

UNITED STATES INTERNATIONAL TRADE COMMISSION

CRABMEAT FROM SWIMMING CRABS

Investigation No. TA-201-71

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3349, August 2000)

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CRABMEAT FROM SWIMMING CRABS

DETERMINATION

On the basis of the information in the investigation, the Commission determines,¹ pursuant to section 202(b) of the Trade Act of 1974, that crabmeat from swimming crabs² is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article.

BACKGROUND

Following receipt of a petition filed on behalf of the Blue Crab Coalition, the Commission, effective March 2, 2000, instituted investigation No. TA-201-71, *Crabmeat from Swimming Crabs*, under section 202 of the Trade Act of 1974 to determine whether crabmeat from swimming crabs 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 March 20, 2000 (65 F.R. 15008). The hearing in connection with the injury phase of the investigation was held on June 15, 2000, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ Chairman Stephen Koplman and Vice Chairman Deanna Tanner Okun dissenting.

² For the purposes of this investigation, the subject merchandise is defined as crabmeat from swimming crabs (family *Portunidae*), in all its forms (except shelf-stable crabmeat in airtight containers), including frozen, fresh, and chilled crabmeat, however packed, preserved, pasteurized, or prepared, and of any grade or size (such as jumbo lump, lump, backfin, claw, select, and the like). Such crabmeat is generally classified in subheadings 1605.10.20 and 1605.10.40 of the Harmonized Tariff Schedule of the United States (HTS), but may also be entering under HTS subheadings 0306.14.20 and 0306.24.20. The petition and scope of investigation initially included shelf-stable crabmeat packed in airtight containers, which is produced using additives and a thermal manufacturing process so that it requires no refrigeration. However, in a letter to the Commission dated April 14, 2000, the petitioner requested the scope of the investigation be amended to exclude such shelf-stable crabmeat. On June 23, 2000, the Commission amended the scope of its investigation to exclude such shelf-stable crabmeat (65 F.R. 40691, June 30, 2000).

VIEWS OF THE COMMISSION

Introduction

Pursuant to section 202(b) of the Trade Act of 1974 (“Trade Act”) (19 U.S.C. § 2252(b)), we determine that crabmeat from swimming crabs is not 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.^{3 4}

Background

The Commission instituted this investigation effective March 2, 2000, following receipt of a petition filed on behalf of the Blue Crab Coalition (hereinafter “petitioner”), comprising 27 domestic crabmeat processors. The petition alleged that crabmeat from swimming crabs 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 crabmeat industry.⁵

For purposes of this investigation, the subject merchandise was defined as crabmeat from swimming crabs (family *Portunidae*) in all its forms, including frozen, fresh and chilled crabmeat, however packed, preserved, pasteurized, or prepared, and of any grade or size (such as jumbo lump, lump, backfin, claw, select, and the like).⁶

Domestic Industry

Like or directly competitive product

Statutory Framework and Commission Practice. Section 202(b)(1)(A) of the Trade Act requires that we 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

³ Commissioner Bragg joins the Commission majority’s discussion of what constitutes the domestic like product, the domestic industry, and increased imports. Although she concurs with certain of her colleagues in determining that increased imports are neither a substantial cause of serious injury nor a substantial cause of the threat of serious injury to the domestic industry, the basis for her determination differs somewhat from that of her colleagues. She therefore issues separate views regarding her injury and causation findings.

⁴ Chairman Koplan and Vice Chairman Okun dissent from this determination. They found that crabmeat from swimming crabs is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry. They also found that imports from Mexico contributed importantly to this serious injury. They join in the discussion of the background and domestic industry. *See Dissenting Views of Chairman Stephen Koplan and Vice Chairman Deanna Tanner Okun.*

⁵ Except where otherwise stated, all references herein to “crabmeat” refer to crabmeat from swimming crabs.

⁶ The petition initially included shelf-stable crabmeat packed in airtight containers, which is produced using additives and a thermal manufacturing process so that the crabmeat requires no refrigeration. The petitioner subsequently requested that the scope of the investigation be amended to exclude shelf-stable crabmeat, and on June 23, 2000, the Commission amended the scope of the investigation to exclude this product. There was no known domestic production of shelf-stable crabmeat from swimming crabs during the period examined. *Crabmeat From Swimming Crabs, Report on Investigation No. TA-201-71* (hereinafter “Report”) at II-3, n.3.

article that is like or directly competitive with the imported article.”⁷

The legislative history of the Trade Act defines the term "like" to mean those articles which are “substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.),” and the term “directly competitive” to mean those articles which are “substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor.”⁸ The decision regarding like or directly competitive product is a factual determination.⁹

In determining what constitutes the like or directly competitive domestic product, the Commission traditionally has taken into account such factors as the physical properties of the product, its customs treatment, where and how it is made (e.g., whether products are manufactured in separate facilities), its uses, and the marketing channels through which the product is sold.¹⁰ Each of the factors is relevant, but the weight given to each particular factor will depend upon the facts in the particular case.¹¹ The Commission traditionally has looked for clear dividing lines among possible products, and has disregarded minor variations.¹²

Arguments of the parties. Petitioner argued that domestic crabmeat from swimming crabs is like or directly competitive with imported crabmeat from swimming crabs. With respect to physical properties, petitioner stated that both the imported and domestic articles are produced from swimming crabs, and have the same fundamental appearance, quality, and texture. Petitioner also asserted that the uses, manufacturing processes, and marketing channels are the same for domestic and imported crabmeat. Petitioner also argued that the uses for imported and domestic crabmeat are the same, *i.e.*, for human consumption in crabmeat dishes. Petitioner argued that imported and domestic crabmeat are viewed as substitutes for one another, and are used interchangeably.¹³ Petitioner argued that domestic fresh, frozen, and pasteurized forms of crabmeat from swimming crabs, and all grades (*e.g.*, jumbo lump, backfin, claw meat, etc.) and sizes of crabmeat from swimming crabs, are part of a single like product.¹⁴ However, petitioner argued that domestic crabmeat from walking crabs is not like or directly competitive with crabmeat from imported swimming crabs, and that the two are viewed by purchasers as entirely different

⁷ 19 U.S.C. § 2252(b)(1)(A).

⁸ *Trade Reform Act of 1973; Report of the Committee on Ways and Means...on H.R. 10710*, H.R. Rep. No. 571, 93rd Cong., 1st Sess., at 45 (1973); and *Trade Reform Act of 1974, Report of the Committee on Finance... on H.R. 10710*, S. Rep. No. 1298, 93rd Cong., 2d Sess., at 121-122 (1974).

⁹ *See, e.g., Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (December 1999) at I-10; *Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999) at I-8; *Lamb Meat*, Inv. No. TA-201-68, USITC Pub. 3176 (April 1999) at I-10; *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-9.

¹⁰ *See, e.g., Circular Welded Carbon Quality Line Pipe* at I-10; *Certain Steel Wire Rod* at I-9, I-34; *Lamb Meat* at I-10; *Wheat Gluten* at I-9.

¹¹ *See, e.g., Circular Welded Carbon Quality Line Pipe*, at I-10; *Certain Steel Wire Rod* at I-9; *Lamb Meat* at I-10; *Wheat Gluten* at I-9.

¹² *See, e.g., Circular Welded Carbon Quality Line Pipe*, at I-10; *Certain Steel Wire Rod* at I-9, I-34; *Lamb Meat* at I-10; *Stainless Steel Table Flatware*, Inv. No. TA-201-49, USITC Pub. 1536 (June 1984) at 4-5.

¹³ Petitioner’s Prehearing Brief at 8-10.

¹⁴ Petitioner’s Prehearing Brief at 12-14.

products.¹⁵

None of the respondents disputed petitioner's proposed like product definition. The Venezuelan respondents stated that they agreed with petitioner that fresh and pasteurized crabmeat are a single like product.¹⁶

Finding. We find that domestic crabmeat from swimming crabs is "like" the imported crabmeat from swimming crabs that is the subject of this investigation and that there is one domestic like product. Domestic crabmeat from swimming crabs is substantially identical to imported crabmeat from swimming crabs in its inherent and intrinsic characteristics. In terms of physical properties, both have the same fundamental appearance, quality, and texture. Domestic crabmeat is derived almost exclusively from Atlantic blue crabs (*Callinectes sapidus*), while imported crabmeat is derived from several kinds of swimming crabs, with much of the imported Asian crabmeat derived from *Portunus pelagicus* crabs.¹⁷ The parties agreed that, although Asian *Portunus pelagicus* crabs may be somewhat thicker and yield more meat, they are basically identical in appearance and structure to the Atlantic blue crabs.¹⁸

Both domestic and imported crabmeat are produced using the same basic process, in which live crabs are cooked in a large pressure cooker, and after the crabs have cooled, workers use knives to split up the crabs and extract the meat.¹⁹ Both domestic and imported crabmeat are used for human consumption, either directly or as part of a recipe, such as in crab cakes or crab soup.²⁰ Both domestic and imported crabmeat are sold to wholesalers, retailers, restaurants, and food service distributors.²¹

The major difference between domestic and imported crabmeat is that most domestic crabmeat is sold fresh, while most imported crabmeat is sold pasteurized. Domestic producers reported that 71.2 percent of their 1999 shipments were fresh, 13.9 percent were frozen, and 14.9 percent were pasteurized in airtight containers.²² By contrast, 13.6 percent of imported shipments were fresh, 10.1 percent were frozen, and 76.3 percent were pasteurized in airtight containers.²³

While some differences may exist in terms of taste, uses, and channels of distribution, depending on whether crabmeat is fresh or pasteurized,²⁴ we find that any such differences do not change our

¹⁵ Petitioner's Prehearing Brief at 10-11.

¹⁶ Venezuelan Respondents' Prehearing Brief at 8.

¹⁷ Report at II-4 to II-7. Some of the imported crabmeat (particularly from Mexico and Venezuela) is also derived from *Callinectes sapidus*. *Id.*

¹⁸ Petitioner's Prehearing Brief at 8; Prehearing Brief on Behalf of the Coalition for Free Trade of Crabmeat (hereinafter "Coalition Respondents") at 34; Hearing Transcript ("Tr.") at 235-236, 238 (S. Phillips).

¹⁹ Report at II-12.

²⁰ Report at II-11.

²¹ Report at II-9, II-16 to II-17.

²² Report at II-51, Table 29.

²³ Report at II-51, Table 29. Almost all imports from Asia were pasteurized, while much of the imports from Mexico and Venezuela were fresh. *Id.* at II-50.

²⁴ These differences include: (1) many purchasers indicated that they prefer the taste of fresh crabmeat to that of pasteurized crabmeat; (2) pasteurized crabmeat has a much longer shelf life than fresh crabmeat; (3) pasteurized crabmeat is more often used in "value added" products, such as crab cakes and crab soup, than fresh crabmeat; (4)

conclusion that domestic crabmeat from swimming crabs is like imported crabmeat from swimming crabs, given the overall similarities between all crabmeat from swimming crabs and the fact that no party has argued for a different like product analysis. We note that almost 90 percent of producers and 80 percent of importers indicated that imported and domestic crabmeat can be used interchangeably.²⁵ Moreover, close to half of the responding producers, importers, and purchasers stated in their questionnaire responses that different forms of crabmeat (fresh, pasteurized, and frozen) could be substituted for each other.²⁶ None of the differences between these different forms of crabmeat, or between different grades of crabmeat (e.g., jumbo lump, backfin, claw meat, etc.),²⁷ establishes a clear dividing line between them for purposes of the Commission's like product determination. In view of the above, we find that all domestically produced crabmeat from swimming crabs is like the imported crabmeat from swimming crabs.

Crabmeat From Swimming Crabs vs. Crabmeat From Walking Crabs. We find that crabmeat from walking crabs is a distinct product, and that domestic crabmeat from walking crabs is not "like" or "directly competitive" with imported crabmeat from swimming crabs. The evidence in the Commission record shows that crabmeat from walking crabs is generally different in physical characteristics, is produced differently, and is viewed as a different product by customers. Swimming crabs have relatively large muscles within the carapace (a chitinous shell covering the crab's body) that propel their swimming legs, but relatively small muscles in their swimming legs. Thus, crabmeat from swimming crabs is picked from the carapace and claws, but meat available from the legs (apart from the claws) is not used for human consumption.²⁸ By contrast, walking crabs have relatively large leg muscles but a relatively small carapace, and crabmeat from the legs of walking crabs is used for human consumption, but the meat from the carapace is typically not used for human consumption.²⁹ While crabmeat from swimming crabs is sold in picked form, the legs from walking crabs are typically sold intact and unpicked, and the consumer extracts the meat.³⁰ A majority of responding producers, importers, and purchasers indicated that crabmeat from walking crabs and crabmeat from swimming crabs cannot be substituted for each other.³¹ Accordingly, we find that imported crabmeat from swimming crabs is not like or directly competitive with domestic crabmeat from walking crabs.

Domestic Industry

Statutory framework and Commission practice. The Trade Act defines the term "domestic

a greater percentage of pasteurized crabmeat is sold in geographically distant markets, such as the Midwest and West, than fresh crabmeat; and (5) a much larger percentage of pasteurized crabmeat is distributed through food service distributors than fresh crabmeat. Report at II-10, II-16 to II-17 at Table 3, II-51 to II-52.

²⁵ Report at II-48.

²⁶ Report at II-49 to II-51.

²⁷ We note that there are no widely accepted government or industry standards for grades of crabmeat, and individual companies use a wide variety of terms to designate their products. Report at II-9.

²⁸ Report at II-4, II-7.

²⁹ Report at II-4 to II-7.

³⁰ Report at II-4 to II-7.

³¹ Report at II-47 to II-48.

industry” to mean “the 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.”³²

In this part of its analysis the Commission focuses on which firms produce the like or directly competitive product. If the Commission has found that there is domestic production of one like or directly competitive product, it will find a single domestic industry and evaluate the impact of the pertinent imports on the facilities and workers producing that product.³³

Most section 201 cases involve firms producing a product at the same stage of production as the imported article. However, in some instances firms 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.³⁴ 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.³⁵ 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.³⁶

Finding. We find that the domestic crabmeat from swimming crabs industry comprises all domestic processors of crabmeat from swimming crabs, and does not include the harvesters of live crabs, the “watermen” and “crabbers” who catch live swimming crabs and supply them to processors and other buyers.^{37 38}

³² 19 U.S.C. § 2252(c)(6)(A)(i).

³³ See, e.g., *Circular Welded Carbon Quality Line Pipe* at I-12 to I-13; *Certain Steel Wire Rod* at I-10, I-36.

³⁴ See, e.g., *Lamb Meat* at I-12; *Certain Canned Tuna Fish*, Inv. No. TA-201-53, USITC Pub. 1558 (August 1984).

³⁵ 19 U.S.C. § 1677(4)(E).

³⁶ See *Lamb Meat* at I-12; *Fresh Tomatoes and Bell Peppers*, Inv. No. TA-201-66, USITC Pub. 2985 (August 1996), at I-9 to I-10; *Certain Canned Tuna Fish* at 5-7; *Apple Juice*, Inv. No. TA-201-59, USITC Pub. 1861 (June 1986) at 5-10; *Honey*, Inv. No. TA-201-14, USITC Pub. 781 (June 1976) at 7. See also *Mushrooms*, Inv. No. TA-201-3, USITC Pub. 1089 (August 1980) at 13-14 (applying these same factors, but declining to include producers of the raw product).

