

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-776-779 (Preliminary)

## CERTAIN PRESERVED MUSHROOMS FROM CHILE, CHINA, INDIA, AND INDONESIA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Chile, China, India, and Indonesia of certain preserved mushrooms,<sup>2</sup> provided for in subheadings 0711.90.40, 2003.10.27, 2003.10.31, 2003.10.37, 2003.10.43, 2003.10.47, and 2003.10.53 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in any of the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of an affirmative final determination in any of the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in

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

<sup>2</sup> For purposes of these investigations, certain prepared mushrooms are of the species *Agaricus bisporus* and *Agaricus bitorquis*, whether imported whole, sliced, diced, or as stems and pieces. "Preserved mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers, including but not limited to cans or glass jars, in a suitable medium that may include, but is not limited to, water, brine, or butter (or butter sauce). Included within the scope of the investigations are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Excluded from the scope of the investigations are: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched" mushrooms; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

## **BACKGROUND**

On January 6, 1998, a petition was filed with the Commission and the Department of Commerce by the Coalition for Fair Preserved Mushroom Trade,<sup>3</sup> alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain preserved mushrooms from Chile, China, India, and Indonesia. Accordingly, effective January 6, 1998, the Commission instituted antidumping investigations Nos. 731-TA-776-779 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 16, 1998 (63 FR 2693). The conference was held in Washington, DC, on January 27, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 20, 1998. The views of the Commission are contained in USITC Publication 3086 (February 1998), entitled "Certain Preserved Mushrooms from Chile, China, India, and Indonesia: Investigations No. 731-TA-776-779 (Preliminary)."

By order of the Commission.

Donna R. Koehnke  
Secretary

Issued:

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<sup>3</sup> The Coalition's member firms are L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH.

## VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain preserved mushrooms from Chile, China, India, and Indonesia that allegedly are sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

### II. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

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

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>6</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission

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<sup>1</sup> 19 U.S.C. § 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 381 (Ct. Int’l Trade 1992).

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

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at § 1677(10).

<sup>6</sup> *See, e.g.*, Nippon Steel Corp. v. United States, 19 CIT \_\_\_, Slip Op. 95-57 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* Nippon Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>7</sup> *See, e.g.*, S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

looks for clear dividing lines among possible like products, and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations, as:

[C]ertain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered by the scope of this investigation are the species *Agaricus bisporus* and *Agaricus bitorquis*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars, in a suitable liquid medium that may include but is not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.<sup>10</sup>

Commerce also excluded the following products from the scope of these investigations:

(1) all other species of mushroom including straw mushrooms; (2) all fresh and chilled mushrooms, including “refrigerated” or “quick blanched”; (3) dried mushrooms; (4) frozen mushrooms; and (5) “marinated,” “acidified,” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.<sup>11</sup>

The imported products covered by these investigations are preserved mushrooms packed in a suitable liquid medium and sold in glass jars or, more commonly, in cans.<sup>12</sup> Preserved mushrooms are produced from harvested fresh mushrooms by washing, blanching, sometimes slicing, packing and heating to commercial sterility.<sup>13</sup> This process imparts the shelf life desired, but also alters the color, texture, smell, and mutes the flavor of the mushrooms as compared to the fresh product.<sup>14</sup> Preserved mushrooms

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<sup>8</sup> Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

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

<sup>10</sup> 63 Fed. Reg. 5360, 5361 (February 2, 1998). Commerce also stated that “[t]he merchandise subject to these investigations is classifiable under subheadings 2003.10.27, 2003.10.31, 2003.10.37, 2003.10.43, 2003.10.47, 2003.10.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (“HTS”). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.”

<sup>11</sup> *Id.*

<sup>12</sup> Petition at 11-12. Confidential Staff Report (“CR”) at I-2. Public Staff Report (“PR”) at I-2.

<sup>13</sup> Transcript of Preliminary Conference (“Conf. Tr.”) at 13-15. CR at I-3-I-4; PR at I-2-I-3.

<sup>14</sup> Petition at 11-12.

require no refrigeration and have a shelf-life of up to three years.<sup>15</sup> Preserved mushrooms are used generally as ingredients in prepared foods such as soups, gravies, sauces, pizzas and entrees.<sup>16</sup>

### **C. Domestic Like Product Issues In These Investigations**

At issue in these investigations is whether we should include within the domestic like product certain categories of domestically produced merchandise in addition to those included by Commerce in the scope of its investigations. Although petitioners contend that the like product should be coextensive with the scope, respondents have argued that the like product should also include fresh mushrooms and marinated, acidified and pickled mushrooms, as well as the preserved mushrooms described in Commerce's scope language. Consequently in the following sections we consider the issues of whether the like product should include: 1) fresh and chilled mushrooms; and 2) marinated, acidified, and pickled mushrooms.<sup>17</sup>

For the reasons discussed below, we find a single domestic like product, certain preserved mushrooms, consisting of all products corresponding to the scope description.

