

UNITED STATES INTERNATIONAL TRADE COMMISSION

INDIVIDUALLY QUICK FROZEN RED RASPBERRIES FROM CHILE

Investigations Nos. 701-TA-416 and 731-TA-948 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Chile of individually quick frozen red raspberries, provided for in subheading 0811.20.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Chile and sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On May 31, 2001, a petition was filed with the Commission and Commerce by the IQF Red Raspberry Fair Trade Committee, Washington, DC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of subsidized and LTFV imports of individually quick frozen red raspberries from Chile. Accordingly, effective May 31, 2001, the Commission instituted countervailing and antidumping duty investigations Nos. 701-TA-416 and 731-TA-948 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 6, 2001 (66 FR 30482). The conference was held in Washington, DC, on June 21, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of individually quick frozen (IQF) red raspberries from Chile that are alleged to be subsidized by the Government of Chile and sold in the United States at less than fair value (LTFV).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

² American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 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) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v.

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

Commerce's notices of initiation define the imported merchandise within the scope of these investigations as follows:

individually quick frozen (IQF) whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (e.g., organic or not), the size of the container in which packed, or the method of packing. The scope of the petition excludes fresh red raspberries and block frozen red raspberries (i.e., puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this investigation is classifiable under 0811.20.2020 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.¹⁰

Producers process IQF red raspberries by freezing IQF-quality fresh red raspberries either in a liquid nitrogen bath or by running the berries through a “tunnel” over very cold air.¹¹ Customers typically use IQF red raspberries in baked goods, yogurt, and fruit drinks.¹²

⁶ (...continued)

United States, 913 F. Supp. 580, 584 (CIT 1996).

⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ Initiation of Antidumping Duty Investigation: IQF Red Raspberries from Chile, 66 Fed. Reg. 34407 (June 28, 2001); Initiation of Countervailing Duty Investigation: IQF Red Raspberries from Chile, 66 Fed. Reg. 34423 (June 28, 2001).

¹¹ Confidential Staff Report (“CR”) at I-5, Public Staff Report (“PR”) at I-4. Processing is commonly performed by the raspberry growers that are also processors (grower/processors) but may also be performed by independent processors. Processing generally includes cleaning, washing, inspecting, sorting, culling, freezing, and packing. CR at I-4-6, PR at I-3-4.

¹² CR at II-3, PR at II-3.

C. Domestic Like Product Issues

Petitioner IQF Red Raspberries Fair Trade Committee¹³ argues that the Commission should find one domestic like product consisting of IQF red raspberries.¹⁴ Respondent Asociación Gremial de Exportadores de Productos Congelados A.G. (“AGEPCO”)¹⁵ argues that the Commission should find that organic IQF red raspberries are a domestic like product separate from non-organic IQF red raspberries.^{16 17} The Commission received limited data specific to organic IQF red raspberries in the preliminary phase of these investigations¹⁸ but intends to seek additional information on this issue in any final phase of these investigations. There appear to be limited differences between the two products.¹⁹ Based on the information available in these preliminary phase investigations, we determine that there is one domestic like product consisting of all IQF red raspberries consistent with Commerce’s scope.²⁰

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”²¹ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²² For the reasons discussed below, we define the domestic industry in these investigations as all domestic producers of IQF red raspberries, including growers, grower/processors, and processors.

¹³ The IQF Red Raspberries Fair Trade Committee is an ad hoc committee whose members define themselves as 44 growers, 8 grower/processors, one (non-growing) coop/processor, and one processor of IQF red raspberries. CR at III-1, PR at III-1.

¹⁴ Petition at 15; Petitioner’s Postconference Br. at 3.

¹⁵ Respondent is a trade association of Chilean growers and processors of IQF red raspberries.

¹⁶ CR at I-6-7, PR I-4-5 at and Respondent’s Postconference Br. at 7-12.

¹⁷ Respondent raised the issue of finding organic IQF red raspberries to be a separate domestic like product for the first time in its postconference brief, though at the preliminary conference it had requested that the Commission exclude imports of organic IQF red raspberries from its injury analysis. Conference Transcript (hereinafter, “Conf. Tr.”) at 68 (Gary N. Horlick, Counsel to AGEPCO). We note that respondent’s argument that the Commission should “exclude” a subject product from its injury analysis was specifically rejected by the Court of International Trade in Sony Corp. of America v. United States, 712 F. Supp. 978, 983-84 (Ct. Int’l Trade 1989) (the Commission in making its injury determination is required to consider the effect on the domestic industry of imports with respect to which the Commerce has made an affirmative determination; in applying the statute the Commission does not look behind ITA’s determination as to which merchandise is in the class of merchandise sold at LTFV).

