UNITED STATES INTERNATIONAL TRADE COMMISSION

LAMB MEAT

Investigation No. TA-201-68

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3176, April 1999)

LAMB MEAT

DETERMINATION

On the basis of the information in the investigation, the Commission unanimously--

(1) determines, pursuant to section 202(b) of the Trade Act of 1974, that lamb meat[1] is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article; and

(2) makes negative findings, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), with respect to imports of lamb meat from Canada and Mexico.

RECOMMENDATIONS WITH RESPECT TO REMEDY

The Commission[2] **(Chairman Bragg and Commissioners Crawford and Askey)** recommends:

(1) that the President impose a tariff-rate quota system, for a 4-year period, on imports of lamb meat that are the subject of this investigation, as follows (all weights are in terms of carcass-weight equivalents):

First year: 20 percent ad valorem on imports over 78 million pounds;

Second year: 17.5 percent ad valorem on imports over 81.5 million pounds;

Third year: 15 percent ad valorem on imports over 81.5 million pounds; and

Fourth year: 10 percent ad valorem on imports over 81.5 million pounds;

(2) that the President implement appropriate adjustment assistance measures, drawing on authorized programs at the U.S. Department of Agriculture and the U.S. Department of Commerce providing specialized direct payments, research, and animal health programs, in such combination as to most effectively "facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." In this context, we recommend that the President look to the industry's report by PriceWaterhouseCoopers and its recommendations when considering adjustment

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[1] The imported article covered by this investigation is fresh, chilled, or frozen lamb meat. Excluded from the scope of the investigation are imports of live lambs and sheep and meat of mature sheep (mutton). Lamb meat is provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTS).

[2] The Commission notes that, pursuant to section 330(d)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(2)), the remedy recommendation of Chairman Bragg and Commissioners Crawford and Askey in this investigation is to be treated as the remedy finding of the Commission for purposes of section 203 of the Trade Act.

assistance options;

(3) having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the tariff-rate quota; and

(4) that the tariff-rate quota not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Vice Chairman Miller and Commissioner Hillman recommend:

(1) that the President increase the rate of duty, for a 4-year period, on imports of lamb meat the subject of this investigation, to the rates of duty as follow: 22 percent ad valorem in the first year of relief, 20 percent ad valorem in the second year, 15 percent ad valorem in the third year, and 10 percent ad valorem in the fourth year;

(2) that the President identify and implement adjustment measures and other action authorized under law that is likely to facilitate positive adjustment to import competition; specifically, that the President make assistance available to the lamb meat industry through Federal programs, primarily those administered by the U.S. Department of Agriculture, and take action to ensure that the National Sheep Industry Improvement Center is fully operational;

(3) having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the increased tariffs;

(4) that the increased rates of duty not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Commissioner Koplan recommends:

(1) that the President impose a quantitative restriction, for a 4-year period, on imports of lamb meat the subject of this investigation, as follows: 52 million pounds in the first year, 56 million pounds in the second year, 61 million pounds in the third year, and 70 million pounds in the fourth year (all quantities are carcass-weight-equivalents);

(2) that the President, within the overall quantitative restriction, provide separate allocations for Australia, New Zealand, and “all other” countries in proportion to their average share of imports entered during calendar years 1995-1997;

(3) that the President take all action necessary to ensure that the National Sheep Industry Improvement Center is fully operational as soon as possible, and that the President make available either through the Center or directly to the industry the full measure of Federal assistance programs, including those administered by the U.S. Department of Agriculture.

(4) having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be

excluded from the quota; and

(5) that the quota not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

The Commissioners find that the respective actions that they have recommended will address the threat of serious injury found to exist and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

BACKGROUND

Following receipt of a petition filed on October 7, 1998, on behalf of the American Sheep Industry Association, Inc., Harper Livestock Company, National Lamb Feeders Association, Winters Ranch Partnership, Godby Sheep Company, Talbott Sheep Company, Iowa Lamb Corporation, Ranchers' Lamb of Texas, Inc., and Chicago Lamb and Veal Company, the Commission, effective October 7, 1998, instituted investigation No. TA-201-68, *Lamb Meat*, under section 202 of the Trade Act of 1974 to determine whether lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings 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 October 23, 1998 (63 F.R. 56940). The hearing in connection with the injury phase of the investigation was held on January 12, 1999, and the hearing on the question of remedy was held on February 25, 1999. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION ON INJURY

Introduction

Pursuant to section 202(b) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2252(b)), we determine that lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article. In addition, pursuant to section 311(a) of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), we find that imports of lamb meat from Canada and Mexico do not account for a substantial share of total imports and do not contribute importantly to the threat of serious injury.

The basis for our affirmative injury determination and our negative findings with respect to Canada and Mexico are set out below. Our findings and recommendations on remedy are set forth in our "Views on Remedy" that follow these views on injury.

Background

The Commission instituted this investigation effective October 7, 1998, following receipt of a petition filed by the American Sheep Industry Association, Inc., Harper Livestock Company, National Lamb Feeders Association, Winters Ranch Partnership, Godby Sheep Company, Talbott Sheep Company, Iowa Lamb Corporation, Ranchers' Lamb of Texas, Inc., and Chicago Lamb & Veal Company, alleging that lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry. Petitioners asserted that these associations and firms are representative of each of the four major segments of the domestic lamb meat industry, which they define to include growers and feeders of live lambs and packers and processors of lamb meat.[1]

Lambs are immature sheep, generally younger than 14 months of age at time of slaughter. Because lamb meat is more valuable than sheep meat (mutton), most animals raised for meat are slaughtered as lambs. In the United States, lambs are generally born in the spring and range-fed until fall, when they are shipped to feeders. Feeders grain-feed the lambs for 30-120 days, and then send them to packers for slaughter.[2] Packers then either further process the lamb into primal, subprimal, or retail cuts, or ship the carcasses to breakers who perform a similar processing function.[3] The cuts are then sold to nonbreaker wholesalers or retail outlets.[4] Most domestically produced lamb meat is sold fresh or chilled. Two countries, Australia and New Zealand, accounted for virtually all U.S. imports of lamb meat during the period of investigation (1993-September 1998).[5] In Australia and New Zealand, lambs raised for meat purposes are range-fed their entire

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[1] Growers include purebred breeders who keep purebred animals and sell rams for breeding purposes, and commercial market lamb producers, who maintain flocks for the production of feeder or slaughter lambs; feeders are firms that maintain feedlots where lambs are fed on grain or other concentrates until they reach slaughter weight; packers are companies that slaughter lambs, regardless of whether they process lamb meat; and processors (breakers) are firms that divide carcasses into primal, subprimal, or retail cuts for resale to nonbreaker wholesalers or retail outlets. *Lamb Meat, Report on Investigation No. TA-201-68* (hereinafter "report"), at II-11, 13-15.

[2] Report at II-13.

[3] Report at II-14-15.

[4] Report at II-15.

[5] Australia and New Zealand collectively accounted for 98.3 percent or more of total imports in both quantity and value in each year during 1993-97 and during the periods January-September 1997 and 1998. Australia was the larger supplier in terms of quantity in each of the periods examined, but New Zealand was the larger supplier in terms of value (continued...)

lives, and are not grain-fed prior to slaughter. Historically, most imported lamb meat was frozen, but during the period of the investigation an increasing amount, particularly from Australia, has been fresh or chilled.[6]

Like or directly competitive product[7]

Statutory framework and Commission practice. Under section 202(b)(1)(A), the Commission is required to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, "to the domestic industry producing an

[5] (...continued)
in 1993, 1995, 1996, and January-September 1998. Table 6, report at II-19.

[6] For example, fresh or chilled lamb meat accounted for *** percent of the quantity of imports of lamb meat from Australia in 1993, and were projected to account for *** percent of the quantity of imports of lamb meat from Australia in 1998. Derived from data in tables 24 and 25, report at II-47-48. Fresh or chilled lamb meat from New Zealand accounted for *** percent of the quantity of lamb meat imports from New Zealand in 1993, and were projected to account for *** percent in 1998. Derived from data in tables 29 and 30, report at I-74-75.

[7] Commissioner Askey does not join the Commission's analysis as a whole in the sections on like or directly competitive product or on domestic industry, though she concurs in the result. Commissioner Askey notes that the focus of a section 201 investigation is on the domestic industry and the injury suffered by it. The domestic industry is defined by reference to products "like or directly competitive with" the imported article. 19 U.S.C. 2252(b)(1)(A). Defining the "like or directly competitive" article therefore serves the function of identifying the domestic industry, but plays no independent role in the Commission's investigation.

In this case, the question is what articles are "like or directly competitive with" imported lamb meat. "Like" articles are substantially identical, while directly competitive articles those that are "substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefore." H.R. Rep. No. 93-571, at 45 (1973). The statute specifies that "[a]n imported article is 'directly competitive with' a domestic article at an earlier or later stage of processing, and a domestic article is 'directly competitive with' an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article." 19 U.S.C. 2481(5). The Commission has previously considered the domestic industry to include all facilities involved in the production of the final product, particularly when the firms performing the final manufacturing operations "account for only a relatively small part of the productive resources involved in the production of the article." *Certain Canned Tuna Fish*, Inv. No. TA-201-53, USITC Pub. 1558 at 5-6 (Aug. 1984).

Commissioner Askey finds that the domestic industry consists of producers of live lambs and of lamb meat -- growers, feeders, breakers, and packers. She finds that live lambs and domestic lamb meat compete commercially with imported lamb meat as contemplated by the statute and by the WTO Safeguards Agreement. Most live lambs become lamb meat, report at II-4, and therefore are adapted to the same end uses. *See, United Shoe Workers of Am., AFL-CIO v. Bedell*, 506 F.2d 174, 185-86 (D.C. Cir. 1974) ("Normally, the term 'directly competitive' invites, in the first instance, a comparison of the commercial uses of the products and not their characteristics. . ."); GATT Dispute Panel Report on Japan -- Taxes on Alcoholic Beverages, WT/DS8/R; WT/DS10/R, WT/DS11/R (11 July 1996) at para 6.22 (construing Article III.2 of GATT 1994, and finding that directly competitive articles have common end-uses). The record also indicates that importation of the lamb meat is having a similar economic effect on the producers of the upstream article (live lambs) as it is on the producers of the article in the same stage of processing as the subject imports (lamb meat). See discussion in the injury section of these views, *infra.* Finally, growers and feeders are responsible for approximately 88 percent of the value of lambs sent for slaughter. Report at II-12.

article that is like or directly competitive with the imported article."[8] Thus, the first issue is defining the domestic product (if any) that is "like or directly competitive" with the imported product under investigation.

The term "like or directly competitive" is defined in the legislative history of the Trade Act.[9] Under these definitions, articles are "like" each other if they are "substantially identical in inherent or intrinsic characteristics," and articles are "directly competitive" with each other if they are "substantially equivalent for commercial purposes."[10]

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[8] Commissioner Crawford concurs with her colleagues that the domestic industry consists of producers of live lamb (growers and feeders) as well as producers of lamb meat (packers and breakers). She reaches her conclusion, however, by reliance on the plain language of the statute and the relevant legislative history. A critical part of the Commission's injury analysis is the identification of "the domestic industry producing an article that is like or directly competitive with the imported article." Sec. 202(b)(1) of the Trade Act. The statute defines the domestic industry as "the domestic producers as a whole of the like or directly competitive article." Sec. 202(c)(6)(A)(i) of the Trade Act. In determining what domestic producers constitute the domestic industry, Commissioner Crawford follows the plain language of the statute in considering both producers of "like" products as well as producers of "directly competitive" products. She does not interpret the statute to exclude producers of directly competitive products if producers of "like" products are present in the market. *See* Wheat *Gluten* (Views of the Commission on Injury, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-7, n. 16); Views of Chairman Peter S. Watson and Commissioners Carol T. Crawford and Lynn M. Bragg, *Fresh Tomatoes and Bell Peppers,* Inv. No. TA-201-66, 1996, USITC Pub. 2985 (Aug. 1996), at I-11, n. 26); and *United Shoe Workers of Am., AFL-CIO v. Bedell,* 506 F.2d 174, 185-86 (D.C. Cir. 1974). In this investigation, she finds that domestic producers of lamb meat (packers and breakers) are clearly producers of a product that is "like" the imported article and therefore should be included in the domestic industry. She concurs with the basic reasoning of her colleagues on this point. She further finds that lamb growers and feeders are producers of a "directly competitive" article and therefore, consistent with the statute, should be included in the domestic industry. In her identification of "directly competitive" producers, she has relied on the statutory language relating to domestic articles at an earlier or later stage of processing and the associated legislative history. *See* Sec. 601(5) of the Tariff Act of 1974 and H.R. Rep. No. 1818, 87th Cong., 2d Sess. 24 (1962) (which includes specific reference to live lamb and processed lamb products). In the context of this investigation, the statute and the legislative history direct the Commission to find the live lamb product to be directly competitive with lamb meat imports if: (1) the live lamb is at an earlier stage of processing than the lamb meat imports, such that the article remains substantially the same during such processing and is not wholly transformed into a different article, and (2) the importation of lamb meat has an economic effect on domestic live lamb producers comparable to the effect of lamb meat imports on domestic lamb meat producers. I find that a live lamb is clearly at an earlier stage of processing than lamb meat. Report at II-11-16. Moreover, the lamb product remains substantially the same during processing, and is not wholly transformed into a different article within the meaning of the legislative history. Lamb growers and feeders are responsible for approximately 88 percent of the value of lambs sent for slaughter. Report at II-12, n. 42. Finally, I find that the economic effect on live lamb producers of importation of lamb meat is comparable to the effect of lamb imports on domestic lamb meat producers. *See* discussion *infra* regarding the threat of serious injury to the live lamb and lamb meat sectors of the domestic industry caused by lamb meat imports.

[9] The legislative history defines the terms as follows:

> The words "like" and "directly competitive", as used previously and in this bill are not to be regarded as synonymous or explanatory of each other, but rather to distinguish between "like" articles and articles which, although not "like," are nevertheless "directly competitive." In such context, "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.), and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor.

H.R. Rep. No. 571, 93rd Cong., 1st Sess. 45 (1973); S. Rep. No. 1298, 93rd Cong., 2d Sess., at 121-122 (1974).

[10] The term "directly competitive with" is also defined in section 601(5) of the Trade Act as follows--

(continued...)

In determining what constitutes the industry or industries producing the like or directly competitive product, the Commission traditionally has taken into account such factors as the physical properties of the article, customs treatment, where and how the article is made (e.g., in a separate facility), uses, and marketing channels.[11] Each of the factors is relevant, but the weight given to each factor will depend upon the facts in the particular case and whether the Commission is applying a like product analysis or a directly competitive product analysis, or both. If there are identifiable domestic producers of a product that is "like" the imported product, the Commission is not required to look further for an industry producing products that are "directly competitive" but not "like" the imported products.[12] The Commission traditionally has looked for clear dividing lines among possible products, and has disregarded minor variations.

Arguments of the parties. Petitioners argued that domestically produced lamb meat is "like" imported lamb meat in terms of its inherent or intrinsic characteristics, within the meaning of the term "like" in the legislative history of the Trade Act.[13] Petitioners also cited the Commission's findings in a 1981 countervailing duty investigation *(Lamb Meat from New Zealand*) in which the Commission found there to be "no significant differences" between imported and domestic lamb meat in characteristics and uses, even though most imported lamb at that time was shipped frozen and virtually all domestic lamb was fresh or chilled.[14] Respondents for the most part did not contest petitioners' claim that domestic lamb meat is "like" the imported lamb meat. Nevertheless, several respondents emphasized certain differences between domestic and imported lamb meat.[15] Petitioners also argued that domestically produced live lambs are "directly competitive with" imported lamb meat.[16] Meat and Livestock Australia argued that live lambs are not "like or directly competitive" with lamb meat.[17]

Finding. We find that domestic lamb meat is "like" the imported lamb meat, in that it is substantially identical in inherent or intrinsic characteristics (*i.e.,* materials from which made, appearance, quality, texture, etc.). In terms of physical properties, the domesticated sheep and lambs in the United States,

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[10] (...continued)

> An imported article is "directly competitive with" a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

While we do not apply section 601(5) in our finding regarding like or directly competitive article, we note that the Commission has developed a practice over the years of taking into account the impact of the subject imports on producers of a raw input into a processed product when evaluating the effects of imports on the producers of the processed product, and vice versa. This is discussed in the subsequent section on domestic industry.

[11] *See, e.g.,* Views of the Commission in *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-9.

[12] *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-8.

[13] Petitioners' prehearing brief on injury, at 4-5.

[14] Petitioners' prehearing brief on injury, at 3-5, citing *Lamb Meat from New Zealand*, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 (Nov. 1981).

[15] While agreeing that imported and domestic lamb meat are "like" each other in a technical sense, Meat New Zealand argued that competition between imported and domestic lamb meat was "at most indirect" because of distinguishing attributes such as physical size, taste, cut, pack form, labeling, and marketing. Posthearing brief on injury of Meat New Zealand, at 10-13. *See also* testimony of Frances Cassidy, CEO, North America, Meat and Livestock Australia, transcript at 204-05, stating that domestic lamb, because it is a grain-fed product and USDA graded, competes at a different level in the U.S. market than fresh Australian range lamb.

[16] Petitioners' prehearing brief on injury, at 5-6; and petitioners' posthearing brief on injury, at 4.

[17] Posthearing brief on injury of Meat and Livestock Australia, at 8-10.

