

UNITED STATES INTERNATIONAL TRADE COMMISSION

HONEY FROM ARGENTINA AND CHINA
Investigation Nos. 701-TA-402 and 731-TA-892-893 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3470, November 2001)

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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 section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), and section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from Argentina and China of honey, provided for in subheadings 0409.00.00, 1702.90.00, and 2106.90.99 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Argentina and sold in the United States at less than fair value (LTFV). The Commission also makes an affirmative determination that critical circumstances exist with respect to subject imports from China for which Commerce made affirmative critical circumstances determinations.²

BACKGROUND

The Commission instituted these investigations effective September 29, 2000, following receipt of a petition filed with the Commission and Commerce by the American Honey Producers Association, Bruce, South Dakota, and the Sioux Honey Association, Sioux City, Iowa. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of honey from Argentina were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports of honey from Argentina and China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 13, 2001 (66 FR 31948). The hearing was held in Washington, DC, on October 3, 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)).

² Commissioners Bragg, Miller, and Devaney make affirmative critical circumstances finding with respect to subject imports from China for which Commerce made an affirmative critical circumstances determinations. Chairman Koplman, Vice Chairman Okun, and Commissioner Hillman make a negative critical circumstances finding with respect to those imports.

VIEWS OF THE COMMISSION

Based on the record in these final investigations, we determine that an industry in the United States is materially injured by reason of imports of honey from Argentina that are subsidized and by reason of imports of honey from Argentina and China that the U.S. Department of Commerce (“Commerce”) has determined to be sold in the United States at less than fair value (“LTFV”). We also find that critical circumstances exist with respect to subject imports from China for which Commerce made affirmative critical circumstances determinations.^{1 2}

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether 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 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

¹ Commissioners Bragg, Miller, and Devaney make an affirmative critical circumstances finding with respect to subject imports from China for which Commerce made affirmative critical circumstances determinations. Chairman Koplan, Vice Chairman Okun, and Commissioner Hillman make a negative critical circumstances finding with respect to those imports.

² Vice Chairman Okun considers the Commission to be evenly divided on the issue of critical circumstances. She does not consider this division to constitute an affirmative Commission finding on the issue. See Additional Views of Vice Chairman Deanna Tanner Okun Regarding Critical Circumstances.

³ 19 U.S.C. § 1677(4)(A).

⁴ Id.

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 (Ct. Int’l Trade 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. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 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

(continued...)

Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its final determinations, Commerce defined the imported merchandise within the scope of these investigations as:

natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.¹⁰

Honey is classified by its individual characteristics (e.g., floral source, color, season, physical state, and means of preparation). There are over 300 unique varieties of honey that are produced in the United States. Honey differs in flavor and color depending upon the floral source from which the nectar is extracted by the honey bee.¹¹

Most natural honey produced in the United States is marketed in liquid form, which is honey that is extracted from the comb by centrifugal force, gravity, or straining. Natural honey is also marketed as cream honey (also called “creamed,” “whipped,” or “spun”); comb honey, which is honey marketed in the beeswax comb; cut comb honey; and dry honey (also known as “dried” or “powdered”), which is made by removing the water found in liquid honey by drum- or spray-drying.¹²

⁸ (...continued)

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 single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ 66 Fed. Reg. 50608, 50610 (Oct. 4, 2001) (China); *id.* 50611, 50612 (Oct. 4, 2001) (Argentina). Commerce indicated that the honey subject to these investigations is classifiable under subheadings 0409.00.00, 1702.90 and 2106.90.99 of the Harmonized Tariff Schedules of the United States (HTSUS). *Id.* Although the HTSUS subheadings are provided for convenience and Customs purposes, Commerce noted that its written description of the scope of these investigations is dispositive. *Id.*

¹¹ Confidential Report (“CR”) at I-7 - I-8, Public Report (“PR”) at I-5.

¹² CR at I-8, PR at I-5. The term “artificial honey,” as defined in the explanatory notes to the HTS, applies to mixtures based on sucrose, glucose, or invert sugar, generally flavored or colored and prepared to imitate natural honey. “Artificial honey” could include a variety of products such as honey mixed with refined sugar, high-fructose corn syrup (HFCS), and the like. “Artificial honey” exists in relatively small amounts in the U.S. market, and is supplied by both foreign and domestic producers. The product acts as a direct substitute for natural honey. CR at I-8, PR at I-6. Preparations of natural honey are not explicitly defined in the HTS or in the explanatory notes to the HTS. However, in the explanatory notes it is indicated that the 6-digit HTS subheading 2106.90 includes “natural honey mixed with bees’ royal jelly.” As defined in the scope language, the product would most likely be marketed as a specialty product in specialty and health food stores. CR at I-9, PR at I-6. Flavored honey is not explicitly defined by the petitioners and no official definition exists. The unofficial guideline is that a product entering the United States as “flavored honey” must contain 99 percent or more honey by weight. Imports of flavored honey are not significant relative to overall imports of natural honey. Flavored honey is most likely sold as a specialty product for retail consumption and not for industrial use. CR at I-10, PR at I-6 - I-7.

C. Domestic Like Product

In the preliminary phase of these investigations, the Commission found that there was a distinct dividing line between honey and other sweeteners. The Commission also considered whether there was a clear dividing line between the various varieties and forms of honey and found none.¹³ No parties disputed the Commission's definition of the domestic like product as all honey, consistent with the description in Commerce's scope definition. However, in the final phase of these investigations, the Argentine respondents maintain that the Commission should find that raw (or bulk) honey is a separate like product from bottled honey.¹⁴

Whether raw or bottled, honey is a sweet, viscous fluid that is an invert sugar that may also be classified by floral source, color, or season.¹⁵ The packing process alters neither the physical characteristics of the honey nor its uses. The underlying product remains honey, a natural sweetener. To the extent that domestic producers include (1) beekeeper-packers and (2) independent beekeepers that produce and pack "raw" (unprocessed) honey for roadside/farmers' market sale, there is a degree of overlap in productive facilities and employees. While bulk honey may be further processed, it may be left in its raw form and bottled for sale.¹⁶ Thus, bottled and bulk honey are both sold in the retail market sector. To the extent that bulk honey is sold to the retail consumer, it is directly interchangeable with bottled honey. In addition, bottled honey may be substituted for bulk honey, although it may not be commercially feasible to do so.¹⁷ Independent packers process, pack, and market domestic and imported honey, including subject imports from Argentina, in both bulk and retail containers, and brokers buy and sell honey from domestic and international sources.¹⁸ Most honey is processed to some degree, as bulk honey is generally heated to remove extraneous substances such as wax, pollen, or bee debris.¹⁹ There would appear to be some overlap in customer or producer perceptions with respect to raw honey that is bottled for sale. However, evidence in the record indicates that average unit values for bottled honey for retail consumption have been consistently higher than bulk honey: \$2.08 for bottled honey as opposed to \$0.91-\$0.98 for bulk honey.²⁰

On the basis of substantial similarities in physical characteristics and uses, some interchangeability, and overlapping channels of distribution, we find that there is one domestic like product consisting of all honey, consistent with the scope of the investigations.

¹³ Honey from Argentina and China, Invs. Nos. 701-TA-402 & 731-TA-892-893 (Preliminary), USITC Pub. 3369 (Nov. 2000), at 5.

¹⁴ Counsel for Argentine producers entered an appearance in these investigations after the deadline for comments on the Commission's draft questionnaires. Although they raised this issue in their comments, it was too late to incorporate them in the final questionnaires. Thus, the Commission has limited data on bottled honey in contrast to raw (or bulk) honey.

¹⁵ CR at I-7, PR at I-5.

¹⁶ CR at I-12, PR at I-8. Raw honey is not dedicated to the production of bottled honey, but has independent uses, *i.e.*, in tobacco, cosmetics, and food. The differences between bulk and bottled honey do not appear to be extensive; there is at least some overlap in markets for bulk and bottled honey and, as described below, the processing involved, although more than minimal, is not complex.

¹⁷ See Argentine Respondents' Prehearing Brief at 3.

¹⁸ CR at I-15, PR at I-9.

¹⁹ CR at I-14, PR at I-9.

²⁰ Argentine Respondents' Prehearing Brief at 6. Argentine respondents' estimates are based on import data comparing bottled honey and unpacked honey. Once the honey is packed for sale to industrial users, the price differential for retail and non-retail honey is likely to be less significant (and largely explained by differences in volume).

D. Domestic Industry

Section 771(4) of the Act defines the relevant industry as “the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of the total domestic production of the 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

In the preliminary phase of these investigations, the Commission considered whether honey packers should be included in the domestic industry and whether honey producers that import or purchase subject merchandise should be excluded from the domestic industry pursuant to the related parties provision. The Commission determined to include packers in the domestic industry²³ and found that appropriate circumstances existed to exclude three domestic producers from the domestic industry: W. Stoller’s Honey, ***, and ***.^{24 25}

1. Inclusion of Packers in the Domestic Industry

In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm’s production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production.²⁶ As they did in the preliminary phase of these investigations, petitioners argue that packers do not engage in sufficient production-related activities to be considered domestic producers, while respondents argue the opposite.