¹⁸ One importer questionnaire respondent, accounting for ***. CR at I-7 and IV-2, PR at I-5 and IV-1.

¹⁹ Respondent’s Postconference Br. at 7-12.

²⁰ Commissioner Bragg considered whether to expand the definition of the domestic like product to include all fresh red raspberries and/or block frozen red raspberries but declined to do so based on the record of these investigations.

²¹ 19 U.S.C. § 1677(4)(A).

²² See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir.1996).

1. Whether the Domestic Industry Includes Growers

In investigations involving a processed agricultural product, section 771(4)(E) of the Act permits the Commission to consider growers of a raw agricultural input part of the domestic industry producing the processed agricultural product if:

- (a) the processed agricultural product is produced from the raw agricultural product,²³ through a single continuous line of production,²⁴ and
- (b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors.²⁵

The petitioner argues that the Commission should include the growers of IQF red raspberries in the domestic industry.²⁶ The information available in these preliminary phase investigations indicates that the processed product is produced from the raw agricultural product through a single continuous line of production. The raw agricultural product, IQF-quality fresh red raspberries,²⁷ appears to be substantially devoted to the production of the processed agricultural product. In 2000, 66 percent of all fresh red raspberries harvested by the domestic IQF red raspberry industry was used to produce IQF red raspberries.^{28 29} We note that the processed agricultural product, IQF red raspberries, is produced substantially from the raw agricultural product, as IQF-quality fresh red raspberries account for *** to 61 percent of the overall cost of producing IQF red raspberries.³⁰ We also find there is a substantial

²³ “Raw agricultural product” is defined as any farm or fishery product. 19 U.S.C. § 1677(E)(iv).

²⁴ The statute provides that the processed product shall be considered to be processed from a raw product through a single continuous line of production if:

- (a) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and
 - (b) the processed agricultural product is produced substantially or completely from the raw product.
- 19 U.S.C. §1677(4)(E)(ii).

²⁵ In addressing coincidence of economic interest under the second prong of the test, the Commission may, at its discretion, consider price, added market value, or other economic interrelationships. Further:

- (a) if price is taken into account, the Commission shall consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and
- (b) if added market value is taken into account, the Commission shall consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

19 U.S.C. §1677(4)(E)(iii).

²⁶ Petition at 15-17, Petitioner's Postconference Br. at 6-8.

²⁷ See Conf. Tr. at 9-11, 19-23, 39, 59-61, 86, and 89.

²⁸ CR and PR at Tables III-1 and III-2.

²⁹ Commissioner Hillman intends, in any final phase investigations, to explore the appropriate definition of the raw agricultural product for determining whether the raw product is substantially or completely devoted to the production of the processed agricultural product. She intends to examine whether “IQF-quality” is an appropriate definition of the raw product, or whether alternatives such as all red raspberries or Grade A red raspberries would be more appropriate.

³⁰ Staff estimates that, on average, the cost of IQF-quality fresh red raspberries purchased in arm's length transactions represents at least *** percent of the total unit operating costs (COGS plus SG&A) reported for producing IQF red raspberries. See Tables VI-2 and VI-4. This estimate may be understated because the cost is

(continued...)

coincidence of economic interest between the growers and processors of the processed product. The eight grower/processors and one coop/processor together accounted for *** percent of reported domestic production of IQF red raspberries in 2000.³¹

In light of the level of integration within the industry, we find that the full impact of imports is felt at all levels along the line of production. To the extent that the grower/processors themselves grow and consume most of the raw material input, their operations are wholly affected by lower prices for sales of IQF red raspberries. Thus, price changes are transmitted back down the production chain from processing to growing operations, and the price of processed IQF red raspberries affects all industry segments similarly.

Based on the information available in these preliminary phase investigations, we determine that the domestic industry producing IQF red raspberries includes growers, grower/processors, and processors (including the coop/processor) of IQF red raspberries.^{32 33} We will continue to examine this issue in any final phase of these investigations.³⁴

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.³⁵ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.³⁶

³⁰ (...continued)

based on an average sales value, and there is some yield loss between the IQF-quality fresh red raspberry and the IQF processed product. The 61 percent figure was provided by the Washington Red Raspberry Commission in response to the Commission's Generalized System of Preferences (GSP) Investigation to Waive the Competitive Need Limit for Frozen Red Raspberries from Chile Based on 9/5/97 Petition HTSUS Subheading 0811.20.20 on September 24, 1997.