³⁷ The petitioner argued that the Commission should find that watermen and crabbers are not part of the domestic industry because there is not a single continuous line of production, and that the domestic industry should comprise all domestic processors of crabmeat from swimming crabs. Petitioner’s Prehearing Brief at 14-17. None of the respondents contested petitioner’s proposed definition of the domestic industry.

³⁸ Commissioner Askey concurs with the Commission’s finding that the domestic producers of crabmeat from swimming crabs (not including live crab harvesters) comprise the members of the domestic industry producing articles that are “like or directly competitive” with the imported articles. In this regard, she agrees with, and joins in, the Commission’s discussion with respect to the significant differences between crabmeat from swimming crabs and crabmeat from walking crabs, as well as the discussion concerning live crab harvesters. Accordingly, she finds that crabmeat from swimming crabs is the only product that is “like or directly competitive” with the article subject to this investigation.

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

Specifically, we find that there is not a single continuous line of production from the raw product, live swimming crabs, to the processed product, crabmeat from swimming crabs. The live crabs caught by watermen are not dedicated to the production of crabmeat, and less than half of live swimming crab landings are sold into the picking crab market to processors for production of crabmeat.^{39 40} Instead, a substantial percentage of live crabs are sold into the “live basket” or “bushel” market, where crabs are sold to be cooked and served intact to the ultimate consumer without commercial processing.^{41 42} Thus, we find that there is not one single continuous line of production from a raw product to the processed product, but rather two separate lines of production in which less than half of the raw product goes to the processed market. Accordingly, we find that the domestic industry does not include the harvesters of the raw product.⁴³

Increased Imports

Statutory Framework and Commission Practice. The first of the three statutory criteria for an affirmative determination under section 201 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.”⁴⁴ In determining whether imports have increased the Commission considers imports from all sources. 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. A simple increase in imports is sufficient to satisfy this statutory requirement.

Finding. We find that imports have increased both in actual terms and relative to domestic production. In actual terms, imports increased each year during the period examined, from 3,168,000 pounds in 1995 to 5,017,000 pounds in 1996, 8,272,000 pounds in 1997, 13,936,000 pounds in 1998, and 20,914,000 pounds in 1999.⁴⁵ The bulk of this increase occurred in 1998 and 1999, during which imports more than doubled. The ratio of imports to domestic production increased each year during the period

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. See *Circular Welded Carbon Quality Line Pipe* at 11, n.60, and *Lamb Meat* at 2, n.7.

³⁹ Report at II-10.

⁴⁰ Because Commissioner Bragg does not rely upon the NMFS crabmeat production data, she does not join this statement. She does agree, however, that live crabs caught by watermen are not solely dedicated to the production of crabmeat. Tr. at 113-115 (Brooks, W. Phillips, and Rich).

⁴¹ Report at II-9 to II-10.

⁴² Because Commissioner Bragg does not rely upon the NMFS crabmeat production data, she does not join this statement. However, she agrees that a substantial percentage of live crabs are sold into the bushel market. Tr. at 113-115 (Brooks, W. Phillips, and Rich).

⁴³ Because we find that there is not a single continuous line of production from the raw product to the processed product, we do not reach the question of whether there is a substantial coincidence of economic interest between the watermen and the crabmeat processors.

⁴⁴ 19 U.S.C. § 2252(c)(1)(C).

⁴⁵ Report at II-18, Table 4.

examined, from 37.1 percent in 1995 to 246.6 percent in 1999.⁴⁶

In view of the above, we conclude that imports are in increased quantities.

Serious Injury or Threat of Serious Injury

Statutory framework. The second of the three statutory criteria concerns whether the domestic industry is seriously injured or threatened with serious injury. The statute defines “serious injury” to mean “a significant overall impairment in the position of a domestic industry,”⁴⁷ and “threat of serious injury” to mean “serious injury that is clearly imminent.”⁴⁸

The statute sets out a list of economic factors that the Commission must consider. With respect to serious injury, the Commission must take into account all economic factors it considers relevant, including but not limited to (1) the significant idling of productive facilities in the domestic industry, (2) the inability of a significant number of firms in the industry to carry out domestic production operations at a reasonable level of profit, and (3) significant unemployment or underemployment within the domestic industry.⁴⁹

With respect to the threat of serious injury, these factors include: (1) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), 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.⁵⁰ The Commission is not limited to consideration of these factors, and it considers all economic factors that it finds relevant. The statute states that the presence or absence of any of these statutory factors is “not necessarily dispositive” of whether there is serious injury or threat of serious injury.⁵¹

Finding. For the reasons set forth below, we find that the domestic industry is not seriously injured and is not threatened with serious injury. That is, we do not find “a significant overall impairment in the position” of the industry, nor do we find that serious injury is “clearly imminent.”

Information in the investigation

Before considering serious injury or threat of serious injury to the domestic industry, we first address the issues of the various data sources in this investigation. Petitioner argued that the Commission should rely on data from the National Marine Fisheries Service (NMFS), citing the Commission’s use of U.S. Department of Agriculture (USDA) data in the *Lamb Meat* section 201 case. Petitioner argued that

⁴⁶ The ratio of U.S. imports to U.S. production was 37.1 percent in 1995, 57.2 percent in 1996, 89.9 percent in 1997, 161.7 percent in 1998, and 246.6 percent in 1999. Report at II-22, Table 6.

⁴⁷ 19 U.S.C. § 2252(c)(6)(C).

⁴⁸ 19 U.S.C. § 2252(c)(6)(D).

⁴⁹ 19 U.S.C. § 2252(c)(1)(A).

⁵⁰ 19 U.S.C. § 2252(c)(1)(B).

⁵¹ 19 U.S.C. § 2252(c)(3).

the Commission's questionnaire data contain a "survivorship bias," in that domestic firms that went out of business during the period examined did not respond to the Commission's questionnaire, and their production is not included in the questionnaire data. Thus, petitioner argued that the questionnaire data understate production for the earlier years in the period examined, and therefore understate what petitioner contended was a significant decline in domestic production. Petitioner argued that to eliminate this survivorship bias, the Commission should rely on NMFS data where available. For the reasons stated below, we have relied primarily on Commission questionnaire data in reaching our determination in this investigation. We have also taken into account the NMFS data where appropriate.

The Commission received questionnaire responses from 74 firms estimated to represent approximately 86 percent of 1998 U.S. production of crabmeat from swimming crabs.⁵² These responses included domestic producers of crabmeat from all crabmeat-producing regions and from firms of all different sizes.⁵³ Moreover, given the relatively broad coverage and comprehensiveness of our questionnaire data here, we find no reason to depart from the Commission's usual practice of relying primarily on Commission questionnaire data.

The scope of the NMFS data is limited, because the NMFS data report only the quantity and value of production, and the monthly number of employees. Also, NMFS data were only available through 1998, while the Commission questionnaires collected data through 1999. It is clear that some domestic producers exited the industry during the period examined, and did not respond to the Commission's questionnaire. At the same time, a number of current domestic producers also failed to respond to the Commission's questionnaire, including nine of the twenty-eight members of the petitioning Blue Crab Coalition. Thus, the available facts do not cause us to conclude that the Commission data are not acceptable in their industry coverage. Moreover, the Commission questionnaires are tailored to address all statutory factors, and therefore provide a more comprehensive basis than the NMFS data to assess the condition of the domestic industry.⁵⁴ Petitioner further argued that the Commission should use NMFS data for the 1995-98 period and questionnaire data for 1999.⁵⁵ However, comparisons of NMFS data for earlier years with questionnaire data for 1999 could be misleading, given the different firms responding and possibly different methodologies used in collecting the data.⁵⁶

⁵² Report at II-14. The 86 percent figure was arrived at by dividing questionnaire reported 1998 production by NMFS reported 1998 production. *Id.* at II-14, n.50. The corresponding production coverage figures for the earlier years were 62 percent for 1995, 66 percent for 1996, and 74 percent for 1997. *Id.*

⁵³ By contrast, in *Lamb Meat*, the Commission received usable questionnaire data from firms or individuals accounting for only 6 percent of domestic lamb production, and the Commission noted that it had been unable to develop a statistically valid sample of the industry. Accordingly, the Commission drew substantially on the more comprehensive published USDA data on the domestic lamb meat industry in addition to questionnaire data. *Lamb Meat* at I-16 to I-17.

⁵⁴ Respondents' Posthearing Brief, Exh. 8. The Commission did not have access here to the NMFS survey responses or any other underlying NMFS data, only the NMFS summary data.

⁵⁵ Petitioner's Prehearing Brief at 26-27.

⁵⁶ Compliance with NMFS surveys is voluntary, and there is evidence that the industry cooperation with NMFS surveys declined between 1995 and 1999. Report at II-10 n.37. Moreover, the record shows that a number of domestic producers who responded to the Commission's questionnaire had not responded to the NMFS surveys. For example, while 28 Maryland processors responded to the Commission's questionnaire, NMFS received survey responses from no more than 16 Maryland processors in 1998 (and from no more than 24 Maryland processors in 1995). See Coalition Respondents' Posthearing Brief at 12. In addition, approximately 12 percent of the NMFS reported production is not derived from actual survey responses, but is rather an estimate by NMFS of non-reported

Accordingly, we place principal reliance on Commission questionnaire data, and take into account NMFS data where appropriate.⁵⁷

Overview of the Domestic Industry

The U.S. crabmeat industry is primarily composed of a large number of small, privately-held businesses, many of which are family owned and operated. The states of Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Texas, and Virginia account for all significant commercial production of crabmeat in the United States. Twelve large producers of crabmeat accounted for an estimated 37 percent of domestic production in 1998.⁵⁸ Many crabmeat processors produce other seafood products in addition to crabmeat, such as oysters and various types of fish.⁵⁹

Domestic crabmeat processors have focused on the production of fresh crabmeat, accounting for over 71 percent of U.S. shipments in 1999, which has a traditional and seasonal market along the east and Gulf coasts of the United States.⁶⁰ In contrast, in 1999, imported crabmeat was made up primarily of pasteurized product distributed on a nationwide basis.⁶¹ Indonesia, Thailand, Mexico and Venezuela were the principal import suppliers in 1999.⁶² This represented a shift from the earlier part of the period when imports were mostly from Mexico and Venezuela, which largely supplied fresh crabmeat, and those imports were generally considered to be complementary to the U.S. harvesting season.⁶³

The domestic industry has faced a number of challenges in recent years in addition to the increased imports. While the domestic crab supply has essentially remained steady, the number of crabs sold to the bushel market has increased, leaving less supply for processing.⁶⁴ Further, harvested live crabs are described as being increasingly smaller, yielding less meat.⁶⁵ Also, much of the growth in demand has been for pasteurized crabmeat, which offers a significantly longer shelf life than the fresh product, and is widely

production. Staff phone notes of July 10, 2000 conversation with *** of NMFS.

⁵⁷ Commissioners Miller and Hillman accept the NMFS data as reasonable indicators of trends for those factors covered by the survey. Contrary to petitioner's arguments, however, we believe that the NMFS data further support the negative determination in showing that declines in important industry performance indicators began prior to the significant increase in imports. Thus, we find no substantial causal nexus between the volume of imports during the period examined and any injury to the domestic crabmeat industry.

⁵⁸ Report at II-14.

⁵⁹ Report at II-14.

⁶⁰ Report at II-51, Table 29.

⁶¹ Report at II-51, Table 29.

⁶² Report at II-18, Table 4.

⁶³ Report at II-18, Table 4, II-49; Tr. at 97-98 (Taylor, Johnson).

⁶⁴ Report at II-10, II-60 to II-62.

⁶⁵ Tr. at 133-134 (Rich); 161 S. Phillips); 164 (Strand); Coalition Respondents' Prehearing Brief, Exh. 4(E) at 400.

preferred by the food service sector.⁶⁶

The Domestic Industry is Not Seriously Injured

In determining that the domestic industry is not seriously injured, we considered evidence relating to the specifically enumerated statutory factors, as well as evidence relating to domestic production and shipments, inventories, productivity, capital expenditures, and research and development (R&D) expenditures. Considered in their entirety, these factors do not show a significant overall impairment in the condition of the industry constituting “serious injury” within the meaning of section 202 of the Trade Act.⁶⁷

No significant idling of productive facilities. Although domestic production of crabmeat was somewhat flat over the period examined, declining slightly by 0.8 percent,⁶⁸ domestic shipments actually increased slightly by 2.5 percent from 1995 to 1999.⁶⁹ Domestic shipments increased in 1996 and 1997, declined in 1998 and rose slightly in 1999, but remained higher than in 1995. These data do not indicate a significant reduction in domestic production.

Capacity utilization declined during the period examined, but we find that this was largely a result of an increase in production capacity. Capacity utilization declined from 69.0 percent in 1995 to 58.8 percent in 1999.⁷⁰ However, production capacity increased by 15.6 percent from 11,669,000 pounds in 1995 to 13,492,000 pounds in 1999.⁷¹ The sharpest decline in capacity utilization during the period examined, from 1998 to 1999, occurred at the same time as the largest increase in capacity (almost 1 million pounds). Thus, we find that the data relating to production, capacity, and capacity utilization do not provide evidence of serious injury, given the industry’s flat production and increased capacity over the period examined.

While the NMFS data show a decline in reported U.S. production each year during the period 1995 to 1998, the data reflect much larger declines in reported production between 1990 and 1995, long before the recent surge in imports.⁷² Moreover, the declines in production suggested by the NMFS data are

⁶⁶ Report at II-10 to II-11; Tr. at 171-175 (Coffman).

⁶⁷ We note again that the statute requires demonstration of not merely injury, but *serious* injury, and not merely impairment, but a *significant* overall impairment of the position of the domestic industry.

⁶⁸ Domestic production was 8,547,000 pounds in 1995, 8,778,000 pounds in 1996, 9,199,000 pounds in 1997, 8,619,000 pounds in 1998, and 8,482,000 pounds in 1999. Report at II-25, Table 8.

⁶⁹ The volume of U.S. producers’ U.S. shipments was 8,277,000 pounds in 1995, 8,539,000 pounds in 1996, 9,026,000 pounds in 1997, 8,421,000 pounds in 1998, and 8,481,000 pounds in 1999. The value of U.S. producers’ U.S. shipments was \$72,679,000 in 1995, \$73,646,000 in 1996, \$79,691,000 in 1997, \$75,321,000 in 1998 and \$73,350,000 in 1999. Report at II-26, Table 9.

⁷⁰ Capacity utilization was 69.0 percent in 1995, 69.2 percent in 1996, 69.8 percent in 1997, 65.7 percent in 1998, and 58.8 percent in 1999. Report at II-25, Table 8.

⁷¹ Production capacity was 11,669,000 pounds in 1995, 12,069,000 pounds in 1996, 12,555,000 pounds in 1997, 12,529,000 pounds in 1998, and 13,492,000 pounds in 1999. Report at II-25, Table 8.

⁷² The NMFS data show reported U.S. production of 19,974,000 pounds in 1990; 27,181,000 pounds in 1991; 16,198,000 pounds in 1992; 18,170,000 pounds in 1993; 18,600,000 pounds in 1994; 13,866,000 pounds in 1995; 13,241,000 pounds in 1996; 12,456,000 pounds in 1997; and 10,052,000 pounds in 1998. Report at II-25.

consistent with the decline in live crab landings destined for the processor market as opposed to the bushel market.⁷³ We do not find the NMFS data indicate a significant idling of productive facilities.