During 2000, there were over 100,000 beekeepers, 350 beekeeper-packers, and 110 independent packers in the United States. Based on assessments paid to the National Honey Board in 1999, it is estimated that beekeeper-packers and other packers accounted for *** and *** percent of the U.S. packing of honey, respectively, with the largest 10 packers accounting for approximately *** of all domestically

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).

²³ USITC Pub. 3369 at 7.

²⁴ USITC Pub. 3369 at 8-9.

²⁵ Commissioner Bragg finds that appropriate circumstances exist to exclude only *** from the domestic industry as a related party.

²⁶ The Commission generally considers six factors:

- (1) source and extent of the firm’s capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. See Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387-391, 731-TA-816-821 (Final), USITC Pub. 3273 (Jan. 2000), at 9; see also Large Newspaper Printing Presses from Germany and Japan, Invs. Nos. 731-TA-736-737 (Final), USITC Pub. 2988 (Aug. 1996), at 8-9.

packed honey.²⁷ The independent packers reported greater employment of production and related workers than did the beekeeper-packers: 305 in 2000 as compared with ***.²⁸

The independent packers' capital investment is substantial. The original cost of fixed assets was valued at \$18.4 million in fiscal year 2000-01 and the book value was \$8.3 million. Capital expenditures totaled \$2.9 million during that period.²⁹

Of the reporting independent packers, five firms support the petition and account for 17 percent of reported packing in 2000. In addition, petitioner Sioux Honey, a non-profit organization operating on a cooperative basis for processing and marketing honey for its *** member patrons, accounted for *** percent of reported packing in 2000 and is by far the largest U.S. packer.³⁰

Upon receipt of extracted honey, packers may blend different types of honey, both domestic and foreign. The honey, usually in 55-gallon drums, is labeled by the packers according to color and floral source, to enable selection for blending or production of monofloral honey.³¹

At this point, heat may or may not be used to pack a finished product. Heating honey aids in the flow of honey through the processing facility and can retard granulation and spoilage. Heated honey flows through filtering mechanisms (filtering paper sheets in commercial processing plants), usually under high pressure. Some packing facilities also add diatomaceous earth to the honey before filtering to aid in filtration. The honey next moves to a "settling tank" in a warm area for several hours or even days, with any remaining foreign material floating to the top, where it can be skimmed. Honey can then be poured directly into containers and sold to consumers or industrial users.³²

Packers may also process creamed honey, which is honey in which the natural granulation has been encouraged and controlled to create a smooth consistency similar to that of butter. Extracted honey is heated to destroy the natural yeasts that can cause fermentation and to dissolve large glucose crystals. The heated honey is strained to remove any extraneous substances such as wax, pollen, or bee debris. It is then cooled and "starter" seed, consisting of creamed honey that has been finely ground to create extremely fine glucose crystals, is added. The starter seed is completely blended into the honey in order to assure uniform crystallization. After blending, the mixture of seed and honey is allowed to set for a period of time during which air bubbles rise to the surface and are skimmed. The product is then transferred to containers and forms within four to six days when stored at approximately 57 degrees F.³³

On balance, we find that all packers engage in sufficient production-related activities to be included in the domestic industry. The packers employ a considerable number of production and related workers and have made substantial capital investments. In addition, the technical expertise required to pack honey is more than minimal and the facilities used to pack honey are used primarily for that purpose. Evidence in the record indicates that packing adds at least 20 percent to the value of the finished product.³⁴ While most packers do not support the petition, indicating some divergence of interests, a significant number do support the petition. In addition, the largest packer, Sioux Honey, is a petitioner. Thus, its interests are not divergent from those of its beekeeper members.

²⁷ CR/PR III-2.

²⁸ CR/PR at Table III-10.

²⁹ CR/PR at Table VI-11.

³⁰ CR at III-3, PR at III-2.

³¹ CR at I-12 - I-13, PR at I-8.

³² CR at I-13, PR at I-9.

³³ CR at I-13 - I-14, PR at I-9. A few packers pack relatively small volumes of products other than honey (e.g., molasses and barbeque sauce) using the same equipment, production lines, and related workers employed to pack honey. CR at I-14, PR at I-9.

³⁴ Respondents' Joint Prehearing Brief at 4.

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

a. Which Producers Are Related Parties

In the preliminary phase, the record indicated that one beekeeper/packer and two packers imported subject merchandise. The Commission found that they were related parties and determined to exclude them from the domestic industry. The Commission did not find that four firms that purchased subject imports were related parties because the record did not indicate that they controlled large volumes of subject imports.³⁷ In the final phase of these investigations, five firms imported subject honey and 16 firms, including four of the five firms that imported subject honey, purchased it as well.

Petitioners argue that the Commission should again exclude from the domestic industry packers that import significant volumes of subject merchandise for the reasons the Commission previously stated,³⁸ but should not exclude from the domestic industry packers that purchased subject honey because there is no indication in the record that they controlled large volumes of subject imports.³⁹ Respondents assert that the Commission should not exclude the packer/importers of subject honey because their imports would not shield them from any injury and because they imported subject product for non-price reasons.⁴⁰

Respondents also contend that the Commission should not exclude the packers that purchased subject imports because doing so would exclude a significant portion of the domestic packing industry and would distort the industry's financial data.⁴¹

***, an independent packer that also produces some raw honey, and independent packers *** imported subject honey from Argentina and/or China in each full year between 1998 and 2000.⁴² In

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 without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related 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 without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

³⁷ USITC Pub. 3369 at 7-9.

³⁸ Petitioners' Prehearing Brief at 9-10.

³⁹ Petitioners' Prehearing Brief at 10 n.4.

⁴⁰ Respondents' Joint Prehearing Brief at 6-7.

⁴¹ Respondents' Joint Prehearing Brief at 6.

⁴² CR/PR at Table III-6. *** and *** also imported subject honey in the first half of 2001. CR/PR at Table III-

addition, packer *** imported subject honey in ***, respectively. Accordingly, all five firms are related parties.

We note that complete information was unavailable as to all the importers from whom the packers purchased subject honey.⁴³ Accordingly, we are unable to determine whether the packers that purchased subject imports but did not themselves import subject honey controlled importers or exporters through their purchases.⁴⁴ While we are aware that a number of the packers opposed the petition,⁴⁵ we find that the record contains insufficient information to enable us to determine that these firms are, in fact, related parties and consequently we do not exclude them from the industry.

b. Whether Appropriate Circumstances Exist for Exclusion^{46 47}

We next consider whether appropriate circumstances exist to exclude the five importers.

In 2000, ***, an independent packer that produces some raw honey, packed *** pounds of honey and produced *** pounds. Of the amount packed, *** pounds were direct imports from Argentina and *** pounds were purchased from subject sources.⁴⁸ Thus, *** percent of the honey it packed in 2000 was

⁴² (...continued)

6.

⁴³ See CR/PR at Table III-6 for a listing of these firms.

⁴⁴ In previous investigations, the Commission has concluded that a domestic producer that does not import subject merchandise, or is not affiliated with an importer, may nevertheless be deemed a related party if it controls large volumes of imports, *i.e.*, where the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial. See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 & 731-TA-815-822 (Preliminary), USITC Pub. 3181 (Apr. 1999), at 12; Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (Apr. 1997), at 10 n.50.

⁴⁵ See CR/PR at Table III-2.

⁴⁶ While the Commission has recently tended to focus on whether a related party's interests are in production as opposed to importation, the CIT has recently reaffirmed the longstanding view that "the provision's purpose is to exclude from the industry headcount domestic producers substantially benefitting" from the relationship. See USEC, Inc. v. United States, 132 F.Supp.2d 1, 12 (Ct. Int'l Trade 2001).

⁴⁷ Although Commissioner Bragg concurs with the Commission majority's finding that the domestic industry consists of beekeepers, beekeeper/packers, and independent packers, she does not join this section of the opinion. She finds that appropriate circumstances exist to exclude only domestic producer *** from the domestic industry as a related party. The record indicates that *** direct imports of subject merchandise represented over *** percent of the honey *** in 2000. CR/PR at Table III-6. The record therefore indicates that *** interests lie in importation and not domestic production. With respect to other domestic producers which also imported subject merchandise during the POI, the record indicates that most of the honey these producers ***. CR/PR at Table III-6. The record further indicates that several domestic producers purchased subject merchandise during the period of investigation. However, there is no indication that total purchases of subject merchandise by a domestic producer amounted to control over large volumes of subject imports from a particular exporter or importer; therefore, in her view, no basis exists to exclude these producers from the domestic industry. Commissioner Bragg further notes that in performing her injury analysis in these investigations she considered the effect of subject imports on the domestic industry as a whole but that she focused her analysis on the effect of subject imports on beekeepers.