#### **1. Whether Fresh and Chilled Mushrooms Should be Included in the Same Like Product as Certain Preserved Mushrooms**

##### **a. Physical Characteristics and Uses**

Preserved mushrooms have substantially different physical characteristics from fresh and chilled mushrooms. Whereas fresh and chilled mushrooms are white to light tan in color, preserved mushrooms are a darker brown to grey.<sup>18</sup> The preserving process also imparts a different texture to preserved mushrooms.<sup>19</sup> Fresh mushrooms are almost exclusively sold as whole mushrooms. Although preserved mushrooms may be sold as whole mushrooms, most are sold as stems and pieces.<sup>20</sup> Indeed, a fresh mushroom may be identified for preserving, rather than for sale as a fresh mushroom, precisely because it is broken, for example, in the picking process.<sup>21</sup> Fresh and chilled mushrooms have a different flavor both from each other and from preserved mushrooms. The distinct acid taste of chilled mushrooms greatly limits their end use to an ingredient in a tomato-based product.<sup>22</sup> Finally, the preserving process gives preserved mushrooms a shelf-life of up to three years, as compared to a few days for fresh mushrooms, or a few months for chilled mushrooms.<sup>23</sup> This difference in shelf-life, in turn, influences other factors in the Commission's analysis, as discussed below.

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<sup>15</sup> Conf. Tr. at 15. CR at I-2; PR at I-2.

<sup>16</sup> Conf. Tr. at 15-16. CR at I-2; PR at I-2.

<sup>17</sup> In general, when making a like product determination, Vice Chairman Bragg first attempts to identify a domestic product that is "like" the merchandise subject to the scope of the investigation as identified by Commerce, and only in the absence of a product that is "like" the subject merchandise does she attempt to identify a product that is "most similar in characteristics and uses." For purposes of these preliminary determinations, Vice Chairman Bragg joins the majority in finding that the domestic like product is limited to certain preserved mushrooms.

<sup>18</sup> CR at I-4-I-5; PR at I-3-I-4; Conf. Tr. at 13 and 15.

<sup>19</sup> CR at I-5; PR at I-3; Conf. Tr. at 15.

<sup>20</sup> CR at I-2; PR at I-2. 75 percent of preserved mushrooms, and 95 percent of those sold to food service and industrial customers, are sold as stems and pieces. CR at II-1; PR at II-1.

<sup>21</sup> Conf. Tr. at 58.

<sup>22</sup> *Id.* at 18.

<sup>23</sup> *Id.* at 17-18.

**b. Interchangeability**

There appears to be some interchangeability between fresh, chilled and preserved mushrooms as evidenced by an instance of a large pizza chain which recently switched from purchasing preserved to fresh mushrooms.<sup>24</sup> Pillsbury has also supplied a telephone marketing survey in which household consumers indicated that there was some overlap in uses between fresh and “canned” mushrooms.<sup>25</sup> Additionally, 13 of 23 responding importers cited fresh mushrooms as a substitute for certain preserved mushrooms, although none of the responding U.S. producers held this view.<sup>26</sup> Because of the distinctive acid flavor imparted by the packing solution, there appears to be little interchangeability between chilled mushrooms and certain preserved mushrooms, as chilled mushrooms are only useful as an ingredient in tomato based products.<sup>27</sup>

**c. Channels of Distribution**

Fresh mushrooms are distributed largely to supermarkets through the retail produce channel of distribution. Other fresh mushrooms are sent to repackers for eventual sale in the produce section of supermarkets.<sup>28</sup> Preserved mushrooms, on the other hand, are sold in supermarkets as dry goods, and are also sold to food service distributors and directly to industrial food processors.<sup>29</sup> These differing channels of distribution are largely a result of the differing perishability of the two products.<sup>30</sup> There does appear to be some overlap between the channels of distribution for chilled and preserved mushrooms in that chilled mushrooms are mainly sold to food service distributors, which is also a major channel of distribution for preserved mushrooms.<sup>31</sup>

**d. Common Manufacturing Facilities, Employees and Methods**

Fresh, chilled and preserved mushrooms are produced using different manufacturing facilities, employees and methods.<sup>32</sup> While manufacturers may produce both chilled and preserved mushrooms, those operations are separated from each other, at the latest, after the blanching procedure. After this stage, separate lines and processes are used to produce chilled and preserved mushrooms.<sup>33</sup>

**e. Producer and Customer Perceptions**

Customers and producers perceive significant differences between fresh and preserved mushrooms.<sup>34</sup> The switch from preserved to fresh mushrooms by a major pizza maker, which respondents cite as an indication of interchangeability, was driven largely by a consumer perception that fresh

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<sup>24</sup> Nature’s Farm Postconference Brief at 10; Conf. Tr. at 81.

<sup>25</sup> Pillsbury Postconference Brief, exhibit 1.

<sup>26</sup> CR at II-5; PR at II-4.

<sup>27</sup> CR at I-5; PR at I-4; Petitioners’ Postconference Brief at 6-7; Conf. Tr. at 18.