NMFS data show that the number of firms responding to the survey fell from 172 firms in 1990 to 147 firms in 1995, and further declined to 119 firms in 1998.⁷⁴ However, for the reasons previously stated, we do not conclude that a reduction in the number of firms responding to the NMFS survey necessarily represents actual exit of all of these firms from the industry. Since many firms also produce other seafood products at their processing facilities, there is some indication that some exiting firms may not have closed down, but rather chose to concentrate on producing products other than crabmeat.⁷⁵

Both Commission and NMFS data suggest that there were some plant closures and production curtailment during the period examined.⁷⁶ It is also undisputed that some crabmeat processors entered the market during the period as well.⁷⁷ Given that the crabmeat industry contains many small family-operated businesses,⁷⁸ it is not surprising that the record reflects such exit and entry during the period, but given the flat production trend and the increase in production capacity, we do not find that the plant closures and production slowdowns during the period demonstrate a significant idling of productive facilities.

No inability of a significant number of firms to operate at a reasonable level of profit. The domestic industry as a whole reported positive operating income in each of the five years of the period examined. Operating income increased in 1996, then declined in 1997, 1998, and 1999. Overall, operating income declined by 14.5 percent over the period from \$2,876,000 in 1995 to \$2,458,000 in 1999.⁷⁹ However, the ratio of operating income to net sales fluctuated within a relatively small range, declining only slightly overall from 4.6 percent in 1995 to 4.2 percent in 1999.⁸⁰ In addition, net sales value and gross profit on a per pound basis both increased from 1995 to 1999.⁸¹ While the decline in operating income suggests that the industry may be experiencing difficulties, the increases in these ratios, and the modest decline in the operating margin, demonstrate that the industry's difficulties do not rise to the level of "serious" injury and "significant" overall impairment.

With respect to the financial performance of individual firms, in 1999, 37 percent (16 of 43) of the

⁷³ See Report at II-45, Table 26.

⁷⁴ NMFS data show 172 firms in 1990, 186 firms in 1991, 181 firms in 1992, 171 firms in 1993, 162 firms in 1994, 147 firms in 1995, 139 firms in 1996, 137 firms in 1997, and 119 firms in 1998. Report at II-13.

⁷⁵ Report at II-14, II-14 to II-15; Tr. at 33 (Rich).

⁷⁶ Report at II-21, II-24. The record reflects a number of different reasons cited by domestic producers for these closures and production shutdowns, including shortages of raw materials and labor, and adverse weather conditions, as well as increased imports. *Id.*; see Coalition Respondents' Posthearing Brief at 19 (citing questionnaire responses).

⁷⁷ Report at II-21, II-24.

⁷⁸ Report at II-13.

⁷⁹ Overall industry operating income was \$2,876,000 in 1995, \$4,690,000 in 1996, \$4,372,000 in 1997, \$3,290,000 in 1998 and \$2,458,000 in 1999. Report at II-30, Table 12.

⁸⁰ The ratio of operating income to sales was 4.6 percent in 1995, 7.2 percent in 1996, 6.4 percent in 1997, 5.1 percent in 1998, and 4.2 percent in 1999. Report at II-30, Table 12.

⁸¹ Net sales value per pound was \$9.67 in 1995, \$9.86 in 1996, \$9.94 in 1997, \$9.92 in 1998, and \$9.78 in 1999. Gross profit per pound was \$1.68 in 1995, \$1.98 in 1996, \$2.00 in 1997, \$1.80 in 1998, and \$1.74 in 1999.

firms reporting financial data in response to Commission questionnaires reported operating losses, as compared to 30 percent (11 of 37) in 1995.⁸² However, we note that the vast majority (13 of 16) of the firms reporting operating losses in 1999 were smaller volume firms with revenues below \$1 million dollars.⁸³ Thirteen of 26 firms with revenues below \$1 million reported operating losses in 1999, while only 3 of 17 firms with revenues of \$1 million and above reported operating losses. Firms with revenues between \$1 million and \$2 million were the most profitable, with an overall operating margin of 8.6 percent, and only 1 of 9 of these producers reporting operating losses. Firms with revenues of over \$2 million were also profitable, with 2 of 8 of these producers reporting operating losses.⁸⁴ These data confirm that the domestic crabmeat industry has always been characterized by a large percentage of small volume, family owned and operated operations that may be marginally profitable during periods of strong demand. Thus, we find that the domestic industry, as a whole, is operating at a reasonable level of profit.

No significant unemployment or underemployment. Similarly, we do not find evidence of significant unemployment or underemployment in the industry. According to the record, all of the relevant indicators with respect to employment and wages increased during the period examined. The number of production and related workers (PRWs) increased in 1996 and 1997, declined in 1998, then increased in 1999, with an overall increase from 2,236 in 1995 to 2,388 in 1999.⁸⁵ The number of hours worked increased in a similar trend from 2,484,000 in 1995 to 2,848,000 in 1999.⁸⁶ Total wages paid increased from \$15,516,000 in 1995 to \$19,782,000 in 1999.⁸⁷ Average hourly wages increased from \$6.10 per hour in 1995 to \$6.95 in 1999.⁸⁸ Thus, none of these employment indicators in the Commission's questionnaire data show significant unemployment or underemployment, or support a finding that the industry is seriously injured. Moreover, there is evidence that the industry has long had a difficulty in attracting and retaining reliable workers, and has experienced labor shortages.⁸⁹ Industry productivity declined somewhat during the period examined from 3.3 pounds per hour in 1995 to 2.8 pounds per hour in 1999, with the largest decline from 1995 to 1996.⁹⁰

The NMFS data show a decline in the reported average number of employees from 4,582 in 1990

⁸² Eleven of 37 firms reported operating losses in 1995, 7 of 40 firms reported operating losses in 1996, 8 of 41 firms reported operating losses in 1997, 16 of 42 firms reported operating losses in 1998, and 16 of 43 firms reported operating losses in 1999. Report at II-30, Table 12.

⁸³ Report at II-31, Table 14.

⁸⁴ Report at II-31, Table 14.

⁸⁵ The number of production and related workers was 2,236 in 1995, 2,339 in 1996, 2,530 in 1997, 2,339 in 1998 and 2,388 in 1999. Report at II-31, Table 11.

⁸⁶ The number of hours worked was 2,484,000 in 1995, 2,725,000 in 1996, 2,911,000 in 1997, 2,763,000 in 1998 and 2,848,000 in 1999. Report at II-31, Table 11.

⁸⁷ Total wages paid were \$15,516,000 in 1995, \$17,026,000 in 1996, \$19,179,000 in 1997, \$18,935,000 in 1998 and \$19,782,000 in 1999. Report at II-31, Table 11.

⁸⁸ Average hourly wages were \$6.10 in 1995, \$6.13 in 1996, \$6.47 in 1997, \$6.73 in 1998 and \$6.95 in 1999. Report at II-28, Table 11.

⁸⁹ Petitioner's Prehearing Brief at 51-53; Report at II-27, II-61, Table 34.

⁹⁰ Industry productivity was 3.3 pounds per hour in 1995, 3.0 pounds per hour in 1996, 3.0 pounds per hour in 1997, 2.9 pounds per hour in 1998, and 2.8 pounds per hour in 1999. Report at II-28, Table 11.

to 3,459 in 1995, and a further decline to 2,941 in 1998.⁹¹ The data reflect a decline in reported employees in 1996, an increase in 1997, and a decline in 1998, but these declines in 1996 and 1998 were smaller than the declines in reported employees in 1994 and 1995 before imports had increased significantly. However, given the absence of any indication of significant unemployment or underemployment in the Commission's questionnaire data, we do not attach much weight to the NMFS data on employment. Thus, we do not find significant unemployment or underemployment within the domestic industry.

No indication of serious injury based on other relevant economic factors. In evaluating the question of serious injury, we have taken into account all relevant economic factors, including inventories, productivity, levels of capital investment, and R&D expenses. While some of these factors showed modest declines, we do not find that they demonstrate serious injury.

As noted earlier, over 70 percent of U.S. crabmeat production is of fresh crabmeat,⁹² and producers do not maintain inventories of fresh crabmeat because of its perishable nature.⁹³ U.S. producers of pasteurized and frozen crabmeat did report a minor amount of inventories.⁹⁴ The ratio of U.S. producers' inventories to production fluctuated within a narrow range between 8.2 percent in 1995 to 10.6 percent in 1998, declining slightly to 9.8 percent in 1999.⁹⁵ U.S. producers' inventories increased from 1995 to 1998, but declined by 9 percent in 1999, with an overall increase of 19.1 percent from 1995 to 1999.⁹⁶ Based on the generally low level of crabmeat inventories during the period, we do not find that this increase demonstrates serious injury, particularly given the decline in inventories in 1999.

The crabmeat industry is a labor-intensive industry, not a capital-intensive industry, and industry capital expenditures were not large during the period examined. Capital expenditures declined during the period examined from \$866,000 in 1995 to \$585,000 in 1999.⁹⁷ The crabmeat industry is likewise not an R&D intensive industry and only five domestic producers reported any R&D expenses during the reporting period examined.⁹⁸ R&D expenditures were likewise not large during the period examined, declining from a high of \$146,000 in 1995 to a low of \$17,000 in 1999.⁹⁹ Given the low levels of capital expenditures and R&D expenditures at the beginning of the period examined, we do not attach much significance to the declines in these indicators during the period, and do not find those declines to evidence serious injury.

In sum, the evidence does not show "significant overall impairment" in the position of the domestic

⁹¹ NMFS data show that the reported number of employees was 4,582 in 1990; 5,016 in 1991; 4,872 in 1992; 4,713 in 1993; 3,971 in 1994; 3,459 in 1995; 3,056 in 1996; 3,197 in 1997; and 2,941 in 1998. Report at II-28.

⁹² Report at II-49.

⁹³ Report at II-27.

⁹⁴ Report at II-27.

⁹⁵ The ratio of U.S. producers' end-of-period inventories to production was 8.2 percent in 1995, 9.6 percent in 1995, 9.0 percent in 1997, 10.6 percent in 1998, and 9.8 percent in 1999. Report at II-27, Table 10.

⁹⁶ U.S. producers' end-of-period inventories were 698,000 pounds in 1995, 841,000 pounds in 1996, 827,000 pounds in 1997, 911,000 pounds in 1998, and 831,000 pounds in 1999. Report at II-27, Table 10.

⁹⁷ Capital expenditures were \$866,000 in 1995, \$892,000 in 1996, \$1,003,000 in 1997, \$548,000 in 1998, and \$585,000 in 1999. Report at II-33, Table 16.

⁹⁸ Report at II-29, II-33.

⁹⁹ R&D expenses were \$146,000 in 1995, \$75,000 in 1996, \$56,000 in 1997, \$38,000 in 1998, and \$17,000 in 1999. Report at II-33, Table 16.

industry. As a result, and consistent with the overall record, we do not find that the industry is seriously injured.

The Domestic Industry Is Not Threatened With Serious Injury

In considering whether the industry is threatened with serious injury, we considered all relevant economic factors, including the statutory threat factors:

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) 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,

(iii) 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.¹⁰⁰

No decline in sales sufficient to support a finding of threat of serious injury. The domestic industry experienced a decline in sales in the period examined. Net sales declined by 7.2 percent in volume, from 6,419,460 pounds in 1995 to 5,958,399 pounds in 1999,¹⁰¹ and by 6.1 percent in value, from \$62,047,000 in 1995 to \$58,266,000 in 1999.¹⁰² However, the quantity of domestic shipments increased by 2.5 percent from 8,277,000 pounds in 1995 to 8,481,000 pounds in 1999, and the value of domestic shipments likewise increased by 0.9 percent from \$72,679,000 to \$73,350,000 in 1999.¹⁰³ Given the increase in domestic shipments, we do not find that the relatively modest decline in net sales supports a finding of threat of serious injury.

No decline in market share sufficient to support a finding of threat of serious injury. It is undisputed that the domestic industry experienced a large decline in market share. Its share of U.S. consumption by volume declined from 73.2 percent in 1995 to 29.9 percent in 1999, and its share of U.S. consumption by value declined from 77.2 percent in 1995 to 32.1 percent in 1999.¹⁰⁴

However, the Commission record indicates that the decline in import market share occurred as

¹⁰⁰ 19 U.S.C. § 2252(c)(1)(B).

¹⁰¹ By volume, net sales were 6,419,460 pounds in 1995, 6,624,536 pounds in 1996, 6,862,998 pounds in 1997, 6,504,644 pounds in 1998, and 5,958,399 pounds in 1999. Report at II-30, Table 12.

¹⁰² By value, net sales were \$62,047,000 in 1995, \$65,297,000 in 1996, \$68,249,000 in 1997, \$64,543,000 in 1998 and \$58,266,000 in 1999. Report at II-30, Table 12.

¹⁰³ Report at II-26, Table 9.

¹⁰⁴ The domestic industry's share of U.S. consumption by volume was 73.2 percent in 1995, 65.2 percent in 1996, 54.9 percent in 1997, 41.5 percent in 1998, and 29.9 percent in 1999. The domestic industry's share of U.S. consumption by value was 77.2 percent in 1995, 73.9 percent in 1996, 60.9 percent in 1997, 46.3 percent in 1998, and 32.1 percent in 1999. Report at C-3, Table C-1.

domestic demand dramatically increased, and that the surge in imports largely supplied that increased demand, rather than significantly affecting domestic production, shipments, or sales. Domestic apparent consumption increased by 151.1 percent in volume from 11,313,000 pounds in 1995 to 28,404,000 pounds in 1999, and by 142.8 percent in value, from \$94,204,000 in 1995 to \$228,762,000 in 1999.¹⁰⁵ U.S. shipments of imports increased by 556.2 percent from 3,036,000 pounds in 1995 to 19,923,000 pounds in 1999.¹⁰⁶ Thus, import shipments increased by 16.9 million pounds, while domestic consumption increased by 17.1 million pounds, demonstrating that the increase in import shipments went to supply increased U.S. demand.

As noted earlier, from 1995 to 1999, domestic production declined slightly by 0.8 percent (65,000 pounds), the quantity of domestic shipments increased by 2.5 percent (204,000 pounds), and net sales declined by 7.2 percent (461,000 pounds).¹⁰⁷ These modest changes, including an increase in domestic shipments, confirm that the large increase in imports did not significantly affect domestic production, shipments, or sales, but rather went to supply the equally large increase in U.S. demand. Accordingly, since we find that increased imports effectively expanded the U.S. market rather than supplanting domestic production, we find that the decline in the domestic industry's market share does not support a finding of threat of serious injury,

No higher and growing inventory sufficient to support a finding of threat of serious injury. As noted earlier, U.S. producers do not maintain inventories on fresh crabmeat, but only of pasteurized and frozen crabmeat, which comprise a relatively small percentage of their production. The ratio of inventories to production fluctuated within a narrow range between 8.2 percent in 1995 to 10.6 percent in 1998, declining slightly to 9.8 percent in 1999.¹⁰⁸ Inventories increased from 1995 to 1998, but declined by 9 percent in 1999, with an overall increase of 19.1 percent from 1995 to 1999.¹⁰⁹ We find that this increase in domestic producers' inventories does not support a threat finding, given the generally low levels of inventories, the relatively stable ratio of inventories to production, and the decline in inventories in 1999.