⁴⁸ CR/PR at Table III-6.

sourced from Argentina or China. The firm imported subject honey because its ***.⁴⁹ It explained that it purchased subject honey because of ***.⁵⁰ It opposes the petition.⁵¹

An examination of independent packers' financial data indicates that the total quantity of net sales increased irregularly during the period examined, while the value of net sales decreased steadily. Operating income also declined steadily over the period, as did net income before taxes.⁵² ***'s financial data exhibited somewhat similar trends. While the total quantity of its net sales increased steadily over the period, the total value of its net sales decreased irregularly. Both operating income and net income before taxes declined steadily over the period.⁵³

Because *** opposes the petition and sources *** of the honey it packs from subject sources, at least in part for price reasons, we find that appropriate circumstances exist to exclude it from the domestic industry. The company's financial data indicate that it has maintained its position vis-a-vis other packers through the acquisition of significant volumes of dumped honey, thus shielding itself from the effects of unfairly traded imports.

In 2000, ***, a packer, packed *** pounds of honey, of which *** pounds were direct imports from Argentina and *** pounds were purchased from subject sources.⁵⁴ Thus, *** percent of the honey it packed in 2000 was sourced from Argentina or China. It gave no reason as to why it imported or purchased subject honey.⁵⁵ *** financial data show the same trends as shown by data for the independent packers.⁵⁶

*** opposes the petition⁵⁷ and sources *** of the honey it packs from subject sources. The company's financial data indicate that it has maintained its position vis-a-vis other packers through the acquisition of significant volumes of dumped honey, thus shielding itself from the effects of unfairly traded imports. We therefore find that appropriate circumstances exist to exclude it from the domestic industry.

In 2000, ***, a packer, packed *** pounds of honey, of which *** pounds were direct imports from subject sources and *** pounds comprised purchases of honey from Argentina.⁵⁸ Accordingly, *** percent of the honey it packed in 2000 was sourced from Argentina or China. It did not indicate why it imported subject honey, and gave as its reason for purchasing subject honey, that ***.⁵⁹ It supports the petition.⁶⁰ With the exception of the total value of net sales, which increased irregularly, its financial data show the same trends as those of the other independent packers.⁶¹

While *** supports the petition, the vast majority of the honey it packed in 2000 was directly imported or otherwise obtained from subject sources. The company's financial data indicate that it has maintained its position vis-a-vis other packers through the acquisition of significant volumes of dumped honey, thus shielding itself from the effects of unfairly traded imports. We therefore find that appropriate circumstances exist to exclude it from the domestic industry.

⁴⁹ CR at III-10 n.14, PR at III-6 n.14.

⁵⁰ CR at III-10 n.15, PR at III-6 n.15.

⁵¹ CR/PR at Table III-2.

⁵² See CR/PR at Table VI-9.

⁵³ See ***'s Producer Questionnaire Response.

⁵⁴ CR/PR at Table III-6.

⁵⁵ CR at III-10 nn.14-15, PR at III-6 nn.14-15.

⁵⁶ See *** Response to Packer Questionnaire.

⁵⁷ CR/PR at Table III-2.

⁵⁸ CR/PR at Table III-6.

⁵⁹ CR/PR at III-10 nn.14-15.

⁶⁰ CR/PR at Table III-2.

⁶¹ See *** Packer Questionnaire Response. We note that the quantity of net sales is absent from its data.

***, a packer, packed *** pounds of honey in 2000. It imported subject honey only in January-June 2001, during which it obtained *** pounds of honey from Argentina. In 2000, it purchased *** pounds of Argentine honey.⁶² Therefore, *** percent of the honey it packed in 2000 was obtained from Argentina. It did not state why it imported subject honey, but gave the following reasons for purchasing it: ***.⁶³ The total quantity of its net sales increased steadily over the period examined, while the total value of net sales increased irregularly. Its operating income decreased irregularly, as did its net income before taxes.⁶⁴

*** supports the petition.⁶⁵ Because of the relatively small amount of subject honey packed and the fact that it supports the petition, we do not find that appropriate circumstances exist to exclude *** from the domestic industry as a related party.

***, a beekeeper, imported only a limited volume of subject honey: *** pounds from China in 1998.⁶⁶ The firm produced *** pounds of honey in 1998.⁶⁷ It imported subject honey because it wanted ***.⁶⁸ It has taken no position on the petition.⁶⁹ *** provided no financial data. However, because it imported a relatively small quantity of subject honey in only the beginning of the period examined and does not oppose the petition, we do not find that appropriate circumstances exist to exclude it from the domestic industry as a related party.

Based on our definition of the domestic like product, we find a single domestic industry consisting of the U.S. producers of honey, both raw and processed. We find that packers, who produce processed honey, as well as beekeepers, who produce raw honey, should be treated as U.S. producers. However, we have excluded packers *** and *** and beekeeper/packer *** from the domestic industry pursuant to the related parties provision. We further note that the vast majority of subject imports are of raw or bulk honey, not processed honey, suggesting that, while we consider the industry as a whole, the focus of our material injury analysis should be on the beekeepers, the producers of raw honey that compete most directly with the subject imports.

II. CUMULATION⁷⁰

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁷¹ In assessing whether subject

⁶² CR/PR at Table III-6.

⁶³ CR at III-10 nn.14-15, PR at III-6 nn.14-15.

⁶⁴ See *** Packer Questionnaire Response.

⁶⁵ CR/PR at Table III-2.

⁶⁶ CR at III-10 n.14, PR at III-6 n.14.

⁶⁷ *** produced honey only during 1998. *** then took over and produced *** pounds in 1999 and *** pounds in 2000. *** Producer Questionnaire Response.

⁶⁸ CR at III-10 n.14, PR at III-6 n.14.

⁶⁹ CR/PR at III-2 n.7.

⁷⁰ Commissioner Bragg notes that negligibility is not an issue in these investigations. See CR/PR at Table IV-2.

⁷¹ 19 U.S.C. § 1677(7)(G)(i).

imports compete with each other and with the domestic like product,⁷² the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁷³

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁷⁴ Only a “reasonable overlap” of competition is required.⁷⁵

B. Analysis

The petitions in these investigations were filed on the same day.⁷⁶ Based on the record in these final investigations, we find, as we did in the preliminary phase of these investigations,⁷⁷ that there is a reasonable overlap of competition among imports from each subject country and between subject imports and the domestic like product.

1. Fungibility

Based on the evidence in the record, there appears to be at least a moderate level of substitutability between domestic and imported honey and between subject imports. Subject honey is often blended with domestic honey to obtain a uniform product.⁷⁸ In addition, purchasers indicated that they did not differentiate between honey from different countries because they had limited knowledge about the country

⁷² The Uruguay Round Agreements Act (URAA) Statement of Administrative Action (SAA) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 316, 103d Cong., 2d Sess. at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁷³ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁷⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁷⁵ See Goss Graphic System, Inc. v. United States, 33 F. Supp.2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁷⁶ CR/PR at I-1.

⁷⁷ USITC Pub. 3369 at 10.

⁷⁸ See Tr. at 108 (Mr. Probst), 258 (Mr. Gamber).

of origin of their honey.⁷⁹ While beekeepers believe that domestic and imported honey are highly substitutable, independent packers and importers indicated that there are some limits to the substitutability between domestic and imported honey.⁸⁰

Sixty-nine of 78 responding beekeepers (88.5 percent) indicated that domestic honey was “always” interchangeable with Argentine honey. Six independent packers indicated that the products are “frequently” interchangeable and 4 importers reported the same. Thus, 57.1 percent of the responding packers indicated that domestic honey was “always” or “frequently” interchangeable with Argentine honey and 30.8 percent of the responding importers indicated the same. Six importers (46.2 percent) reported that domestic and Argentine honey are “sometimes” interchangeable.⁸¹

Sixty-seven of 79 (84.8 percent) responding beekeepers indicated that domestic honey was “always” interchangeable with Chinese honey. One of the 13 responding importers indicated the same. Three of the 12 responding independent packers reported that the products are “frequently” interchangeable and 6 reported that they are “sometimes” interchangeable. Seven importers reported that Chinese and domestic honey are “sometimes” interchangeable. Thus, 75 percent of the responding packers reported that the products are at least sometimes interchangeable and 61.5 percent of the responding importers reported the same.⁸²

Sixty-three of 71 responding beekeepers (88.7 percent) indicated that honey produced in Argentina was “always” interchangeable with Chinese honey. Three of the 10 responding independent packers indicated that the products are “frequently” interchangeable and 3 reported that they are “sometimes” interchangeable. Accordingly, 60 percent of the responding independent packers indicated that subject imports are frequently or sometimes interchangeable. Six of the 10 responding importers (60 percent) indicated that they are at least “sometimes” interchangeable.⁸³

We note that there are some quality differences between the Argentine and Chinese honey. Color and flavor are important factors and frequently cited by independent packers and purchasers as characteristics that are considered when determining the quality of a supplier’s honey.⁸⁴ Twelve of 20 independent packers sometimes, frequently, or always order honey from a particular country for reasons which include quality. One of these packers prefers Chinese honey, one prefers Argentine honey, four prefer domestic honey, while others prefer honey from a combination of countries.⁸⁵ Purchasers, however, have limited knowledge about the country of origin of their honey and no purchaser indicated that Argentine and Chinese honey are used for different applications.⁸⁶ Moreover, honey from both countries is often blended to ensure consistent color and taste, as well as for other reasons. Based on the record as a whole, we find there is general interchangeability between subject imports and between subject imports and the domestic like product.