Australia, and New Zealand all belong to the same subfamily, Ovinae, which are hollow-horned ruminants known as "ovines."[18] The imported and domestic lamb meat sold in the United States is all from animals that fall within a similar definition of "lamb" -- an immature ovine, usually under 14 months of age, that has not cut its first pair of permanent incisor teeth.[19]

We find the differences between imported and domestic lamb meat alleged by respondents, to the extent that they exist, to be limited. While most domestic lamb meat traditionally has been sold as fresh or chilled and imported lamb meat was sold frozen, imported lamb meat increasingly enters as fresh or chilled.[20] Thus, domestic and imported lamb are to a large extent sold in the same form.[21] The majority of respondents (10 of 16) to the Commission's purchasers' questionnaire reported that the grades, cuts, and sizes enumerated in the survey were available from both importer and domestic sources.[22] Further, evidence regarding whether domestic or imported lamb meat was superior in certain attributes was inconclusive, and some of the reasons given for preferring one over the other had to do with such considerations as price and supply, rather than the factors (physical properties, customs treatment, and where and how a good is made) on which the Commission places principal reliance for this aspect of its determination. Some purchasers preferred lamb meat from one source or another for various reasons, such as flavor, size, consistency, quality, reliable supply, and price, but there was no clear pattern of purchasers considering lamb meat from one source to be a superior product.[23]

We also find that domestic and imported lamb meat have the same uses. The majority of respondents to the Commission's purchaser questionnaire reported that imported and domestic lamb meat are used similarly--14 of 16 said that U.S. and Australian lamb meat are used similarly, and 8 of 12 said that U.S. and New Zealand lamb meat are used similarly.[24] Nine of 16 responding purchasers said that fresh, chilled, and frozen lamb meat are used in the same way.[25]

Domestic and imported lamb meat is generally sold through the same channels of distribution. Although percentages vary, significant portions of both domestic and imported lamb meat are sold through distributors, retailers, and food services.[26] Slightly more than half of responding purchasers reported that there is no relevant difference in the marketing efforts of U.S. suppliers and importers.[27]

For the foregoing reasons, we find the domestic product "like" the imported lamb meat is domestically produced lamb meat.

Domestic industry

Statutory framework and Commission practice. The term "domestic industry" is defined in section 202(c)(6)(A)(i) of the Trade Act to mean "the domestic producers as a whole of the like or directly

[18] Report at II-4.

[19] The United States, Australia, and New Zealand apply similar definitions. Report at II-6-8.

[20] Fresh or chilled lamb meat accounted for *** percent of lamb meat imports in 1997, and were projected to account for slightly over *** percent in 1998, as compared with *** percent in 1993. Tables 24, 25, 29, 30, report at II-40, II-47-48 (Australia, New Zealand).

[21] No party argued that fresh, chilled, and frozen lamb meat should be considered to be separate like products.

[22] Report at II-72.

[23] Report at II-72.

[24] Report at II-71-72.

[25] Report at II-72.

[26] Report at II-17-18.

[27] Report at II-71.

competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article."[28]

Most section 201 cases involve firms and workers producing a product at the same stage of production as the imported article. However, in some instances firms and workers at an earlier stage of processing have accounted for a significant part of the value of the product and have been either the primary proponent or a strong supporter of relief.[29] Unlike the antidumping and countervailing duty provisions in title VII of the Tariff Act of 1930, section 201 does not address the issue statutorily. Over the years the Commission generally has taken an approach similar to that developed, and later codified, under title VII.[30] Under that approach, the Commission includes producers of the raw product in the industry producing the processed product if it finds (1) there is a continuous line of production from the raw to the processed product, and (2) there is substantial coincidence of economic interest between the growers and the processors.[31]

Arguments of the parties. Petitioners argue that the domestic lamb meat industry should be defined to include lamb growers and feeders, and lamb meat packers and processors. They assert that each of these industry segments represents a portion of the overall production process.[32] They maintain that growers and feeders are "the heart of the lamb meat industry," and that without them the remainder of the U.S. lamb meat industry, the packers and breakers, cannot be sustained.[33] They claim that this is how the Commission defined the industry in the 1981 CVD case on lamb meat,[34] and how the Commission has defined the industry in prior section 201 cases involving processed products where domestic growers or producers accounted for a significant part of the value of the processed product (citing *Apple Juice*, *Certain Canned Tuna Fish*, and *Honey*).[35]

Respondents argued that the domestic industry should be limited to lamb meat packers and breakers and exclude lamb growers and feeders.[36] Meat and Livestock Australia compared the facts in the current lamb case to those in the 1989 countervailing duty case of *Fresh, Chilled, or Frozen Pork from Canada*,[37] in

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[28] Section 202(c)(6)(A)(i).

[29] *See, e.g.,Certain Canned Tuna Fish*, Inv. No. TA-201-53, USITC Pub. 1558 (Aug. 1984). The petitioners included, *inter alia*, two labor unions representing fishermen and the American Tuna Boat Association.

[30] 19 U.S.C. 1677(4)(E).

[31] *See Fresh Tomatoes and Bell Peppers*, Inv. No. TA-201-66, USITC Pub. 2985 (Aug. 1996), at I-9-10; *Certain Canned Tuna Fish*, Inv. No. TA-201-53, USITC Pub. 1558 (Aug. 1984), at 5-7; *Apple Juice*, Inv. No. TA-201-59, USITC Pub. 1861 (June 1986), at 5-10; and *Honey*, Inv. No. TA-201-14, USITC Pub. 781 (June 1976), at 7. *See also Mushrooms*, Inv. No. TA-201-43, USITC Pub. 1089 (Aug. 1980), at 13-14 (applying these same factors, but declining to include producers of the raw product).

[32] Petitioners' prehearing brief on injury, at 10.

[33] Petitioners' posthearing brief on injury, at 4.

[34] *See, e.g.,* petitioners' posthearing brief on injury, at 5, citing *Lamb Meat from New Zealand*, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 (Nov. 1981).

[35] Petitioners' prehearing brief on injury, at 3-11.

[36] Posthearing brief on injury of Meat and Livestock Australia, Ltd., at 2; posthearing brief on injury of Lamb Importers' Committee, at 3; posthearing brief on injury of Transhumance Holding Company, Inc., at 11; and posthearing brief on injury of Foodcomm International, at 2.

[37] *Fresh, Chilled, or Frozen Pork From Canada*, Inv. No. 701-TA-298 (Final), USITC Publication 2218 (Sept. 1989).

which the Commission found that hog growers should not be included in the domestic industry with pork packers because the two groups had divergent interests.[38]

Finding. We find that the domestic lamb meat industry includes the growers and feeders of live lambs as well as packers and breakers of lamb meat.[39] The evidence clearly establishes a continuous line of production from a raw product, live lambs, to the processed product, lamb meat. In the United States, most sheep and lambs are meat-type animals kept primarily for the production of lambs for meat.[40] Lambs are generally born in the spring and range fed until the fall. Except for lambs withheld for breeding purposes, virtually all meat-type lambs are shipped to feeders in the fall, where they are fed for between 30 and 120 days.[41] They are then generally shipped to lamb packers for slaughter.[42] Packers then either further process the lamb into primal, subprimal, or retail cuts, or ship the carcasses to breakers who perform a similar processing function.[43] The cuts are then sold to nonbreaker wholesalers or retail outlets.[44]

There is also evidence of a coincidence of economic interests between lamb growers and processors. The value added by lamb growers and feeders (*i.e.,* the value of slaughter-ready live lambs) accounts for about 88 percent of the wholesale cost of lamb meat.[45] Thus, packers and breakers can be viewed largely as finishers of products for which the vast majority of value has already been created by growers and feeders. Packers' and breakers' operations are therefore highly affected by the supply and quality of the live lambs produced by growers and feeders.

Some lamb operations are vertically integrated, which also supports a finding of a coincidence of economic interests between different industry segments. For example, there are some growers who engage in both feeding and slaughtering of lambs.[46] Transhumance, which is a major domestic lamb packer, owns a breaker operation and owns Superior Farms, which is a lamb feeder.[47]

While the main grower and feeder associations were co-petitioners, packers' and breakers' support for the petition was mixed. Two packers, including Iowa Lamb, the largest packer whose operations are devoted exclusively to lambs, and one breaker were co-petitioners. ***. Transhumance, which also imports fresh, chilled, and frozen lamb meat from Australia and New Zealand, opposed the petition.[48] Of the breakers responding, ***.[49]

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[38] Posthearing brief on injury of Meat and Livestock Australia, at 10-14.

[39] Having found that the like or directly competitive product consists of live lamb and lamb meat, Commissioner Crawford further finds that the domestic industry consists of live lamb growers and feeders, and lamb meat packers and breakers. No party has alleged that growers and feeders should not both be included as producers of live lamb and Commissioner Crawford finds no convincing evidence to the contrary. Likewise, no party has alleged that packers and breakers should not both be included as producers of lamb meat and Commissioner Crawford finds no convincing evidence to the contrary.

[40] Report at II-4.

[41] Report at II-11, II-13.

[42] Report at II-14.

[43] Report at II-14-15.

[44] Report at II-15. We note that this line of production yields only one principal end product, lamb meat. During the period of investigation, lamb carcasses accounted for between *** percent and *** percent of the value of packers' net sales; pelts and offal accounted for the remaining portion. *See* Table 16, report at II-33.

[45] Report at II-12, citing the petition at 6.

[46] Report at II-12.

[47] Report at II-14.

[48] Report at II-14, n. 52.

[49] Internal staff compilation.

There is also evidence that the price of lamb meat affects all four industry segments similarly--that is, when processors do well, growers and feeders also benefit, but when processors confront lower prices, they pass the lower prices back to feeders and then growers, and all suffer to some extent. As described below, all four segments suffered financially over the period of investigation, and all experienced significant declines in the unit value of their sales at the end of the period. No representatives in any of the four industry segments testified that the economic interests of packers and breakers diverged from those of growers and feeders.[50]

Regarding Meat and Livestock Australia's argument comparing the current case to the 1989 countervailing duty case of *Fresh, Chilled, or Frozen Pork from Canada*,[51] the facts in the current case are distinguishable. First, the finding in *Pork* refers to the pork "cycle," at the peaks and valleys of which growers and processors tend to suffer or benefit inversely. The evidence before us in this investigation does not suggest the existence of a "lamb cycle," and no party has argued that such a cycle exists. Second, the finding in *Pork* refers to an inverse relationship between the profitability of the packers and growers. While the impacts of price changes on profitability in the various segments of the lamb industry can be staggered in time, price changes impact all four segments in a similar manner.

In sum, we find that the domestic industry producing lamb meat includes the growers and feeders of live lambs and the packers and breakers of lamb meat.

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[50] For example, one rancher testified that lower import prices forced processors to reduce prices for the carcasses they bought from the packers, who in turn had to reduce the prices they paid to feedlots for live lambs. He said that because feedlot operators sold their lambs in the spring of 1998 for less than they paid for them in the fall of 1997, they had to reduce the price they could pay for lambs in the fall of 1998. Thus, lower import prices "forced the entire U.S. lamb meat industry in successive waves to substantially reduce the prices they could pay for their lamb." Testimony of Loren Moench, transcript at 38-39. *See also* similar testimony from Harold Harper, owner of a feedlot operation, transcript at 31-32; and Joseph Casper, Vice President, Chicago Lamb & Veal Co., transcript at 68-69. A lamb packer testified that lower cost imports had caused his firm to lose sales and to operate at a lower rate of capacity utilization, and that this had hurt profits; he said that the eventual effect will be the closing of plants and a decrease in domestic herds and the number of ranchers. Joseph Casper, Vice President, Chicago Lamb & Veal Co., transcript at 22-23, 63-64.

Subsequent to the Commission's hearing, Transhumance asserted that the domestic industry should consist only of packers and breakers, but did not explain the basis for this position or otherwise claim a divergence in economic interests between the different types of entities. Posthearing brief on injury of Transhumance at 11.

[51] *Fresh, Chilled, or Frozen Pork From Canada*, Inv. No. 701-TA-298 (Final), USITC Publication 2218 (Sept. 1989). Posthearing brief on injury of Meat and Livestock Australia, at 10-14.

Increased imports

Statutory framework. The first of the three statutory criteria is that imports must be in "increased quantities." Under section 202 of the Trade Act, imports have increased when the increase is "either actual or relative to domestic production."[52] Because section 202 is a global safeguard law, the Commission considers imports from all sources in determining whether imports have increased. In investigations under section 202, the Commission traditionally has considered import trends over the most recent 5-year period as a framework for its analysis, but can consider longer or shorter periods as it deems appropriate. There is no minimum quantity by which imports must have increased. A simple increase is sufficient.

Finding. Before considering the issue of increased imports, we first address a technical issue of how to ensure comparable data for imports and domestic production. The issue arises because domestic production is measured at the packer stage when the meat is in carcass form, whereas most imports are in a more finished form, including in the form of boneless lamb products. USDA has published conversion factors that account for the loss of weight from deboning, so that both domestic and imported lamb quantities can be reported as pounds of "carcass-weight equivalents."

Petitioners proposed a different set of conversion factors for both boneless and bone-in imports, claiming that current USDA factors did not adequately capture the weight loss that occurs in processing carcasses into more finished lamb products.[53] Petitioners' proposed conversion factors would have resulted in higher import volumes and lower import unit values.

USDA, after reviewing petitioners' conversion factors, expressed the view that the mix of imported lamb meat products had not changed sufficiently in recent years to warrant a change in its factors, and that its current factors continued to provide the best means of estimating carcass-weight equivalents.[54] Moreover, petitioners submitted no studies and little other empirical information supporting their preferred conversion factors. We have applied the USDA conversion factors as the best available evidence.

We find that imports have increased both in actual terms and relative to domestic production. Commerce data converted to carcass weight equivalents using USDA conversion factors indicate that imports increased by nearly 50 percent during the period of investigation, as follows: 41.0 million pounds in 1993, 38.7 million pounds in 1994, 43.3 million pounds in 1995, 50.7 million pounds in 1996, and 60.4 million pounds in 1997.[55] Imports also increased between January-September 1997 and January-September 1998, from 46.1 million pounds to 55.1 million pounds.[56] The ratio of imports to domestic production rose continuously during the period of investigation, from 12.5 percent in 1993 to 24.1 percent in 1997. The ratio rose further in January-September 1998 to 30.5 percent, as compared with 24.6 percent in the same period in 1997.[57]

Serious injury or threat of serious injury

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[52] Section 202(c)(1)(C).

[53] USDA uses conversion factors of 1:1.52 for boneless imports, and 1:1 (*i.e.,* no conversion) for bone-in imports. Petitioners proposed factors of 1:2.13 and 1:1.43 for boneless and bone-in imports, respectively. Prehearing brief of petitioners at 17.

[54] See discussion in report at II-18, n. 74.

[55] Based on data in table 7, report at II-21.

[56] Id. Monthly import data through November 1998 were made available to the Commission just prior to our vote on injury. October and November imports were higher than in any other previous month in 1998 except March, which is traditionally a high-volume month due to the Easter holiday.

[57] Table 7, report at II-21.

Statutory framework. The second of the three statutory criteria is whether the domestic industry is either seriously injured or threatened with serious injury. Section 202(c) of the Trade Act defines "serious injury" as "a significant overall impairment in the position of a domestic industry,"[58] and "threat of serious injury" as "serious injury that is clearly imminent."[59]

The statute sets out the economic factors that we are required to take into account. With respect to serious injury, we must consider: (1) a significant idling of productive facilities in the domestic industry, (2) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and (3) significant unemployment or underemployment within the domestic industry. With respect to threat of serious injury, we must consider: (1) a decline in sales or market share, a higher and growing inventory, and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry; (2) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and (3) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.

We are not limited to the above-listed factors, and consider all economic factors that we find relevant. The presence or absence of any of the statutory factors is not "necessarily dispositive" of whether there is serious injury or the threat of serious injury.[60]

Finding. As described below, we find that the domestic industry is threatened with serious injury that is clearly imminent.[61]

–Information in this investigation

Two issues relating to the data concerning the health of the industry warrant discussion. First, we have obtained and used data both from USDA and Commission questionnaires. USDA publishes annual figures on the domestic lamb slaughter and on the number of lamb-growing establishments. These data provide more comprehensive industry coverage than our questionnaire responses, and so we have relied on USDA data where possible. For other industry indicators, most notably many financial indicators, there are no USDA or other secondary source data, so we relied on our questionnaire responses for these other indicators.

In relying on questionnaire data, we note that such data on production and shipments from all industry segments generally show much more positive trends than do the USDA data. For example, USDA data show that lamb slaughter declined 23 percent from 1993 to 1997, whereas packers' questionnaire data

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[58] Section 202(c)(6)(B).

[59] Section 202(c)(6)(D).

[60] Section 202(c)(3).

[61] The Lamb Importers' Committee argued that the Commission must find each sector of the domestic industry to be seriously injured or threatened with serious injury in order to find that the injury criterion is satisfied. Posthearing brief on injury of the Lamb Importers' Committee of the Meat Importers Council of America, Inc., at 4. We disagree. We must determine whether there is serious injury or threat thereof to a domestic industry, which the statute defines as "domestic producers *as a whole* of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article." Section 202(c)(6)(A)(i) (emphasis added). However, as described below, in determining whether the industry as a whole is seriously injured we have examined data and other information relating to the individual sectors. Such an approach was the most appropriate way to examine the data to avoid double counting or the combining of data expressed in different forms (e.g., shipments vs. production). While we find that all sectors show evidence of a threat of serious injury, we recognize that the economic effect of the increase may manifest itself in different ways and at different times in the four different sectors.

on production of lamb meat show only a *** percent decline over that same period.[62] Similarly, despite USDA's report of the loss of nearly 20,000 lamb-growing establishments over the period, Commission data show a slight *increase* in shipments, employment, and net sales over the period.[63] [64] Thus, questionnaire data likely represent a set of entities that are performing better than the lamb meat industry as a whole. A main reason for this is that our questionnaire data have a survivorship bias in that we did not obtain responses from those establishments that exited the market. Indeed, it stands to reason that those establishments that survive are relatively more competitive for a variety of reasons.