There was a very large increase in U.S. importers' end-of-period inventories from 237,000 pounds in 1995 to 4,594,000 pounds in 1999.¹¹⁰ However, this 4.3 million pound increase in importers' inventories is much less significant when set against the much larger increases of 16.9 million pounds in import

¹⁰⁵ By volume, domestic apparent consumption was 11,313,000 pounds in 1995, 13,098,000 pounds in 1996, 16,431,000 pounds in 1997, 20,271,000 pounds in 1998, and 28,404,000 pounds in 1999. By value, domestic apparent consumption was \$94,204,000 in 1995, \$99,624,000 in 1996, \$130,915,000 in 1997, \$162,854,000 in 1998, and \$228,762,000 in 1999. Report at C-3, Table C-1.

¹⁰⁶ U.S. shipments of imports were 3,036,000 pounds in 1995, 4,559,000 pounds in 1996, 7,405,000 pounds in 1997, 11,850,000 pounds in 1998, and 19,923,000 pounds in 1999. Report at C-5, Table C-1.

¹⁰⁷ Report at II-25, Table 8; II-26, Table 9; and II-30, Table 12.

¹⁰⁸ The ratio of U.S. producers' end-of-period inventories to production was 8.2 percent in 1995, 9.6 percent in 1995, 9.0 percent in 1997, 10.6 percent in 1998, and 9.8 percent in 1999. Report at II-27, Table 10.

¹⁰⁹ U.S. producers' end-of-period inventories were 698,000 pounds in 1995, 841,000 pounds in 1996, 827,000 pounds in 1997, 911,000 pounds in 1998, and 831,000 pounds in 1999. Report at II-27, Table 10.

¹¹⁰ U.S. importers' end-of-period inventories were 237,000 pounds in 1995, 694,000 pounds in 1996, 1,555,000 pounds in 1997, 3,588,000 pounds in 1998, and 4,594,000 pounds in 1999. Report at II-43, Table 25. However, these figures are probably significantly overstated due to Phillips Foods' inclusion of product in transit on the ocean as U.S. inventory in its questionnaire response. See Report at II-44.

shipments and 17.1 million pounds in domestic consumption in the same period.¹¹¹

Moreover, despite the seemingly high level of importer inventories, there is evidence of domestic crabmeat supply shortages in the United States, particularly with respect to pasteurized crabmeat. Phillips Foods, the largest volume importer of crabmeat, stated that it is currently desperately short of product and cannot fill all customer orders, that its inventories have declined substantially from December 1999 to May 2000, and that as soon it receives shipments of imported crabmeat, it ships the crabmeat to its customers.¹¹² Thus, such importer inventories are designated for existing customer orders, and do not constitute an overhang on the market. Domestic producers have also experienced product shortages, and have purchased crabmeat from other sources, including imported crabmeat, to fill customer orders.¹¹³ Purchasers such as food service distributors and wholesalers reported that they have experienced crabmeat product shortages or have been placed on allocation, and are unable to purchase all the crabmeat they require.¹¹⁴ Thus, we find that the level of U.S. importers' inventories does not support a finding of threat of serious injury. Similarly, given the rapidly increasing demand in the United States for crabmeat, and the current product shortages, we do not find that projections of future increases in shipment by importers and foreign producers support a finding of threat of serious injury.

No indication of a threat of serious injury based on trends in other statutory factors. We have examined the trends in all other relevant factors, and found that in none of these factors do the trends demonstrate threat of serious injury. All of the relevant indicators with respect to employment and wages increased during the period examined. There were increases in the numbers of production and related workers, in the number of hours worked, in total wages paid, and in average hourly wages. Moreover, average hourly wages increased every year during the period, and, except for declines in 1998, the number of PRWs, the number of hours worked and total wages paid also increased each year, including increases in 1999. Both hourly wages and the total wages paid were at their highest levels in the period examined in 1999.¹¹⁵ Thus, trends in the employment and wages indicators do not support a finding that the industry is threatened with serious injury.

While there were slight declines in other factors during the period examined, these declines are insufficient to establish threat of serious injury. For example, industry production declined by 0.8 percent from 1995 to 1999, and industry productivity declined somewhat from 3.3 pounds per hour in 1995 to 2.8 pounds per hour in 1999.¹¹⁶

With respect to profitability, the domestic industry as a whole reported positive operating income in each of the five years of the period examined. Overall, operating income declined by 14.5 percent from 1995 to 1999, and the ratio of operating income to net sales declined from 4.6 percent in 1995 to 4.2

¹¹¹ The ratio of importers' inventories to imports was 7.5 percent in 1995, 13.8 percent in 1996, 18.8 percent in 1997, 25.7 percent in 1998, and 22.0 percent in 1999. Report at II-43, Table 25. As noted earlier, these ratios are somewhat overstated given the overstatement of Phillips Foods' inventories because of the inclusion of product in transit on the ocean. See Report at II-44.

¹¹² Report at II-44; Tr. at 191-192 (Sneed). Phillips Foods reported that its inventory of crabmeat located in its U.S. warehouses declined by 67 percent from *** pounds on December 31, 1999 to *** pounds on May 31, 2000. Coalition Respondents' Posthearing Brief at 28 and Exh. 13.

¹¹³ Coalition Respondents' Posthearing Brief, Part B, at 2 (summarizing questionnaire responses).

¹¹⁴ Tr. at 176 (Coffman); 219-220 (Hoppenjans); Coalition Respondents' Posthearing Brief, Part B, at 2-3.

¹¹⁵ Report at II-28, Table 11.

¹¹⁶ Report at II-25, Table 8, and II-28, Table 11.

percent in 1999.¹¹⁷ These overall declines are not sufficient to demonstrate threat of serious injury.

Operating income increased from 1995 to 1996, and then declined by 6.7 percent in 1997, by 24.8 percent in 1998, and by 25.2 percent in 1999.¹¹⁸ While the declines in operating income in 1998 and 1999 are much steeper than the overall decline during the period examined, we find that they are not sufficient to establish threat of serious injury, given that trends in production and productivity in 1998 and 1999 showed much more modest declines, and employment and wages paid both increased in 1999.¹¹⁹ Thus, the trends in 1998 and 1999 do not support a finding of threat of serious injury.

No evidence of inability to generate adequate capital or maintain R&D expenditures. As noted earlier, the crabmeat industry is a labor-intensive industry, not a capital-intensive industry, and industry capital expenditures were not large during the period examined. Capital expenditures declined during the period examined from \$866,000 in 1995 to \$585,000 in 1999.¹²⁰ The crabmeat industry is likewise not an R&D-intensive industry, and only five domestic producers reported any R&D expenses during the reporting period examined.¹²¹ Overall R&D expenditures were likewise not large during the period examined, declining from a high of \$146,000 in 1995 to a low of \$17,000 in 1999.¹²² Given the low levels of capital expenditures and R&D expenditures at the beginning of the period examined, we do not attach much significance to the declines in these indicators during the period, and do not find those declines to evidence serious injury.

No indication that U.S. market is the focal point for diverted exports. Finally, we do not find evidence that the U.S. market is the focal point for diversion of exports by reason of restraints on exports to or imports in third country markets. There is no allegation or evidence of diversion of exports to the United States, given that the United States has been the primary market for crabmeat produced by foreign producers throughout the period examined. Over 97 percent of all shipments by foreign crabmeat producers were exports to the United States during the period examined.¹²³ Petitioners have cited no restraints on exports or imports in any third country markets, and we have no evidence in the record of any such restraints. Based on the foregoing discussion, we conclude that the domestic industry is not threatened with serious injury.

SUBSTANTIAL CAUSE OF SERIOUS INJURY

Because we have found that the domestic industry producing crabmeat from swimming crabs is not seriously injured or threatened with serious injury, we do not make any findings as to whether increased imports are an important cause of any such injury, or the threat thereof, to the domestic industry, nor as to

¹¹⁷ Report at II-30, Table 12.

¹¹⁸ Report at II-30, Table 12.

¹¹⁹ Domestic production declined by 6.3 percent in 1998 and by 1.6 percent in 1999, while productivity declined by 0.6 percent in 1998 and by 4.7 percent in 1999. Employment declined by 7.6 percent in 1998, but then increased by 2.1 percent in 1999. Wages paid declined by 1.3 percent in 1998, but then increased by 4.5 percent in 1999. Report at C-5, Table C-1.

¹²⁰ Report at II-33, Table 16.

¹²¹ Report at II-33.

¹²² Report at II-33, Table 16.

¹²³ Report at II-34.

whether any other cause is a greater cause of such injury to the domestic industry than is increased imports. We do, however, address some of the issues and arguments relating to causation, since they are pertinent to our finding that the domestic industry is not seriously injured or threatened with serious injury by reason of imports of crabmeat from swimming crabs. We note that the record shows that many of the domestic industry's present difficulties are unrelated to imports.

As noted earlier, the surge in pasteurized imports corresponds to a huge increase in U.S. demand for crabmeat. As noted earlier, U.S. crabmeat import shipments increased by 16.9 million pounds from 1995 to 1999, while U.S. apparent consumption of crabmeat increased by 17.1 million pounds.¹²⁴ Much of this increase is attributable to growth in demand for crabmeat in new geographical markets in the United States (such as in the Midwest and West) and for different crabmeat-derived products (such as crab cakes, crab soup, and other value-added products).¹²⁵ Recent restaurant industry trade journal surveys show crab cakes moving onto the list of the top 10 appetizers for the first time.¹²⁶

Ordinarily, a huge increase in U.S. demand for crabmeat would be expected to provide the domestic industry with a significant opportunity to increase its production and sales.¹²⁷ The domestic industry's ability to take advantage of the large growth in U.S. demand for crabmeat depends in large part on (1) its level of production of pasteurized crabmeat; and (2) the availability of live crabs for processing.¹²⁸

The vast majority of domestic crabmeat production is fresh, while the vast majority of crabmeat imports are pasteurized. Domestic producers reported that 71.2 percent of their 1999 shipments were fresh, and only 14.9 percent were pasteurized. However, only 13.6 percent of imported shipments were fresh and 76.3 percent were pasteurized.¹²⁹ Furthermore, purchasers reported that 89 percent of their purchases of domestic crabmeat were of fresh product, while 85 percent of their purchases of imported crabmeat were of pasteurized product.¹³⁰ The large increase in imports, particularly in 1998 and 1999, came primarily from imports of pasteurized crabmeat from Asia (principally from Indonesia, Thailand, and the Philippines).¹³¹

Due to its perishable nature, fresh crabmeat has always been a product available in limited seasons (particularly in summer and fall) and in limited regions (particularly the mid-Atlantic Coast and Gulf Coast) in the United States. Many purchasers believe that the taste of fresh crabmeat is superior to the

¹²⁴ Report at C-3 to C-5, Table C-1.

¹²⁵ Tr. at 156, 160 (S. Phillips); 178, 220-221 (Hoppenjans); 186-188, 232-233 (Sneed); Coalition Respondents' Prehearing Brief, Exh. 18.

¹²⁶ Report at II-47; Tr. at 187 (Sneed).

¹²⁷ Petitioner contended that there are no significant technical, financial or operational barriers to U.S. processors producing pasteurized crabmeat. Petitioner stated the total cost of setting up a plant for pasteurization is less than \$20,000, which is not expensive, even for a small, family-owned crabmeat processor. Petitioner's Posthearing Brief at Q-6 to Q-7.

¹²⁸ Report at II-44.

¹²⁹ Report at II-49 to II-51, Table 29.

¹³⁰ Report at II-49.

¹³¹ Report at II-16, II-49.

taste of pasteurized crabmeat.¹³² Thus, fresh crabmeat still retains an advantage over pasteurized crabmeat in many traditional seasonal and regional markets in the United States, where taste is a principal criterion for purchasers.¹³³

However, since pasteurized crabmeat has a much longer shelf life than perishable fresh crabmeat, pasteurized crabmeat is preferred for uses requiring a long shelf life.¹³⁴ Thus, pasteurized crabmeat is preferred by purchasers such as large food service distributors, and national restaurant and grocery chains, which require a reliable year round supply of crabmeat with a long shelf life that can be shipped long distances and be put on retail shelves without risk of spoilage.¹³⁵ Fresh crabmeat does not meet these purchasers' requirements, because of its perishable quality, its limited seasonal availability, and the large fluctuations in its price due to its limited availability.¹³⁶ Pasteurized crabmeat can be used in many value-added products such as crab cakes, crab imperial, crab soup, and in the rapidly growing market for convenience foods, in which differences in taste between fresh and pasteurized crabmeat become much less distinguishable.¹³⁷ Furthermore, U.S. importers such as Phillips Foods and Byrd International, Inc. market pasteurized imported crabmeat as a premium product, emphasizing not only its longer shelf life, but also its shell-free content, consistent grading, and packaging in clear plastic containers, which many purchasers find provide significant advantages over domestic fresh crabmeat.¹³⁸ Given these significant differences, and the different markets served by fresh and pasteurized crabmeat, the record shows that competition in the United States between domestic fresh crabmeat and imported pasteurized crabmeat is limited.¹³⁹ Moreover, the Commission's pricing data reflect attenuated competition between the pasteurized imports from Asia and domestic crabmeat, whether fresh or pasteurized. The Commission's pricing data for Products 1 and 3 show that in a majority of cases the price of imported pasteurized crabmeat from Asia oversold domestic pasteurized crabmeat in 1998 and 1999, when the increase in import volumes was greatest.¹⁴⁰ In addition, the trends in price of imported pasteurized backfin from Asia (Product 1) were very different from those for the price of domestic fresh backfin (Product 2).¹⁴¹

With regard to live crabs, the domestic industry faces two significant supply difficulties, both essentially unrelated to imports: a relatively flat trend in the harvests of live crabs, and a significant decline

¹³² Report at II-11, II-51.

¹³³ Tr. at 36-37 (Bufano); 72-73 (Johnson); 193 (S. Phillips).

¹³⁴ As noted earlier, pasteurized crabmeat has a shelf life of a year or more, while fresh crabmeat has an average shelf life of 7 to 10 days. Report at II-10 to II-11.

¹³⁵ Tr. at 172-175 (Coffman); 178, 220 (Hoppenjans); 196-197 (S. Phillips); 233 (Sneed). In order for pasteurized crabmeat in airtight containers to retain its long shelf life, the containers must remain chilled, and thus are typically displayed on a bed of ice in a retail outlet. Report at II-10.

¹³⁶ Tr. at 174-175 (Coffman); 182-184 (Catanzaro).

¹³⁷ Tr. at 178-179 (Hoppenjans); 187-188 (Sneed); 236 (S. Phillips); Report at II-10 to II-11.

¹³⁸ Tr. at 167-171 (Byrd); 173-176 (Coffman); 178-180 (Hoppenjans); 182-183 (Catanzaro); 185-187 (Sneed); Report at II-10 to II-11, II-48 to II-50.

¹³⁹ See Tr. at 182 (Catanzaro).

¹⁴⁰ Report at II-58.