2. Geographic Overlap

We find that there is a reasonable geographic overlap between domestic and imported honey and between subject imports.

Beekeepers operate in virtually every state in the United States, although California, North Dakota, South Dakota, Florida, and Minnesota accounted for 51 percent of the country’s honey-producing colonies

⁷⁹ CR at II-15, PR at II-9.

⁸⁰ CR at II-8, PR at II-6.

⁸¹ CR at II-16, PR at II-12.

⁸² CR at II-16, PR at II-12.

⁸³ CR at II-18, PR at II-13.

⁸⁴ CR at II-8 - II-9, PR at II-6.

⁸⁵ CR at II-9, II-12, PR at II-6.

⁸⁶ See CR at II-15, PR at II-9.

in 2000 and 59 percent of total production.⁸⁷ Imports were present in the same geographical areas throughout the period examined.⁸⁸

3. Channels of Distribution

Domestic honey and subject imports are present in all three channels of distribution: retail, food service, and industrial/ingredient.⁸⁹ As discussed above, the parties dispute the degree to which there is overlap. We find that there is at least a moderate level of overlap in channels of distribution between domestic and imported honey and between subject imports.

Beekeepers and beekeeper-packers often market their product unconventionally – from home, on the Internet, door-to-door, at roadside stands, and at farmer’s markets. In some instances, beekeepers and beekeeper-packers may rely on brokers or dealers to sell their honey. Beekeepers may also be members of cooperatives that process, pack, and market honey. Cooperatives pool their individual members’ honey and often purchase some imported honey, then process, pack, and market the honey under the cooperative label or private labels in both bulk and retail containers. Sioux Honey is the only large-scale cooperative operating in the United States, and ***. Independent packers process, pack, and market both domestic and imported honey, including honey imported from Argentina and China, in both bulk and retail containers. Brokers buy and sell honey from domestic and international sources and serve as an agent for independent packers.⁹⁰

Darker grades of honey (light amber and amber or darker) are primarily sold to the industrial sector, while lighter grades (white or extra light amber) are sold primarily to the retail sector.⁹¹ More than one-half of responding beekeepers indicated that the color of the honey does not dictate the sector into which it is sold, while 10 of 12 responding importers and 15 of 20 responding independent packers indicated the opposite.⁹² During the period examined, honey of all colors, from both domestic and subject import sources, was shipped to all sectors.⁹³

4. Simultaneous Presence

Domestic honey and subject imports from Argentina and China were simultaneously present in the U.S. market throughout the period examined.⁹⁴

5. Conclusion

On balance, we find that there is a reasonable overlap of competition between the domestic product and subject imports, and between subject honey imports from Argentina and China.

The Commission has given significant weight to differences in channels of distribution when evidence regarding the other factors suggested a reasonable overlap in competition. However, this has occurred when subject imports moved in clearly distinct channels.⁹⁵ In the instant investigations, there is a

⁸⁷ CR at III-2, PR at III-1.

⁸⁸ CR at IV-3, PR at IV-1.

⁸⁹ CR/PR at Tables I-3, I-4.

⁹⁰ CR at I-15, PR at I-9.

⁹¹ CR at I-15, II-1, PR at I-10, II-1.

⁹² CR/PR at II-1.

⁹³ CR/PR at Tables I-2, I-3, I-4.

⁹⁴ CR/PR at Table IV-4.

⁹⁵ In Ferrosilicon from Egypt, Inv. No. 731-TA-642 (Final), USITC Pub. 2688 (Oct. 1993), the Commission

(continued...)

significant overlap in the colors of Argentine, Chinese, and domestically-produced honey, and all colors are sold to industrial, food service, and retail customers. Accordingly, we find that there is a reasonable overlap of competition and cumulate subject imports for the purpose of analyzing whether the domestic industry is materially injured by reason of subject imports from Argentina and China.⁹⁶

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS⁹⁷

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁹⁸ 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.⁹⁹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁰⁰ In assessing whether 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 the United States.¹⁰¹ No single factor is dispositive, and all relevant factors are considered

⁹⁵ (...continued)

declined to cumulate subject imports from Egypt with subject imports from Brazil. Subject imports from Egypt were sold only to two U.S. processors who transformed the ferrosilicon into more commercially viable products, while subject imports from Brazil were sold directly to end users. Those who purchased subject imports from Egypt did not purchase subject imports from Brazil. Additionally, the Commission found some quality differences between the products. *Id.* at I-16 - I-17.

In Certain Preserved Mushrooms from Chile, Inv. No. 731-TA-776 (Final), USITC Pub. 3144 (Nov. 1998), the Commission found no reasonable overlap between mushrooms from Chile and those from Indonesia. Subject imports from Chile were predominantly shipped to food service users, while subject imports from Indonesia were overwhelmingly shipped to retail users. No purchaser bought both Chilean and Indonesian products. *Id.* at 13-14.

⁹⁶ The fact that subject imports from China were subject to a suspension agreement for part of the Commission’s period examined does not detract from this conclusion. Chinese Respondents argue that because the suspension agreement imposed price and quantity restrictions on subject imports from China that it did not impose on subject imports from Argentina, the Chinese product did not compete directly with subject imports from Argentina in the U.S. market. Chinese Respondents’ Prehearing Brief at 12-13. The suspension agreement did not entirely preclude subject imports from China from entering the U.S. market in competition with domestically-produced honey and honey from other imported sources. In addition, the reference price for imports from China under the agreement was tied to that of imports from other countries, and Argentina was the largest source of imports during the period. *See* CR/PR at Table IV-2. As explained above, the criteria that the Commission traditionally examines in that regard indicate that there is a reasonable overlap of competition between the subject imports from China, on the one hand, and subject imports from Argentina and domestically-produced honey, on the other.

⁹⁷ Commissioner Bragg notes that given her related party findings, the data she relied upon in performing her injury analysis differ slightly from the data relied upon by the Commission majority; however, the differences are not meaningful to the analysis and the trends for both data sets are nearly identical. *See* CR/PR at Tables C-2 and C-6. Since Commissioner Bragg concurs in the Commission majority’s decision to focus the injury analysis on beekeepers, she finds it appropriate to join the Commission majority’s material injury analysis.

⁹⁸ 19 U.S.C. § 1673d(b).

⁹⁹ 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).

¹⁰⁰ 19 U.S.C. § 1677(7)(A).

¹⁰¹ 19 U.S.C. § 1677(7)(C)(iii).

“within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁰²

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from Argentina that are subsidized and by reason of subject imports from Argentina and China that are sold in the United States at less than fair value.

A. Conditions of Competition

Several conditions of competition are pertinent to our analysis in these investigations. Demand for honey increased over the period examined.¹⁰³ As measured by apparent U.S. consumption, demand rose from 352.7 million pounds in 1998 to 419.2 million pounds in 2000.¹⁰⁴ Domestic production is unable to keep pace with demand: beekeepers produced 220.3 million pounds of honey in 1998 and 221.0 million pounds in 2000.¹⁰⁵

The honey market comprises three sets of customers: the industrial/ingredient sector is the largest, followed by the retail sector and then the food service sector.¹⁰⁶ Darker grades of honey are generally used in the industrial sector and the lighter graders in the retail sector.¹⁰⁷ Although imports from Argentina are generally the lighter grades while imports from China are predominantly the darker grades, subject imports from both Argentina and China include the entire range of colors and are found in all markets.¹⁰⁸

Fourteen of 22 responding independent packers indicated that they blend honey from different country sources, including the United States, China, and Argentina. Consistency and price were the two most frequently cited reasons for blending. Four beekeeper-packers indicated that they blend honey from different country sources for reasons such as supply continuity, cost, flavor, color, availability, and quality. In addition, 9 of 12 responding purchasers indicated that they can use blended honey in all their end uses.¹⁰⁹ As a result, blended honey is present in all three market sectors.