We note that the sheer size and nature of the grower segment (there were over 70,000 growers in 1997) made it impossible to canvass a large percentage of the industry or even to develop the kind of statistically valid sample used for smaller, less dispersed industries. To obtain financial and other data on grower operations, we sent questionnaires to 110 firms and individuals believed to be among the larger growers of lambs. We received usable data from 57 firms or individuals accounting for an estimated 6 percent of domestic lamb production.[65]

While we do not place decisive weight on the questionnaire data obtained from growers, we believe it is appropriate to take these data into account along with all the other data we have obtained in the investigation to obtain the most accurate picture of this industry over the period. As noted above, a comparison of questionnaire data and USDA data suggests that questionnaire responses from domestic growers, if anything, reflect that those who responded are doing better than the industry as a whole. Second, the overall trends in grower questionnaire data do not differ markedly from the trends in the questionnaire data we have obtained from feeders, packers, and breakers, for which our questionnaire coverage was significantly higher.[66] Finally, we note that none of the respondents argued that the data were biased or inaccurately portrayed the condition of growers. Instead, they stated that these data showed that lamb growers "did remarkably well throughout the period of investigation."[67]

–Overview of the domestic lamb meat industry

The parties generally agreed that the U.S. lamb industry has been in a long state of decline and has confronted a variety of problems and challenges over the years, ranging from changing consumer preferences to Congress' decision in 1993 to phase out federal payments made to growers and feeders under the Wool Act.[68] These changes have affected all segments of the industry, contributing to a decline in the number of firms engaged in the growing and feeding of lambs, and in the packing and breaking of lamb meat. While not truly healthy during any part of the period of investigation, by 1996 per capita lamb/mutton consumption

[62] Compare report at II-17, table 5, with report at II-22, table 8.

[63] Compare report at II-12, with table 1, report at II-12, table 11, report at II-23, and table 12, report at II-25. This also reflects the consolidation in the industry following rescission of the Wool Act (the National Wool Act of 1954) (see further discussion below).

[64] USDA census figures indicate that the number of lamb-producing establishments fell from 93,280 in 1993 to 74,710 in 1997, or by 20 percent.

[65] Report at II-11.

[66] *See* description below under "analysis of factors."

[67] Posthearing brief of Meat New Zealand at 4.

[68] The Wool Act of 1954 provided direct support payments to growers and feeders. In late 1993, Congress passed legislation to reduce payments under the Wool Act to 75 percent of traditional levels in 1994, 50 percent of traditional levels in 1995, and zero starting in 1996. Report at II-77-78.

appeared to be stabilizing to some degree,[69] and lamb prices were generally higher,[70] offsetting in part the loss of the Wool Act payments in that year. In mid-1997, economic indicators relating to the industry began to fall. As described below, the deterioration in these indicators that occurred after 1996 confirms that the industry is threatened with serious injury.

–Analysis of factors

The share of the domestic market held by the U.S. industry, as measured both in quantity and value, was steady during the first part of the period of investigation, and then declined starting in 1996 as imports increased. In quantity terms, the share held by the domestic industry was 88.8 percent and 88.6 percent, respectively, in 1993 and 1994.[71] It then fell to 86.5 percent of the U.S. market in 1995, 83.4 percent in 1996, 80.3 percent in 1997, and 76.7 percent in January-September 1998.[72] In terms of value, the domestic lamb meat industry's market share decreased by an even greater ratio, from 88.1 percent in 1993 to 75.2 percent in 1997 and 69.3 percent in January-September 1998.[73]

USDA data show a substantial decline in U.S. lamb meat production, from 326.7 million pounds in 1993 to 250.8 million pounds in 1997, a decline of over 23 percent. Production in January-September 1998 was 180.7 million pounds, 3 percent below the January-September 1997 figure of 187.1 million pounds.

These USDA figures indicate a comparable decline of 24 percent in the volume of industry shipments from 1993 to 1997, and a slight rise in January-September 1998 as compared to the same period in 1997.[74] In terms of value, shipments declined from $441.0 million in 1993 to $417.4 million in 1997, a decrease of approximately 5 percent, then dropped by over 13 percent, from $297.2 million to $256.6 million, in January-September 1998 as compared to January-September 1997.[75] The recent 13 percent decline in shipment values reflect falling lamb meat prices that began in late 1997 and continued in 1998.

Consistent with its figures showing a decline in lamb slaughter, USDA found a 20 percent decrease in the number of lamb-growing establishments from 1993 (93,280 establishments) to 1997 (74,710 establishments).[76] While USDA maintains no official employment statistics, the sharp declines in slaughter and in the number of establishments, taken together, suggest that employment indicators – such as number of workers and total hours worked – also fell during the period.[77]

We note that questionnaire data from all industry segments generally showed more positive trends on such indicators as production, shipments, and employment than USDA data.[78] As discussed above, since

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[69] Table 36, report at II-69. The table shows lamb and mutton consumption. Mutton consumption is believed to be small relative to lamb consumption.

[70] Report at II-75-76.

[71] Table 32, report at II-50.

[72] Table 32, report at II-50.

[73] Table 32, report at II-50.

[74] Report at C-3.

[75] Report at C-3.

[76] Report at II-11.

[77] There is no evidence of any significant changes in the productivity of labor during the period. It is therefore reasonable to assume that the decline in production has led to a decline in hours worked.

[78] For example, production reported by packers in questionnaire responses fluctuated during the period of the investigation, and ultimately was approximately *** percent lower in 1997 than in 1993. Table 8, report at II-22. Production reported by breakers in their responses trended upwards during the period of investigation. Table 3, report at II-16. Production reported by feeders held steady through 1996, and then declined sharply in 1997 and January-September 1998. Table 2, report at II-13. Production reported by growers in questionnaires rose somewhat during the period of investigation. Table 1, report at II-12.

(continued...)

USDA data are more comprehensive, where possible we have relied more heavily on USDA data and have given less weight to questionnaire data. These USDA data show an industry that has experienced a contraction over the period of investigation. Data on other industry indicators, in particular questionnaire data on the declining financial condition of the industry, exacerbated by declining lamb meat prices at the end of the period of investigation, show that the domestic industry is threatened with serious injury--that is, that serious injury is imminent.

With respect to industry profitability, questionnaire responses by packers and breakers show a significant decline in the value of net sales and in operating income. The value of net sales of packers and breakers fell by more than *** percent between 1996 and 1997, and net sales fell by more than *** percent between January-September 1997 and January-September 1998.[79] Operating income for most packers and breakers was at the lowest point at the end of the period of investigation in 1997 and January-September 1998.[80] Representatives of packer and breaker firms reported having to reduce prices, sometimes selling at a loss in order to compete with low-priced imports.[81]

Feeders experienced even greater financial difficulties. The net sales value of slaughtered lambs, after having trended upward in recent years, fell sharply, by 29 percent, in January-September 1998 from the level in the comparable period of 1997.[82] After having operated at a profit in 1995 and 1996, feeders operated at a loss in 1997 and at a substantial loss in the first 9 months of 1998.[83] For the first 9 months of 1998, feeders reported that expenses exceeded income by 8.4 percent, which was by far the largest loss experienced by feeders during the period of investigation.[84] The clear majority of feeders reporting financial data reported that they operated at a loss during the first 9 months of 1998.[85]

Lamb sales by growers rose slightly in quantity during the period of investigation and were slightly higher in the first 9 months of 1998 than in the comparable period of 1997.[86] The net sales value on lamb and related sales (e.g., wool and related by-products) trended upwards during 1993-97, but net sales value in the first 9 months of 1998 was significantly below (about 19 percent) the level of the net sales value of the comparable period of 1997, notwithstanding the increase in sales quantity between the two interim periods.[87] While the aggregate data for the responding growers showed an overall profit during the entire period of the investigation, profits as a percentage of net sales fell from 1995 to 1996 to a very low level (0.7 percent), and

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[78] (...continued)

Similarly, with respect to employment-related indicators, the number of production and related workers employed by growers that submitted questionnaire responses actually increased by 9 percent between 1993 and 1997 and increased by 4 percent in interim 1998. The hours worked by such employees increased by 10 percent during 1993-97 and declined by 2 percent in interim 1998. Hourly wages increased from $4.47 per hour in 1993 to $4.64 per hour in 1997. Hourly wages paid to production and related workers by the feeders were slightly higher than those paid by the growers; otherwise, the trends in employment, hours worked, and wages are similar. Report at II-23.

[79] Tables 16-20, report at II-33-34.

[80] Tables 16-20, report at II-33-34.

[81] Transcript at 22 (Mr. Casper), 25 (Mr. Brennan).

[82] Table 15, report at II-30.

[83] Table 15, report at II-30.

[84] Table 15, report at II-31.

[85] Table 15, report at II-32.

[86] Table 12, report at II-25. As noted above, the fact that growers' questionnaire responses showed increasing sales while USDA data showed significant declines in packer shipments and the number of growing establishments suggests that the questionnaire respondents were performing more favorably than the growing segment as a whole.

[87] Table 12, report at II-25.

remained at a diminished level (2.8 percent) in 1997. In each year, a significant portion of individual growers reported that they had operated at a loss.[88]

We find that financial performance across all industry segments has worsened due largely to falling prices. Commission questionnaires show a marked decline in prices for various lamb meat products beginning in mid-1997. Although prices recovered to some degree in 1998, prices remained depressed through September 1998, the end of the period surveyed. Weighted average U.S. delivered prices for virtually all of the products surveyed were substantially lower beginning with the third quarter of 1997.[89] In several instances prices for several of the products were 20 percent or more below comparable quarters in 1996 and early 1997.[90]

Questionnaire data with respect to other indicators -- capacity, capacity utilization, inventories, and productivity -- were mixed. Capacity reported by packers declined early in the period of investigation and then rose, but was still lower in 1997 than in either 1993 or 1994.[91] Reported capacity was higher in January-September 1998 than in January-September 1997.[92] Capacity utilization rose irregularly through 1996, and then fell in 1997.[93] It was at its lowest level of the period of investigation, 73.5 percent, during January-September 1998, significantly below the January-September 1997 level of 85.7 percent.[94] Capacity reported by breakers rose significantly during the period of investigation and at a faster rate than production.[95] As a result, capacity utilization declined significantly.[96]

Productivity for feeders and growers remained relatively constant throughout the period of investigation.[97] Data on direct labor costs compiled from questionnaire responses from packers and breakers indicate that their productivity remained relatively constant over the period of the investigation.[98]

End-of-period inventories reported by U.S. packers rose slightly during the period, but remained under *** percent throughout the period of investigation.[99] Inventories are not particularly relevant in this case because fresh lamb meat is perishable and can be inventoried for only a limited time.

We also note that a number of firms in the industry reported difficulties in generating adequate capital to finance the modernization of their domestic plants and equipment. A significant number of growers and feeders reported cancellation or rejection of expansion plans, reductions in the size of capital investments,

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[88] Table 12, report at II-27-28. During January-September 1998, 9 of the 27 reporting growers operated at a loss, as compared with 7 of the 27 reporting in the comparable period of 1997. *Id.* In their questionnaire responses, growers expressed the view that low priced imports will erode profit margins, cause losses, and cause some growers to cease producing lamb. Report at F-4.

[89] Report at II-75-76.

[90] Report at II-75-76. Carcasses and products 6 and 7.

[91] Table 8, report at II-22.

[92] Table 8, report at II-22.

[93] Table 8, report at II-22.

[94] Table 8, report at II-22.

[95] Table 3, report at II-16.

[96] Table 3, report at II-16. Collection of capacity and capacity utilization data from growers and feeders was not practical. Growers' range capacity would likely have varied from ranch to ranch depending on land conditions. Feeder capacity also depends on a number of variables that are difficult to measure, including length of time that lambs are kept by the feeders, which may vary with market conditions.

[97] Data compiled from questionnaire responses.

[98] Tables 16, 18, and 20, report at II-33-34.

[99] Table 10, report at II-22.

bank rejection of loans, reduced credit ratings, and difficulty in repaying loans.[100] Also, firms in the packer and breaker segments reported difficulties in recouping new investments in plant and equipment and in repaying loans.[101] These difficulties are consistent with the worsening financial condition of the domestic lamb meat industry described above.[102]

In view of the declines during the period of investigation in the domestic industry's market share, production, shipments, profitability, and prices, among other difficulties that the domestic industry is facing, we conclude that it is threatened with imminent serious injury.

Causation

Statutory framework. Under the third statutory criterion we must determine whether the subject article is being imported in such increased quantities as to be a "substantial cause" of serious injury or threat of serious injury. The term "substantial cause" is defined in section 202(b)(1)(B) to mean "a cause which is important and not less than any other cause."[103] Thus, for purposes of this determination, the increased imports must be both an important cause of the threat of serious injury *and* a cause that is equal to or greater than any other cause.

In determining whether increased imports are a substantial cause of the threat of serious injury, the statute directs that we take into account all economic factors that we find relevant, including but not limited to ". . . an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers."[104] The statute also directs that we consider "the condition of the domestic industry over the course of the relevant business cycle." We may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury.[105] Also, the statute directs that we examine factors other than imports that may be a cause of the threat of serious injury to the domestic industry and include such findings in our report. Neither the statute nor the legislative history rules out consideration of any other possible causes of injury.[106]

Finding. As described below, we find that increased imports of lamb meat are both an important cause of the threat of serious injury and a cause that is not less than any other cause. Thus, we find that increased imports of lamb meat are a "substantial cause" of the threat of serious injury to the domestic lamb meat industry under section 202(b)(1)(B). First, we describe several relevant conditions of competition.

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[100] Report at F-3.

[101] Transcript at 24-25 (Mr. Brennan); transcript at 22-23 (Mr. Casper).

[102] We discuss diversion of exports to the United States in the following section on causation.

[103] Section 202(b)(1)(B).

[104] Section 202(c)(1)(C).

[105] Section 202(c)(2)(A).

[106] The legislative history of the Trade Act includes examples of other causes "such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management," which, if found to be more important causes of injury than increased imports, would require a negative determination. *Trade Reform Act of 1974, Report of the Committee on Finance. . . on H.R.. 10710*, S. Rept. 93-1298, 93d Cong., 2d Sess. (1974), at 121.

–Conditions of competition

We have considered the economic characteristics of the domestic lamb meat market for purposes of our injury analysis. We note that the growth cycles make it extremely difficult to increase supply in the short-run. The production of lambs involves a relatively long process, and thus it can take several years for a grower to adjust desired flock size after unexpected price shocks.[107] Meat-type lambs have one principal use, meat production. Once a lamb has reached the desired weight and maturity it cannot be withheld from the market for very long without adversely affecting quality, and must go to slaughter within a short time regardless of market price.[108] Thus, growers and feeders cannot easily adjust their production by diverting mature lambs to other uses or by withholding animals from slaughter for a lengthy period of time. Growers and feeders are therefore likely to experience injury should prices fall rapidly. Over longer periods of time, however, domestic producers have more ability to adjust flock size in response to long-term price trends.[109]

Demand at any level of lamb meat production is ultimately driven by consumer demand. Consumer demand for lamb in the United States has fallen steadily since World War II as consumers have shifted their consumption towards other products.[110] During the period of investigation, domestic apparent consumption of lamb meat fell sharply from 1993 to 1996, but has stabilized since then.[111] We do not expect domestic consumer preferences to change significantly in the imminent future, though demand does seem somewhat responsive to price changes. In such a market, an increase in imports to the United States would likely cause domestic producers to lose some sales, to lower prices to attempt to maintain sales, or both.

We find that imported and domestic lamb are somewhat substitutable. Although respondents argued that imported lamb meat was distinguishable from domestic lamb meat in size, taste, and consistency of quality and supply, the record shows that imported and domestic products in fact became more similar during the period of investigation. Traditionally, virtually all domestic lamb meat sold in the domestic market was fresh or chilled, and most imported lamb meat was frozen. However, much of the increase in imports between 1995 and 1997 was in fresh or chilled lamb meat, which increased by 101 percent during that period, as compared to 11 percent for imports of frozen lamb meat.[112] Moreover, foreign exporters estimate that the major portion of their 1999 increase will be in fresh and chilled lamb meat.[113] In addition, there is evidence that imported cuts have become larger in size and more comparable to domestic cuts.[114] There is, nonetheless, evidence of differences between products from different sources.[115]

–Analysis of causation

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[107] For example, it takes up to 37-41 months to bring increased supply to market. Report at II-52.

[108] Report at II-56.

[109] Between 1993 and 1997, the standing flock size in the United States fell from 10.9 million to 7.9 million lambs. Report at II-53.

[110] Petitioners' prehearing brief on injury at 51; and *Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries*, Inv. No. 332-357, USITC Pub. 2915 (Aug. 1995), at 1-1.

[111] Apparent consumption declined significantly from 365.1 million pounds in 1993 to 305.3 million pounds in 1996, before rising slightly to 306.6 million pounds in 1997. Table 32, report at II-50. Domestic apparent consumption was about 4 percent higher in January-September 1998 than in the comparable period of 1997. Id. Per capita domestic lamb meat consumption has followed a similar trend, declining from 1.3 pounds in 1993 to 1.2 pounds in 1994 before leveling off at 1.1 pounds in 1995, 1996, and 1997. Table 36, report at II-69.

[112] Report at II-20.

[113] Tables 24-25, 29-30, report at II-40, II-47-48.

[114] Transcript at 19-20 (Casper).

[115] Report at II-70-72.

Imports reached record levels in 1996, and increased another 19.2 percent in 1997.[116] Imports will exceed even those record levels based on annualized data from interim 1998. Australian and New Zealand firms submitting questionnaire responses to the Commission themselves project that their exports to the United States will increase further in 1999. These firms' 1999 projections were 21 percent above projections for full year 1998.[117] They estimate that the major portion of the increase will be in fresh and chilled lamb meat,[118] which is the primary form in which U.S. lamb meat is marketed.

The Australian industry association states that the questionnaire projections from Australian exporters are overly optimistic, and that decreased overall lamb meat production in Australia will limit exporters' ability to obtain necessary supplies for export to the United States.[119] The industry noted that only about 25 percent of Australian lamb meat is exported and that about 80 percent of lamb meat exported in 1997 went to growing non-U.S. markets, which it has no intention of abandoning.[120] It also cited flock limitations, product differences that limit its ability to supply the U.S. market, and the fact that most Australian plants are not accredited to produce lamb meat for export to the U.S. market.[121] As of the time of the Commission's vote on injury, the Australian Government had projected a 6 percent increase in exports to the United States.[122] The New Zealand Government and industry state that exporters' existing commitments to other markets – especially the European Union – will significantly limit the ability of New Zealand exporters to increase exports to the United States.[123] [124]

Increases in import volume are likely to have further negative effects on the domestic industry's prices, shipment volumes, and financial condition in the imminent future. With regard to prices, given the inability of domestic growers and feeders to reduce production in the short run, the increase in imports has caused prices to fall in the short run. The unit value of domestic, Australian, and New Zealand lamb meat dropped in interim 1998 as compared to interim 1997; over the same period imports (on an annualized basis) increased by the greatest amount of any year during the period of investigation.[125] Moreover, U.S., Australian, and New Zealand lamb meat prices were in most cases lower for the products surveyed in the

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[116] Report at C-3.