¹⁴¹ Report at Tables G-1, G-2; see Coalition Respondents' Posthearing Brief at 27.

in the percentage of live crabs going for processing. While demand for crabmeat has been dramatically increasing, the supply of live swimming crabs has been relatively stable, declining slightly over the last eight years, leaving the domestic industry with a limited ability to expand production to take advantage of the increased demand. NMFS data show live blue crab landings declining from 222,708,000 pounds in 1990 to 217,946,000 pounds in 1994 to 217,505,000 pounds in 1998.¹⁴² Petitioner acknowledges a decline in landings and a current scarcity of crabs in the Chesapeake Bay area.¹⁴³

Moreover, there is evidence that the relatively stable overall catch has been achieved only by the watermen expending a great deal more effort, with possible adverse consequences to the long term viability of blue crab stocks. Evidence in the record shows that the watermen's catch per unit effort has declined significantly during the past decade.¹⁴⁴ The Coalition respondents presented evidence that the blue crab has reached its limits of production, and that greater harvests are not possible under current conditions.¹⁴⁵ There is evidence that the average size of live crabs harvested has been declining in recent years.¹⁴⁶ A number of states, including Maryland, Virginia, and North Carolina, have imposed regulations limiting the efforts by watermen to harvest live crabs.¹⁴⁷ While lower crab harvests in areas such as the Chesapeake Bay may be offset in particular years by increased harvests elsewhere in the United States, it is clear that the ability of the domestic industry to expand production of crabmeat to meet increased demand is significantly constrained by the flat or slightly declining live crab harvests.

Another source of the domestic industry's difficulties is the increasing diversion of live crabs from the picking crab market for the processing of crabmeat to the live bushel crab market, which involves no commercial processing. In general, the percentage of crabs sold into the bushel market varies with the seasons, with the largest demand for bushel crabs in the summer, although Louisiana has a year round bushel market.¹⁴⁸ NMFS data suggest that the percentage of crabmeat processed has declined from 64 percent in 1990 to 61 percent in 1994 to 33 percent in 1998.¹⁴⁹ Not only has there been an increasing percentage going to the bushel market without processing, but the largest crabs with the most meat have

¹⁴² NMFS data show blue crab landings of 222,708,000 pounds in 1990; 228,214,000 pounds in 1991; 196,236,000 pounds in 1992; 252,746,000 pounds in 1993; 217,946,000 pounds in 1994; 208,105,000 pounds in 1995; 224,500,000 pounds in 1996; 227,335,000 pounds in 1997; and 217,505,000 pounds in 1998. Report at II-45, Table 26.

¹⁴³ Tr. at 109 (Brooks); Petitioner's Posthearing Brief at 47.

¹⁴⁴ Tr. at 161, 208 (S. Phillips); 164 (Strand); Coalition Respondents' Prehearing Brief, Exh. 4(A) at 369. The domestic harvests of live crabs has also been adversely affected by weather conditions, such as hurricanes, and by environmental problems, such as parasites. See Tr. at 30 (Johnson); Coalition Respondents' Prehearing Brief, Exhs. 6(A), 6(J), 6(K).

¹⁴⁵ Tr. at 163-164 (Strand). We make no finding on this issue.

¹⁴⁶ Tr. at 133-134; 161 (S. Phillips); 164 (Strand); Coalition Respondents' Prehearing Brief, Exh. 4(E) at 400.

¹⁴⁷ See, e.g., Coalition Respondents' Prehearing Brief, Exhs. 6(L), 6(M), 6(N), 6(O), 6(P), 6(Q); Report at II-11 to II-13.

¹⁴⁸ Report at II-9; Tr. at 112 (Rich).

¹⁴⁹ NMFS data suggest that the percentage of crabmeat processed was 64 percent in 1990; 85 percent in 1991; 59 percent in 1992; 51 percent in 1993; 61 percent in 1994; 48 percent in 1995; 42 percent in 1996; 39 percent in 1997; and 33 percent in 1998. Report at II-45, Table 26. The NMFS data show that the decline in this percentage predates the surge in imports in 1998 and 1999.

also been going to the bushel market, leaving crabmeat processors with not only fewer crabs to process, but also smaller crabs with less meat to pick.¹⁵⁰ Watermen generally receive a higher price for their crabs in the bushel market than they do in the picking crab market, and regard the bushel market as the high end market.¹⁵¹ Thus, crabmeat processors have faced increasing competition with the bushel market. As the percentage of crabs going into the bushel market has increased in recent years, crabmeat processors have complained that they have been left with the leftover crabs, which are smaller, contain less meat, and are of inferior quality.¹⁵² Accordingly, the ability of the domestic industry to expand production of crabmeat to meet the increase in demand is also limited by the declining percentage of high quality crabs that go to the picking crab market for processing.¹⁵³

Thus, given the supply difficulties surrounding live crabs, and the limited competition from imports due to the domestic industry's focus on fresh crabmeat, we believe the record demonstrates that increased imports of crabmeat are not the principal cause of the domestic industry's present difficulties.

CONCLUSION

For the reasons stated herein, we find that the domestic industry is not seriously injured or threatened with serious injury.

¹⁵⁰ Consumers in the bushel market prefer the large male crabs (jimmys) which contain the most meat, while female crabs (sooks) and small male crabs are sold into the picking market. Report at II-9.

¹⁵¹ Tr. at 115 (Rich), 116 (Gault).

¹⁵² Tr. at 115, 133 (Rich); 133-134; Coalition Respondents' Prehearing Brief, Exh 6(R) at 2.

¹⁵³ We make no findings as to whether the domestic industry's operating costs have increased as a result of increased labor costs, increased raw material costs, or compliance with governmental regulations such as the Hazard Analysis Critical Control Point Program, nor as to the extent to which any such increased operating costs are a cause of the domestic industry's difficulties.

SEPARATE VIEWS OF COMMISSIONER LYNN M. BRAGG

Crabmeat from Swimming Crabs

Inv. No. TA-201-71

For the reasons set forth below, I determine that increased subject imports are not a substantial cause of serious injury or the threat of serious injury to the domestic industry producing crabmeat from swimming crabs (“crabmeat”).

I join all of my colleagues with respect to our discussion of what constitutes the domestic like product, the domestic industry, and increased imports. Although I concur with certain of my colleagues in determining that increased imports are neither a substantial cause of serious injury nor a substantial cause of the threat of serious injury to the domestic industry, the basis for my determination differs somewhat, particularly with regard to my decision not to rely upon crabmeat production data obtained from the National Marine Fisheries Service (“NMFS”).¹⁵⁴ I therefore find it necessary to issue these separate views. As discussed below, my analysis is based upon the extensive data set received from domestic industry questionnaire responses, which I find to be a reliable and probative indicator of the experience of the domestic industry over the period of investigation (“POI”).

While at first glance it may appear that domestic crabmeat producers are injured by the evident and considerable increase in the volume of crabmeat imports over the POI, close scrutiny of the record indicates that domestic producers are not seriously injured or threatened with serious injury. I recognize that over the POI the domestic industry lost U.S. market share and was not able to improve its operating performance in a growing market. However, the record indicates that the domestic industry was constrained in its ability to take advantage of increased U.S. crabmeat consumption by factors entirely unrelated to subject imports, factors which include: (1) increased demand for higher-value bushel crabs, resulting in a reduction in the size of crabs available for picking which then leads to smaller grade yields, particularly in the higher-value grade categories jumbo lump and backfin, increased costs to obtain those smaller grade yields, and decreased productivity;¹⁵⁵ and (2) static or declining domestic live crab harvests. As I elaborate upon below, the record also indicates that the single most important limitation on the domestic industry’s profitability over the POI was increased demand for bushel crabs.

No Serious Injury or Threat of Serious Injury

Statutory framework. Having joined in the Commission’s finding of increased imports, I now turn to the second of the three statutory criteria: that is, whether the domestic industry is seriously injured or threatened with serious injury. The term “serious injury” is defined in the statute to mean “a significant overall impairment in the position of a domestic industry,”¹⁵⁶ and the term “threat of serious injury” is

¹⁵⁴ I note that I did rely upon the NMFS data regarding live crab landings. Importantly, the NMFS live crab landings data were based upon mandatory reporting whereas the NMFS crabmeat production data were based upon voluntary reporting. As discussed in detail below, I find, in this investigation, inherent problems with the voluntarily reported NMFS data and therefore elect not to rely upon such data. Conversely, there is no record evidence which calls into question the NMFS data based upon mandatory reporting. Accordingly, I find the data based upon mandatory reporting requirements probative.

¹⁵⁵ Crabs sold into the bushel market for eventual sale to the final end-user/consumer, generally as steamed crabs in restaurants, are known as bushel crabs. In contrast, crabs sold for use in the production of processed crabmeat are known as picking crabs.

¹⁵⁶ Section 202(c)(6)(B).

defined to mean “serious injury that is clearly imminent.”¹⁵⁷

The statute sets out certain economic factors that must be taken into account. With respect to serious injury, these factors are: (1) the significant idling of productive facilities in the domestic industry;¹⁵⁸ (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, these factors are: (1) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), 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.¹⁵⁹ These factors are not exclusive; the statute instead directs consideration of all economic factors that are found to be relevant, including the listed factors. Also, the statute directs that the presence or absence of any of these factors shall not be considered “necessarily dispositive.”¹⁶⁰

The Commission has developed no set formula for determining whether an industry is seriously injured or threatened with serious injury, but instead has examined the relevant facts in the record of each investigation and made its determination on the basis of the totality of these facts.

- Data relied upon in reaching my determination

As a starting point in my analysis, and as noted above, I have elected not to rely upon the domestic crabmeat production data obtained from NMFS. Instead, I have based my determination on the extensive data received from questionnaire responses, upon finding the questionnaire data set a reliable and probative indicator of the experience of the domestic industry over the POI.

I again point out that the NMFS domestic crabmeat production data are based on a voluntary survey. The reliability of such data is therefore closely linked to the level of participation by domestic processors. Importantly, it is evident that domestic processors’ cooperation with the NMFS survey has declined over time.¹⁶¹ This conclusion is supported by comparing the NMFS data to domestic producers’ responses to the Commission’s questionnaires in this investigation.

The NMFS data indicate that both the number of domestic producers and domestic production

¹⁵⁷ Section 202(c)(6)(D). This definition is also consistent with the legislative history, which defines a “threat” of serious injury to exist “when serious injury, although not yet existing, is clearly imminent if imports [sic] trends continued unabated.” *Trade Reform Act of 1974, Report of the Committee on Finance . . . on H.R. 10710*, S. Rep. 93-1298, 93d Cong., 2d Sess. (1974), at 121.

¹⁵⁸ The statute further provides that the term “significant idling of productive facilities” includes the closing of plants or the underutilization of production capacity.

¹⁵⁹ Section 202(c)(1).

¹⁶⁰ Section 202(c)(3).

¹⁶¹ Commission Report (“Report”) at II-10.

declined considerably over the POI.¹⁶² This would appear to be supported by additional record evidence which indicates that some domestic producers closed their facilities over the POI.¹⁶³ However, questionnaire responses indicate that domestic production remained relatively stable over the POI while domestic capacity actually increased.¹⁶⁴ The questionnaire data thus suggest that although there were plant closures over the POI, such closings were in part the result of increased consolidation within the industry and are not indicative of a general downward trend in the health of the domestic industry.

More specifically, in 1995, NMFS received survey responses from 24 Maryland processors, but received only 16 responses from Maryland processors in 1998.¹⁶⁵ Based upon that data set alone, it would appear that from 1995 to 1998 the total number of Maryland crabmeat processors declined. However, the Commission received questionnaire responses from 29 Maryland crabmeat processors, of which 20 provided useable data. The questionnaire data thus indicate that there were considerably more Maryland crabmeat processors in 1998 than the number accounted for in the NMFS data.

In addition, the NMFS data indicate that in 1998 Maryland crabmeat production totaled approximately 1 million pounds.¹⁶⁶ However, the reliability of the NMFS data set is again called into question by questionnaire responses which indicate that Maryland crabmeat production was at least *** million pounds in 1998.¹⁶⁷ Actual production was likely even higher considering that additional responding producers from Maryland did not provide useable data.

Based upon all of the foregoing, I conclude that the NMFS crabmeat production data set is not a sufficiently reliable indicator of the experience of the domestic industry over the POI. Accordingly, I exclude the NMFS crabmeat production data from my analysis and rely primarily upon the extensive domestic industry data received from questionnaire responses.¹⁶⁸

- Overview of the domestic crabmeat industry & relevant conditions of competition

Over the POI (1995-1999), annual U.S. crabmeat consumption increased from 11.3 million pounds to 28.4 million pounds.¹⁶⁹ During this period, U.S. producers' production and shipments remained constant

¹⁶² Report at II-13.

¹⁶³ Hearing Transcript ("Tr.") at 17-18 (Gault); Tr. at 20 (Purvis).

¹⁶⁴ Report at II-25. For example, questionnaire data indicate that domestic production capacity increased from approximately 11.67 million pounds in 1995 to 13.49 million pounds in 1999, an increase of over 15 percent. Id.

¹⁶⁵ Table 1, Report at II-15. Importantly, more than one third of the original petitioners in this investigation were comprised of Maryland processors. In addition, Maryland crabmeat processors account for over *** percent of the questionnaire responses received by the Commission in this investigation. Accordingly, I find the discrepancies between the NMFS data and the data received from Maryland questionnaire responses to be of particular significance.

¹⁶⁶ Table 1, Report at II-15.

¹⁶⁷ Domestic Producers' Questionnaire Responses.

¹⁶⁸ As noted, I do rely upon the NMFS live crab landings data for the reasons stated previously. See supra n.1.

¹⁶⁹ Report at II-23.

while the volume of crabmeat imports surged.¹⁷⁰ As a result, U.S. producers' market share decreased from 73.2 percent in 1995 to 29.9 percent in 1999, while subject imports' market share increased from 26.8 percent in 1995 to 70.1 percent in 1999.¹⁷¹

Primary sources of subject imports include, in order of 1999 U.S. market share, Indonesia (***) percent), Thailand (***) percent), Mexico (***) percent), Venezuela (***) percent), China (***) percent), and the Philippines (***) percent).¹⁷² Nearly all crabmeat production in these countries is exported to the United States.

The record also indicates that the overwhelming majority of subject imports were of pasteurized crabmeat, particularly with respect to the larger volume crabmeat exporting countries, including Indonesia and Thailand.¹⁷³ In contrast, domestic producers primarily focus on the production of fresh crabmeat.¹⁷⁴ This is an important distinction because the increased demand for crabmeat in the United States appears to be primarily related to the increased availability of pasteurized crabmeat. Several large volume food distributors and purchasers indicated that the relatively long shelf life of pasteurized crabmeat, one year or more if chilled, versus fresh crabmeat's average shelf life of 7 to 10 days, has led to increased demand for pasteurized crabmeat and static demand for fresh crabmeat.¹⁷⁵

In addition, and most importantly, domestic demand for higher-value bushel crabs increased over the POI,¹⁷⁶ resulting in a reduction in the size of live crabs available for picking.¹⁷⁷ The reduction in the size of picking crabs resulted in a concomitant decline in the size of domestic producers' crabmeat grade yields,¹⁷⁸ as well as increased costs to obtain those smaller grade yields¹⁷⁹ and decreased productivity.¹⁸⁰ The record further indicates that live crab harvests appear to have reached their peak in the United States.¹⁸¹

¹⁷⁰ Table C-1, Report at C-3-C-5. U.S. crabmeat production was 8,547,000 pounds in 1995 and 8,482,000 pounds in 1999. Table C-1, Report at C-5.

¹⁷¹ Table C-1, Report at C-3.