Price is an important factor in purchasing decisions for both independent packers and purchasers, such that honey is highly substitutable within the same grades. While no responding independent packer indicated that price was the number one factor considered in its purchasing decisions, price was the most frequently mentioned secondary or tertiary factor, and one-half of responding independent packers at least “usually” purchase the honey offered at the lowest price.¹¹⁰ Most responding independent packers indicated

¹⁰² Id.

¹⁰³ Most responding beekeepers indicated that in recent years U.S. demand for honey was either the same or increasing. Most importers indicated that demand has increased. CR at II-5, PR at II-4.

¹⁰⁴ CR/PR at Table IV-4. Honey production is limited by the number of beehives beekeepers use to make honey. Because the nature of beekeeping is to produce as much honey from beehives as possible, beekeepers are usually operating at full capacity and cannot increase production without increasing the number of hives they use for honey production. Additional capacity in the form of new hives could be added, but it takes time for the bees to build up the hives and the colony. CR at II-2 - II-3, PR at II-2.

¹⁰⁵ CR/PR at Table IV-4.

¹⁰⁶ In 2000, 48 percent of U.S. packers’ sales of honey were marketed in bulk form to the industrial sector, 40 percent to the retail sector, and 12 percent to the food service retail. CR at I-15, PR at I-10.

¹⁰⁷ See CR/PR at Table I-2.

¹⁰⁸ Compare CR/PR at Table I-2 with INV-Y-224 at Table I-4.

¹⁰⁹ CR at II-2, PR at II-1.

¹¹⁰ CR at II-9, PR at II-6.

that quality is the most important factor,¹¹¹ and most responding purchasers ranked it as one of the top three factors in their purchasing decisions.¹¹²

Pollination services have become increasingly important to beekeepers as a means of augmenting their income.¹¹³ In addition, beekeepers received agricultural program payments (loan deficiency payments or LDPs) in 1999 and 2000 as well as Commodity Credit Corporation (CCC) loans that were considered income at the time of the loan.¹¹⁴ The LDPs totaled \$1.1 million in 2000. The CCC loans were valued at \$4.7 million in 2000.¹¹⁵

Nonsubject imports exhibited a relatively stable presence in the U.S. market during most of the period examined. They increased from 32.4 million pounds in 1998 to 40.2 million pounds in 2000, and were 25.8 million pounds in Jan.-June 2000 and 19.2 million pounds in Jan.-June 2001.¹¹⁶ Their market share increased irregularly from 9.2 percent in 1998 to 9.6 percent in 2000.¹¹⁷

A suspension agreement was in place from August 2, 1995 to August 1, 2000 that obligated the government of China to restrict the volume of honey exports to the United States from all Chinese producers/exporters and established a pricing mechanism for Chinese exports, with these exports tied to a reference price defined to be “92 percent of the weighted-average of the honey unit import values from all other countries for the most recent six months of data available at the time the reference price is calculated.”¹¹⁸ As we did in the preliminary phase of the investigations,¹¹⁹ we conclude that the suspension agreement does not preclude us from making either a finding of adverse price effects or an affirmative determination of material injury by reason of subject imports. Nonetheless, we do perceive the suspension agreement to be a pertinent condition of competition during the time it was in effect.

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.”¹²⁰

The quantity of cumulated subject imports increased over the entire period examined, including the interim periods, and the value of cumulated subject imports followed the same trend. The quantity of cumulated subject imports was 100.0 million pounds in 1998, rose to 142.6 million pounds in

¹¹¹ CR at II-9, PR at II-6.

¹¹² CR at II-12, PR at II-9; CR/PR at Table II-3.

¹¹³ See CR/PR at Table VI-1 (pollination fees increased from \$12.1 million in 1998 to \$14.0 million in 2000); CR at VI-7, PR at 6; Petitioners’ Prehearing Brief at 30-31.

¹¹⁴ The production support extended by the U.S. Government to the domestic honey industry extends back to 1949. The Agriculture Appropriations Act for fiscal year 2001 included a non-recourse loan provision that provided for a loan deficiency payment program for the 2000 crop of honey. Thus, the recourse, non-purchase loan rate program switched to a non-recourse, purchase loan rate program. The loan rate increased by 10 percent, from 59 cents per pound to 65 cents per pound, and serves as a minimum price (*i.e.*, a price floor) for honey. If the market price dropped below the loan rate, then the beekeeper could forfeit the honey to the CCC and collect 65 cents per pound. Outstanding recourse loans were converted to the non-recourse loans on the date of enactment of the legislation. Beekeepers that had already sold their 2000 crop of honey were eligible for the deficiency payment. Thus, the legislation was retroactive. CR/PR at App. D.

¹¹⁵ CR/PR at Table VI-1.

¹¹⁶ CR/PR at Table IV-2.

¹¹⁷ CR/PR at Table IV-4.

¹¹⁸ CR at I-3 - I-4, PR at I-2 - I-3.

¹¹⁹ USITC Pub. 3369 at 14.

¹²⁰ 19 U.S.C. § 1677(7)(C)(i).

1999, then increased further to 157.9 million pounds in 2000. Cumulated subject imports were 74.3 million pounds in interim 2000 and 77.9 million pounds in interim 2001.¹²¹ The value of cumulated subject imports increased from \$59.2 million in 1998 to \$67.5 million in 1999, then to \$72.3 million in 2000. It was \$33.8 million in interim 2000 and \$35.2 million in interim 2001.¹²²

While domestic market share decreased over the period, subject import market share steadily and substantially increased. Subject imports' share of apparent U.S. consumption rose from 28.4 percent in 1998 to 36.8 percent in 1999, then to 37.7 percent in 2000.¹²³ Beekeepers' share of apparent U.S. consumption declined from 62.5 percent in 1998 to 52.9 percent in 1999, then declined further to 52.7 percent in 2000.¹²⁴ In contrast, nonsubject imports exhibited a stable presence.¹²⁵ The record also indicates that the volume of domestic beekeepers' end-of-period stocks and the ratio of those stocks to production increased from 1998 to 2000.¹²⁶

Accordingly, we find that the increased volumes of subject imports, both in absolute terms and relative to consumption in the United States, are significant.

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

(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.¹²⁷

As noted above, price is an important factor in purchasing decisions. Both domestic and subject import prices for honey fell by 17 to 26 percent over the period examined for all pricing products with available data. Prices rebounded somewhat in the first half of 2001, but remained at levels well below those of the first quarter of 1998.¹²⁸ Prices for domestically-produced honey alone fell 17 to 25 percent over the period.^{129 130}

¹²¹ CR/PR at Table IV-2.

¹²² CR/PR at Table IV-2.

¹²³ CR/PR at Table IV-4.

¹²⁴ CR/PR at Table IV-4.

¹²⁵ As noted above, nonsubject imports represented 9-10 percent of apparent U.S. consumption between 1998 and 2000.

¹²⁶ CR/PR at Table III-7.

¹²⁷ 19 U.S.C. § 1677(7)(C)(ii).

¹²⁸ CR/PR at Tables V-1 - V-4; CR at V-13, PR at V-9.

¹²⁹ CR at V-13, PR at V-9.

¹³⁰ We note that prices for other sweeteners, which tend to be substantially less costly than honey, either fell less rapidly (beet sugar) or rose (HFCS). The correlation between prices for these sweeteners and for honey prices was either lower than the correlation between domestic prices and subject import prices (beet sugar) or in the wrong direction (HFCS). See CR at II-6, PR at II-4 (cost differences); CR at V-13 n.12, PR at II-4 (honey price correlations by source of honey); and CR at V-17-18, PR at II-9 (correlations between honey and other sweeteners). In light of the differences in both absolute price levels for honey and other sweeteners and in the degree to which

(continued...)

In 72 percent of the instances in which price comparisons were possible, subject import prices were below those of domestically-produced honey.¹³¹ The margins of underselling ranged from 0.4 percent to 20.8 percent.¹³² We find that the margins of underselling are significant, especially in view of large and increasing volumes of subject imports that represent a substantial portion of the market.

We note that some of petitioners' allegations of lost sales and revenues were confirmed. In addition, although a large number of lost sales and revenues allegations were unconfirmed, many were not confirmed because the Commission received no response to its inquiry, was unable to reach the purchasers at issue, or because the purchasers could not distinguish the country of origin.¹³³

We find that evidence regarding arguments made during the investigations that Sioux Honey may be a price leader in the market is inconclusive,¹³⁴ and thus does not detract from our finding that underselling by subject imports is nonetheless exerting a significant adverse price effect.¹³⁵ We observe that Sioux Honey expanded its presence in the U.S. market far less dramatically than did the subject imports, and that the association controls a far smaller volume of honey than do U.S. importers (even excluding Sioux Honey's purchases of subject honey).¹³⁶

In view of the depressed domestic prices and significant margins of underselling by the subject imports, together with subject imports' increased volumes and market share, we find that the subject imports have depressed domestic prices to a significant degree during the period examined.