[117] Tables 24-25, 29-30, report at II-40, II-47-48.

[118] Tables 24-25, 29-30, report at II-40, II-47-48.

[119] Transcript at 206-07 (Ms. Cassidy). Cassidy said that the estimates of individual exporters were based on the assumption that they would be successful in obtaining the stock necessary to expand their exports, but that ultimately they would be competing in a market in which available stock was declining. Transcript at 207.

[120] Transcript at 165-66 (Ms. Cassidy).

[121] Transcript at 165-66 (Ms. Cassidy). Cassidy said that only 10 Australian plants are accredited as meeting the health and safety standards imposed by the U.S. and Australian governments and the product standards developed by the Australian industry. Transcript at 164-65.

[122] At the remedy hearing, the Australian Government updated its projection. Transcript of hearing on remedy at 160 (Mr. Shales).

[123] Prehearing brief on injury of Meat New Zealand, at 47-48; transcript at 144 (Mr. Bolger).

[124] Vice Chairman Miller and Commissioners Hillman and Koplan note that one would not expect foreign exporters to exaggerate their near-term future exports to the United States, since an overstatement may well not be in the exporters' interest. Thus, they have given weight to the exporters' projections in this investigation. However, even if the 1999 increase is somewhat less than the exporters project, they find that the increase will be substantial. In this regard, they note that the Australian Government itself has predicted an increase of between 5 and 10 percent in exports to the United States in 1999, despite also predicting a decline in overall Australian lamb meat production.

In any event, Vice Chairman Miller and Commissioners Hillman and Koplan note that, in view of the precarious condition of the domestic lamb meat industry and depressed prices, even a continuation of imports at current record-high levels would present a threat of serious injury.

[125] Figures 13-16, report at II-67-68; and table 7, report at II-21.

second half of 1997 and the first 3 quarters of 1998 than in comparable quarters in 1996 and the first half of 1997.[126] [127] Any further increases in the volume of imports would be expected to put further downward pressure on prices in the U.S. market.

With regard to market share, the share of the domestic market held by imports, as measured both in quantity and value, more than doubled during the period of investigation, from 11.2 percent in 1993 (as measured in quantity) to 23.3 percent in January-September 1998, and from 11.9 percent in 1993 (as measured in share of value) to 30.7 percent in January-September 1998.[128] Most of this increase occurred in 1997 and 1998.[129] The 1997 increase in imports of 9.7 million pounds was mirrored by a decline in U.S. lamb shipments of 8.4 million pounds, suggesting that imports captured market share directly from U.S. producers.

With regard to the domestic industry's financial condition, we found above that financial performance of the various segments worsened due to declining sales and falling prices, a result of the increase in imports. In addition, the increased imports directly captured market share from the domestic producers. Thus, the increase in imports is likely to have a negative impact on the industry's shipments, prices, and financial performance.

As required by the statute, we considered whether any other causes might be a more important cause of the threat of serious injury than increased imports. First, we examined whether termination of payments under the National Wool Act of 1954 ("Wool Act") might be a more important cause. Congress enacted legislation ending the Wool Act in 1993, and the support payments were phased out largely in 1994 and 1995,[130] before the increase in imports that began in 1996. Petitioners claim that the loss of the payments had been largely absorbed by the growers and feeders before the increase in imports. Respondents assert that the industry cannot be expected to absorb so quickly the effects of the loss of such a longstanding payment program.

We have no doubt that the loss of Wool Act payments hurt lamb growers and feeders and caused some to withdraw from the industry. We also believe that it is unrealistic to conclude that the effects of the termination of Wool Act payments had completely disappeared as of 1997. However, the industry had experienced some recovery since full termination in 1996,[131] and the effects of termination of Wool Act payments can be expected to recede further with each passing month. In addition, the termination of the Wool Act could only have had an indirect effect on the financial condition of the packers and breakers, who never received payments under the Wool Act.[132] We find that in the imminent future, the recent loss of Wool Act payments is a less important cause of the threat of serious injury than imports of lamb meat.

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[126] Tables 38-43, report at II-74-76.

[127] We note that the EU maintains a tariff-rate quota (TRQ) on imports of lamb meat, and its tariff on over-quota imports is considered to be prohibitive. The EU quota for Australia is a relatively small 18,650 metric tons. Report at I-63. New Zealand's quota is much larger, 226,700 metric tons, but has been filled in recent years. Report at II-38. The EU restrictions, together with the ongoing economic turmoil in Asia, two major lamb-consuming regions, greatly reduce the likelihood that Australia or New Zealand will ship substantial new quantities to the EU and possibly Asia. These factors may also explain why much of the recent growth in Australia's and New Zealand's exports has been directed to the United States market. *See* section 202(c)(1)(B)(iii) (threat factor of whether the United States is the focal point for diversion of exports due to restraints in third country markets).

[128] Table 32, report at II-50.

[129] Table 32, report at II-50.

[130] Report at II-77.

[131] For example, growers showed a small profit on their lamb operations in 1997 despite the absence of Wool Act payments. Table 12, report at II-25.

[132] Transcript at 23 (Mr. Casper).

We also considered whether competition from other meat products, such as beef, pork, and poultry, might be a more important cause of the threat of serious injury. Although such products appear to compete with lamb to a certain extent,[133] we find no evidence that such competition is a more important cause of future imminent serious injury than imports of lamb meat. As noted above, per capita consumption of lamb meat has been relatively steady since 1995.

We also considered whether increased input costs, alleged overfeeding of lambs, and increased concentration in the packer segment might individually be more important causes of the threat of serious injury than the increased imports. We find that they are not. Expenses for growers rose at a modest rate and then fell in January-September 1998.[134] Expenses for feeders increased at a faster pace but not at a dramatic pace.[135] Similarly, costs of inputs for packers and breakers rose moderately in line with production.[136] Thus, there has been no significant increase in input costs that explains the sharp decline in industry profits, and no increase is predicted in the imminent future.

Respondents allege that some U.S. feeders in 1997 held lambs unduly long in feed lots in order to maximize revenue while prices were high, and that these lambs went to slaughter on the heavy side and sold at lower prices, which pulled down other domestic prices.[137] Petitioners disagree, pointing out that the percentage of domestic lamb carcasses with higher fat content as measured by the USDA grading system was lower in 1997 than in 1993 and 1994.[138] Even if we accept respondents' arguments, these "fat" lambs would have accounted for no more than a small share of total domestic lamb production. In any event, respondents do not allege that overfeeding is currently taking place or represents a future threat.

We also considered whether concentration in the packer segment of the industry might be a more important cause of the threat of serious injury. USDA data indicate that nine domestic packing plants accounted for 85 percent of the sheep and lambs slaughtered in 1997.[139] However, petitioners claim that packer concentration has actually decreased over the past 5 years.[140] An undue level of concentration among packers would have suggested that they would have been sheltered from the effects of low-priced imports and would have been able to pass through lower prices more readily to feeders and growers. However, packers, like other segments of the lamb meat industry, experienced deteriorating profits in the latter part of the period of investigation and operated at a loss in January-September 1998.[141] Thus, we conclude that concentration in the packer segment of the industry is a less important cause of the threat of serious injury than increased imports.

Finally, we considered whether the failure to develop and implement an effective marketing program for lamb meat was a more important cause of the threat of serious injury, particularly in light of the repeal of the longstanding Wool Act payment program. While an effective marketing program to bolster domestic demand could have had an important impact on the industry, in view of the foregoing discussion, we do not find that failure to implement such a program is a more important cause of the threat of serious injury than increased imports.

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[133] Report at II-80.

[134] Table 12, report at II-25.

[135] Table 15, report at II-30.

[136] Tables 16, 18, 20, report at II-33-34.

[137] Report at II-80.

[138] Report at II-80.

[139] Report at II-14, n. 48.

[140] Petitioners' prehearing brief on injury, at 60.

[141] Table 16, report at II-33. *See also* transcript at 22 (Mr. Casper) (packers had difficulty pushing lower prices through to the feeders who provided them with lambs for slaughter).

In conclusion, we find that the increased imports are an important cause, and a cause no less important than any other cause, of the threat of serious injury to the domestic lamb meat industry. Our finding is based on the increase in imports that has already occurred, and which shows every sign of continuing, the increase in the share of the domestic market taken by imports, depressed domestic lamb meat prices due in large part to the increase in imports, and the high degree of likelihood that the increased imports will have a substantial negative effect on the volume or prices, or both, of the U.S. industry's lamb meat sales.

Finding with respect to NAFTA country imports

Statutory framework. Section 311(a) of the NAFTA Implementation Act provides that if the Commission makes an affirmative injury determination in an investigation under section 202 of the Trade Act, or if the Commission is equally divided, the Commission must also find whether--

> (1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and
>
> (2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

Section 311(b)(1) states that imports from a NAFTA country "normally" will not be considered to account for a substantial share of total imports if that country is not among "the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period." Section 311(c) defines "contribute importantly" to mean "an important cause, but not necessarily the most important cause." In determining whether imports have contributed importantly to the serious injury or threat, the Commission is directed to consider "such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports from a NAFTA country or countries."[142] Imports from a NAFTA country or countries "normally" will not be considered to contribute importantly to the serious injury or threat "if the growth rate of imports from such country or countries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period."[143] Petitioners stated that imports from NAFTA countries are not contributing importantly to the alleged serious injury and threat of serious injury.[144]

Finding. We find that imports of lamb meat from Canada and Mexico do not individually account for a substantial share of total imports of lamb meat and are not contributing importantly to the threat of serious injury. Imports from Canada accounted for less than 1 percent of total lamb meat imports in each year of the period of investigation.[145] At their highest level of the period of investigation, 209,000 pounds, in 1997, imports from Canada accounted for only 0.3 percent of total U.S. lamb meat imports.[146] The data show imports from Mexico in only one year during the period of investigation, 1995, accounting for less than 1 percent of total imports in that year.[147]

[142] Section 311(b)(2) of the NAFTA Implementation Act.

[143] Id.

[144] Petition, at 19.

[145] Report at II-18, n. 73.

[146] Report at II-18, n. 73.

[147] Report at II-18, n. 73.

VIEWS OF THE COMMISSION ON REMEDY[148]

Findings and recommendations

For the reasons set forth below, we find that the following remedy will address the threat of serious injury that we have found to exist and will be the most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. In structuring our proposed remedy, we have taken into account that the U.S. lamb industry is not currently experiencing serious injury, but rather is threatened with serious injury. Specifically--

(1) We recommend that the President impose a tariff-rate quota system, for a 4-year period, on imports of lamb meat that are the subject of this investigation, as follows (all weights are in terms of carcass-weight equivalents):

First year: 20 percent ad valorem on imports over 78 million pounds;

Second year: 17.5 percent ad valorem on imports over 81.5 million pounds;

Third year: 15 percent ad valorem on imports over 81.5 million pounds; and

Fourth year: 10 percent ad valorem on imports over 81.5 million pounds.

(2) We recommend that the President implement appropriate adjustment assistance measures, drawing on authorized programs at the U.S. Department of Agriculture and the U.S. Department of Commerce which provide specialized direct payments, research, and animal health programs, in such combination as to most effectively "facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." In this context, we recommend that the President look to the industry consultant's report[149] and its recommendations when considering adjustment assistance options.

(3) Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, we recommend that such imports be excluded from the tariff-rate quota; and

(4) We recommend that the tariff-rate quota import relief action not apply to imports of lamb meat from Israel, or to imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Introduction

Having determined that increased imports are a substantial cause of threat of serious injury to the domestic industry, we are required, pursuant to section 202(e)(1) of the Trade Act, to recommend action that

[148] Pursuant to section 330(d)(2) of the Tariff Act of 1930, the remedy finding of Chairman Bragg and Commissioners Crawford and Askey in this investigation will be treated as the remedy finding of the Commission by the President for purposes of section 203 of the Trade Act.

[149] PriceWaterhouseCoopers, *Revitalizing the American Lamb Industry: A Call to Action* (July 1998).

will address the threat of serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

In deciding what relief to recommend, we took into account: the considerations set forth in section 202(e)(5)(B) of the Trade Act, including the form and amount of action that will, in our view, prevent serious injury; the objectives and actions specified in the adjustment plan submitted by petitioners; information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested; and international negotiations that may be constructive in addressing the threat of serious injury and in facilitating adjustment. We begin our discussion with a brief description of the competitive conditions affecting the domestic lamb industry and follow with a brief discussion of the industry's adjustment plan and consultant's report.

Competitive Conditions

Market conditions. We have considered the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the next several years. During the period of investigation, 1993-98, the U.S. lamb industry experienced significant changes in market conditions.

- Consumption of lamb meat continues to be a minimal portion of U.S. protein meat consumption, approximately 0.7 percent of red meat consumption in 1998 and approximately 0.4 percent of meat consumption when poultry consumption is included.[150]

- A significant change in the United States lamb industry occurred with the repeal of the National Wool Act of 1954 ("Wool Act"), which provided support payments for shorn wool, mohair, and pulled wool from 1955-95. While the value of the lamb pelt (including its wool) is smaller than the value of the meat, Wool Act subsidies represent an important contribution to profit (15 to 20 percent). Elimination of Wool Act payments not only reduced sheep industry income, but also led to significant changes in the size of domestic lamb herds, as growers adjusted to the change in economic incentives.

- The global market has also changed. The major lamb meat exporting nations, Australia and New Zealand, provide increasing amounts fresh lamb meat products around the world. They have taken advantage of preservation technology, which has substantially increased the shelf life of fresh lamb products. This has allowed exporters to compete in a segment of the market previously reserved to home market producers.

- The substantial drop in pelt prices, particularly in Russia, a large importer of pelts, caused additional changes in world market conditions.

Demand conditions. U.S. consumption of lamb meat has been declining since the 1940's. Per capita lamb consumption in the United States has fallen from 4.0 pounds in 1950, to 1.1 pounds in 1997.[151] U.S. Department of Agriculture ("USDA") data indicate that total domestic lamb meat consumption decreased from 365 million pounds in 1993 to 305 million pounds in 1996, remained flat during 1997, and then increased in 1998 to approximately 320 million pounds. During this same period, Bureau of Labor

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[150] Report at II-71. 320 million pounds is used for 1998 lamb meat consumption, which is based on staff calculations from the most recently available U.S. Department of Agriculture data.

[151] Report at II-66 and II-69, table 36.

Statistics price data show a general increase in the inflation adjusted price of lamb meat. Lamb meat is the highest priced basic meat protein.[152] Demand at any level of lamb meat production is ultimately driven by final consumer demand at the retail level.[153] Although lamb meat is relatively more expensive than other protein choices, U.S. apparent consumption held steady and actually increased at the end of the period as prices fell, suggesting that final consumers of lamb meat are at least somewhat sensitive to its price level.

Supply conditions. The domestic supply of live lambs is the principal determinant of the domestic supply of lamb meat.[154] Present-year production can be maximized by slaughtering the entire lamb crop, although that would eliminate breeding stock for future production. Retained female lambs can begin breeding at approximately 19 months of age. The producer of live lambs has limited flexibility to respond to changes in price in a one-year period due to the lengthy production period. Over a longer period, however, a lamb grower can more easily adjust the size of the breeding flock, resulting in a larger or smaller supply of lamb meat. Restrictions on grazing land can also limit the producers' ability to adjust the size of the breeding flock to meet changing market conditions.

Market conditions of other sheep products, such as wool, can influence the supply of lambs. Currently, world prices for wool and lamb pelts are relatively low. In addition, payments made under the Wool Act were phased out largely in 1994-95. The elimination of these payments resulted in a contraction in the size of U.S. flocks.[155] Consequently, the domestic industry has experienced a steady decrease in lamb meat production over the period of investigation.

Import supply conditions. Since 1997, imports of lamb meat have increased while domestic production has declined. The increase in lamb meat imports resulted in a higher market share for importers. The United States accounted for 21.3 percent of Australian exports of lamb meat (shipped weight) in 1997.[156] The Australian Government forecasts that Australian exports to the United States will increase by 9 percent in 1999 from the 1998 level. However, the Australian Government projects exports to decline over the longer term as its domestic flock contracts.[157] Alternatively, lamb meat exports to the United States accounted for only 5 percent of total New Zealand lamb meat exports in 1997.[158] The New Zealand government reported that its lamb meat exports are expected to meet its EU quota in 1999, but that 16 percent less lamb meat is expected to be available for export in 1999 compared to 1998 because of a smaller lamb crop.[159] How this decrease will affect exports to other individual countries was not specified.

Imports into the U.S. market of fresh lamb meat (vs. frozen) have increased most rapidly. Imports of fresh lamb meat increased 101 percent from 1995-97, while imports of frozen increased only by 11 percent during the same period. Up through 1995, the majority of lamb meat imported from Australia was frozen. Since 1996, however, about half of the imports from Australia have been fresh lamb meat. The majority of

[152] Report at II-70, fig. 17.

[153] In this context, demand changes at the retail level more quickly impact processors (packers and breakers) and affect sheep growers and feeders with a lag.

[154] U.S. production appears to be limited by the availability of lambs and not by processing capacity.

[155] Report at II-51.

[156] Report at II-39, table 23.

[157] Presentation by Terry Sheals, Chief Commodity Analyst, Australian Bureau of Agricultural and Resource Economics at the Remedy Hearing.

[158] Report at II-43.

[159] Government of New Zealand, posthearing brief (remedy), p. 2.

lamb meat from New Zealand continues to be frozen (70 percent frozen vs. 30 percent fresh).[160] Many imports also supplied new demand through food warehouses such as Price Club.