¹⁷² Table C-1, Report at C-3.

¹⁷³ Report at II-50.

¹⁷⁴ Table 29, Report at II-51. Domestic producers report that in 1999 71.2 percent of their shipments was of fresh crabmeat, 14.9 percent was pasteurized, and 13.9 percent was frozen. Id.

¹⁷⁵ Report at II-10-II-11; Report at II-52; Tr. at 196-197 (Phillips); Tr. at 199-200 (Byrd).

¹⁷⁶ Tr. at 113 (Brooks).

¹⁷⁷ Tr. at 133 (Rich and Johnson).

¹⁷⁸ Tr. at 133 (Rich).

¹⁷⁹ Tr. at 133 (Rich); Table C-1, Report at C-5. Domestic unit labor costs increased from \$1.88 per pound in 1995 to \$2.46 per pound in 1999, an increase of over 30 percent. Table C-1, Report at C-5. Tr. at 133 (Johnson). Domestic producers acknowledge that smaller crabs result in smaller crabmeat grade yields. Tr. at 133 (Rich).

¹⁸⁰ Tr. at 130 (Reilly).

¹⁸¹ Posthearing Brief of the Coalition for Free Trade of Crabmeat at Exhibits 1-5.

- The domestic industry is not seriously injured

The record does not show significant idling of productive facilities in the domestic industry. The questionnaire data indicate that although there were plant closures over the POI,¹⁸² such closings were in part the result of increased consolidation within the industry and are not indicative of a general downward trend in the health of the domestic industry.¹⁸³ Moreover, the record indicates that over the POI, domestic producers' production capacity actually increased from 11.67 million pounds in 1995 to 13.49 million pounds in 1999.¹⁸⁴ In addition, the record indicates that while domestic capacity utilization decreased by 10.2 percent over the POI, total production in 1999 was virtually unchanged from 1995, declining by only 65,000 pounds over the POI.¹⁸⁵

With respect to the number of domestic firms able to carry out domestic production operations at a reasonable level of profit, the record indicates that approximately 37 percent of domestic firms reporting operating performance indicated that they sustained operating losses in 1999.¹⁸⁶ However, the percentage of domestic firms reporting losses in 1999 is not substantially different from the percentage of firms reporting operating performance at the beginning of the period of investigation, in 1995, when approximately 30 percent of domestic firms reporting operating performance indicated that they had sustained operating losses. In addition, domestic operating margins were 4.6 percent in 1995; 7.2 percent in 1996; 6.4 percent in 1997; 5.1 percent in 1998; and 4.2 percent in 1999.¹⁸⁷ Thus, over the course of the POI, operating margins decreased by only 0.4 percent. Importantly, the relative stability of operating margins coincided with steadily increasing unit labor costs, which increased from \$1.88 per pound in 1995 to \$2.46 per pound in 1999.¹⁸⁸ The record therefore does not evidence an inability of a significant number of firms to carry out domestic production at a reasonable level of profit.

With respect to significant unemployment or underemployment within the domestic industry, the record indicates that employment increased by 6.8 percent over the POI, from 2,236 production and related workers ("PRWs") in 1995 to 2,388 PRWs in 1999.¹⁸⁹ In addition, hours worked increased by 14.6

¹⁸² Tr. at 17-18 (Gault); Tr. at 20 (Purvis).

¹⁸³ I note that petitioners argue that the Commission's questionnaire data reflect a survivor bias, and therefore, such data do not reflect the condition of those firms that exited the industry over the POI. I find, however, that the only record evidence which may support this contention is the NMFS crabmeat production data. And as a result of my decision not to rely upon the NMFS crabmeat production data, as discussed earlier, I find no record evidence which supports petitioners' survivor bias contention. I therefore conclude that the questionnaire data set is a sufficiently reliable and probative indicator of the condition of the domestic industry over the POI. Accordingly, I reject petitioners' claim that the Commission's data reflect a survivor bias.

¹⁸⁴ Table C-1, Report at C-5.

¹⁸⁵ Table C-1, Report at C-5.

¹⁸⁶ Table 14, Report at II-31.

¹⁸⁷ Table C-1, Report at C-6. I note that some fluctuations in industry profits would not be unexpected over the POI considering the fluctuations in live crab harvests over the same period.

¹⁸⁸ Table C-1, Report at C-4.

¹⁸⁹ Table C-1, Report at C-5.

percent and wages paid increased by 27.5 percent¹⁹⁰ It is therefore apparent that there is no significant unemployment or underemployment within this industry.

Finally, there is no additional record evidence which indicates that the domestic industry is seriously injured as a result of any other relevant economic factors. Accordingly, and based upon all of the foregoing, I find that the domestic crabmeat industry is not seriously injured.

- The domestic industry is not threatened with serious injury

Examination of the statutory threat factors indicates that the domestic industry is not threatened with serious injury. Over the POI, domestic crabmeat production capacity, shipments, and wages and employment all increased. Domestic producers have not faced an appreciable growth in inventories and did not face measurable downward trends in production during a period of sharp growth in the volume of crabmeat imports. And although domestic industry profits declined slightly over the POI, the decline, at 0.4 percent, was not significant and in fact profitability remained relatively stable notwithstanding increased labor costs and declining productivity. I therefore find that the domestic industry is neither vulnerable nor threatened with serious injury.

First, with regard to market share, over the POI, the domestic producers' share of U.S. apparent consumption declined. This occurred even as domestic production capacity increased over the POI. In sum, the domestic producers failed to garner a share of the increasing domestic demand for crabmeat.¹⁹¹ However, because domestic producers do not have the ability to take advantage of increasing domestic consumption, these market share trends do not support a threat of serious injury finding.

Second, with regard to domestic producers' U.S. shipments, the record indicates that domestic shipments were approximately 8.28 million pounds in 1995; 8.54 million pounds in 1996; 9.03 million pounds in 1997; 8.42 million pounds in 1998; and 8.48 million pounds in 1999.¹⁹² These relatively flat shipment trends do not support a threat of serious injury finding.

Third, with regard to inventories, domestic producers' end of period inventories increased by 19.1 percent over the POI.¹⁹³ However, the ratio of inventories to shipments increased by only 1.4 percent during the same period.¹⁹⁴ The record thus indicates that there was no meaningful imbalance between domestic production and domestic shipments.

Regarding importers' inventories of the subject merchandise, the record evidences a similar trend; while the total volume of importers' inventories increased substantially over the POI, the ratio of importers' inventories to U.S. shipments of imports increased by only 15.3 percentage points.¹⁹⁵ While I recognize that even a 15.3 percentage point increase could be considered sizeable, the record indicates that importers'

¹⁹⁰ Table C-1, Report at C-5.

¹⁹¹ As discussed in the following causation analysis, it is apparent that the domestic industry's ability to take advantage of growing U.S. apparent consumption is limited by several factors entirely unrelated to increased imports, chief of which is the domestic industry's inability to supply growing demand for pasteurized crabmeat.

¹⁹² Table C-1, Report at C-5. I note that fluctuations in yearly live crab harvests over the POI would be expected to lead to some fluctuations in domestic crabmeat production during the same period.

¹⁹³ Table C-1, Report at C-5.

¹⁹⁴ Table C-1, Report at C-5.

¹⁹⁵ Table C-1, Report at C-5. The ratios of importers' inventories to U.S. shipments were 7.8 percent in 1995, 15.2 percent in 1996, 21.0 percent in 1997, 30.3 percent in 1998, and 23.1 percent in 1999. Report at II-43.

inventories were overstated by *** pounds in 1997, *** pounds in 1998, and *** pounds in 1999.¹⁹⁶ Thus, the actual increase in both importers' inventories and the ratio of such inventories to import shipments are somewhat overstated. Additionally, the impact or significance of any increase in importers' inventories is further offset by record evidence indicating a domestic supply shortfall for pasteurized crabmeat in the U.S. market, particularly at the end of the POI when importers' inventories were at their highest levels.¹⁹⁷ Accordingly, inventory trends over the POI are not indicative of a threat of serious injury.

Fourth, with regard to production, domestic crabmeat production was relatively static over the POI, decreasing by only 0.8 percent. However, as noted above, while domestic production remained stable over the POI, domestic shipments actually increased slightly, from approximately 8.28 million pounds in 1995 to 8.48 million pounds in 1999.¹⁹⁸ The trends in production, therefore, do not support a threat of serious injury finding.

Fifth, with regard to profits, domestic industry operating margins were also relatively stable over the POI, decreasing by 0.4 percent from 1995 to 1999. Domestic industry operating margins over the POI therefore do not indicate that the domestic industry is threatened with serious injury.

Sixth, with regard to wages, productivity, and employment in the domestic industry, the record indicates that wages and hours worked increased by 27.5 percent and 14.6 percent, respectively. And while productivity declined by 13.8 percent from 1995 to 1999, as discussed above, this would be expected considering that live crabs available for picking were becoming smaller over the POI, thus leading to smaller grade yields and increased costs to obtain such yields. In this context, these changes in wages, productivity, and employment do not indicate a threat of serious injury.

Seventh, with regard to capital expenditures for plant and equipment, as well as research and development expenses, domestic producers' investments declined over the POI, from capital expenditures of \$866,000 in 1995 to \$585,000 in 1999. Research and development costs appear to be a relatively minor area of investment for domestic producers as only 5 of 93 responding domestic producers reported any research and development costs over the entire POI. However, those that did report indicated that their research and development costs declined from \$146,000 in 1995 to \$17,000 in 1999.¹⁹⁹ While the decrease in capital expenditures and research and developments costs may indicate a threat of serious injury, standing alone, these factors are an insufficient basis for such a finding.

Eighth, the record contains no evidence that the U.S. market is a focal point for the diversion of any exports by reason of restraints on such exports to third country markets. The record, in fact, indicates that the U.S. market is the only large volume market for crabmeat in the world. Thus, the ability of foreign crabmeat producers to increase imports into the United States by redirecting shipments from other, non-U.S. markets is limited at best.

The record therefore indicates that although the domestic industry experienced declines in market share, productivity, capital expenditures, and research and development over the POI, there were no

¹⁹⁶ Report at II-44. The overstatement is a result of Phillips having included in its importers' inventory data the amount of crabmeat that was shipped from overseas but which was still on the water and not yet in a U.S. warehouse. According to Phillips, counting the product on the water as U.S. inventory is normal accounting practice for the firm. *Id.*

¹⁹⁷ For example, a representative from a large volume crabmeat purchaser indicated that domestic pasteurized crabmeat was not available from any source at the time of the hearing in these proceedings. Tr. at 219-220 (Hoppenjans). The record thus indicates that there was no meaningful imbalance between importers' inventories and U.S. shipments of imports.

¹⁹⁸ Table C-1, Report at C-5.

¹⁹⁹ Table 16, Report at II-33.

measurable adverse trends in inventories (whether domestic producers', importers', wholesalers', or retailers'), production, profits, wages, or employment. In addition, because the United States is already the focal point of crabmeat exports by all major foreign crabmeat producers, there is little foreign crabmeat currently sold in third country markets which could potentially be diverted to the United States. There is also no indication that any of the above factors are likely to change appreciably in the future so as to evidence a threat of material injury to the domestic industry. Accordingly, I conclude that, on the whole, the record indicates the domestic industry is not threatened with serious injury.

Causation

Statutory framework. The third statutory criterion concerns whether the subject article is being imported in such increased quantities as to be a “substantial cause” of serious injury or threat thereof. 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.”²⁰⁰ Thus, increased imports must be both an important cause of the serious injury or threat thereof *and* a cause that is equal to or greater than any other cause.

In determining whether increased imports are a substantial cause of serious injury or threat thereof, the statute instructs that all relevant economic factors be taken into account, 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.”²⁰¹ In addition, the statute directs that the condition of the domestic industry be considered over the course of the relevant business cycle.²⁰² The statute further directs the Commission to “examine factors other than imports” that may be a cause of serious injury or threat to the domestic industry, and to include such findings in the Commission’s report.²⁰³

- Analysis of causation

Even if I were to assume, *arguendo*, that the domestic industry is seriously injured or threatened with serious injury, the record indicates that increased imports of crabmeat are not a “substantial cause” of serious injury or the threat of serious injury to the domestic crabmeat industry under section 202(b)(1)(B). Rather, any indication of serious injury or the threat of serious injury is only discernible from the record evidence which indicates that the domestic industry was constrained in its ability to take advantage of increased U.S. crabmeat consumption by factors unrelated to subject imports, factors which include: (1) increased demand for higher-value bushel crabs, resulting in a reduction in the size of crabs available for picking which then led to smaller crabmeat grade yields and increased costs to obtain those smaller grade

²⁰⁰ Section 202(b)(1)(B).

²⁰¹ Section 202(c)(1)(C).

²⁰² Section 202(c)(2)(A).

²⁰³ Section 202(c)(2)(B). 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. Rep. 93-1298, 93d Cong., 2d Sess. (1974), at 121.

yields;²⁰⁴ and (2) static or declining domestic live crab harvests.²⁰⁵

- in the context of serious injury

The record indicates that the volume of live crabs harvested in the United States over the POI was relatively static while the proportion of live crabs shipped to the bushel market increased.²⁰⁶ In addition, it appears that live crab harvests have reached their peak in the United States.²⁰⁷ Therefore, even if domestic producers had wanted to increase their production in response to increased demand, it is evident that they were constrained in doing so by factors entirely unrelated to subject imports. As further evidence of domestic producers having neared the ceiling of their production capabilities, many domestic producers were forced to purchase crabmeat from other sources in order to meet supply contract requirements.²⁰⁸

In fact, the most important factor which in my view explains any injury to the domestic industry is the increased demand for higher-value bushel crabs, which resulted in a reduction in the size of crabs available for picking, which in turn led to smaller crabmeat grade yields and a decline in domestic crabmeat prices. The parties agree that the size of domestic picking crabs declined over the POI and that smaller picking crabs result in smaller crabmeat grade yields, particularly with respect to the higher-value grade categories jumbo lump and backfin.²⁰⁹ The record therefore indicates that, more than any other factor, increased reliance on smaller picking crabs was largely responsible for the small reduction in prices for domestic crabmeat.

The record also indicates that domestic producers focus on production of fresh crabmeat whereas increased imports are comprised primarily of pasteurized crabmeat.²¹⁰ Importantly, any measurable evidence of underselling by imports exists only with respect to Mexican fresh crabmeat.²¹¹ However, although the volume of Mexican crabmeat increased significantly from 1995 to 1996, from 1996 to 1999, the volume of crabmeat imports from Mexico was relatively unchanged.²¹²

Finally, domestic producers contend that they are primarily injured by pasteurized crabmeat

²⁰⁴ See supra n.2.

²⁰⁵ Although, as noted in the above no serious injury and threat of serious injury discussion, I find that even these constraints unrelated to subject imports did not cause serious injury or the threat of serious injury to the domestic industry.

²⁰⁶ Tr. at 113 (Brooks).

²⁰⁷ Posthearing Brief of the Coalition for Free Trade of Crabmeat at Exhibits 1-5.

²⁰⁸ In their questionnaire responses, nineteen domestic producers indicated that they purchased, in the aggregate, over 1.2 million pounds of crabmeat from other sources in 1999 to fill orders, equivalent to approximately 4 percent of 1999 U.S. crabmeat consumption. Domestic Producers' Questionnaire Responses.