D. Impact of the Subject Imports¹³⁷

¹³⁰ (...continued)

the trends in those prices are correlated, we cannot agree with the respondents' contention that "the presence of cheaper substitutes for honey, and not subject imports, has suppressed prices." Respondents' Joint Prehearing Brief at 65 (emphasis added).

¹³¹ CR at V-14, PR at V-10.

¹³² CR at V-15, PR at V-10.

¹³³ See CR/PR at Tables V-6, V-7; CR at V-21, V-31 - V-35, PR at V-13.

¹³⁴ Few U.S. purchasers identified Sioux Honey as a price leader. CR at V-5, PR at V-4. Fifteen independent packers, however, indicated that there are one or more firms they consider to be price leaders in the U.S. market, with Sioux Honey being named by 13 as a price leader. Most of those 13 packers indicated that Sioux lowers prices and some indicated that Sioux's pricing was predatory. CR at V-4, PR at V-3. ***.

¹³⁵ Sioux Honey is a cooperative that packs honey for its beekeeper members, sells the processed honey, and provides a return to its members. The record indicates that Sioux Honey's prices to its members are ***. CR at V-13 n.10, PR at V-9 n.10.

¹³⁶ Compare INV-Y-224 at Table I-4 with Sioux Honey's Questionnaire Response.

¹³⁷ As noted earlier, while our analysis is based on consideration of the domestic industry as a whole, we have primarily focused our analysis of the effect of subject imports on the beekeepers, the producers of raw honey, given that virtually all subject imports are of raw honey. We also note that not all beekeepers were able to separate out financial data for their pollination services, and the adverse impact of the subject imports may thus be understated. Thirty-two companies, accounting for more than one-half of the reported total pollination revenues, were able to extract revenue and expense data for their pollination services. CR at VI-5, VI-7, PR at VI-3. The statute provides that to the extent data permit the separate identification of production in terms of such criteria as the production process or the producer's profits, the Commission is to assess the effects of unfairly traded imports on that basis. If the data cannot be separated, the effects of the unfairly traded imports are to be assessed by examining production of the narrowest group or range of products, which includes a domestic like product, for which the necessary information can be provided. 19 U.S.C. § 1677(4)(D). In making our material injury determination, we have examined the data that exclude pollination services to the extent available, but have otherwise relied upon data that include pollination services.

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.¹³⁸ 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.”^{139 140 141}

While domestic consumption increased steadily and significantly between 1998 and 2000,¹⁴² the domestic producers’ market share decreased steadily and significantly while domestic inventories and the ratio of inventories to production grew.¹⁴³

Key trade and financial trends for domestic producers, including the packers, declined over the period. While beekeepers’ production, as measured by quantity, increased modestly, the value of production decreased.¹⁴⁴ The independent packers’ U.S. shipments followed a similar trend.^{145 146} Beekeepers’ net income before taxes fell significantly over the period, from *** in 1998 to *** in

¹³⁸ 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).

¹³⁹ 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.

¹⁴⁰ 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). Commerce published its final antidumping determination in its investigation of honey from Argentina on Oct. 4, 2001. In its final determination, Commerce assigned individual weighted-average dumping margins ranging from 32.56 percent to 60.67 percent, and an all others rate of 36.59 percent. 66 Fed. Reg. 50611, 50613 (Oct. 4, 2001). Commerce also published its final antidumping determination in its investigation of honey from China on Oct. 4, 2001. In its final determination, Commerce assigned individual weighted-average dumping margins ranging from 25.88 percent to 57.13 percent, and a PRC-wide entity rate of 183.80 percent. 66 Fed. Reg. 50608, 50610 (Oct. 4, 2001).

¹⁴¹ 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 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.

¹⁴² Domestic consumption increased from *** pounds in 1998 to *** pounds in 2000. CR/PR at Table C-2.

¹⁴³ Domestic producers’ market share declined from *** percent in 1998 to *** percent in 2000. CR/PR at Table C-2.

¹⁴⁴ The quantity of beekeepers’ production increased from *** pounds in 1998 to *** pounds in 2000. The value of their production decreased from *** in 1998 to *** in 2000. CR/PR at Table C-2.

¹⁴⁵ The quantity of independent packers’ U.S. shipments increased from *** pounds in 1998 to *** pounds in 2000. The value of these shipments decreased from *** in 1998 to *** in 2000. CR/PR at Table C-2.

¹⁴⁶ A small subset of packers, beekeeper-packers, actually saw their financial performance improve over the period examined. While their average unit sales fell between each full fiscal year, so too did the cost of unpacked honey and “other costs,” resulting in an improvement from a net loss of \$0.07 per pound in 1998 to net income of \$0.09 in 1999 and \$0.06 in 2000. CR/PR at Table VI-6.

2000,¹⁴⁷ as did the independent packers' operating income.¹⁴⁸ When adjusted to exclude pollination services, the data for the beekeepers that were able to separate out pollination revenues and expenses show significant losses as well: net income before taxes declined from \$972,000 in 1998 to a loss of \$799,000 in 2000.¹⁴⁹ Data for all reporting beekeepers, adjusted to exclude the pollination services of those beekeepers who could provide separate data, showed a decline in net income before taxes from \$5.1 million in 1998 to \$2.0 million in 2000.¹⁵⁰ Although the capital expenditures of both the beekeepers and independent packers increased,¹⁵¹ 73 honey producers reported they were forced to cancel or reject expansion projects during the period, 76 said they were forced to reduce the size of their capital investments, and 24 had their investment proposals denied or rejected.¹⁵²

Beekeepers experienced other significant declines over the period examined. The number of beekeepers reporting net losses increased over the period.¹⁵³ Their net sales declined by quantity and value.¹⁵⁴ In addition, the number of their production workers declined slightly over the period, while their hours worked remained steady.¹⁵⁵ Although the number of their colonies remained steady over the period,¹⁵⁶ the quantity of their ending stocks increased.¹⁵⁷

¹⁴⁷ CR/PR at Table C-2.

¹⁴⁸ Independent packers' operating income, excluding Sioux Honey, fell from *** in 1998 to *** in 2000. Sioux Honey's net proceeds fell from *** in 1998 to *** in 2000. CR/PR at Table C-2. The ratio of independent packers' operating income to sales, excluding Sioux Honey, decreased from *** percent in 1998 to *** percent in 2000. CR/PR at Table C-2.

¹⁴⁹ CR/PR at Table VI-4.

¹⁵⁰ CR/PR at Table VI-4.

¹⁵¹ Beekeepers' capital expenditures increased from *** in 1998 to *** in 2000. CR/PR at Table C-2. Independent packers' capital expenditures, excluding Sioux Honey, rose from *** in 1998 to *** in 2000. Sioux Honey's capital expenditures increased from *** in 1998 to *** in 2000.

¹⁵² CR at VI-20, PR at VI-16.

¹⁵³ The number of firms reporting net losses was 25 in 1998 and increased to 39 in 2000. CR/PR at Table VI-1.

¹⁵⁴ Beekeepers' net sales decreased, by quantity, from *** pounds in 1998 to *** pounds in 2000. As measured by value, their net sales fell from *** in 1998 to *** in 2000. CR/PR at Table C-2. Although the independent packers' net sales increased over the period when measured by quantity, the value of their net sales decreased. As measured by quantity, independent packers' net sales, excluding Sioux Honey's, rose from *** pounds in 1998 to *** pounds in 2000. Sioux Honey's net sales, as measured by quantity, increased from *** pounds in 1998 to *** pounds in 2000. As measured by value, independent packers' net sales, excluding Sioux Honey's, declined from *** in 1998 to *** in 2000. Sioux Honey's net sales, as measured by value, declined from *** in 1998 to *** in 2000. CR/PR at Table C-2.

¹⁵⁵ The number of the beekeepers' production workers fell from *** in 1998 to *** in 2000. Their hours worked remained steady at *** in 1998 and 2000. CR/PR at Table C-2. The independent packers' production workers rose over the period examined, as did their hours worked. The number of the independent packers' production workers climbed from *** in 1998 to *** in 2000. CR/PR at Table C-2. Their hours worked increased from *** in 1998 to *** in 2000. CR/PR at Table C-2.

¹⁵⁶ Beekeepers' colonies totaled *** in 1998 and 2000. CR/PR at Table C-2. The independent packers' capacity was *** pounds in 1998 and *** pounds in 2000. CR/PR at Table C-2.

¹⁵⁷ While the apparently high levels of honey stocks reflect, in part, seasonal considerations, see CR at III-14, PR at III-7, the honey stocks nonetheless demonstrate an increasing trend in absolute and relative levels over the period examined. They increased from 80.8 million pounds in 1998 to 86.2 million pounds in 2000. The ratio of stocks to production climbed from 36.7 percent in 1998 to 39.0 percent in 2000. CR/PR at Table III-7. Independent packers' ending stocks declined from *** pounds in 1998 to *** pounds in 2000. CR/PR at Table C-2.