Summary. The conditions of competition in both the domestic and world lamb markets have changed in several important respects during the past several years. As a result of these changes, the grower/feeder segment of the U.S. industry will have to adjust to a domestic market absent Wool Act payments, and processors will have to adjust to a market with increased competition from imported fresh lamb meat.

Industry Adjustment Plan

The industry submitted an adjustment plan that described existing programs and planned initiatives to improve its competitive position.[161] No significant commitments were submitted other than those contained in the industry plan. The plan outlines a number of programs to improve industry efficiency, cost-effectiveness, and to increase consumer demand.

Production-side improvements include: 1) genetic improvements to sheep in order to increase carcass weight, increase the lambing ratio, develop "easy-care" sheep, and increase the production of sheep dairy products; 2) development of new technologies and production processes; 3) formulation of new industry alliances; 4) development of reproductive and therapeutic drugs; 5) disease control including scrapie and other diseases; 6) food safety improvements; and 7) reduction of predator loss.

Demand-side programs include development of new more "user-friendly" lamb meat products, new packaging, and marketing and promotion activities. The industry plans to establish "Industry Action Teams" that will be responsible for implementing programs in business development, production and cost efficiencies, and consumer growth. The industry also plans to establish a "Business Development Council" to assist in the formation of new business alliances and market opportunities, securing capital at favorable rates, and providing quality assurance. Another component of the plan is the use of the National Sheep Industry Improvement Center to fund genetics research, new production practices, disease prevention, predator control, new and improved products, and marketing.

The Adjustment Plan contains many potential programs, which if successfully implemented, would benefit the industry. The plan does not set forth specific commitments, however. Programs that have the biggest immediate return are not identified, and concrete plans that show how these programs will be implemented are not extensively developed. Many activities depend upon an organizational structure that is not yet fully operational.

Consultant's Report

The American Sheep Industry Association commissioned studies in 1991 and again in 1997 to examine the lamb industry and market. The 1997 consultant's report[162] made several specific and targeted recommendations for steps the domestic industry needed to take to become more competitive both with other meat proteins and with imported lamb. Many of the recommendations were included in the industry's adjustment plan. However, some meritorious recommendations were not included, particularly those urging cooperation with foreign producers.

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[160] Report at II-20.

[161] Lamb Industry Adjustment Plan, Jan. 29, 1999.

[162] PriceWaterhouseCoopers, *Revitalizing the American Lamb Industry: A Call to Action* (July 1998).

The consultant's report emphasized the potential benefit of alliances and promotional efforts for the U.S. lamb industry. Specifically, it: 1) encouraged alliances between domestic and foreign producers to ensure more consistent supply of lamb meat; 2) suggested that the domestic industry investigate the New Zealand producers' offer to discuss their production methods and cost containment measures; and 3) encouraged the domestic industry to seriously consider joining with the New Zealand lamb industry to fund lamb promotions in the United States. With regard to promotion, the consultant's report specifically suggests, *inter alia*, that the domestic industry: 1) target marketing efforts towards current users;[163] 2) develop a clear selling position for lamb versus other proteins; 3) renew efforts to facilitate new product development; 4) develop a branding program;[164] and 5) institute a $1 per head check-off program to fund promotion to implement the above recommendations.[165]

Recommended Relief

Selection of a tariff-rate quota and adjustment assistance measures. Pursuant to section 202(e) of the Trade Act of 1974, we are recommending to the President actions that would address the threat of serious injury to the lamb industry and that would most effectively "facilitate efforts by the domestic industry to make a positive adjustment to import competition." We examined the different forms of relief that the Commission is authorized to recommend in this investigation.[166] We sought to develop a remedy that would not disrupt the U.S. lamb market more than is necessary to provide the domestic lamb industry an opportunity to make adjustments and successfully compete with import competition.[167] The two-pronged approach of a tariff-rate quota and adjustment assistance measures, as outlined above, is designed to provide insurance against upward surges in imports while providing targeted assistance to facilitate the industry's adjustment.

Ultimately, it is up to the domestic lamb industry to make a positive adjustment to import competition. For relief to be effective, it must encourage the industry to implement changes that lower its production costs and raise domestic demand for lamb, as highlighted in the petitioner's adjustment plan and the consultant's report.[168] The domestic lamb industry has been in a prolonged state of decline resulting from changing consumer preferences, revocation of extensive subsidies under the Wool Act, inefficient cost

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[163] The report estimates that a truly national program addressing primary demand would probably cost $15 to $30 million.

[164] The report notes that for a branding program to succeed it requires consistency in financial support, product supply, and quality.

[165] The report notes that the domestic industry must have reliable committed resources for sustainable programs and that the industry needs a $5-6 million minimum budget to compete for consumer attention.

[166] As the Commission noted in *Wheat Gluten*, as a general matter a simple tariff increase is preferred over tariff-rate quotas and quantitative restrictions because a simple tariff increase tends to be less distortive of trade and is easiest to administer. *Views of the Commission on Remedy, Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998), at I-26. However, in this case we found a tariff increase or a quota to be inappropriate for two reasons. First, we found a threat of serious injury (i.e., serious injury "is clearly imminent") as opposed to present serious injury, and thus our remedy focus is on the imminent future, including further possible increases in imports as opposed to past levels of imports. Second, we concluded that a tariff or a quota of any significance would unduly raise the price of both domestic and imported lamb meat and, given the competition in the marketplace from other protein meats, might have the long term effect of reducing demand for lamb meat and thus be counter productive.

[167] Rather than punish foreign trading partners whose participation in the United States market has benefitted American consumers and provided some benefits to producers by promoting lamb as an alternative protein, our remedy would focus on providing some breathing room for the domestic lamb industry to implement needed changes.

[168] We recommend that the President look to the industry consultant's report regarding recommendations when considering adjustment assistance options.

structure, and other factors. We recognize that it will take time to implement changes to improve the industry's cost structure and to develop new markets and products that expand demand for lamb.[169] We also recognize that the proposed adjustment programs at the USDA and the U.S. Department of Commerce ("USDOC") may take some time to take effect. The tariff-rate quota will allow the domestic lamb industry to operate with some level of certainty regarding import competition during a reasonable period of adjustment and targeted adjustment assistance programs will offer help to the domestic lamb industry for its adjustment (while minimizing the social costs of intervention).

Tariff-rate quota. For these reasons, we propose that a tariff-rate quota be imposed for a four-year period and that adjustment assistance be provided to the industry.[170] The first year of the tariff-rate quota is designed to maintain the status quo (approximately 1998 levels), after which imports would be permitted to rise to a level consistent with respondents' projections. Respondents projected that imports would rise somewhat in 1999 and then essentially level off.[171] Thus, for the last three years of the four-year tariff-rate quota, imports will be allowed to enter without additional duties in quantities approximately equal to respondents' projected levels, while providing insurance against upward surges in imports. For those imports above the tariff-quota threshold, the magnitude of the duties recommended is relatively high the first two years (20 percent in year one and 17.5 percent in year two), then falls more rapidly in the final two years of relief (15 percent in year three and 10 percent in year four). The TRQ we recommend gives stability and predictability to the domestic industry without discouraging Australian and New Zealand producers from their continuing efforts to increase lamb consumption in this country. Those efforts have substantially benefitted all lamb producers, including the domestic industry.

Adjustment assistance. We recommend adjustment assistance because we believe that, in conjunction with the four-year tariff-rate quota, it is the most effective means to accelerate the industry's adjustment (while minimizing social costs). Specifically, we recommend that the President draw on authorized programs at the USDA and the USDOC to provide specialized direct payments and funding for research and animal health programs. As outlined in the Appendix to the views on remedy, there are several

[169] The domestic industry has not been able to compete effectively against foreign producers that have drawn new and existing United States consumers to their product in increasing numbers through their production efficiencies, costs, product advertising programs, and innovative marketing and product strategies.

[170] Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, we recommend that the President exclude Canada and Mexico from any relief action. We further recommend that the tariff-rate quota import relief action not apply to imports of lamb meat from Israel, or to imports of lamb meat from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel. 19 U.S.C. 2703(e)(2), 19 U.S.C. 3203(d)(2), and 19 U.S.C. 2112 note. The Commission's findings and recommendations in this case do not apply to Israel or to the Caribbean Basin and Andean countries. There were no reported importations of lamb meat from any of these countries during the period of investigation, based on a review of data compiled by the U.S. Department of Commerce. None of these countries are known to be significant producers or exporters of lamb meat.

[171] The Australian Government forecast that exports to the United States will increase 9 percent above 1998 levels and the New Zealand Government forecast that its exports overall would decrease. However, New Zealand's exports to the United States are not expected to decrease. Consequently, the overall increase in lamb meat imports is projected to be approximately 4.5 percent. *See*, Final Remedy Memorandum, EC-W-023, Mar. 22, 1999, at 16-17.

existing programs that can provide such funding and could be highly effective in accelerating the domestic lamb industry's adjustment.[172]

Conclusion. We believe that the combination of the four-year tariff-rate quota on imports of lamb meat and the adjustment assistance measures described above would provide the most effective means to "facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs."[173] However, success can ultimately come only from the industry's efforts outlined in the industry's adjustment plan and their consultant's report. The relief action that we recommend will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation will provide the Commission with an opportunity to review the domestic industry's progress in implementing the necessary changes outlined in its adjustment plan and the consultant's report and to report on the industry's progress to the President. This would provide the President with the opportunity, as contemplated by the statute, to alter relief to reflect the level of the industry's efforts to make a positive adjustment to import competition.

Short- and Long-term Effects of the Commission's Recommended Remedy

The tariff-rate quota and adjustment assistance that we are recommending will provide the level of relief that is necessary to address the threat of serious injury to the domestic industry and that will be the most effective, in our view, in facilitating the domestic lamb industry "to make a positive adjustment to import competition and provide greater economic and social benefits than costs."[174]

As discussed above, the dual challenges facing the domestic lamb industry are the need to improve production methods and efficiency and to improve demand for lamb overall. Our proposed remedy would allow domestic lamb producers to compete effectively with imports by implementing changes to lower costs, such as improvements in genetics, animal health, and flock management through their own efforts, cooperation with foreign suppliers, as well as by support from adjustment assistance programs. Our proposed remedy would provide an opportunity for domestic suppliers to expand demand through marketing programs and, through cooperation with foreign suppliers, maintain a steady supply of lamb meat to domestic consumers without the prospect of being overwhelmed by imports during the period of relief.

More specifically, the Commission estimates that the four-year tariff-rate quota that we are recommending will raise total industry revenue in the first year through higher prices and somewhat higher volumes. Our recommended remedy in the first year will effectively suspend the market at 1998 levels with regard to imports, representing a reduction in projected 1999 import levels. The demand that would have gone to imports will be in part captured by domestic producers and in part be eliminated due to lower overall demand related to the rise in prices. Adjustment assistance will provide further benefits to the industry, e.g., through direct payments and product development support. This combination of dampening of imports into the U.S. market and adjustment assistance will give the domestic industry time to implement many of the necessary improvements described above, including genetic improvements to the U.S. flock, seeking out new technologies and production processes, forming industry alliances with domestic and foreign producers, developing new lamb meat products with innovative packaging, and pursuing an active marketing effort.

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[172] Commissioner Crawford notes that adjustment assistance measures provide direct assistance to the domestic industry without the significant costs that restrictive quotas and tariffs would impose on consumers in the form of reduced supply and higher prices.

[173] Sec. 203(a)(1)(A).

[174] *Id.*

The tariff-rate quota in the first year comes at some cost to other domestic industries and to consumers.[175] There are also direct costs to the Federal government through support from existing adjustment programs. These costs, however, are likely to be offset by longer term improvements in the domestic product and increasing consumer awareness of lamb products as the industry implements the necessary changes and programs. Moreover, the first year costs diminish over the period of relief. Following the first year of the tariff-rate quota, our recommended remedy raises the level of imports not subject to tariff restriction by 4.5 percent to 81.5 million pounds and remains there for the last three years of the four-year period. Moreover, duties would fall in the second, third, and fourth years, thereby providing a safety valve in the event demand expands more rapidly than expected. Adjustment assistance program support, which by design would have longer term benefits to the industry, should be in place by the latter half of the adjustment period and would yield increasingly higher dividends in the form of improved lamb products. Thus, in the short run there will be some costs associated with the tariff-rate quota, but in the long run the domestic industry will be more profitable in a growing U.S. lamb market. Therefore, our remedy will "provide greater economic and social benefits than costs."[176]

Short- and Long-term Effects of Not Taking the Recommended Action

In the absence of relief, we believe that the relatively higher cost structure of the domestic industry and declining, or at best stable, demand for lamb meat in the United States will force a significant portion of the domestic lamb industry to scale down in the near term and likely exit the industry in the long term in the face of competition from other protein sources as well as import competition. This assessment is based on imports increasingly entering at a stage of processing that is tailored to consumer wants. For example, early in the period of investigation, imports were comprised primarily of frozen lamb meat. In 1997, however, imports from Australia and New Zealand were approximately 38 percent fresh.[177] Australian and New Zealand producers have natural advantages and have also developed significant technical efficiencies and effective marketing programs to expand demand. Consequently, the domestic industry is facing increased competition in an area of the market (fresh lamb meat) where in the past it faced little import competition. Lamb processing plants need to operate at a certain level of throughput to maintain economies of scale in their production process. If the domestic lamb grower and feeder segments of the industry shrink, the inevitable effect will be an increase in short- and long-term unemployment and a negative impact on their respective production communities, as well as an adverse impact on the packer and breaker segments of the industry since they will be unable to obtain a reliable supply of slaughter lambs for processing.

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[175] *See*, Final Remedy Memorandum, EC-W-023, Mar. 22, 1999, at 34-37.

[176] Sec. 203(a)(1)(A).

[177] Report at II-18-19.

ADDITIONAL STATEMENT BY COMMISSIONER CAROL T. CRAWFORD ON REMEDY INVESTIGATION NO. TA-201-68 LAMB MEAT March 26, 1999

My recommendation follows the Commission's unanimous determination on February 9,1999, under Section 201 of the Trade Act of 1974. The Commission found that lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic lamb industry. The largest increases in imports took place in the most recent two year period. Australia and New Zealand, two traditional suppliers to United States consumers, together accounted for over 98 percent of total imports during the period examined.

There is no allegation of any unfair trade practices by the foreign producers. On the basis of their production efficiencies, product advertising programs, and innovative marketing strategies, the Australian and New Zealand lamb meat industries have fairly and effectively drawn United States consumers to their product in increasing numbers.

Unfortunately, conditions in the domestic lamb industry have not been so positive. The industry has been in declining health, buffeted by many factors beyond its control. For example, demand for lamb has declined due to changing consumer food and clothing preferences, while the industry's income was reduced with the 1995 revocation of the Wool Act subsidies the industry had received over several decades. The industry has not been fully successful in introducing efficiencies and improving the industry's cost structure commensurate with the changes in supply and demand conditions. It has taken some steps to improve its ability to compete more effectively with beef, pork and other sources of protein available to consumers, but much more needs to be done.

The Commission's role now is to recommend to the President the most effective mechanism to facilitate the industry's adjustment to import competition. The remedy must fit the problems faced by the domestic industry. After careful analysis, it is clear that the domestic industry's greatest needs are to reduce its production costs and simultaneously expand demand for lamb.

- Tariff Rate Quota

A tariff rate quota at the levels I have recommended, with my colleagues, provides distinct benefits to the domestic industry without imposing undue harm to the Australian and New Zealand producers. First, the TRQ gives the domestic industry "breathing room," as envisioned by the statute. It halts the surge of imports the industry faced in 1998 and prevents future surges that could injure the industry, further destabilize it or hinder its ability to regain its health. To this end, the TRQ I have recommended will provide a more restrictive level of imports in the first year to provide the domestic industry with greater initial relief. Second, the TRQ I have recommended gives stability and predictability to the domestic industry -- the domestic industry will know with certainty the maximum level of import competition it can expect. Finally, allowing growth of imports over time will not discourage the Australian and New Zealand producers from their continuing efforts to increase lamb consumption in this country, which have substantially benefitted all lamb producers, including the domestic industry.

- Adjustment Assistance

The second component, and perhaps the most important part, of my recommendation consists of adjustment assistance for the domestic lamb industry. The need for generous industry assistance reflects my own analysis of the industry, and is consistent with the industry's own consultants. In July 1998, the industry's

consultants, Price Waterhouse Coopers, identified competition not just from imports but also from beef, pork, and other proteins as central to the industry's recovery program. The consultants recommended steps that were needed to allow domestic producers to compete more effectively with and thus gain market share from other protein meats. The report repeated an earlier recommendation to the industry to focus on programs to raise domestic demand for lamb (as well as lower domestic producer costs). The key recommendation of the consultant's July 1998 report was to create a check-off industry marketing program, with industry contributions of $5 to $6 million. The marketing program was identified as key to reversing falling demand by targeted marketing, in cooperation with foreign lamb meat suppliers, and other initiatives. The industry's trade adjustment plan, required under the statute, seems to endorse the consultant's recommendations. Our recommendation includes funding from both the Department of Commerce and the Department of Agriculture, addressing industry needs ranging from marketing to animal health research.

Summary

In summary, I have recommended to the President a remedy that creates temporary boundaries to future increases in import competition, providing the industry with badly needed "breathing room," and provides adjustment assistance to help the industry address the problems that have hindered its ability to compete effectively in the meat protein market. In my judgment, it is the most effective action the President can take to "facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs."