²⁰⁹ Tr. at 133 (Rich and Johnson); Posthearing Brief of the Coalition for Free Trade of Crabmeat at 7-8; Tr. at 133 (Rich).

²¹⁰ Report at II-50.

²¹¹ Table G-1, Report at G-3-G-12.

²¹² Table 4, Report at II-18. In addition, Mexican crabmeat is alleged to be perceived by the U.S. consumer as somewhat less valuable than domestic crabmeat because it is "less fresh." Report at II-39.

imports, not imports of fresh crabmeat.²¹³ The record information regarding this argument is rather important because the pricing data for pasteurized crabmeat indicates that, particularly with respect to imports from the large volume countries (Indonesia, Thailand, and the Philippines), imports generally oversold the domestic product, especially towards the end of the POI when the volume of such imports were at their peak.²¹⁴ In sum, I find that there is no causal connection between prices for imports and prices for the domestic like product evidenced on the record, and thus no connection with serious injury.

- in the context of threat of serious injury

There is no indication in the record that imports will threaten serious injury. As discussed above, over the POI, the performance of the domestic crabmeat industry was, and will continue to be in the future, largely determined by the increased demand for bushel crabs in the U.S. market and the decreasing size of crabs available for picking, resulting in smaller crabmeat grade yields. Domestic performance will also continue to be affected by the shift of consumer preference for pasteurized crabmeat, particularly with respect to large volume purchasers, and static live crab harvests. Given these production constraints, domestic producers will not be able to capture greater market share in the United States.

Even if the domestic industry continues to harvest increasing volumes of smaller crabs at higher production costs, there is no threat of serious injury by reason of subject imports because: (1) subject imports did not have a negative effect on prices for the domestic product over the POI (in fact, prices for imports from large volume sources increased steadily over the POI) and there is not likely to be a connection in the future, particularly given robust and increasing U.S. demand; (2) there is minimal evidence of lost sales by domestic producers to imports over the POI and no evidence that future lost sales are likely; and (3) even if domestic producers were able to shift the focus of their production away from fresh crabmeat to pasteurized crabmeat, thereby competing more directly with imports, the continuing increase in U.S. pasteurized crabmeat demand²¹⁵ will provide increased sales opportunities for domestic producers of the pasteurized product. I therefore find that there is no causal connection between increased imports and any threat of serious injury to the domestic industry.²¹⁶

Conclusion

Based upon all of the foregoing, I determine that imports, although entering the United States in increased quantities, are not a substantial cause of serious injury or the threat of serious injury to the domestic industry producing crabmeat from swimming crabs.

²¹³ Prehearing Brief of the Blue Crab Coalition at 19-21; Tr. at 48 (Gordon).

²¹⁴ Table G-1, Report at G-3-G-12.

²¹⁵ Tr. at 171 (Byrd); Tr. at 178 (Hoppenjans); Tr. at 183 (Catanzaro); Tr. at 192 (Sneed); Tr. at 206 (Phillips).

²¹⁶ I also point out that the limits on domestic producers' production, which I have found to be unrelated to subject imports, are not likely to change in the future, thus indicating that domestic producers will not be able to share measurably in any future demand increases.

**DISSENTING VIEWS OF CHAIRMAN STEPHEN KOPLAN
AND VICE CHAIRMAN DEANNA TANNER OKUN**

As noted, we join with our colleagues in the background discussion for this investigation, as well as the domestic industry analysis. However, because we find that the crabmeat is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic crabmeat industry, and because we find that imports from Mexico both account for a substantial share of total imports and contribute importantly to serious injury, we set forth our dissenting views below.

Legal Standard

In determining whether the domestic industry has been seriously injured or threatened with serious injury under section 202, we analyze the three criteria set forth in the statute. Specifically, we must consider whether -

- (1) imports of the subject article are in *increased quantities* (either actual or relative to domestic production);
- (2) the domestic industry producing an article that is likely or directly competitive with the imported article is *seriously injured or threatened with serious injury*; and
- (3) the article is being imported in such increased quantities as to be a *substantial cause of serious injury or threat of serious injury* to the domestic industry.

We must find that all three criteria are satisfied in order to make an affirmative determination. We discuss each of these three criteria below.

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.”²¹⁷ Because section 202 is a global safeguard law, we consider imports from all sources in determining whether imports have increased. We have traditionally considered import trends over the most recent 5-year period as a framework for our analysis, but can consider longer or shorter periods as we deem appropriate, focusing on the most recent period.

Finding: Imports of crabmeat increased dramatically over the period of investigation, rising over 560 percent, from 3.2 million pounds in 1995 to 20.9 million pounds in 1999.²¹⁸ The value of such imports also increased significantly, rising from \$14.3 million in 1995 to \$117.5 million in 1999.²¹⁹ This increase was large both in absolute terms and relative to domestic production. The ratio of the volume of total U.S. imports of crabmeat to total U.S. production of crabmeat increased from a low of 37 percent in 1995 to a

²¹⁷ Section 202(c)(1)(C), 19 U.S.C. § 2252(c)(1)(C).

²¹⁸ Report at II-16; II-18, Table 4.

²¹⁹ Report at II-18, Table 4.

high of 247 percent in 1999.²²⁰ In light of the above, we find that imports are in increased quantities under the statute.

Serious Injury or Threat of Serious Injury

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,”²²¹ and “threat of serious injury” as “serious injury that is clearly imminent.”²²²

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 in the domestic industry to carry out domestic production operations at a reasonable level of profit, and (3) significant unemployment or underemployment within the domestic industry. Similarly, with respect to threat of injury, we must consider (1) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), 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.²²³

We are not limited, however, to consideration of these factors, and must consider all economic factors that are relevant. The presence or absence of any of the statutory factors is not “necessarily dispositive” of whether there is serious injury or threat of serious injury.²²⁴

Finding: For the reasons set forth below, we find that the domestic industry is seriously injured.

- *Analysis of factors*

U.S. producers’ share of domestic consumption declined significantly throughout the period of investigation. As measured by quantity, the share of U.S. apparent consumption held by domestic producers declined from 73.2 percent in 1995 to 29.9 percent in 1999; commensurately, total import market share increased from 26.8 percent to 70.1 percent.²²⁵ Similarly, in terms of value, the share of U.S. apparent consumption held by domestic producers declined from 77.2 percent in 1995 to 32.1 percent in 1999, while total import market share increased from 22.8 percent to 67.9 percent during the same period.²²⁶

²²⁰ Report at II-22, Table 6.

²²¹ Section 202(c)(6)(C), 19 U.S.C. § 2252(c)(6)(C).

²²² Section 202(c)(6)(D), 19 U.S.C. § 2252(c)(6)(D).

²²³ Section 202(c)(1), 19 U.S.C. § 2252(c)(1).

²²⁴ Section 202(c)(3), 19 U.S.C. § 2252(c)(3).

²²⁵ Report at II-23, Table 7.

²²⁶ *Id.*

Despite significant increases in U.S. consumption, domestic production of crabmeat declined overall during the period of investigation, particularly in 1998 and 1999. Domestic production increased from 8.547 million pounds in 1995 to 9.199 million pounds in 1997, but then declined to 8.619 million pounds in 1998, and further declined to 8.482 million pounds in 1999.²²⁷

Capacity increased overall during the period of investigation, from 11.669 million pounds in 1995 to 13.492 million pounds in 1999. However, capacity utilization declined overall from 69.0 percent in 1995 to 58.8 percent in 1999. The most significant declines were observed in the second half of the period, *i.e.*, from 1997 to 1999, when capacity declined from a high of 69.8 percent in 1997 to 58.8 percent in 1999.²²⁸ In addition, 45 firms responded in the affirmative when asked if they had experienced any plant openings, relocations, expansions, modernizations, acquisitions, consolidations, closures, shutdowns, outages, or curtailment of production during the period of investigation. Of those responding, only three reported opening of production facilities during the period of investigation, while the majority of producers indicated that their firms had experienced closures or curtailment of production.²²⁹ Statistics published by the National Marine Fisheries Service (NMFS)²³⁰ confirm that there were closures or a curtailment of production during the period of investigation. In 1995, 147 crabmeat processors reported data to the NMFS, but only 119 firms reported data in 1998, the last year for which NMFS data was available. The NMFS data indicate that there was a net decline of 29 producers between 1996 and 1998.²³¹

A significant number of domestic crab processors have not been able to operate at a reasonable level of profit. Operating income as a ratio to net sales increased from 4.6 percent in 1995 to 7.2 percent in 1996, and then declined steadily to 4.2 percent in 1999.²³² Significantly, by 1999, 16 of 43 firms, or 37 percent, reported operating losses.²³³ Similarly, net sales increased from 1995 to 1997, and then steadily declined. By 1999, net sales were below 1995 levels.²³⁴ Capital expenditures also declined significantly over the period of investigation, initially increasing from 1995 to 1997, then declining significantly in 1998,

²²⁷ Report at II-25, Table 8.

²²⁸ *Id.*

²²⁹ Report at II-21.

²³⁰ The National Marine Fisheries Service (NMFS) collects statistical data on the U.S. crabmeat industry. Report at II-4. While respondents dispute the usefulness of NMFS data, Posthearing Brief of Respondent the Coalition for the Free Trade of Crabmeat, we do not consider the NMFS data to replace the information collected in this investigation. However, the fact is that this data confirm information received in our investigation. We recognize that the NMFS data has some limitations because participation in the NMFS survey is voluntary. It is probable that not all producers that responded to the Commission questionnaires participated in NMFS, and vice versa. Further, the latest data available for NMFS is 1998, but our investigation included 1999 data. However, NMFS data confirmed both closures and curtailments of production in the domestic crabmeat industry. It also provides useful historical information, particularly with respect to the number of crab landings and prices for live crabs.

²³¹ Report at II-24.

²³² Report at II-30, Table 12.

²³³ Report at II-31, Table 14.

²³⁴ Report at II-30, Table 12.

followed by a slight increase in 1999. However, 1999 levels were significantly less than 1995 levels.²³⁵

The number of production and related workers employed by crabmeat producers increased by 13 percent from 1995 to 1997, but fell overall by 6 percent from 1997 to 1999. The number of hours worked also increased from 1995 to 1997, but were lower in 1998 and 1999 than 1997.²³⁶ Productivity declined throughout the period of investigation.²³⁷

Because of the perishable nature of fresh crabmeat, producers do not maintain year-end inventories; however, 21 producers of pasteurized and frozen crabmeat reported minor amounts of inventory. The ratio of inventories to production fluctuated during the period of investigation, with a low of 8.2 percent in 1995 to a high of 10.6 percent in 1998. The ratio of inventories to production was 9.8 percent in 1999.²³⁸

In sum, the record reflects broad declines over the course of the period of investigation in most industry indicators. Moreover, an examination of the latter part of the period of investigation in particular indicates that between 1997 and 1999, there were significant declines in U.S. producers market share, (as measured by quantity and value), production, shipments, profitability, net sales, the number of production and related workers, and productivity. In view of these declines, we find the domestic crabmeat processing industry to be seriously injured.

Causation

Statutory Framework. Under the third criterion, we must determine whether the subject articles are 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.”²³⁹ Thus, the increased imports must be both an important cause of the serious injury or threat of serious injury *and* a cause that is not less than any other cause.

In determining whether increased imports are a substantial cause of serious injury or threat of serious injury, the statute directs that we take into account all relevant economic factors, 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.”²⁴⁰ 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 U.S. economy into a single cause of serious injury or threat of serious injury.²⁴¹ Also, the statute directs that we examine factors other than imports that may be a cause of serious injury or threat of serious injury to the domestic industry and include such findings in our report. Neither the statute nor the legislative history

²³⁵ Report at II-33, Table 16.

²³⁶ Report at II-28, Table 11.

²³⁷ *Id.*

²³⁸ Report at II-27, Table 10.

²³⁹ Section 202(b)(1)(B), 19 U.S.C. § 2252(b)(1)(B).

²⁴⁰ Section 202(c)(1)(C), 19 U.S.C. § 2252(c)(1)(C).

²⁴¹ Section 202(c)(2)(A), 19 U.S.C. § 2252(c)(2)(A).

rules out consideration of any other possible causes of injury.²⁴²

Finding. For the reasons set forth below, we determine that increased imports are both an important cause of the serious injury and not less important than any other cause. We find therefore that increased imports are a “substantial cause” of serious injury to the domestic industry.

²⁴² Section 202(c)(2)(B), 19 U.S.C. § 2252(c)(2)(B). 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, 93rd Cong., 2d Sess. (1974), at 121.

Conditions of Competition

Picked crabmeat may be marketed in three basic forms: fresh, pasteurized, or frozen. Crabmeat may be sold fresh in plastic containers. As a fresh product, crabmeat is sold in plastic containers and has a shelf life of 6 to 20 days. At the hearing there was testimony that, depending on the storage conditions, the shelf life of fresh crabmeat varied from 7 to 20 days with an average falling around 7 to 10 days. In this form, it must remain refrigerated or chilled.²⁴³ Crabmeat is also marketed pasteurized in airtight containers. Pasteurized crabmeat in airtight containers has a shelf life of 1 year or more, but the containers must remain chilled.²⁴⁴ Crabmeat is also marketed as a frozen product. However, many customers object to this form, contending that freezing imparts a “cottony” consistency to the product.^{245 246}

Domestic producers reported that about 71 percent of their crabmeat production was fresh, whereas 15 percent was packed in airtight containers and pasteurized. Conversely, importers reported that only about 14 percent of their imports were fresh, whereas 76 percent of their imports were packed in airtight containers and pasteurized.²⁴⁷ The remainder was frozen. Imports of crabmeat from Asian countries are almost all pasteurized, whereas imports of fresh crabmeat originate in such countries as Mexico and Venezuela. During 1999, 64 percent of crabmeat imports from Mexico and 27 percent of imports from Venezuela were of fresh product.²⁴⁸

Almost 90 percent of producers and 80 percent of importers indicated that imported and domestic crabmeat could be used interchangeably.²⁴⁹ Moreover, close to half of producers, importers, and purchasers reported that different forms of crabmeat could be substituted for each other. While a number of producers, importers, and purchasers claim that fresh crabmeat tastes better than pasteurized crabmeat, pasteurized has a much longer shelf life than fresh crabmeat.²⁵⁰

The U.S. market for crabmeat expanded rapidly during the period of investigation, with overall consumption of crabmeat increasing from 11.3 million pounds in 1995 to 28.4 million pounds in 1999.²⁵¹ The U.S. market is a large consumer of crabmeat and has been a focal point for exports from other countries. During the period of investigation, over 97 percent of all shipments by the foreign crabmeat

²⁴³ Report at II-10.

²⁴⁴ Report at II-11.

²⁴⁵ *Id.*

²⁴⁶ A small amount of crabmeat is also sold sterilized in airtight metal containers. Such products are shelf-stable, and thus do not require refrigeration, and have an indefinite shelf life. Domestic shelf-stable crabmeat is generally produced from dungeness crabs, whereas imported shelf-stable crabmeat is derived from swimming crabs. Report at II-11. Shelf-stable crabmeat is not included in the scope of this investigation. Report at II-3, n.2.

²⁴⁷ Report at II-50.

²⁴⁸ *Id.*

²⁴⁹ Report at II-48.

²⁵⁰ Report at II-48-49.