Under section 771(7)(D)(ii) of the Act, in cases involving agricultural products “the Commission shall consider any increased burden on government income or price support programs.”¹⁵⁸ As stated earlier, beekeepers received agricultural program payments (LDPs) in 1999 and 2000 as well as CCC loans that were considered income at the time of the loan.¹⁵⁹ To the extent that the loan program described above permits beekeepers to receive greater revenues for their crops than the market prices reflected by the Commission’s questionnaire data, these revenues will be reflected in an increased burden on the government’s loan program. In addition, beekeepers indicated that one of the actual negative effects of subject unfairly traded imports was the difficulty in repaying agricultural program loans. Some have had to borrow money to repay CCC loans, which results in a downward spiral because the low prices do not generate the income necessary to repay loans.¹⁶⁰

In sum, the record indicates there have been significant increases in the volume and market share of the subject imports, and that the subject imports undersold the domestic like product and have had a significant depressing effect on domestic prices. As a result, the overall condition of the industry declined during the period examined. Accordingly, we find that the cumulated subject imports are having a significant adverse impact on the domestic industry.

IV. CRITICAL CIRCUMSTANCES¹⁶¹

In its final determination, Commerce made affirmative critical circumstances findings with respect to honey produced and/or exported by several Chinese producers: Kunshan, Zhejiang, High Hope, and others.¹⁶² Because we have determined that the domestic honey industry is materially injured by reason of subject imports from China, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”¹⁶³ The SAA indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”¹⁶⁴

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.¹⁶⁵

¹⁵⁸ 19 U.S.C. § 1677(7)(D)(ii).

¹⁵⁹ LDPs were \$1.1 million in 2000 and CCC loan payments were \$4.7 million in that year. CR/PR at Table VI-1.

¹⁶⁰ CR at VI-20, PR at VI-16.

¹⁶¹ Chairman Koplman, Vice Chairman Okun, and Commissioner Hillman do not join this section. See their views on critical circumstances.

¹⁶² 66 Fed. Reg. at 50610.

¹⁶³ 19 U.S.C. § 1673d(b)(4)(A)(i).

¹⁶⁴ SAA at 877.

¹⁶⁵ 19 U.S.C. § 1673d(b)(4)(A)(ii).

Consistent with Commission practice,¹⁶⁶ in considering the timing and volume of subject imports, we have considered import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding subject import volume from the affected producers. Although Commerce typically compares the import volume of the subject merchandise for the three months immediately preceding and following the filing of the petition,¹⁶⁷ we are not required to analyze the same comparison periods that Commerce analyzed.¹⁶⁸

We generally consider a period encompassing several months before and after the filing of the petition for purposes of the critical circumstances analysis, unless circumstances warrant examining a different period.¹⁶⁹ Petitioners argue that in the seven-month period following the filing of the petition,¹⁷⁰ honey imports from China increased *** percent. They claim that these imports first “surged dramatically” in November 2000, shortly after the petition was filed in September 2000. Even allowing for any effects relating to the expiration of the suspension agreement, they claim, the data indicate a significant surge.¹⁷¹ A second substantial increase occurred in the two-month period before Commerce issued its preliminary determination and imposed provisional remedies. These volumes were more than double the average monthly volume that entered the United States during the seven-month pre-petition period.¹⁷² Chinese respondents do not indicate which period should be examined, but refer to the summer of 2000 and events occurring from October 2000 to March 2001.¹⁷³

In these investigations, the petition was filed on September 29, 2000. We thus considered the data relevant to critical circumstances to be the data for the periods of April 2000-September 2000 and October 2000-March 2001, which roughly correspond to the six-month period preceding the filing of the petition and the six-month period after the filing of the petition. Based on a comparison of the data for these periods, we find that the imports subject to Commerce’s affirmative critical circumstances determination would undermine seriously the remedial effect of the order.

In the six-month period preceding the filing of the petition, imports from the Chinese producers subject to the critical circumstances determination totaled *** pounds.¹⁷⁴ However, in the six-month period

¹⁶⁶ See, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159, at 24 (Feb. 1999).

¹⁶⁷ See 19 C.F.R. § 351.206(i); Notice of Preliminary Determination of Sales at Less Than Fair Value . . . Stainless Steel Sheet and Strip in Coils from Japan, 64 Fed. Reg. 108, 112 (Jan. 1, 1999).

¹⁶⁸ See Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (Apr. 1997), at 34.

¹⁶⁹ See, e.g., Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999), at 33-34; Certain Preserved Mushrooms from China, India and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999), at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplán), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey; Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (Apr. 1997), at 19; Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (Apr. 1997), at 34.

¹⁷⁰ Petitioners assumed Commerce would use a seven-month comparison period, comparing shipments exported between March 2000 and September 2000 with shipments between October 2000 and April 2001. Petitioners’ Prehearing Brief at 83 n.34.

¹⁷¹ Petitioners’ Posthearing Brief at 14.

¹⁷² Petitioners’ Prehearing Brief at 82-84; Petitioners’ Final Comments at 13.

¹⁷³ Chinese Respondents’ Prehearing Brief at 28-29.

¹⁷⁴ CR/PR at Table IV-3 (rev.). We note that Table IV-3, while revised from the table appearing in the Final Staff Report, simply rectifies an error in subtraction and does not contain new data.

after the filing of the petition, the subject imports surged to *** pounds, an increase of more than 78.5 percent.¹⁷⁵

We also note that end-of-period inventories of Chinese honey held by reporting subject importers surged from *** pounds in Jan.-June 2000 to *** pounds in Jan.-June 2001, representing an increase of 292 percent.¹⁷⁶

The timing and volume of subject imports, the substitutability of the subject imports from China with the domestic like product described above in the analysis on price effects and the apparent rapid increase in inventories, together with evidence of low and depressed domestic prices due to subject imports, support a conclusion that there was a surge of relevant subject imports that is likely to seriously undermine the remedial effect of the antidumping duty order. Accordingly, we make an affirmative critical circumstances finding.

¹⁷⁵ CR/PR at Table IV-3 (rev.).

¹⁷⁶ INV-Y-224 at Table VII-1. We note that the record does not contain monthly data respecting inventories of subject imports. Consequently, we rely on interim data, which correspond roughly to the six-month periods examined, as the best information available regarding subject importers' inventories. See 19 U.S.C. § 1677e(a). While these data contain information regarding all imports from China and not simply those for which Commerce made an affirmative critical circumstances determination, four importers, accounting for 76 percent of reported subject imports, failed to answer the question regarding inventories. Thus, inventories of subject honey from China may be significantly understated.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of honey from Argentina that are subsidized and honey from Argentina and China that is being sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to subject imports from China for which Commerce made affirmative critical circumstances findings.¹⁷⁷

¹⁷⁷ Chairman Koplan, Vice Chairman Okun, and Commissioner Hillman make a negative critical circumstances finding with respect to those imports.

**VIEWS OF CHAIRMAN STEPHEN KOPLAN, VICE CHAIRMAN DEANNA TANNER OKUN,
AND COMMISSIONER JENNIFER A. HILLMAN REGARDING CRITICAL
CIRCUMSTANCES**

In its final determination regarding honey from China, Commerce made affirmative critical circumstances determinations with respect to honey produced and/or exported by several Chinese producers: Kunshan, Zhejiang, High Hope, and others.¹ Because we have determined that the domestic honey industry is materially injured by reason of subject imports from China, we must further consider “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”² Unlike our three colleagues, we find that the imports subject to Commerce’s affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued, and therefore make a negative finding with respect to critical circumstances.

The statute provides that in making a finding with respect to critical circumstances, the Commission shall consider, among other factors it considers relevant:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.³

Consistent with Commission practice,⁴ in considering the timing and volume of subject imports, we have considered import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding subject import volume from the affected producers. Although Commerce typically compares the import volume of the subject merchandise for the three months immediately preceding and following the filing of the petition,⁵ we are not required to analyze the same comparison periods that Commerce analyzed.⁶

The AHPA and Sioux Honey filed the petitions that led to the initiation of these investigations on September 29, 2000, two months after Commerce terminated a suspension agreement covering imports of honey from China because no domestic interested party expressed a willingness to participate in the five-year review.⁷ Comparing the three-month period July 2000-September 2000 with the three-month period October 2000-December 2000, imports for which Commerce made affirmative critical circumstances

¹ 66 Fed. Reg. at 50610.

² 19 U.S.C. § 1673d(b)(4)(A)(i). The SAA elaborates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.” SAA at 877.

³ 19 U.S.C. § 1673d(b)(4)(A)(ii).

⁴ See, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159, at 24 (Feb. 1999).

⁵ See 19 C.F.R. § 351.206(i); Notice of Preliminary Determination of Sales at Less Than Fair Value . . . Stainless Steel Sheet and Strip in Coils from Japan, 64 Fed. Reg. 108, 112 (Jan. 1, 1999).