³¹ Compiled from data submitted in response to Commission questionnaires.

³² In any final phase investigations, we intend to examine the extent to which the reported domestic industry data include the production of products not included in our domestic like product definition.

³³ While all Commission determinations are sui generis and prior determinations involving even the same product are not binding on the Commission, our domestic industry determination in these investigations is consistent with the Commission's previous determination in Red Raspberries from Canada, Inv. No. 731-TA-196 (Preliminary), USITC Pub. 1565 at 3-8 (Aug. 1984) and (Final), USITC Pub. 1707 at 4 (June 1985) (where the domestic like product was defined as bulk-packed red raspberries, Commission included in the domestic industry growers of bulk-packed red raspberries but not growers of red raspberries for the fresh market or for retail/institutional packing).

³⁴ We note that excluding growers from the industry would not have changed the result, given that grower/processors and processors accounted for the vast majority of IQF red raspberry production and the grower/processors are unable to provide separate data on their growing and processing operations. Staff interviews conducted July 11, 2001, with growers/processors ***.

³⁵ 19 U.S.C. § 1677(4)(B).

³⁶ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related

(continued...)

*** of IQF red raspberries, imported subject merchandise from Chile during the investigation period and is therefore a related party under the statute.³⁷ *** accounted for approximately *** and *** percent of U.S. production of IQF red raspberries in 1998 and 1999, respectively.³⁸ *** subject imports from Chile were equivalent to *** and *** percent of its production in 1998 and 1999, respectively.³⁹ *** reported that it imported subject product to remain competitive in the U.S. market.⁴⁰ The record therefore indicates that its interests appear to lie primarily in domestic production, and not importation.⁴¹ Accordingly, we find that appropriate circumstances do not exist to exclude the company from the domestic industry as a related party.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS THAT ARE ALLEGEDLY SUBSIDIZED AND SOLD AT LESS THAN FAIR VALUE

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁴² In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁴³ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴⁴ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in

³⁶ (...continued)

parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the less than fair value sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd mem.*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

³⁷ CR at IV-2, PR at IV-3.

³⁸ CR at IV-2, PR at IV-3.

³⁹ CR at IV-2, PR at IV-3.

⁴⁰ CR at IV-2, PR at IV-3.

⁴¹ *** financial performance is similar to that of a substantial portion of the domestic producers (CR and PR at Table VI-5); thus, it does not appear to derive a significant benefit from its importation of subject imports.

⁴² 19 U.S.C. § 1671b(a) and 1673b(a).

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

19 U.S.C. § 1677(7)(B). *See also, Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

⁴⁴ 19 U.S.C. § 1677(7)(A).

the United States.⁴⁵ No single factor is dispositive, and all relevant factors are

⁴⁵ 19 U.S.C. § 1677(7)(C)(iii).

considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴⁶

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from Chile.

A. Conditions of Competition

We find several conditions of competition pertinent to the U.S. market for IQF red raspberries.

First, demand for IQF red raspberries depends on the demand for downstream food products that use them as ingredients, along with consumer and institutional demand for retail IQF red raspberries.⁴⁷ Both petitioner and respondent indicated that demand for IQF red raspberries has been relatively stable since 1998.⁴⁸ However, the record indicates that apparent U.S. consumption increased 52 percent between 1998 and 2000.⁴⁹ Apparent U.S. consumption of IQF red raspberries rose from 16.9 million pounds in 1998, to 24.9 million pounds in 1999, and to 25.6 million pounds in 2000.⁵⁰ The sharp increase of 47.7 percent from 1998 to 1999 may reflect the unusually diminished supply of both subject imports and the domestic like product in 1998, which was the result of climatic conditions that reduced IQF red raspberry production in the United States and Chile.⁵¹

Second, the domestic supply of IQF red raspberries increased between 1998 and 2000. U.S. producers' capacity rose from 15.0 million pounds in 1998 to 17.0 million pounds in 1999, before declining slightly to 16.9 million pounds in 2000, a net increase of 12.5 percent.⁵² Similarly, U.S. production rose from 12.0 million pounds in 1998, to 16.4 million pounds in 1999, then fell slightly to 15.6 million pounds in 2000, reflecting an overall increase of 29.3 percent.⁵³ U.S. producers supplied a decreasing portion of the U.S. market, however, as U.S. imports, primarily from Chile, increased from 4.2 million pounds in 1998 to 9.4 million pounds in 2000.⁵⁴