²⁵¹ Report at II-15.

producers responding to the Commission's questionnaires were exported to the United States.²⁵² Projections indicate that the United States will remain the primary market for at least the next two years (the only time period for which projections were available).²⁵³ Foreign capacity increased from 6.3 million pounds in 1995 to 21.6 million pounds in 1999. Likewise, foreign production increased from 3.8 million pounds in 1995 to 16.4 million pounds in 1999. Further increases in foreign capacity and production are expected in 2000 and 2001.²⁵⁴

Analysis of causation

In determining that increased imports of crabmeat are an important cause of "serious injury," we considered the amount of the increase in imports over the period of investigation, both in actual terms and relative to U.S. production.

Imports of crabmeat increased dramatically over the period of investigation, rising over 560 percent, from 3.2 million pounds in 1995 to 20.9 million pounds in 1999.²⁵⁵ The value of such imports also increased significantly, rising from \$14.3 million in 1995 to \$117.5 million in 1999.²⁵⁶ This increase was large both in absolute terms and relative to domestic production. The ratio of the volume of total U.S. imports of crabmeat to total U.S. production of crabmeat increased from a low of 37 percent in 1995 to a high of 247 percent in 1999.²⁵⁷

While this massive increase in imports was being absorbed into a growing U.S. market for crabmeat, domestic producers lost considerable market share as they were unable to capture any significant portion of this growing market. U.S. producers' share of the U.S. market for crabmeat fell from 73.2 percent in 1995 to 29.9 percent in 1999; on a value basis, U.S. producers market share fell from 77.2 percent in 1995 to 32.1 percent in 1999. Conversely, imports share of domestic consumption increased from 26.8 percent in 1995 to 70.1 percent in 1999.²⁵⁸

It is noteworthy that the increase in the volume of imports was significantly higher in absolute terms during the second half of the period, *i.e.*, from 1997 to 1999. Specifically, the volume of imports increased by 5.1 million pounds from 1995 to 1997, and then increased an additional 12.6 million pounds between 1997 and 1999.²⁵⁹ The greater increase in imports during the second half of the period is also reflected in the market share held by imports, which increased from 26.8 percent to 45.1 percent, or 18.3 percentage points from 1995 to 1997, and then increased from 45.1 percent to 70.1 percent, or 25.0

²⁵² Report at II-34.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ Report at II-16; II-18, Table 4.

²⁵⁶ Report at II-18, Table 4.

²⁵⁷ Report at II-22, Table 6.

²⁵⁸ Report at II-23, Table 7. The market share held by imports on a value basis rose from 22.8 percent in 1995 to 67.9 percent in 1999. *Id.*

²⁵⁹ Report at II-22, Table 6.

percentage points from 1997 to 1999.²⁶⁰ This significant increase in imports during the second half of the period coincided with the decline in the condition of the domestic industry. From 1997 to 1999, when imports were increasing at a greater rate both absolutely and as a percentage of domestic consumption, U.S. production of crabmeat fell 7.8 percent from 9.199 million pounds to 8.482 million pounds, a level lower than that of 1995.²⁶¹ Similarly, domestic producers' shipments, net sales, employment, and operating income declined from 1997 to 1999 coincident with the greatest increase in imports.²⁶² This reflects the fact that increased imports are an important cause of serious injury to the domestic crabmeat industry.

The pricing data confirms that imports are an important cause of serious injury to the domestic crabmeat industry. The Commission collected pricing data from U.S. producers and importers for three specific crabmeat products. These data reflect the fact that prices for domestic crabmeat, both fresh and pasteurized, declined over the period of investigation;²⁶³ coincident with the increase in imports. Moreover, prices for imported crabmeat were lower than those for domestic crabmeat in a majority of instances.²⁶⁴

We also considered other possible causes of serious injury to the domestic industry, including respondents' claims that any injury that the domestic crabmeat industry may be experiencing is due to customer preference for imported product, a lack of availability of crabs, increased raw material costs, and the inability of U.S. producers to satisfy a growing market with the product demanded by the market. However, as discussed below, we do not view any of these other possible causes of serious injury, either individually or collectively, as a more important cause than the increase in imports.

First, we find that the record does not support respondents' argument that imports have increased the overall demand for crabmeat in the United States without taking sales from domestic producers. The record reflects the fact that domestic consumption of crabmeat increased significantly during the period of investigation. However, while U.S. producers enjoyed an increase in production and shipments during the first half of the period of investigation, domestic production declined significantly in the second half of the period. By 1999, domestic production of crabmeat had declined to levels below that in 1995. Further, the domestic product was displaced over the period by often lower-priced imported product.²⁶⁵ In addition, the increase in the quantity of imports was greater than the increase in consumption. Indeed, the overall effect of the increase in imports was to increase the *supply* of crabmeat, resulting in lower prices for crabmeat in the U.S. market. Thus, the domestic industry did not benefit from the increased consumption and experienced declines in production and prices due to the significant increase in imports in quantities greater than the increase in U.S. consumption.

²⁶⁰ Report at II-23, Table 7.

²⁶¹ Report at II-25, Table 8.

²⁶² Report at II-27-30.

²⁶³ There appears to be some seasonality in the price data as prices decline during a given year and are then higher at the beginning of the next year (compared with the ending price of the previous year). The reported price data for U.S. producers indicate that the third quarter of each year tends to have the lowest price within a given year. Thus, to account for any seasonality in the price data, trends in prices should compare the same quarter for one year to another. Data reported by U.S. producers for all three of the requested products show lower prices in every quarter of 1999 compared to the corresponding quarter of 1995. Report at G-3 to G-12, Tables G-1-G-3.

²⁶⁴ Of the 348 instances where prices for domestic crabmeat and imported crabmeat could be compared, the imported product undersold the domestic product in 195 instances, or 56 percent. Report at II-58.

²⁶⁵ Numerous domestic producers reported losing sales to the imported product on the basis of price. Report at II-48, n.78; E-3-4.

The record also does not support respondents' argument that customers prefer the imported pasteurized product to the domestic product.²⁶⁶ Almost 90 percent of producers and 80 percent of importers indicated that imported and domestic crabmeat could be used interchangeably.²⁶⁷ Less than half of responding U.S. producers reported that factors such as shell content, taste, and availability differentiate the imported and domestic product. Some producers indicated the domestic crabmeat had less shell content, while others indicated that the imported crabmeat had less shell content.²⁶⁸ While the majority of imported product was pasteurized, and the majority of domestic product is fresh crabmeat, the record does not indicate that customers prefer pasteurized over fresh product. Each has its benefits, inasmuch as a number of U.S. producers, importers, and purchasers claim that fresh crabmeat tastes better than pasteurized crabmeat, but indicated that the latter has a much longer shelf life.²⁶⁹ Therefore, we find no clear indication that the imported product was perceived to be of a higher quality.

We have also considered respondents' argument that any inability of the domestic crabmeat industry to gain sales in the growing market was due to its own inadequacy to provide a consistent year-round supply of pasteurized product. Respondents argue that some customers have a preference for pasteurized crabmeat and that the growth in the U.S. crabmeat market is due to the availability of imported pasteurized crabmeat.²⁷⁰

While a majority of domestic crabmeat sold in the U.S. market is fresh crabmeat, the domestic industry has both the capability and the capacity to produce pasteurized crabmeat. In fact, 17 out of 91 responding domestic producers indicated that improvements that they have made since 1995 include the installation of pasteurization equipment.²⁷¹ However, the influx of imported crabmeat during the period of investigation forced numerous crabmeat producers to reduce production of pasteurized crabmeat and to cut back on expansion projects and capital investments.²⁷² While prices for U.S.-produced pasteurized product were higher than the domestic fresh product over the period, the gap was smaller in 1997-99 as compared with 1995, indicating that U.S. producers may have difficulty obtaining the necessary premium for domestic pasteurized crabmeat as increased amounts of often lower-priced imported pasteurized crabmeat enter the U.S. market.²⁷³ One domestic crabmeat producer, ***, indicated that ***. ***.²⁷⁴ Similarly, ***.²⁷⁵

We have also considered respondents' argument that a shortage of crabs in the U.S. market was a more important cause of serious injury. The record does not support this argument. The available data

²⁶⁶ *E.g.*, Posthearing Brief of the Coalition for the Free Trade of Crabmeat at 34-36.

²⁶⁷ Report at II-48.

²⁶⁸ Report at II-49.

²⁶⁹ Report at II-51.

²⁷⁰ *E.g.*, Posthearing Brief of the Coalition for the Free Trade of Crabmeat at 31-32, 34-36.

²⁷¹ Table 35, Report at II-64.

²⁷² Report at E-5-E-11.

²⁷³ Report at G-3-G-8, Tables G-1 and G-2 (comparing prices for pasteurized backfin crabmeat (product 1) with prices for fresh backfin crabmeat (product 2)).

²⁷⁴ Report at E-4-5, E-10 (Response of ***) .

²⁷⁵ Report at E-3-4 (Response of ***) .

indicate that during the period of investigation, blue crab landings actually increased from 208.1 million pounds in 1995 to 217.5 million pounds in 1998, the last year for which data were available.²⁷⁶ Conversely, domestic producers' reported data reflect declining production from 1997 onward.²⁷⁷ Thus, the decline in production was not coincident with a decline in crab landings, but rather with a dramatic increase in imports.²⁷⁸

The reported raw materials costs gathered in this investigation also do not reflect a shortage of live crabs over the period of investigation. If the domestic industry was experiencing a significant shortage of live crabs for processing, it would presumably be reflected in increased live crab prices. However, U.S. producers reported overall declining raw materials costs during the period of investigation.²⁷⁹ Similarly, respondents' assertion that increasing operating costs, (due to such factors as increased labor costs, the implementation and maintenance of Hazard Analysis Critical Control Point Programs (HACCPs), increased operating costs due to the crab harvest, diversion to the bushel market, fall in crab size, etc.) individually caused more injury to the domestic industry than increased imports is contradicted by the questionnaire data gathered in this investigation. That data indicate that unit cost of goods sold and total unit cost of goods sold and SG&A expenses combined did not change significantly over the period of investigation.²⁸⁰

We also have considered respondents' argument that supply problems in the U.S. crabmeat market have been compounded by a diversion of an increasing number of live crabs to the bushel market. While there has been a long-term trend for a larger share of crabs to be sold in the bushel market,²⁸¹ as discussed above, the record does not reflect significant supply problems in the U.S. market. Further, the share of crabs sold into the bushel market or for picking tends to vary with the season. For example, peak crab availability in the Chesapeake Bay is usually in the fall, whereas the bushel market tends to decline with the decline of vacationers to the bay.²⁸² Therefore, the degree to which diversion to the bushel market affects the total amount of crabs available for the picking market is inherently limited.

In view of the foregoing, we find that increased imports of crabmeat are a substantial cause, and a cause no less than any other cause, either individually or collectively, of serious injury to the domestic crabmeat industry. Our finding is based on the significant increase in imports and the corresponding increasing share of the domestic market held by imports, accompanied by the declines in domestic production, net sales, shipments, capacity utilization, profitability, employment, and number of firms in the industry.

Finding With Respect to NAFTA Country Imports

²⁷⁶ Table 26, Report at II-45.

²⁷⁷ Report at II-25, Table 8.

²⁷⁸ Questionnaire responses from domestic crab producers also support the finding that the alleged shortage of live crab was not a cause of serious injury to the domestic industry. Numerous domestic producers indicated that their production declined because they could not process the crab profitably due to competition with imports, not because of any actual shortage of crabmeat. *See, e.g.*, Responses of ***, Report at E-3-4.

²⁷⁹ Report at II-31, Table 13.

²⁸⁰ *Id.*

²⁸¹ Report at II-10.

²⁸² Report at II-9.

Statutory Framework: Section 311(a) of the NAFTA Implementation Act²⁸³ 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 articles subject to the investigation, measured in terms of import share during the most recent 3-year period.”²⁸⁴ Section 311(c) defines “contribute importantly” to mean “an important cause, but not necessarily the most important cause.”²⁸⁵ In determining whether imports have contributed importantly to the serious injury or threat of serious injury, we are directed to consider “such factors as the change in import share of the NAFTA country or countries, and the level and change in the level of imports from a NAFTA country or countries.”²⁸⁶ 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.”²⁸⁷

Finding: We make a negative finding with respect to imports of crabmeat from Canada, and an affirmative finding with respect to imports of crabmeat from Mexico. Canada is not a known supplier of crabmeat from swimming crabs, and therefore has not been among the top five suppliers of crabmeat during the most recent 3-year period. Based on this fact, we find that imports from Canada do not account for a substantial share of total imports and imports from Canada do not contribute importantly to the serious injury.

Mexico, however, was among the top five suppliers of subject crabmeat imports in each of the last three years of the investigation. It was the largest individual source of imports in 1997, accounting for 30.9 percent of total imports by quantity, and the third largest source in 1998 and 1999, accounting for 16.0 percent in 1998 and 12.8 percent in 1999.²⁸⁸ Accordingly, we find that imports from Mexico account for a substantial share of total imports.

We further note that, pursuant to the NAFTA Implementation Act, imports from a NAFTA country “normally” will not be considered to contribute to serious injury or the threat thereof if the growth rate of imports from that country during which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period. Imports from Mexico

²⁸³ 19 U.S.C. § 1371(a).

²⁸⁴ 19 U.S.C. § 1371(b)(1).

²⁸⁵ 19 U.S.C. § 1371(c).

²⁸⁶ 19 U.S.C. § 1371(b)(2).

²⁸⁷ *Id.*

²⁸⁸ Report at II-18, Table 4.

declined from 2.556 million pounds from 1997 to 1998, then increased to 2.673 million pounds in 1999, for an overall increase of 4.57 percent.²⁸⁹ Such a divergence of import trends “normally” would indicate that imports from Mexico do not contribute importantly to the serious injury; in our view, however, the instant investigation presents a clear example for when departure from this “normal” outcome is warranted.

Specifically, notwithstanding the difference in growth rates, Mexico remained the third largest supplier of crabmeat to the United States, and Mexican imports increased overall during the last three years of the investigation. Additionally, projections for 2000 and 2001 indicate that further increases in exports from Mexico are expected during that time. In fact, ***.²⁹⁰ Furthermore, the Commission’s pricing data support a finding that imports from Mexico are contributing importantly to the serious injury. Mexico is a relatively low-priced supplier in the U.S. market. During the period of investigation, Mexican imports undersold the domestic product in 48 instances at margins of between 1.0 percent and 36.3 percent, with an average margin of 19.4 percent. Conversely, Mexican imports oversold the domestic product in only 6 reported instances, at margins of between 1.5 percent and 22.6 percent, with an average margin of 8.9 percent.²⁹¹ The results were similar from 1997 to 1999. Mexican imports ***.²⁹² Significantly, during 1999, 64 percent of imports from Mexico were of the fresh product, whereas imports of crabmeat from Asian countries were almost all pasteurized product.²⁹³ Thus, the domestic industry was facing significant competition from underpriced Mexican fresh product, while also being inundated with imports of pasteurized product from other sources.

Based on this evidence, we find that crabmeat imports from Mexico contributed importantly to the serious injury suffered by the domestic industry, notwithstanding any difference in the growth rate of Mexican imports and imports from other sources.

²⁸⁹ *Id.*

²⁹⁰ Report at II-37.

²⁹¹ Report at II-59, Table 32.

²⁹² Report at G-3-12, Tables G-1-G-3.

²⁹³ Report at II-50.