⁶ See Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034, at 34 (Apr. 1997).

⁷ CR at I-4, PR at I-2 (citing 65 Fed. Reg. 46425, July 28, 2000).

determinations increased from *** pounds to *** pounds, or by *** percent. Similarly, comparing the six-month period April 2000-September 2000 with the six-month period October 2000-March 2001, imports for which Commerce made affirmative critical circumstances determinations increased from *** pounds to *** pounds, or by *** percent.⁸

While post-petition import levels were higher than pre-petition import levels, we do not believe that this increase is likely to undermine seriously the remedial effect of the antidumping duty order, given the prevailing conditions of competition in the U.S. honey market. Apparent U.S. consumption increased in both 1999 and 2000, while domestic production fluctuated with little net growth, contributing to an increasingly-wide gap between domestic honey demand and domestic honey supply.⁹ Moreover, higher sales of packed honey by independent packers and by Sioux Honey in the first half of 2001 relative to the first half of 2000 suggest that U.S. honey demand has continued to increase.¹⁰ Given strong demand and limits to alternative sources of supply, we do not view the increase in post-petition import levels as sufficient to merit an affirmative finding of critical circumstances.

We have also considered the extent to which there was an increase in inventories of the subject imports. As of December 31, 2000, reported U.S. inventories of honey from China were *** pounds, or *** percent of U.S. shipments of imports of honey from China. Both the absolute and the relative level of U.S. inventories of honey from China were comparable to the levels reported for 1999, and were below the levels reported for 1998.¹¹ As of June 30, 2001, reported U.S. inventories of honey from China were *** pounds, or *** percent of U.S. shipments of imports of honey from China.¹²

We note at the outset that available data do not permit us to evaluate the inventory levels of the imports for which Commerce made affirmative critical circumstances determinations. We observe, however, that U.S. importers reported relatively small inventories of Chinese honey, both absolutely and relative to U.S. shipments of imports from China. Even allowing for under-reporting, inventory levels were far below those held by U.S. beekeepers.¹³ Moreover, as discussed below, U.S. importer holdings in the first half of 2001 did not put additional pressure on U.S. price levels. To the contrary, the pricing environment gradually improved, and U.S. beekeepers began to draw down their swollen production stocks.¹⁴ Accordingly, we do not view the U.S. importer inventory levels or movements as sufficient to merit an affirmative finding of critical circumstances.

We have also considered other circumstances relevant to the remedial effect of the antidumping order. Prices for honey from China, regardless of color, increased in the six-month period following

⁸ CR/PR at Table IV-3, as revised. We observe that the increase resulted in part because the volume of imports in September 2000 was exceptionally low compared to other months in 2000 (i.e., September 2000 imports were only *** pounds, compared to average monthly imports during the previous five months of *** pounds). Chinese Respondents contend that lower pre-petition import levels resulted from uncertainty over whether and on what terms the suspension agreement would be extended. (Chinese Respondents' Posthearing Brief at 21). As a factual matter, had September 2000 imports been at more typical 2000 levels, the post-petition increase would have been smaller.

⁹ CR/PR at Table C-1.

¹⁰ CR/PR at Table C-1.

¹¹ CR/PR at Table VII-1, as revised. Reported U.S. inventories of honey from China were *** pounds in 1999 and *** pounds in 1998, or *** percent and *** percent of U.S. shipments, respectively. *Id.*

¹² CR/PR at Table VII-1, as revised. As of June 30, 2000, reported U.S. inventories of honey from China were *** pounds, or *** percent of U.S. shipments of imports of honey from China. *Id.* We note that inventory levels may be understated, as four importers, including one company that imported honey from China in 2000, did not provide the Commission with inventory data. CR at VII-1 and n.1, PR at VII-1 and n.1; CR/PR at Table IV-1.

¹³ See CR/PR at Table III-7.

¹⁴ Hearing transcript at 21 (Mr. Adee) and at 46-47 (Ms. Beck).

September 2000.¹⁵ Similarly, prices for domestic honey, regardless of color, increased in the six-month period following September 2000.¹⁶

We find that the observed increases in the prices of subject Chinese honey and domestic honey do not support a conclusion that the imports in question are likely to undermine seriously the remedial effect of the order. To the contrary, the pricing prospects for honey in the U.S. market have improved sufficiently that Petitioner Sioux Honey announced a price increase in September 2001 of \$0.05 per pound, effective October 15, 2001.¹⁷ Accordingly, we do not view the recent price levels or trends of Chinese honey as sufficient to merit an affirmative finding of critical circumstances.

We have evaluated the timing and the volume of the imports, the level and the trend in inventories of the imports, and any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined. Based on the record in these investigations, we find that the imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued, and therefore make a negative finding with respect to critical circumstances.

¹⁵ Per-pound prices for white honey increased from *** to \$0.50; prices for extra light amber honey increased from \$0.47 to ***; prices for light amber honey increased from *** to \$0.48; and prices for amber honey increased from *** to ***. In the second quarter of 2001, prices for all high volume honey from China (e.g., all honey other than amber honey) either remained stable or continued to increase. CR/PR at Tables V-1-V-4.

¹⁶ Per-pound prices for white honey increased from \$0.53 to \$0.54; prices for extra light amber honey increased from \$0.52 to \$0.55; prices for light amber honey increased from \$0.46 to \$0.47; and prices for amber honey increased from \$0.34 to \$0.47. In the second quarter of 2001, prices for domestic honey increased. CR/PR at Tables V-1-V-4.

¹⁷ Petitioners' Posthearing Brief at Exhibit 8. Mr. Jerry Probst, President of Sioux Honey, observed that the association has experienced a significant increase in spot market orders, and speculated that other packers have implemented or will implement honey price increases. *Id.*

**ADDITIONAL VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN REGARDING
CRITICAL CIRCUMSTANCES**

In these investigations, the Commission was equally divided as to whether critical circumstances exist with respect to certain imports of honey from China. I do not find that the tie-vote provision applies in this situation, and therefore I do not believe that the equal division constitutes an affirmative critical circumstances finding by the Commission.

Regarding the Commission's tie-vote provision, the statute states:

If the Commissioners voting on a determination by the Commission, including a determination under section 1675 of this title, are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

- (A) material injury to an industry in the United States,
- (B) threat of material injury to such an industry, or
- (C) material retardation of the establishment of an industry in the United States, by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.¹

The tie-vote provision is an exception to the general rule on agency decisions by majority vote. By its terms, it applies only to determinations of material injury, threat of material injury, material retardation, and section 1675 reviews. A divided Commission's critical circumstances finding is not contemplated in the tie-vote provision of the statute.

While there is some ambiguity in the statute as to whether a decision on critical circumstances is a "finding" or a "determination," the substantive provision requires the Commission to make a "finding on critical circumstances."² While I am mindful that a critical circumstances finding has been referred to as a determination elsewhere the statute,³ I do not consider this reference sufficient to find that the tie-vote provision applies to findings other than Commission's overall material injury finding.

¹19 U.S.C. § 1677(11).

²The statutory provision on critical circumstances instructs the Commission, should Commerce find critical circumstances under 19 U.S.C. § 1673d(a)(3), to include in its final determination "a finding as to whether the imports subject to the affirmative determination under subsection (a)(3) of this section are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 1673e of this title." 19 U.S.C. § 1673d(b)(4)(A)(i).

³Should the "determination" of Commerce under § 1673d(a)(3) or of the Commission under § 1673d(b)(4)(A) be negative, then the statute, under a provision titled "Effect of final determinations," prohibits Commerce from imposing duties retroactively on the subject imports. 19 U.S.C. § 1673d(c)(3).

The development of the law also supports the conclusion that the tie-vote provision does not apply to critical circumstances findings. The tie-vote provision, initially enacted in 1958, preceded the enactment of the critical circumstances provision, which was first passed in 1979. Had Congress intended the tie-vote provision to apply to the Commission's critical circumstances findings, it could have made that clear at the time of passage of the critical circumstances provision. Moreover, when Congress amended the critical circumstances provision of the statute in 1988 to make relief easier to obtain, it did so by changing the criteria the Commission considers in making its determination, but did not modify the language to ensure that the tie-vote provision would apply.

Significantly, Congress amended the tie-vote provision in the Uruguay Round Agreements Act ("URAA") to include determinations made under section 1675 of the statute, which includes Commission sunset review investigations. If Congress had to revise the tie-vote provision to make it applicable to sunset determinations, which are very similar in effect to an injury determination in an original Title VII investigation, then logically the provision does not apply to such subsidiary issues as critical circumstances findings. This latest amendment supports the conclusion that the tie-vote provision applies only to overall Commission determinations set forth in the statute. Therefore, I conclude that an equally divided Commission as to the existence of critical circumstances should not be considered an affirmative finding.