Third, both U.S. and foreign producers have the ability to process other IQF fruit and vegetables in the same facilities in which they produce IQF red raspberries, and have the ability to switch production from one product to another should market conditions warrant.⁵⁵

Fourth, U.S. and Chilean IQF-quality fresh red raspberries are harvested in different seasons. While U.S. producers harvest IQF-quality fresh red raspberries from late June through early August, Chile has two harvests, with the first running from November through January, and the second occurring between

⁴⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁷ CR at II-3, PR at II-3.

⁴⁸ CR at II-4, PR at II-3.

⁴⁹ CR and PR at Table C-1.

⁵⁰ CR and PR at Table C-1.

⁵¹ In 1998, the U.S. harvest was affected by rain causing mold growth that damaged the U.S. red raspberry crop. CR at III-2 n.2, PR at III-1 n.2. Respondent stated that too much rain just before or during the harvest season can harm the U.S. product by encouraging mold growth, making the raspberries “unacceptable for IQF quality.” Conf. Tr. at 70 (Dr. Kenneth Button, Economic Consulting Services, hereinafter “Button”). Chile experienced a drought in 1998 that reduced its red raspberry production. CR at VII-3, PR at VII-1.

⁵² CR and PR at Table C-1

⁵³ CR and PR at Table C-1.

⁵⁴ CR and PR at Table C-1.

⁵⁵ Petition at Exh.16, CR at I-5-6, PR at I-4.

approximately March and May (with most imports entering from January through June).⁵⁶ Respondent argues that the different growing seasons make Chile an attractive alternate supply source of IQF red raspberries for some buyers, because frozen storage time is reduced.⁵⁷ We note that IQF red raspberries can be stored for indefinite periods of time and, once in cold storage, may be shipped year round.⁵⁸

Fifth, the record indicates that there is a reasonably high degree of substitutability between imported and domestically-produced IQF red raspberries.⁵⁹ The degree of substitution between domestic and imported IQF red raspberries depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates), and conditions of sale (price discounts/rebates, lead times between order and delivery dates, payment terms, product services).⁶⁰ In their questionnaire responses, all responding domestic producers and nine of 13 responding importers indicated that the domestic like product and subject imports are used interchangeably.⁶¹ Domestic processors and importers both sell IQF red raspberries to distributors, food processors, and retail stores, and certain importers also purchase domestic product.⁶² Some importers indicated that certain purchasers prefer IQF red raspberries from Chile because they are predominately of the Heritage variety and are hand-picked,⁶³ while others preferred U.S.-produced IQF red raspberries because they are of the Meeker variety or machine-picked.⁶⁴ However, nothing in the record of these investigations indicates that purchasers are willing to pay a premium based on either the horticultural variety or harvesting method.⁶⁵

Finally, nonsubject imports were present in only limited quantities throughout most of the period examined.⁶⁶

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁶⁷

⁵⁶ Between 85 to 90 percent of Chilean product entered the United States from January through June in each year from 1998 to 2000. CR at IV-1, PR at IV-1. Conf. Tr. at 73 (Button), Petitioner’s Postconference Br. at 13, Respondent’s Postconference Br. at 1-2.

⁵⁷ Conf. Tr. at 71 (Button) (Some buyers believe that over time IQF red raspberries lose quality because of dehydration and crystallization). See Respondent’s Postconference Br. at Exh.1-7.

⁵⁸ CR at I-6 and III-2, PR at I-4 and III-1.

⁵⁹ CR at II-5, PR at II-3.

⁶⁰ CR at II-5, PR at II-3.

⁶¹ CR at II-7, PR at II-5.

⁶² CR at II-1, PR at II-1.

⁶³ CR at II-7, PR at II-5.

⁶⁴ CR at II-7, PR at II-5.

⁶⁵ Conf. Tr. at 97 (Button) and 108 (Joseph W. Dorn, Counsel to Petitioner), CR at II-6, PR II-4.

⁶⁶ CR and PR at Table IV-1.

⁶⁷ 19 U.S.C. § 1677(7)(C)(i).

