. Although domestic and subject CPF are largely sold in different tiers, the domestic industry is nonetheless not insulated from competition by subject imports.⁸⁴ A majority of responding importers and the U.S. producer report that national brands Dole and Del Monte, who are not U.S. producers, are most often the price leaders and a significant percentage of the CPF they purchase is imported from Thailand.⁸⁵ As previously discussed, the record in this review indicates, as in the original investigation, that prices in any one segment of the market impact prices in the other two segments. Thus, declining prices in the first tier of the market will cause price declines in both the second and third tiers.

Price comparisons indicate that sales of product 1 (20 oz. can) to first private label brands were reported by both the domestic industry and responding importers for every quarter for which data were requested. Subject product sold to first private labels undersold domestic product in 22 out of 23 quarters.⁸⁶ Sales of subject product 2 (#10 size can for food service market) to first private labels undersold domestic CPF in 11 out of 12 quarters for which comparisons were possible.⁸⁷ Margins of underselling have generally been higher since the fourth quarter of 1998, and particularly high in the first

⁸⁰ CR and PR at Table I-2.

⁸¹ Original Determination at I-16.

⁸² Original Determination at I-13.

⁸³ Original Determination at I-14.

⁸⁴ CR at II-5; PR at II-2.

⁸⁵ In 1995, Dole's imports from Thailand accounted for *** percent of all of Dole's imports of CPF and *** percent of all imports by national brand suppliers Dole and Del Monte combined. In 1999, Dole's imports from Thailand accounted for *** percent of Dole's imports and *** percent of all imports of national brands. Id.

⁸⁶ CR at V-4; PR at V-3; CR and PR at Tables V-1 through V-4, Figures V-2 through V-4.

⁸⁷ Id.

three quarters of 2000.⁸⁸ During the first three quarters of 2000, Thai first private label sales undersold domestic first private label CPF by margins of between 38.8 percent and 55.3 percent.⁸⁹

As discussed above, we find that the volume of subject imports is likely to increase significantly if the order is revoked. In light of the substitutability of Thai CPF and the domestic product, and the evidence of existing underselling, it is likely, as in the original investigation,⁹⁰ that subject imports from Thailand would continue to undersell the domestic like product in order to increase exports to the United States at prices that would likely have a significant depressing and suppressing effect on prices for the domestic like product.

E. Likely Impact of the Subject Imports

The original determination found that the large volume of LTFV imports coupled with price depression and suppression had a significant adverse impact on the domestic industry, particularly through the decrease in net sales which contributed to substantial operating losses.⁹¹ As at the time of the original investigation, there is still only one significant domestic producer. The imposition of the order resulted in an improvement in the condition of the domestic industry, as reflected in data from 1996, the first full year after imposition of the order, which showed modest improvements in the domestic producer's market share, capacity utilization, and financial condition.⁹² The domestic producer's operating income improved from a loss of *** percent in 1995 to a profit of *** percent in 1999.⁹³ Although the industry's condition did improve after the original investigation, recent data indicate that the industry is currently in a weakened condition. In 2000, the domestic industry incurred operating *** and there was a *** percent *** in net sales volume from 1995 to 2000.⁹⁴ Production, capacity utilization, and market share have all declined in the latter part of the period of review.⁹⁵ Based on the above information, we find the domestic industry to be vulnerable to material injury if the order is revoked.

Given the substitutable nature of the subject imports and domestic like product, we find that the significant volume of low-priced subject imports, when combined with the negative price effects of those imports, would likely have a significant adverse impact on the production, shipments, sales, and revenues of the domestic industry. This reduction in the industry's production, sales, and revenues would have a direct adverse impact on the industry's profitability and employment levels, as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

⁸⁸ CR at V-4; PR at V-3.

⁸⁹ CR and PR at Table V-1.

⁹⁰ Commissioner Bragg infers that, in the event of revocation, subject producers from Thailand will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determination.

⁹¹ Original Determination at I-17.

⁹² CR and PR at Table I-1.

⁹³ CR at III-8; PR at III-3.

⁹⁴ CR and PR at Table C-2.

⁹⁵ Id.

For the foregoing reasons, we determine that revocation of the antidumping duty order on CPF from Thailand would be likely to lead to continuation or recurrence of material injury to the domestic CPF industry within a reasonably foreseeable time.