VIEWS ON REMEDY OF VICE CHAIRMAN MARCIA E. MILLER AND COMMISSIONER JENNIFER A. HILLMAN

Findings and recommendations

For the reasons set out below, we recommend the following actions, which we find would address the threat of serious injury to the domestic lamb meat industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition:

1. that the President increase the rate of duty, for a 4-year period, on imports of lamb meat the subject of this investigation, to the rates of duty as follows: 22 percent *ad valorem* in the first year of relief, 20 percent *ad valorem* in the second year, 15 percent *ad valorem* in the third year, and 10 percent *ad valorem* in the fourth year;

2. that the President identify and implement adjustment measures and other action authorized under law that is likely to facilitate positive adjustment to import competition; specifically that the President make assistance available to the lamb meat industry through Federal programs, primarily those administered by the U.S. Department of Agriculture, and take action to ensure that the National Sheep Industry Improvement Center is fully operational;

3. having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the increased tariffs; and

4. that the increased rates of duty not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Introduction

Having found that increased imports are a substantial cause of the threat of serious injury to the domestic lamb meat industry, we must now recommend the action that would address the threat of serious injury and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. In deciding what relief to recommend, we have taken into account the considerations set forth in section 202(e)(5)(B) of the Trade Act, including the form and amount of action that will, in our respective views, prevent serious injury, the objectives and actions specified in the adjustment plan submitted by petitioners, any individual commitments submitted in the course of the investigation, information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and whether international negotiations may be constructive in addressing the threat of serious injury and in facilitating adjustment.

Industry and market conditions

Our views on injury describe several basic conditions of competition in the domestic lamb meat market that we have also considered in forming our remedy recommendation.[178] In addition, we have been particularly mindful of the following key market and industry factors.

First, in our view the main threat posed by the surge in imports is depressed domestic prices for lamb meat. As noted in our injury determination, prices dropped precipitously starting in mid-1997. Witnesses from all four industry segments emphasized that they could not operate profitably with the recent depressed prices. It is our view that the industry would experience serious injury caused by imports if import levels and prices continue at now-existing levels, even if no further price declines occur. Thus, a key focus of an appropriate remedy must be to raise prices from current levels.

Second, while all four distinct industry segments (growers, feeders, packers, processors) are in need of relief, growers and feeders are especially so. The grower segment is exceptionally highly dispersed: USDA estimated that there were over 70,000 lamb-growing establishments in 1997. Feeders apparently number in the hundreds. Their large numbers and the fact that they cannot hold lambs back from the market once they are ready for slaughter makes them particularly vulnerable to the effects of falling prices. However, we would expect increases in the price of lamb meat brought about by tariff increases on imports to be shared by all four industry segments.[179] Growers and feeders would likely reap only a minority portion of any price increase, especially during a limited four-year period of relief. For this reason, additional targeted and immediate relief for growers and feeders is appropriate.

Third, an important consideration in formulating a remedy recommendation is the potential impact of any relief on aggregate demand in the U.S. market. Lamb meat consumption in the United States has been in a slow decline for several decades. During 1993-98, demand fluctuated somewhat but remained at about 1 pound per capita. This compares to beef consumption at a per capita rate of over 60 pounds. Lamb meat has a core demand base, but it is important for the industry to focus efforts on building from that base. Thus, we have used care to fashion a remedy that, while likely to generate some price increases in the near term, will not cause prices to rise so greatly that demand will be negatively affected over the longer term.

Industry Adjustment Plan

We have considered the petitioners' adjustment plan that described existing programs and planned initiatives to improve its competitive position.[180] The plan outlines a number of actions designed to improve industry efficiency and cost-effectiveness and also to increase consumer demand for lamb meat in general and for U.S.-produced lamb meat in particular.

Production-side improvements include: genetic improvements to sheep in order to increase carcass weight and lambing ratio; wide-scale investment in improved production equipment and processes; formulation of new industry alliances; development of reproductive and therapeutic drugs; control of diseases such as scrapie; food safety improvements; and reduction of predator loss. Demand-side interventions include development of new more "user-friendly" lamb meat products, new packaging, and marketing and promotion activities. The industry plans to establish "Industry Action Teams" that will be responsible for implementing programs in business development, production and cost efficiencies, and consumer growth. The industry also plans to establish a "Business Development Council" to assist in the formation of new

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[178] *See* discussion in section on causation, *supra.*

[179] The ratio of live lamb prices and lamb carcass prices fluctuated during the period of investigation between 0.42 to 0.52. Report at II-62. This finite band suggests that movements in prices of lamb meat are transmitted at least to some degree to growers and feeders.

[180] Lamb Industry Adjustment Plan, Jan. 29, 1999.

business alliances and market opportunities, securing capital at favorable rates, and providing quality assurance. Another component of the plan is the use of the National Sheep Industry Improvement Center to fund genetics research, dissemination of new production practices, disease prevention, predator control, new and improved products, and marketing.

In our view, the adjustment plan correctly identifies several themes that are the key to the industry's long-term survival; specifically, (1) developing an industry that produces lamb meat efficiently and responds well to modern consumers' tastes, and (2) expanding the market for lamb meat, which currently occupies only a marginal position among the protein sources of U.S. consumers. Moreover, the adjustment plan outlines numerous specific actions that, if successfully implemented, would advance these key themes. The plan depends for its implementation on the effective operation of nascent industry-wide organizations and the actions of individual industry members to adopt those measures that will make them more competitive. Although this dependence introduces some degree of uncertainty surrounding the actual implementation of the industry's adjustment plan (unavoidable in our view), we do believe the plan can and should form the basis for a significant positive adjustment by the domestic industry.

We note that the industry's adjustment plan contains a mix of proposed actions, some of which may be implemented at the individual firm level (*e.g.,* modifying production techniques, purchasing improved equipment), and others that require a more concentrated and directed application of funds (*e.g.,* genetic research, disease eradication). The ability of firms to obtain a sufficient return on their investment through higher sales prices is critical in order to give individual firms access to the capital they need to implement individual firm improvements. However, price increases that are spread throughout a diffuse industry may not be the most effective way to enable the industry to fully carry out actions requiring concentrated funds.[181] Some U.S. Government programs have the potential to bring a pool of funds to bear on those aspects of the adjustment plan requiring such funds.

Recommended remedy

The above considerations have led us to recommend a two-part plan of action involving temporary tariff increases and targeted assistance to the domestic lamb meat industry using programs administered by the United States Government. The common thread of these actions is that they are calculated to increase the financial resources available to the industry in the short-term (*i.e.*, over a 4-year relief period) to: (1) enable *individual* firms to survive in the short-term and to invest in increasing long-term efficiency; and (2) enable *joint* efforts across industry segments to increase industry efficiency and to increase domestic demand for lamb meat in the long-term.

Tariff increase

The statute allows several types of import relief, including quotas, tariffs, and tariff-rate quotas. After careful consideration of these options, we have determined that a simple tariff will provide this industry with the most appropriate and most easily-administered form of relief. The domestic industry has stressed in particular the necessity of "predictable price relief,"[182] including immediate increases in both domestic and import prices, and a longer term goal of reducing the price disadvantage with imported lamb meat. We believe a tariff provides such relief.

[181] This need is less acute with respect to pooling funds for promoting increased lamb consumption, which may be accomplished via an industry-wide check-off program, as described below.

[182] Posthearing brief of petitioner, p. 16

The domestic industry has proposed a tariff rate quota, with an under quota tariff of 30 percent *ad valorem* and an over quota rate of 50 percent *ad valorem*.[183] The prohibitive 50 percent over-quota tariff would apply to all lamb meat imports above 40,000 pounds annually, which is slightly below 1995 import levels. We do not believe that it is appropriate in the context of a threat finding to propose a remedy that so severely restricts import volumes, especially considering the inability of the domestic industry to respond to increased demand in the short-term. The industry would not likely make up such a large supply shortfall during the initial relief period.

By the same token, we disagree with respondents that non-tariff adjustment measures alone will address the threat we have found to exist. In particular, without some form of tariff relief, low-priced imports are likely to continue to suppress or depress domestic prices. The significant threat posed by low domestic prices and surging imports requires a more robust remedy. We believe that our proposed remedy balances the primary concerns of the parties by setting a threshold that should allow the price relief the domestic industry seeks without restricting imports to levels at which we did not find a threat of serious injury to exist.

We recommend that the President increase the current tariff rate applied to imported lamb meat for a four-year period. In the first year of relief, imports will be subject to a dutiable rate of 22 percent *ad valorem*, falling to 20 percent *ad valorem* in the second year, 15 percent *ad valorem* in the third year, and 10 percent *ad valorem* in the fourth year. We chose these levels in order to strike a balance between providing sufficient price relief and stability to enable the industry to adjust meaningfully, and avoiding the creation of any supply shortfall in the near term.

In the earlier part of the relief period, the primary benefit to the industry of the tariff increases will be higher prices, resulting in higher revenues on lamb and lamb meat sales. This will counteract in part the substantial price decreases that have occurred in 1997 and 1998 and should allow most producers to operate at or near a reasonable level of profit. More viable price levels should also help restore market confidence and market stability and better enable firms to obtain loans for capital investments such as the upgrading of facilities. Over the course of the four-year relief period, as the industry responds to higher prices by increasing output, the benefits of the tariff will shift toward increased domestic production, and the effects of the tariff on prices in the U.S. market should lessen.[184] [185]

Adjustment measures and other actions

In addition to import relief, the Commission may recommend that the President implement "appropriate adjustment measures" and "any other action authorized under law that is likely to facilitate positive adjustment to import competition."[186] An integral part of our remedy recommendation is the

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[183] Section 203(e)(3) of the Trade Act caps tariff increases at 50 percentage points *ad valorem* above the existing rate. The current duty on imports of lamb meat is 0.8 cents per kilogram, which equates to 0.2 percent *ad valorem*.

[184] Our proposed tariff satisfies the requirements of section 203(e)(5) of the Trade Act, in that it is phased down at regular intervals.

[185] Having made a negative finding under section 311(a) of the NAFTA Implementation Act with respect to imports from Canada and Mexico, we recommend that the President exclude Canada and Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under Section 202 of the Trade Act when imported from beneficiary Caribbean or Andean countries or from Israel. 19 U.S.C. 2703(e)(2);19 U.S.C. 3203(d)(2); 19 U.S.C. 2112 note. Our findings and recommendations in this case do not apply to these countries. None of these countries are known to be significant producers or exporters of lamb meat, and there were no reported importations from any of these countries during the period of investigation.

[186] 19 U.S.C. 2252(e)(2)(D), 2252(e)(4)(B).

application of programs of the United States Government to target growers for direct assistance, or to provide for concentrated funds devoted to advancing some of the goals set out in the industry's adjustment plan.

Most of the programs at issue are administered by the U.S. Department of Agriculture. We recognize that there may be funding issues relating to some programs. We also are not in a position to judge whether the lamb industry satisfies the relevant legal criteria for the programs. For these reasons we have avoided specifying a precise mix of programs or the precise amounts of funds to be devoted to particular programs.

Nevertheless, in light of how certain programs have been applied vigorously on behalf of other agricultural industries in recent months (*e.g.*, hog growers, Alaskan salmon fishermen), we are sufficiently convinced that several programs may well be viable. We are even more convinced that such programs would, if applied, be of significant benefit to the industry's efforts to secure its long-term health. We describe below those actions we believe may be the most appropriate.

Direct payments to growers and feeders. Section 32 of P.L. 320 provides, among other things, that the Secretary of Agriculture may use certain funds to "reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption."[187] Direct payments to lamb growers and feeders under section 32 would be the most immediate and certain mechanism to increase funds available to particularly vulnerable segments of the industry.[188]

Increased research or technical assistance funds. The 1997 Sheep Industry Long Range Plan identified elimination of scrapie, a neuro-degenerative disease affecting sheep and goats, as the highest industry priority.[189] The industry highlighted elimination of scrapie in its adjustment plan.[190] More funds could be made available to appropriate USDA entities[191] in order to, for example, develop a test for scrapie that may be used on live animals, buy up known infected herds, or take other actions deemed most likely to accelerate the eradication of scrapie.

Genetic research figures prominently in the industry's adjustment plan as a way to increase the lambing ratio or to produce larger, leaner lambs more consistently.[192] Hearing testimony before the Commission suggested this would be a promising course of action to increase the productivity of the industry

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[187] 7 U.S.C. 612c. For example, the Secretary of Agriculture recently established a program of approximately $50 million of payments to hog growers under section 32. *See* USDA News Release, *Glickman Announces Plan for Direct Cash Payments to Hog Producers*, Jan. 12, 1999.

[188] Should there be funding constraints in the current fiscal year, a program could be begun in FY2000 or spread out over several years. Application of section 32 may require that a commodity be in surplus supply. In this respect, we observe that the Secretary of Agriculture took note of "the surplus supply of lamb which is depressing prices to producers" when announcing the purchase of lamb products in 1998. *See* USDA Press Release, *Glickman Announces Purchases to Support Lamb Producers*, May 18, 1998.

[189] *See* Sheep Industry Long Range Plan, Aug. 1997, Texas A&M University. Respondents' Joint Submission on Measures Available to Assist the Domestic Sheep Industry, Exhibit 1, p. 4:

> "Scrapie has to be eliminated, and it must be eliminated as soon as possible! The sheep industry in the United States can no longer tolerate the risk of having scrapie in any of its flocks. The worldwide situation with Bovine Spongiform Encephalopathy (B.S.E.) has significantly elevated the critical need to deal with scrapie in sheep. Negative perceptions regarding the safety of a food product can put the entire industry at risk. . . . . The future of the sheep industry is at stake."

[190] Lamb Meat Industry Adjustment Plan at pp. 12-14.

[191] Appropriate USDA entities may include the Agriculture Research Service (ARS) or the Animal and Plant Health Inspection Service (APHIS).

[192] Adjustment Plan at pp. 4-7.

and thereby make it more competitive.[193] As with scrapie, more funds could be made available to appropriate USDA or related entities[194] for this purpose.

Increased government purchases of lamb meat. In 1998 the Secretary of Agriculture announced the purchase of $8 million of lamb products, to be distributed to recipients of federal food aid assistance programs through food banks and other charitable institutions.[195] The Administration should seriously explore making additional purchases for food assistance programs, or additional purchases under other federal programs. Federal government purchases of lamb meat would provide the industry with immediate additional revenue for adjustment efforts by increasing sales and helping to firm up prices. Other avenues for federal government purchases may include the federal school lunch program and purchases by other government entities (*e.g*., the Veterans Administration, Department of Defense).[196]

Trade Adjustment Assistance for Industries. As part of the Department of Commerce's Trade Adjustment Assistance (TAA) program for firms, section 265 of the Trade Act of 1974 authorizes the Secretary of Commerce to provide technical assistance for the establishment of industry-wide adjustment programs.[197] A program specific to the lamb industry could provide technical assistance in areas within the ambit of TAA, such as increasing productivity, lowering costs, product development, and marketing analysis. The industry's adjustment plan focuses on each of these areas. We note that an industry-wide TAA program was recently established to assist the Alaskan salmon fishing industry.[198]

Industry adjustment efforts. The tariff and other actions described above will only succeed if the domestic industry also takes all steps within its power to carry out the elements of its adjustment plan. We would emphasize two issues that the domestic industry -- together with the Executive Branch as necessary -- should pursue urgently in the short term.

The first issue is to ensure that the National Sheep Industry Improvement Center is fully operational. Legislation establishing the Center was enacted in 1996, and includes a $20 million appropriation. The legislation authorizes an additional $30 million to be appropriated at a later date. The Center has substantial potential to assist the industry in such areas as research, developing and disseminating improved production techniques, and product development. A representative of the Center testified before the Commission that no funds had been expended to date due to problems relating to the establishment of a revolving fund.[199] A concerted effort must be made by the industry and the Administration to resolve any problems in accessing the $20 million already appropriated, and to ensure smooth functioning of the Center so that the additional $30 million authorized is made available in the future.

The second issue that the industry should pursue in the short-term is to establish an industry-wide check-off program to generate a pool of funds for promoting increased lamb consumption. Establishment of a check-off program -- under which a set fee would be assessed with respect to domestically-produced lamb

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[193] *See, e.g.,* transcript at 37-41 (Dr. Parker).

[194] Appropriate entities may include ARS or the Cooperative State Research and Education Extension Service.

[195] USDA Press Release, *Glickman Announces Purchases to Support Lamb Producers*, May 18, 1998. As of March 10, 1999, just over $2 million had been purchased pursuant to this announcement. USDA Agricultural Marketing Service, Food Purchase Report, *USDA Buys Frozen Lamb,* March 10, 1999.

[196] *See* USDA News Release, *Glickman Announces Additional Steps to Help Pork Producers*, Dec. 17, 1998 ("Glickman said he is accelerating USDA's purchase of pork products and urging the Departments of Defense and Veterans Affairs to consider additional pork purchases.")

[197] 19 U.S.C. 2355.

[198] *See* 64 Fed. Reg. 7054 (Feb. 11, 1999)($5 million of funds were provided through the Omnibus Appropriations Act of 1998).

[199] Transcript at p. 97 (Mr. Miller).

and potentially imported lamb as well-- requires prior industry approval through a referendum.[200] The most recent referendum failed to garner sufficient industry support. The industry indicated to the Commission that it is actively exploring the possibility of asking USDA to conduct another referendum. We strongly urge the industry to pursue such a course. Other industries such as the beef and pork industries have used check-off programs successfully to generate high-visibility marketing campaigns.[201]

Review of adjustment efforts

We recognize that a relief action of more than three years duration will require that the Commission conduct a mid-course review under section 204(1)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to review, among other things, the progress of the industry in implementing its adjustment plan. It would also provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if the industry has not made adequate efforts to make a positive adjustment to import competition.

Short and Long-term Effects of Our Recommended Remedy

The tariff increase and other actions we are recommending will provide the minimum level of relief that is necessary to address the threat of serious injury to the domestic industry and will be the most effective in facilitating the efforts of the lamb meat industry to make a positive adjustment to import competition.

Our tariff-based remedy is intended to restore domestic prices and industry profitability to reasonable levels, as the industry increases supply, improves the quality of its product, and stimulates consumer demand. The industry must take immediate action through available avenues such as the National Sheep Industry Improvement Center, to achieve coordinated efforts towards stimulating demand, improving lamb genetics, eradicating pervasive diseases, and undertaking flock management programs.

Respondents have argued that import relief will be counterproductive because it would restrict, not expand, demand for lamb meat. We do not dispute that our import relief program may have negative short-term price and supply effects. The costs of relief, in its initial phase, may even outweigh benefits to consumers. We believe, however, that any such temporary negative repercussions will ultimately yield a stronger overall lamb meat market as the industry becomes more efficient and consumer-oriented. We further believe that the tariff levels we propose strike an appropriate balance between ensuring a sufficient market supply of lamb meat and providing price relief for the domestic industry.