Imports of IQF red raspberries from Chile increased by 122 percent between 1998 and 2000, rising from 4.2 million pounds in 1998 to 9.4 million pounds in 2000.⁶⁸ Subject imports decreased by 44.8 percent in interim 2001 as compared to interim 2000, declining from 3.7 million pounds during the first three months of 2000 to 2.0 million pounds during the same period a year later.⁶⁹ The market share of subject imports increased from 25.2 percent in 1998 to 36.8 percent in 2000, and was 39.9 percent in the first quarter of 2001, compared to 48.1 percent in the first quarter of 2000.⁷⁰

The increase in market share held by subject imports from 1998 to 2000 accompanied a decrease in the domestic industry's market share. The domestic industry's share of apparent U.S. consumption, measured by quantity, fell from 71.3 percent in 1998 to 62.7 percent in 2000, even as apparent U.S. consumption increased by 52.0 percent between 1998 and 2000.⁷¹ Between 1998 and 2000, the Chilean importers' share of apparent U.S. consumption increased by 11.6 percentage points compared to the U.S. producers' share, which declined by 8.6 percentage points.⁷²

For purposes of these preliminary determinations, we determine that the subject import volume, and the increase in that volume, both in absolute terms and relative to consumption in the United States, are significant.⁷³

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

⁶⁸ CR and PR at Table C-1. Respondent argues that because the petition indicates that frozen red raspberry imports from the most significant exporter of red raspberries from Chile to the United States, Comercial Fruticola, were sold at prices above normal value, the Commission should exclude the Chilean company's U.S. imports from its injury analysis. Respondent's Postconference Br. at 21 and Exh. 31. The Commission has no authority to exclude the Chilean company's exports absent Commerce's action. S. Rep. No. 412, 103d Cong., 2d Sess. (1994) at 80 ("it is the Commerce Department, and not the ITC, that determines the dumping margins."); Algoma Steel Corp. v. United States, 865 F.2d 240, 241 (Fed. Cir. 1989) (noting the bifurcation of authority between Commerce and the Commission). The Commission is directed by the statute in making its preliminary determination under 19 U.S.C.

§ 1673b(a) to use the dumping margin or margins published by the administering authority in its notice of initiation of the investigation. 19 U.S.C. § 1677(35)(C)(i). Commerce did not exclude the exporter from its notices of initiation.

⁶⁹ We note that the decline in subject imports between the interim periods coincided with a 33.5 percent decline in apparent U.S. consumption. CR and PR at Table C-1.

⁷⁰ CR and PR at Table IV-3 and C-1.

⁷¹ CR and PR at Table C-1.

⁷² CR and PR at Table C-1. The Chilean importers' share of apparent U.S. consumption fell by 8.2 percentage points during January to March 2001, compared with the same period in 2000. Id.

⁷³ We have focused our attention on the period for which the Commission collected data, that is, our standard reporting period of three years and an interim period. Respondent argues that the Commission should examine the volume of subject imports beginning in 1996 rather than 1998, because the volume of all red raspberries imported from Chile declined from 13 million pounds in 1996 to 9.4 million pounds by 2000. Respondent's Preliminary Conference Exh. 1. While there may have been a decline in all red raspberries imported since 1996, we note that there were significant increases between 1998 and 2000.

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁷⁴

As noted earlier, the record in these preliminary phase investigations indicates that the domestic like product and IQF red raspberries from Chile are highly substitutable.⁷⁵ Moreover, the record indicates that price is an important factor in purchasing decisions.⁷⁶

We find that the Chilean product was generally priced lower than the domestic product over the period examined, although price trends for both U.S.-produced IQF red raspberries and subject imports between 1998 and 2000 were mixed. The pricing data obtained by the Commission with respect to the largest-volume imported product (representing 90 percent of the pricing data for the United States and 56 percent of the data for Chile) indicate that both U.S. and Chilean prices for the product declined irregularly from the first quarter of 1998 through the first quarter of 2001.^{77 78}

Pricing data for the other three products examined by the Commission were also mixed. U.S. prices for products 3 and 4 declined between the first quarter of 1988 and the first quarter of 2001, while the U.S. price for product 2 increased slightly between the last quarter of 1998 and the first quarter of 2001.⁷⁹ The Chilean prices for products 3 and 4 increased between the first quarter of 1998 and the first quarter of 2001, while the Chilean price of product 2 fell between the first quarter of 1998 and the first quarter of 2001.⁸⁰

The record also indicates that subject imports undersold the domestic like product in 28 out of 48 instances where direct comparisons were possible (or 58 percent of the direct comparisons) with margins of underselling averaging 16.3 percent.⁸¹ With respect to product 1, which accounted for the majority of both the domestic and import pricing data, the margins of underselling were more prevalent in 1999, 2000, and in the first quarter of 2001, than in 1998.⁸² The underselling margins for product 1 were greatest in the

⁷⁴ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁵ CR at II-5-8, PR at II-3-5.

