

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. TA-201-77

Fresh, Chilled, or Frozen Blueberries

Institution of Investigation, Scheduling of Public Hearings, and Determination That the Investigation is Extraordinarily Complicated.

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and scheduling of public hearings; determination that the investigation is extraordinarily complicated.

SUMMARY: Following receipt of a request from the United States Trade Representative (“USTR”) on September 29, 2020, the Commission has instituted Investigation No. TA-201-77 pursuant to section 202 of the Trade Act of 1974 (“the Act”) (19 U.S.C. § 2252) to determine whether fresh, chilled, or frozen blueberries are 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. The Commission has determined that this investigation is “extraordinarily complicated” within the meaning of section 202(b)(2)(B) of the Act (19 U.S.C. § 2252(b)(2)(B)), and will make its injury determination within 135 days after the petition was filed, or by February 11, 2021. The Commission will submit to the President the report required under section 202(f)(1) of the Act (19 U.S.C. § 2252(f)(1)) within 180 days after the date on which the petition was filed, or by March 29, 2021.

EFFECTIVE DATE: September 29, 2020.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202-205-2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. – This investigation is being instituted, pursuant to section 202 of the Act (19 U.S.C. § 2252), in response to a request filed on September 29, 2020, by the USTR.

The imported articles covered by this investigation are fresh, chilled, or frozen blueberries (“blueberries”). For Customs purposes, the blueberries covered by the investigation are provided for under Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 0810.40.0024; 0810.40.0026; 0810.40.0029; 0811.90.2010; 0811.90.2024; and 0811.90.2030. These HTSUS numbers are provided for convenience, and the written description of the scope is dispositive.

Determination that investigation is extraordinarily complicated. – The Commission has determined that this investigation is “extraordinarily complicated” within the meaning of section 202(b)(2)(B) of the Act (19 U.S.C. § 2252(b)(2)(B)). The Commission’s decision to designate this investigation “extraordinarily complicated” is based on the complexity of the investigation, including the need to collect data and other information from a large number of firms involved in the domestic production, processing, and/or marketing of blueberries. Ordinarily, the Commission is required to make its injury determination within 120 days after the petition was filed, or by January 27, 2021. The statute permits the Commission to take up to 30 additional days to make its injury determination in an investigation where it determines that the investigation is extraordinarily complicated. In this instance, the Commission intends to take fifteen extra days and make its injury determination by February 11, 2021. As required by section 202(f)(1) of the Act (19 U.S.C. § 2252(f)(1)), the Commission will submit its report to the President no later than 180 days after the day on which the USTR requested the investigation.

Participation in the investigation and public service list. – Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission’s rules, not later than 21 days after publication of this notice in the *Federal Register*. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI). – Pursuant to § 206.17 of the Commission’s rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under an administrative protective order (APO) issued in the investigation in accordance with the procedures set forth in section 206.17 of the rules, provided that the application is made not later than 21 days after the publication of this notice in the *Federal Register*. The Secretary will maintain a separate service list for those parties authorized to receive CBI under the APO.

The Commission may also include some or all CBI submitted in this investigation in the report it sends to the President and the U.S. Trade Representative in this or a related investigation. The Commission will not otherwise disclose information which it considers to be CBI unless the party submitting the information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. See 19 U.S.C. 2252(a)(8) and 19 U.S.C. 1332(g).

Hearings on injury and remedy. – The Commission has scheduled separate hearings in connection with the injury phase and remedy phase (if necessary) of this investigation. It appears at this time that the injury phase hearing and possibly the remedy phase hearing will be held via an online videoconferencing platform. Information about the place and form of the hearings, including about how to participate in and/or view the hearings, will be posted on the Commission’s website at <https://www.usitc.gov/calendarpad/calendar.html>. Interested parties should check the Commission’s website periodically for updates.

The hearing on injury will be held beginning at 9:30 a.m. EST on January 12, 2021, either via an online videoconferencing platform or at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. In the event the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on February 25, 2021. Requests to appear at the hearings should be filed electronically with the Secretary to the Commission on or before December 30, 2020 for the injury hearing, and on or before February 19, 2021 for the remedy hearing. A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the hearings.

All parties and nonparties desiring to appear at the hearings and make oral presentations should participate in prehearing conferences to be held on January 11, 2021 for the injury hearing and February 24, 2021 for the remedy hearing, if deemed necessary. Oral testimony and written materials to be submitted at the public hearings are governed by sections 201.6(b)(2) 201.13(f), and 206.5 of the Commission’s rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the respective hearings.

Written submissions. – Each party which is an interested party may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of sections 201.8, 206.7, and 206.8 of the Commission’s rules. Please note that section 201.8 of the Commission’s rules has been temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

The deadline for filing prehearing briefs on injury is December 29, 2020; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is February 18, 2021. Parties may also file written testimony in connection with their presentation at the hearing, as provided in sections 201.13, 206.5, and 206.8 of the Commission's rules, and posthearing briefs, which must conform with the provisions of sections 201.8, 201.13, 206.7, and 206.8 of Commission's rules. Persons appearing at the injury and/or remedy phase hearings must file, with the Secretary, an electronic copy of the oral statement they plan to present at the hearing no later than noon, January 11, 2021, and February 24, 2021, respectively. The deadline for filing posthearing briefs for the injury phase of the investigation is January 19, 2021. The deadline for filing posthearing briefs for the remedy phase of the investigation, if any, is March 3, 2021.

No posthearing brief, either in the injury phase or any remedy phase, shall exceed fifteen (15) pages of textual material, double-spaced and single-sided, when printed out on pages measuring 8.5 x 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing for the injury phase, and at any hearing for the remedy phase, within a specified time. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before January 19, 2021, and pertinent to the consideration of remedy on or before March 3, 2021.

Except as provided above, all written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of sections 201.6 and 206.17 of the Commission's rules. The Commission's *Handbook on E-Filing*, available on the Commission's website at <https://edis.usitc.gov>, further explains the Commission's rules with respect to electronic filing.

Any additional written submission to the Commission, including requests pursuant to section 201.12 of the Commission's rules, will not be accepted unless good cause is shown for accepting such a submission, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

AUTHORITY: This investigation is being conducted under authority of Section 202 of the Act; this notice is published pursuant to section 203(b)(3) of the Act.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: October 6, 2020