The usefulness of traditional economic models to predict likely market effects of a tariff are limited in this case by such factors as the fragmented, four-segment nature of the lamb meat industry. Nevertheless, the use of such a model may provide a rough approximation of effects. Based on 1998 industry and trade data, the tariff we recommend would initially raise prices at the packer level by an estimated 4.8 to 8.3 percent over 1998 levels, raise U.S. domestic sales volume by 1.2 to 2.0 percent, and raise sales revenues by 6.0 to 10.5 percent. Domestic sales volume increases are naturally constrained by the longer time period needed for growers and feeders to adjust lamb supply to changed market conditions. Perhaps more important for the domestic industry in the short term, import prices are estimated to increase in the first year of relief by

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[200] *See* 7 U.S.C. 7411-7425.

[201] Section 202(e)(4)(A) of the Trade Act allows the Commission to recommend to the President that he initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat. In this case, neither the domestic industry nor the New Zealand Government believed that such negotiations would be useful. A domestic industry representative stated that negotiations would have to address import restraints, which the foreign governments opposed. Transcript at p. 92 (Mr. Rosenthal). Ambassador Bolger noted that exports from New Zealand are totally outside the government's gambit of responsibility. Transcript at p.170. For these reasons, we do not believe that international negotiations would be appropriate.

approximately 17 percent. Import levels would be restricted somewhat, to a level between actual 1997 and 1998 imports.[202]

For producers and feeders of live lambs, the initial results of any relief program will be limited, with prices increasing by only an estimated 1.3 to 2.2 percent over 1998 levels, while supply would increase by only a limited amount in the first year, less than one percent. Total revenues would increase by up to 3 percent. The inability of domestic growers and feeders to respond quickly to any relief effort, or realize increased prices based on the segmented nature of the market, makes additional government actions such as direct payments essential. Measures targeted to growers and feeders are important so that they too will realize short term benefits of a relief program, allowing them to utilize the full four years of relief allowed under the law.

The adjustment programs we have cited would impose no direct cost to consumers and would not reduce demand. Direct costs would be borne by the Federal Government, and thus indirectly by taxpayers.

Predicting market effects with precision in years 2 through 4 of our proposed relief period is even more uncertain. In general, we would expect the domestic industry to increase production over time in response to the price increases and stronger U.S. demand. In addition, we expect that the industry would be able to supply more lamb meat at a given price as a result of gradual efficiency gains from implementation of its proposed adjustment measures, thus becoming more competitive with the imports. These changes, together with the annual phasing-down of the tariff, will moderate price increases in the latter years of relief and introduce price stability, which should also contribute to stable if not increasing demand.

Short and Long Term Effects of Not Taking the Recommended Action

In the absence of relief, we believe that a significant portion of the lamb meat industry, particularly growers and feeders, will likely exit the industry, as prices remain at unsustainable levels and imports continue to capture an increasing share of the market, leading to serious injury to the industry. Imports will be increasingly concentrated in the fresh and chilled market that has been the mainstay of the U.S. industry. Without relief, the imports will likely impede efforts of the industry to become more competitive, and render more difficult industry efforts to coordinate a marketing effort on a scale sufficient to stimulate U.S. demand and maintain a viable industry.

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[202] In making our estimates, we have assumed that overall demand for lamb meat is only modestly price-sensitive, that short-term domestic supply is largely insensitive to price changes, and that, in the absence of relief, imports would rise substantially above 1998 levels. See related Compas runs for a 22 percent tariff in year 1 (cases 1 and 5).

VIEWS ON REMEDY OF COMMISSIONER STEPHEN KOPLAN

Findings and Recommendations

For the reasons set forth below, pursuant to Section 202 (e) of the Trade Act of 1974, as amended, I recommend the following actions, which I find would address the threat of serious injury to the domestic lamb meat industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition:

1. that the President impose a quantitative restriction, for a four year period, on imports of lamb meat, as follows: 52 million pounds in the first year, 56 million pounds in the second year, 61 million pounds in the third year, and 70 million pounds in the fourth year (all quantities are carcass-weight-equivalents);

2. that the President, within the overall quantitative restriction, provide separate allocations for Australia, New Zealand, and "all other" countries in proportion to their average share of imports entered during calendar years 1995-1997;

3. that the President take all action necessary to ensure that the National Sheep Industry Improvement Center is fully operational as soon as possible, and that the President make available to the industry the full measure of Federal assistance programs, including those administered by the U.S. Department of Agriculture;

4. having made negative findings with respect to imports from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the quantitative restriction; and

5. that the quantitative restriction not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Introduction

In rendering an injury determination, the statute directs the Commission to determine whether an article "is being imported into the United States in such increased quantities as to be a substantial cause of . . . the threat [of serious injury]." Thus, we must focus on the causal connection, if any, between the increase in imports and the threat of serious injury. In this investigation, the Commission unanimously determined that the increase in imports was a substantial cause of the threat of serious injury.

As discussed in the Commission's opinion on injury, many of the financial indicators we examined were negative for much of the industry as a result of the increase in imports. Specifically, the Commission stated:

> With regard to the domestic industry's financial condition, we found above that the financial performance of the various segments worsened due to declining sales and falling prices, *a result of the increase in imports*. In addition, *the increased imports* directly captured market share from the domestic producers. Thus, *the increase in imports* is likely to have a negative impact on the industry's shipments, prices, and financial performance.

See Views of the Commission on Injury at I-24 (emphasis added).

Consequently, the Commission unanimously determined that:

> *the increased imports* are an important cause, and a cause no less important than any other cause, of the threat of serious injury to the domestic lamb meat industry. *Our finding is based on the increase in imports that has already occurred,* and which shows every sign of continuing, the increase in the share of the domestic market taken by imports, depressed domestic lamb meat prices due in large part to the increase in imports, and the high degree of likelihood that *the increased imports* will have a substantial negative effect on the volume or prices, or both, of the U.S. industry's lamb meat sales.

See Views of the Commission on Injury at I-26 (emphasis added).

Thus, although the full impact of the increased lamb meat imports had not been realized by the entire industry by the end of our period of investigation, those increased imports will result in serious injury to the industry as a whole absent the statutorily required relief. In other words, the increased imports were not yet a substantial cause of serious injury to the industry as a whole, but they will result in such injury once their impact is fully felt by all segments of the industry. Based on this injury determination, an effective remedy must be designed to prevent the threatened injury from fully materializing by temporarily offsetting the surge that otherwise will cause the serious injury.

Restoring imports to approximately the levels held before the surge would provide such relief by allowing the domestic industry to achieve reasonable operating profits. *See, e.g.,* Inv. No. 201-TA-67, Wheat Gluten, USITC Pub. No. 3088 (March, 1998) at I-28. A temporal lag exists between the import surge and the imposition of relief. Consequently, the industry will likely be experiencing much of the serious injury by the time relief is granted. Nevertheless, any remedy imposed under Section 202 must be fashioned to address the surge in order to fulfill the statutory mandate to prevent the serious injury that otherwise will be substantially caused by the increased imports.

<u>The Tariff Rate Quotas</u>

I considered whether various tariff rate quotas would satisfy this statutory mandate, but rejected those options in this case for several reasons.

<u>Petitioner's Proposal</u>

As to the tariff rate quota proposed by petitioners, that plan called for a 30 percent tariff on imports up to 40 million pounds and a tariff of 50 percent on imports above that level in the first year. The 50 percent tariff effectively would operate to limit imports in the first year to about 40 million pounds. I declined to adopt that proposal because it would lower imports to an unacceptable amount that was well below the pre-surge level and could be harmful to the industry both in the short term and in the long term. Subsequent to the Commission hearing on remedy, in response to a question that I posed, petitioners admitted that they would not be able to supply a substantial portion of domestic demand with imports capped at 40 million pounds. CO74-W-006; Petitioner's Post-hearing Brief on Remedy at p. 16. Thus, the domestic industry would not be able to fill much of the void created by the restriction on imports proposed by petitioner. In the absence of a significant supply response from the domestic industry, its proposed cut in import supply would disrupt the market and would seriously undermine the industry's efforts to promote lamb meat consumption. Petitioner's proposed modest reduction in the tariff rates for the remaining three years does not alter this conclusion. *See* COMPAS Model Comparison of Remedies (attached).

The Plurality's Recommendation

In contrast, the recommendation put forward by Chairman Bragg and Commissioners Crawford and Askey (the plurality) would not provide meaningful relief to the industry, in contravention of the statute. The plurality recommends imposing a 20 percent tariff beginning at 78 million pounds in the first year. That recommendation would then permit tariff free imports of 81.5 million pounds for the remaining three years.

Lamb meat imports reached 78 million pounds in 1998, after the surge. The Commission staff projects that imports would rise 4.5 percent to 81.5 million pounds in 1999 and level off at that amount for the next three years. *See*, Final Remedy Memorandum, EC-W-023, March 22, 1999 at pp. 16-17. Thus, the plurality's recommendation only holds imports to the 1998 level for one year, after which imports are allowed to rise to a level consistent with projected increases. In other words, after the first year, imports are permitted to reach the level they are projected to reach absent any remedy.

Consequently, the plurality's recommended remedy -- which only begins to restrict imports at the post-surge level and permits projected increases beyond that level -- would have virtually no discernable impact on the domestic industry over the four years. Indeed, the plurality's recommended remedy could provide the industry with a total of only $4 million spread over four years. *See* COMPAS Model Comparison of Remedies (attached) (showing a net revenue effect of $3.7 million in the first year and $100,000 per year thereafter). As the Commission stated in its injury determination, "the increase in imports is likely to have a negative impact on the industry's shipments, prices, and financial performance." *See* Views of the Commission on Injury at I-24. Consequently, the remedy recommended by the plurality would not stave off the threatened serious injury much less provide the industry with the opportunity to make a positive adjustment to prepare for the import competition.

The efforts the industry must undertake to adjust to import competition will require capital and other expenditures that cannot be made if imports are allowed to remain at, and rise above, the post-surge level. This fact renders meaningless the portions of the recommendation regarding implementation of the industry's adjustment plan, including its recommendation to implement the plan outlined by PricewaterhouseCoopers. This industry must improve production efficiency and lower production costs, while better marketing its product. With respect to marketing alone, a national program could require between $15 and $30 million, with $5 million to $6 million annually in sustainable funds. PricewaterhouseCoopers, Revitalizing the American Lamb Industry, July 1998 at pp. 84, 98. Expenditures to improve productivity are likely to require millions more. For example, petitioners estimate that it would cost $2.25 million per plant to install an inverted chain production process. Petitioner's Pre-hearing Brief on Remedy at p. 11.

Consequently, the plurality's recommended remedy cannot facilitate the industry's positive adjustment to import competition and does not provide the necessary relief as required by the statute. Since the recommended remedy ultimately permits imports to increase at projected levels over the four years it would deprive the industry of the opportunity to achieve a reasonable level of profitability, which is necessary to implement its adjustment plan. Thus, the likely negligible effects of this recommended remedy are virtually indistinguishable from the effects of not taking the recommended action. *See* Section 202(f)(2)(G).

The Tariff Recommendation

I was unable to join with the remedy recommended by Vice Chairman Miller and Commissioner Hillman because it provides less than is necessary to facilitate the industry's positive adjustment to import competition. As an initial matter, in my view the nature of this industry made it infeasible to determine the probable economic effects of that relief measure. This industry is composed of distinct segments, several of which are highly fragmented. Consequently, there were a broad range of variables to consider in connection with a tariff and this naturally resulted in a broad range of possible outcomes, regardless of the tariff level selected.

Moreover, the available pricing data demonstrates that the imports from Australia and New Zealand generally undersold the domestic industry. Thus, prices for those imports could rise as a result of the tariff without reaching domestic price levels. Under those circumstances, it is unclear the extent to which their importers could pass along any tariff without increasing domestic prices. For these reasons, it was not possible to assess the likely effects of a tariff-based remedy on the industry as a whole within an acceptable margin of certainty, a fact that neither petitioner nor respondents disputed. Indeed, although they offered us no alternative methodology, both petitioners and respondents recognized the weaknesses inherent in applying such an analysis to this industry. Petitioner's Pre-hearing Brief on Remedy at p. 7; Post-hearing Brief of Meat And Livestock, Australia, Ltd at pp. 9-11.[203]

More important, as stated in the Commission's opinion on injury, the domestic industry is relatively concentrated at the packer/slaughterer and breaker/processor stages of production, but widely fragmented at the grower and feeder stages of production. Therefore, the available data did not permit a precise assessment of the likely effect that a tariff on *lamb meat* would have on the industry as a whole. A tariff on the end product likely would affect retail prices to some extent. It was infeasible to predict the extent to which any such increase would flow through the relatively concentrated downstream stages of production (packer/breakers) to the equally threatened, but very disperse, upstream stages of production (grower/feeders).[204] Any price increase resulting from the tariff on the end product might not translate into a comparable price increase to the upstream stages of production. A quantitative restraint is more likely to have the necessary short and long term remedial effects throughout the entire industry, including on the growers and feeders.

Finally, even if one were to attempt to predict the likely effects of their recommended tariff on the industry as a whole, using the mid-point of the Commission's estimated COMPAS model inputs, slightly less than 60 million pounds of imports would enter in the first year, an amount roughly equal to the level reached in 1997. *See* COMPAS Model Comparison of Remedies (attached). As stated in the Commission's opinion on injury, "imports reached record levels in 1996 of 50,701 pounds, and increased another 19.2 percent in 1997 to 60,428 pounds." *See* Views of the Commission on Injury at I-23. Thus, that COMPAS run indicates that their recommended tariff would not offset a significant portion of the import surge. For the reasons stated above, in my view, their recommended remedy would not enable the industry as a whole to adjust to import competition.

<u>My Recommendation</u>

My recommended quantitative restraint is a straight forward method of countering the import surge and temporarily placing the domestic industry in the position it would have been in absent the surge. In other words, it is tailored to directly offset the very surge that threatens serious injury. At the same time, it ensures that the relief provided is not more than that necessary to prevent the serious injury.

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[203] During the hearing on remedy I requested that petitioner provide the Commission with an alternative model to assess the probable economic effects of a tariff, tariff rate quota, or quantitative restriction. Transcript at p. 102. No such alternative was offered. Petitioner's Post-hearing Brief at p. 15.

[204] The Commission identified 17 firms as packers/slaughterers of lambs. Report at II-14. USDA reported that 9 plants accounted for 85 percent of the sheep or lambs slaughtered in 1997. *Id*. at II-14, n. 48. By contrast, there are estimated to be roughly 75,000 growers of lambs. *Id*. at II-11.

I recommend a remedy that begins with a quantitative restriction in the first year of 52 million pounds as a necessary step to prevent the serious injury.[205] This restriction would limit imports to the level they held prior to the increase that threatens serious injury, thereby permitting the industry to begin to achieve reasonable operating profits. A restriction at that level would not significantly disrupt the market or cause a significant shift in demand to substitute proteins (such as beef, poultry, or pork). Therefore, such a restriction would not impede the industry's long term goal of marketing lamb meat and adjusting to import competition. I further recommend that this restriction be phased down by increasing the quantitative restriction to 56 million pounds in the second year and to 61 million pounds in the third year. In the fourth year, the restriction would be 70 million pounds, which would amount to a 16 percent increase in imports over the 1997 level, which is the average annual increase in imports for the representative period.

Thus, my recommendation phases down the quantitative restriction on imports in a predictable manner, so that the industry could implement its adjustment plan. The certainty provided by the recommended restriction would permit the industry to make the capital investments and other expenditures necessary to adjust to the import competition. *See* Petitioner's Pre-Hearing Brief on Remedy at p. 5 ("[w]hat the industry needs most during this period is market stability"). I have recommended that the quantitative levels increase disproportionately at the end of the remedy period because, while all segments of the industry would benefit from the remedy, growers would need about two years to adjust production in response to the temporary relief. In addition, packers and breakers would require some time to alter their production facilities. Thus, this type of phase down would enable the industry to achieve reasonable profitability levels that would permit it to dedicate the necessary financial resources to its adjustment plan. I note that in the most recent Section 201 investigation the Commission recommended, and the President adopted, a quantitative restriction structured in a similar manner for many of the same reasons I put forth here. *See* Inv. No. 201-TA-67, Wheat Gluten, USITC Pub. No. 3088 (March, 1998) at I-26-29.

I also recommend that the quantitative restriction be allocated on a country-by-country basis, with separate allocations for Australia, New Zealand, and "all other" countries in proportion to their average share of imports into the United States during the representative three year period. In accordance with section 311(a) of the NAFTA Implementation Act, I recommend that this import relief not apply to imports of lamb meat from Canada and Mexico. I also recommend that the import relief not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.. *See* 19 U.S.C. § 2703(e)(2), 19 U.S.C. § 3203(d)(2), and 19 U.S.C. § 2112 note.

In addition, in 1996, Congress established the National Sheep Industry Improvement Center and authorized a total of $50 million for that Center. This Center was established to promote the development of the sheep industry. Of the total authorization, $20 million has been appropriated for fiscal year 1999, but has not yet been made available to the domestic industry. I recommend that the President take all action necessary to ensure that the Center is fully operational as quickly as possible. I also recommend that the President take the necessary steps to make available directly to the industry the full measure of authorized Federal assistance programs, including those administered by the U.S. Department of Agriculture.

For any recommended remedy to be effective, the domestic industry must collectively undertake significant efforts to promote a positive adjustment to the import competition. The industry submitted an adjustment plan to the Commission in the course of this investigation (as required by the statute). In this

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[205] I find that calendar years 1995 through 1997 are the three most recent years that are representative of lamb meat imports. I recognize that the surge in imports was occurring in 1997. Thus, I normally would be reluctant to consider such a year to be representative of lamb meat imports. Nevertheless, I included 1997 in this case so that the three year period would be equally divided between a time the industry was receiving payments under the National Wool Act of 1954 and when it was not receiving any such payments. The average carcass-weight equivalent of total imports for the 1995 through 1997 representative period was 51,471,000 pounds and the quantitative restriction cannot be set below that level. *See* Section 202(e)(4) of the Trade Act of 1974, as amended.

regard, I note that in the event the President takes action and provides import relief, the Commission is required to monitor developments in the industry, including the industry's efforts to adjust to import competition.