⁷⁶ CR at II-5 and V-11-14, PR at II-4 and V-7-8.

⁷⁷ CR and PR at Table V-1 and CR at V-4 and V-11, PR at V-2-4 and V-7.

⁷⁸ The U.S. price for product 1 first decreased by *** percent between the first quarter of 1998 and the first quarter of 1999, then increased by *** percent between the first quarter of 1999 and the first quarter of 2000. It subsequently fell by 25 percent between the first quarter of 2000 and the first quarter of 2001. Specifically, the U.S. price fell from \$*** per pound in the first quarter of 1998 to \$0.98 in the first quarter of 2001. The Chilean price for product 1 decreased by *** percent between the first quarter of 1998 and the first quarter of 1999, and fell another *** percent between the first quarter of 1999 and the first quarter of 2000. It further declined by 16 percent between the first quarter of 2000 and the first quarter of 2001. CR and PR at Table V-1 and CR at V-4 and V-11, PR at V-3. The Chilean price fell from \$*** per pound in the first quarter of 1998 to \$0.81 in the first quarter of 2001. CR and PR at Table V-1.

⁷⁹ The U.S. price for product 2 increased by approximately *** percent between the last quarter of 1998 and first quarter of 2001, while the U.S. prices of products 3 and 4 decreased by about *** percent between January 1998 and January 2001. CR at V-11, PR at V-3.

⁸⁰ Chilean prices for product 2 decreased by approximately *** percent between the first quarter of 1998 and the first quarter of 2001, with Chilean prices for products 3 and 4 increasing over the same period. CR at V-11, PR at V-3.

⁸¹ CR at V-11, PR at V-7.

⁸² CR and PR at Table V-1.

first and second quarters of 2000, preceding a steep decline in domestic prices.⁸³ Domestic prices for product 1 fell by 25 percent between the first and third quarters of 2000.⁸⁴ We therefore conclude for purposes of these preliminary determinations that underselling by the subject imports was significant.^{85 86}

Consequently, we find that there is a reasonable indication that subject imports have had a significant depressing effect on domestic prices during the period examined. We intend to examine further in any final phase of these investigations apparent differences in price trends between domestic prices, which fluctuated somewhat, and those of the subject imports which, although generally lower than the domestic product, remained flat over the period examined.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{88 89 90}

⁸³ CR and PR at Table V-1.

⁸⁴ CR and PR at Table V-1.

⁸⁵ The record of these investigations contains some evidence of lost sales. Though the Commission was unable to confirm the particulars of certain of the lost sales allegations, information provided to the Commission indicates instances of lower prices of Chilean product, and that customers ***. Petition at Exh. 26, CR at V-11-14, PR at V-7.

⁸⁶ Commission rules 207.11(b)(2)(v) and (3) require the listing of all lost sales and lost revenue allegations in the petition, or a certification that the facts underlying those loss allegations were not reasonably available to petitioner. We remind petitioner that failure to comply with this rule may result in the Commission's disregarding lost sales/revenues allegations provided late in preliminary phase investigations.

⁸⁷ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885.)

⁸⁸ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

⁸⁹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated that dumping margins for imports of IQF red raspberries from Chile ranged from 2.73 to 61.27 percent based on price-to-constructed value comparisons, and 0 to 10.32 percent based on price-to-price comparisons. 66 Fed. Reg. 34407, 34409 (June 28, 2001). Commerce included in its countervailing duty investigation programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject product in Chile, including (1) the Suppliers Development Program; (2) Export Promotion by ProChile; (3) Corporación de Fomento de la Producción (CORFO) Export Subsidies; (4) Law 18,576 Export Credit Limits; (5) Law 18,634 Import Duties on Capital Goods; and (6) Law 18,480 Simplified Duty Drawback. 66 Fed. Reg. 34423 (June 28, 2001).

⁹⁰ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate
(continued...)

Indicators of the industry's performance over the period examined were mixed. Following a poor 1998 harvest due to unfavorable weather conditions, the industry's capacity, production, shipments, and employment figures improved significantly in 1999.⁹¹ Some indicators continued to improve in 2000 (e.g., shipments, employment, net sales quantity)⁹² while others decreased somewhat in 2000 (e.g., capacity, production, capacity utilization, productivity, net sales value).^{93 94} Nearly all indicators were more positive in 2000 than in 1998.^{95 96}

By contrast, the domestic industry posted operating losses in each fiscal year examined: \$3.1 million in 1998, \$0.6 million in 1999, and \$3.8 million in 2000. As a ratio to net sales, the losses were 30.2 percent in 1998, 3.8 percent in 1999, and 30.9 percent in 2000.⁹⁷ The smaller loss in 1999 was due in large part to a significantly increased average unit sales value compared to 1998. Conversely, the large operating loss in 2000 was due mainly to a return to a lower average unit sales value close to the 1998 level. Industry unit costs were relatively flat throughout the period.^{98 99}

⁹⁰ (...continued)

and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

⁹¹ Capacity increased from 15.0 million pounds to 17.0 million pounds, production rose from 12.0 million pounds to 16.4 million pounds, U.S. shipments increased from 12.0 million pounds to 14.5 million pounds, and the number of production and related workers increased from 579 to 663. CR and PR at Table C-1.

⁹² U.S. shipments increased from 14.5 million pounds to 16.1 million pounds, the number of production workers rose from 663 to 677, and net sales measured by quantity increased from 12.0 million pounds in 1999 to 12.2 million pounds in 2000. CR and PR at Table C-1.

⁹³ Capacity fell from 17.0 million pounds to 16.9 million pounds, production fell from 16.4 million pounds to 15.6 million pounds, capacity utilization declined from 95.7 percent to 92.1 percent, productivity measured in pounds per hour declined from 44.8 to 35.3, and net sales value fell from \$15.4 million in 1999 to \$12.3 million in 2000. CR and PR at Table C-1.

⁹⁴ The U.S. industry's inventory levels rose from 6.3 million pounds in 1998 to 9.0 million pounds in 1999, falling slightly to 8.4 million pounds in 2000. CR and PR at Table C-1. The inventories also increased sharply between the interim periods, rising from 4.6 million pounds on March 31, 2000 to 5.1 million pounds on March 31, 2001. Inventories therefore rose 32.2 percent between 1998 and 2000, and 10.5 percent in interim 2001, compared with interim 2000. CR and PR at Table C-1.

⁹⁵ Information on these indicators is based on the questionnaire responses of the eight grower/processors, who accounted for more than *** percent of U.S. production of IQF red raspberries in 2000. CR at III-1, PR at III-1.

⁹⁶ Since the harvest occurs in the summer months, there are only limited data covering the interim periods. The quantity and value of shipments decreased significantly in interim 2001, compared with interim 2000. CR and PR at Table C-1.

⁹⁷ Growers experienced relatively large swings in sales volume, average unit sales values, and average unit cost of goods sold (COGS) over the period examined. In 1999, a positive combination of higher volume, higher average unit sales values, and lower average unit COGS resulted in operating profitability. In contrast, growers reported operating losses in both 1998 and 2000. While average unit operating expenses were essentially the same in 1998 and 2000, the operating loss reported in 2000 was greater due to the combination of lower average unit sales values, which in turn resulted in larger average unit operating losses, and higher sales volume (compared to 1998). Overall, growers' net operating income as a ratio to net sales increased from a negative 9.1 percent in 1998, to 29.6 percent in 1999, and then declined to a negative 19.9 percent in 2000. CR and PR at Table VI-1.

⁹⁸ CR and PR at Table C-1.

⁹⁹ Capital expenditures in the industry declined from \$1.2 million in 1998 to \$1.1 million in 1999, then

(continued...)

We found above that the volume and price effects of subject imports are significant. In view of the performance of the domestic industry over the period examined, particularly the industry's financial condition, we find that the subject imports have had a significant adverse impact on the domestic industry.

CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of IQF red raspberries from Chile that are alleged to be subsidized by the Government of Chile and sold in the United States at less than fair value.

⁹⁹ (...continued)

increased to \$1.4 million in 2000. CR and PR at Table VI-6. Reported depreciation amounts indicated that most of the reported capital expenditures were likely some form of capitalized maintenance or repair of existing facilities.

CR at VI-18, PR at VI-6.