Finally, I recommend that the President engage in international negotiations to alleviate the threat of serious injury. I am mindful that at the Commission's hearing on remedy neither the government of Australia nor the government of New Zealand indicated a willingness to engage in such negotiations. In the event they reconsider that decision, I encourage the President to attempt to find a mutually acceptable solution to the issues presented in this investigation.

Attachment to Views on Remedy of Commissioner Stephen Koplan:
COMPAS Model Comparison of Remedies

The following tables present a comparative quantitative analysis of the remedy proposed by the petitioner and the various remedy recommendations put forth by the Commissioners. The likely effects were estimated using the COMPAS model developed by the Commission's Office of Economics. I note that although I did not ultimately base my recommendations in this investigation on this model for the reasons stated in my opinion, it is the standard method to quantitatively assess the probable impact of the different remedies in section 201 investigations.

The model requires as inputs values for the elasticity of demand, the elasticity of domestic supply, the elasticity of import supply, the elasticity of substitution between the domestic and imported product, and the quantity and value of the domestic shipments and of the imported product with no trade restrictions imposed. The model results presented here were estimated using the values for these inputs adopted by Commission staff. *See* EC-W-023. Staff estimated a range of estimates for the elasticities; the results presented here use the midpoint of the range for each of these elasticities.

Table 1: COMPAS Model Comparison of Remedies Using the Midpoint of the Staff Elasticity Estimates; Effects in Year 1

Change in:	Petitioner	Plurality	Miller/Hillman	Koplan
Domestic Price	10.4 %	0.7 %	4.9 %	7.3 %
Domestic Quantity	12.3 million lbs.	0.9 million lbs.	5.9 million lbs.	8.6 million lbs.
Import Quantity	-38.5 million lbs.	-3.6 million lbs.	-21.7 million lbs.	-29.6 million lbs.
Consumption	-26.2 million lbs.	-2.8 million lbs.	-15.8 million lbs.	-21.0 million lbs.
Domestic Revenue	**$54.8 million**	**$3.7 million**	**$25.6 million**	**$38.0 million**

Table 2: Effects in Year 2

Domestic Price	9.8 %	0.0 %	4.5 %	6.0 %
Domestic Quantity	11.6 million lbs.	0.03 million lbs.	5.4 million lbs.	7.2 million lbs.
Import Quantity	-37.0 million lbs.	-0.1 million lbs.	-20.1 million lbs.	-25.6 million lbs.
Consumption	-25.4 million lbs.	-0.1 million lbs.	-14.7 million lbs.	-18.4 million lbs.
Domestic Revenue	**$51.9 million**	**$0.1 million**	**$23.4 million**	**$31.5 million**

Table 3: Effects in Year 3

Domestic Price	7.2 %	0.0 %	2.7 %	3.5 %
Domestic Quantity	18.4 million lbs.	0.05 million lbs.	6.8 million lbs.	8.8 million lbs.
Import Quantity	-36.7 million lbs.	-0.1 million lbs.	-16.5 million lbs.	-20.1 million lbs.
Consumption	-18.3 million lbs.	0.1 million lbs.	-9.7 million lbs.	-11.8 million lbs.
Domestic Revenue	**$53.9 million**	**$0.1 million**	**$19.5 million**	**$25.3 million**

Table 4: Effects in Year 4

Domestic Price	6.7 %	0.0 %	1.8 %	1.8 %
Domestic Quantity	16.9 million lbs.	0.05 million lbs.	4.7 million lbs.	4.6 million lbs.
Import Quantity	-34.5 million lbs.	-0.1 million lbs.	-11.7 million lbs.	-11.6 million lbs.
Consumption	-17.6 million lbs.	0.1 million lbs.	-7.1 million lbs.	-7.0 million lbs.
Domestic Revenue	**$49.3 million**	**$0.1 million**	**$13.3 million**	**$13.2 million**

Table 5: Total Four Year Effects on Domestic Revenue

Domestic Revenue	**$209.9 million**	**$4.0 million**	**$81.8 million**	**$108.0 million**

APPENDIX

VIEWS OF THE COMMISSION ON REMEDY*

USDA AND COMMERCE PROGRAMS AVAILABLE TO THE SHEEP INDUSTRY

* Note.–Commissioners Miller, Hillman, and Koplan do not join in this appendix.

USDA PROGRAMS

I. Section 32

Section 32 of P.L. 320, approved Aug. 24, 1935, as amended (7 U.S.C. 612c), authorizes the USDA to assist agricultural industries with adjustment problems if it determines that there is a market surplus of the commodity at issue. The Secretary of Agriculture makes the relevant decisions.[206] Section 32 authorizes three types of expenditures:

(1) Direct cash payments to firms in an industry, such as those recently announced for U.S. hog producers. A direct payments program could be developed for the domestic lamb industry,[207] similar to that recently developed for U.S. hog producers. In January 1999, USDA announced that it would make direct payments of $50 million from section 32 funds to U.S. hog producers.[208] Approximately 100,000 hog producers will receive up to $5 per slaughter hog, if they meet certain eligibility requirements.[209]

(2) Purchases for the needy. The lamb industry does not appear to be a good candidate for this remedy.[210]

(3) Export subsidies–this subpart has not been used in years, with the exception of minor expenditures for the export of cottonseed oil.

USDA attempts to start each year with a $300 million reserve.[211] According to USDA officials, as of March 1999, there was just over $100 million remaining for FY 1999. Unless otherwise directed, remaining FY 1999 funds are, according to USDA, likely to be needed for emergency surplus removal purchases, which the USDA has indicated is not likely to include lamb. Reserves are typically "re-upped" to about $300 million at the beginning of the fiscal year.[212] USDA recommends that persons seeking more information should contact Ralph Tapp, Agricultural Marketing Service (telephone: 202 720-1115).

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[206] USITC staff interview with officials from USDA, Mar. 22, 1999.

[207] Respondents' joint submission, p. 7 and exh. 5.

[208] USDA News Release, Glickman announces plan for direct cash payments to hog producers, release no. 0009.99.

[209] USDA indicated that this is the first time in several decades that this type of assistance has been provided.

[210] The School Lunch Program is currently the largest item in this category; this year about $5.4 billion of the $5.7 billion budget for the section 32 program will go to the School Lunch Program. The aid provided by this program is about 85 percent cash, with the remaining 15 percent donated commodities. According to USDA officials, lamb technically is an eligible commodity, but schools will have to want it. USDA officials indicate that lamb typically is not sold to schools because it is more expensive than other forms of meat protein and there is some resistance to it by children.

[211] The reserves are funded from tariff revenues.

[212] USITC staff interview with officials from USDA, Mar. 22, 1999.

II. Research programs

The USDA funds various research programs that encompass the areas of genetics, predator management, promotion, nutrition, and food safety. Research is supported by USDA through the two core programs: (1) the Agricultural Research Service (ARS) and (2) research grants provided by the Cooperative State Research, Education, and Extension Service (CSREES).

Agricultural Research Service. The ARS is the primary research arm of USDA. ARS has primary responsibility to provide initiative and leadership in agricultural research, conduct research on broad regional and national agricultural and related problems, conduct research in support of Federal action and regulatory agencies, provide technical expertise to meet national food, food safety, and environmental emergencies, and to serve as an agricultural science resource to the executive and legislative branches.[213]

The ARS currently spends only about $8.7 million yearly on sheep research at over 10 locations. Current ARS lamb-related projects include projects relating to total flock management (to show that sheep are ecologically friendly), genetic markers (to identify larger, healthier sheep to produce consistent product), and diseases and parasites.

USDA reports that it is seeking an increase in its ARS budget for FY2000, but not for lamb. According to USDA, any redirection of funds requested by the President to lamb would require a reduction in funding for other intended projects (under existing funding levels).

USDA officials have identified the development of a live animal test for scrapie[214] as a priority for additional funding.[215] They note that it will be impossible to eradicate scrapie until a practical live animal test is developed to determine if scrapie is present. Some research is being conducted (including a possible scrapie test), and final development of such a test is estimated at the current research pace to be 2-3 years away. USDA recommends that persons seeking more information on ARS programs available to the sheep industry should contact Dr. Lewis Smith, ARS (telephone: 301- 504-5925).

Cooperative State Research, Education, and Extension Service (CSREES). CSREES has three basic funding mechanisms: (i) funding through a special grants program, (ii) funding through land-grant universities, and (iii) funding through a competitive grants program.

The Special Grants Program may be directly useful to the lamb industry if funding can be designated. Under this program, Congress designates funding for specific projects (about $60 million total). Written into the budget each year, these grants do not require new framework legislation. The lamb industry would be a candidate for additional funds through this program.

About $400 million, including formula funding, is available for university research. Funding is typically for projects at land-grant colleges. About 1,000 projects, at least in part, involve sheep, and some projects are devoted exclusively to sheep. CSREES research grant funds totaled about $5.6 million in 1997 for sheep and wool research. These funds are typically administered by state agricultural extension services. The states determine spending priorities based on USDA guidelines.[216]

There are also competitive research grants administered by states and not explicitly designated for sheep.[217] CSREES works in partnership with the land-grant university system, other colleges and universities, and other public and private research and education organizations, in concert with the Secretary

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[213] Found at Internet address **Http://www.ars.usda.gov/afm/mr.html,** retrieved Mar. 27, 1999.

[214] Scrapie is a fatal, degenerative disease affecting the central nervous system of sheep and goats. Scrapie has had a significant impact on the sheep industry and has caused financial losses to U.S. sheep producers. Found at Internet address *http://www.aphis.usda.gov/oa/pubs/fsscrapie.html*, retrieved Mar. 27, 1999.

[215] USITC staff interview with USDA officials, Mar. 22, 1999.

[216] In addition, approximately $400 million is available for technical assistance.

[217] USITC staff interview with USDA officials, Mar. 22, 1999.

of Agriculture, in the initiation and development of agricultural research, extension, and higher education programs. These programs are carried out by land-grant universities and other partners.[218] Some program areas include animal production, protection, and processing, animal genomes, germplasm, reproduction and development, and animal health.[219]

For additional information, USDA recommends that the public contact Larry Miller, CSREES, (telephone: 202-401-6848).

III. Animal Health Programs (Scrapie)

An APHIS[220] representative expressed the view that scrapie eradication would be the most beneficial step for the industry under its jurisdiction. APHIS oversees programs to protect the health of American animal agriculture, including programs that might address scrapie and predator problems. More money for APHIS programs would be helpful for (1) identifying scrapie-free regions; and (2) buying up known infected herds.[221]

The APHIS currently spends about $2 million to $3 million year on scrapie, of which about $400,000 is for indemnification of growers for the purchase of sheep within a herd that are determined to have a high risk of scrapie. The Administration is asking for $3 million for FY2000.[222]

APHIS is considering a 1-year National Slaughter Surveillance Project that in conjunction with the ARS and industry would cost $1 million in new funding. It would use sampling after slaughter to identify areas with high and low incidence of scrapie. The problem of scrapie most immediately affects the ability to export "germplasm" (i.e., breeding stock), but the inability to export germplasm is considered to affect product reputation and hence the ability to export lamb meat.[223] There is currently a voluntary certification program, which involves testing slaughtered animals from herds. If no scrapie is detected for 5 years, the herd is certified as scrapie free. Participation is not universal and there is resistance by some growers, especially in the Midwest, where incidence of scrapie is highest.

USDA could also reduce the incidence of scrapie by purchasing known infected herds. There are now about 70 known infected flocks. The estimated cost of buying up such infected flocks is about $4-5 million.[224] While it will be impossible, according to USDA officials, to eradicate scrapie until a practical live animal test is developed to determine if scrapie is present, an elimination of these flocks would, if funding were available, likely help limit the spread of scrapie. Full elimination of scrapie must wait until a live animal scrapie test is developed. As indicated above, such a test is still about 2-3 years away at the current research pace.

For more information on scrapie programs, USDA suggests that the public contact John Clifford, APHIS (telephone: 202-720-5193).

IV. Marketing (Check-off Authority)

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[218] Found at Internet address **http://www.reesuda.gov/1700/about/csreesa2.htm,** retrieved Mar. 27, 1999.
[219] Respondents joint posthearing brief, exh. 10, 11, and 15.
[220] The Animal and Plant Health Inspection Service (APHIS).
[221] USITC staff interview with USDA officials, Mar. 22, 1999.
[222] USITC staff interview with USDA officials, Mar. 22, 1999.
[223] USITC staff interview with USDA officials, Mar. 22, 1999.
[224] For pork, USDA recently announced use of $80 million of CCC funds for eradication of pseudo-rabies. An emergency was declared to obtain access to these funds. Unlike scrapie, this program is expected to eradicate the disease. USDA officials note that while it is theoretically possible to declare an emergency with regard to scrapie and obtain CCC funds, this would not eradicate scrapie, and that the publicity stemming from the emergency might adversely affect lamb sales.

The USDA is authorized under the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411) to establish commodity promotion boards.[225] The USDA administers similar programs for the beef and pork industries to fund activities in research, marketing, and promotion through checkoff programs. A checkoff program can be organized in different ways, including on a per-animal basis, which is how the beef industry assesses its members.

The Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101-7111) authorized the Secretary of Agriculture to establish a national sheep and wool promotion, research, education program to strengthen the sheep industry's position in the market place.[226] This program would have assessed domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers would have been assessed 1 cent per pound on live sheep and the equivalent of 1 cent per pound of live sheep for sheep products and 2 cents per pound on imports of degreased wool. Reportedly, because of disagreements over the organization and details of this Act, an industry-wide referendum failed in 1996, and the program was not implemented. One advantage of a check-off program is that it could put in place a long-term funding mechanism that would continue after any trade remedy came to an end. Funds could be used to address important issues such as promotion of lamb meat. For more information on check-off programs contact Ralph Tapp, Agricultural Marketing Service (telephone 202-720-1115).

V. National Sheep Industry Improvement Center

The National Sheep Industry Improvement Center (NSIIC) was established pursuant to the Federal Agriculture Improvement and Reform Act of 1996.[227] It is an independent entity, but administratively supported by USDA Rural Development.[228]

Congress has appropriated $20 million to create a revolving fund to begin the operation of the NSIIC. There is no annual appropriation as the fund is available to the NSIIC, without fiscal year limitation. An additional $30 million in Federal funds is authorized to be appropriated for up to a 10 year period. The enabling legislation required the NSIIC to submit a strategic plan to the Secretary of Agriculture annually.

Financial assistance provided by the NSIIC is to accomplish the following goals: (1) make capital available for increasing production or improving production efficiency, (2) improve marketing efficiency or product quality, (3) promote coordination, (4) support industry communications, and (5) continued viability of the NSIIC.[229]

The NSIIC is authorized to use equity investments, guaranteed, and direct loans to deliver financial assistance to the sheep (and goat) industries. Applicants may be a public, private, or cooperative organization, an association, including a corporation not operated for profit, Federally recognized Indian Tribe, or a public or quasi-public agency to be eligible for funds.

As of late March 1999, the sheep industry had not utilized the $20 million. Funds have not been used because no plan has been submitted.[230] For more information contact Jay Wilson, executive director, NSIIC (telephone 202-720-7558).

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[225] Respondents' joint posthearing brief (remedy), p. 9.

[226] A description of the proposed program was set out in the *Federal Register* of May 9, 1996 (61 F.R. 21049 et seq.).

[227] PL 104-127.

[228] The USDA Rural Development (RD) was created in 1994 to forge new partnerships with rural communities and to fund projects that bring housing, community facilities, utilities, and other services to rural areas. The RD also provides technical assistance and financial backing for rural businesses and cooperatives to create quality jobs in rural areas. The RD program applicable to the National Sheep Industry Improvement Center (NSIIC) is administered through the Rural Business-Cooperative Service.

[229] NSIIC's 1998 Strategic Plan, pp. 3-4.

[230] USDA officials, Apr. 5, 1999.

DEPARTMENT OF COMMERCE PROGRAMS

Trade adjustment assistance

Under section 265 of the Trade Act of 1974 (19 U.S.C. 2355), the Secretary of Commerce is authorized to provide technical assistance, on such terms and conditions as he deems appropriate, for the establishment of *industry-wide* programs for new product development, new process development, export development, or other uses.[231] Section 265 permits expenditures for technical assistance of up to $10 million annually per industry, typically spread out over several years. [232]

According to a Commerce official, an industry-wide program for lamb would probably require a special appropriation, as was done for the Alaskan salmon industry recently. In a notice published in the *Federal Register* on February 11, 1999, EDA announced the availability of $5 million in trade adjustment assistance funding for the Alaskan salmon industry, to help the industry adjust to the loss of sales due to the Asian financial crisis, imports from other countries, and a natural disaster involving low runs of salmon.[233] The funds were provided in section 763 of the Omnibus Appropriations Act of 1998 (P.L. 105-277). The notice indicated that EDA's program would assist the industry with technical assistance grants or cooperative agreements to address the economic problems, and that funds under such programs are typically shared on a 50 percent Federal, 50 percent industry basis. It invited applications for funding, and said that such applications should be from associations, unions, or other nonprofit fishing organizations with an understanding of the industry's problems, and indicated it expected the successful application to call for the preparation of a strategic marketing plan. The notice invited interested persons to contact Mr. Anthony Meyer of the Economic Development Administration of the Department of Commerce (telephone: 202-482-2127) for further information.

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[231] The programs are administered by the Economic Development Administration within Commerce. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other non-profit industry organizations in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under section 223 or section 251 of the Trade Act.

[232] The Commerce Department (with the Labor Department) also administers adjustment assistance measures for workers and firms. According to officials at the U.S. Department of Labor and U.S. Department of Commerce, there have been no applications for worker or firm adjustment assistance in recent years.

[233] 64 F.R. 7054 (Feb. 11, 1999). *See also* respondent's joint submission on measures available to assist the domestic sheep industry, exhibit 2., Mar. 4, 1999.