<sup>28</sup> CR at I-5; PR at I-3; Petitioners’ Postconference Brief at 7.

<sup>29</sup> CR at I-2-I-3; PR at I-2.

<sup>30</sup> Conf. Tr. at 16-17.

<sup>31</sup> CR at I-5-I-6; PR at I-4; Petitioners’ Postconference Brief at 7. However, chilled mushrooms must be distributed in refrigerated conditions. *Id.*

<sup>32</sup> CR at I-5; PR at I-4; Conf. Tr. at 18-19.

<sup>33</sup> CR at I-5-I-6; PR at I-4; Petitioners’ Postconference Brief at 8. Conf. Tr. at 19.

<sup>34</sup> Conf. Tr. at 16-17.

mushrooms are better than preserved mushrooms.<sup>35</sup> The significant differences in physical characteristics discussed above also contribute to differing customer and producer perceptions. Finally, the differences in perishability between fresh and preserved mushrooms also lead to different perceptions of the two products.<sup>36</sup> Customers also perceive chilled mushrooms to be distinct from certain preserved mushrooms, and are mindful of the necessary refrigeration of chilled mushrooms.<sup>37</sup>

#### **f. Price**

Finally, parties agree that the prices of these products differ substantially, with the fresh produce being much more expensive than the preserved mushrooms.<sup>38</sup>

#### **g. Semi-Finished Products Analysis**

We also considered whether fresh mushrooms are the same like product as preserved mushrooms, viewing fresh mushrooms as a “semi-finished” version of preserved mushrooms. We employ a semifinished product analysis rather than our traditional analysis when analyzing whether a product at an earlier stage of its production process is “like” a finished or further processed product. Under this analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article, or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles.<sup>39</sup>

The record indicates that the upstream article, fresh mushrooms, is not dedicated to the production of canned mushrooms. Rather, as respondents themselves indicate, fresh mushrooms are sold in substantial quantities as a fresh product,<sup>40</sup> and are also used in making products other than certain preserved mushrooms.<sup>41</sup> The record indicates that only 28.7 percent of fresh mushrooms is used for processing of any type, and that percentage has been shrinking.<sup>42</sup>

As discussed above, there are also different markets for fresh mushrooms and for certain preserved mushrooms. Fresh mushrooms are sold largely as fresh produce in supermarkets, while preserved mushrooms are sold in supermarkets as dry goods, and are sold to food service distributors and industrial food processors.<sup>43</sup> There are also significant differences in the physical characteristics between the two products, as discussed under the six-factor analysis, above.

Parties disagree with regard to the amount of value added to canned mushrooms by the canning process. Although respondents alleged that the canning process only added between 9 and 15 percent to

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<sup>35</sup> CR at II-4-II-5; PR at II-3; Conf. Tr. at 78.

<sup>36</sup> Conf. Tr. at 17.

<sup>37</sup> CR at I-6; PR at I-4.

<sup>38</sup> Nature’s Farm Postconference Brief at 13.

<sup>39</sup> Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. No. 731-TA 736 and 737 (Final), USITC Pub. 2988 (Aug. 1996) at 6 n.23.

<sup>40</sup> Nature’s Farm Postconference Brief at exhibit 14.

<sup>41</sup> CR at I-3; PR at I-2.

<sup>42</sup> CR at I-3; PR at I-2; Petition, Exhibit G-1; Nature’s Farm Postconference Brief at 10.

<sup>43</sup> Petitioners’ Postconference br, at 7.

the value of the canned mushrooms,<sup>44</sup> this statement conflicts with information provided by petitioners, and confirmed by questionnaire responses, showing that the fresh mushrooms account for a much smaller percentage of producers' total manufacturing costs.<sup>45</sup>

Finally, production of processed mushrooms from fresh mushrooms requires significant and extensive additional operations.<sup>46</sup> This production requires the additional steps of washing, blanching, adding solution, canning sealing, retorting and labeling. All of these steps require specialized equipment and separate employees.<sup>47</sup>

#### **h. Conclusion**

While there may be some interchangeability between the two products, fresh mushrooms and preserved mushrooms have substantially different physical characteristics, channels of distribution and customer perceptions. Further, fresh mushrooms are not dedicated to the production of certain preserved mushrooms. Therefore, applying both the traditional six-factor analysis and the semi-finished product analysis, we find that fresh mushrooms are not included within the like product of these investigations.

### **2. Whether Marinated, Acidified and Pickled Mushrooms Should be Included in the Same Like Product as Certain Preserved Mushrooms**

Marinated, acidified and pickled mushrooms ("marinated mushrooms") have been included in prior investigations of preserved mushrooms, including the prior antidumping investigation.<sup>48</sup> Commerce, however, has excluded these products from the scope of its investigation.<sup>49</sup>

#### **a. Physical Characteristics and Uses**

Although there is conflicting information on this issue, there is some overlap of physical characteristics between marinated, acidified and pickled mushrooms, and certain preserved mushrooms. The products are produced through a similar procedure.<sup>50</sup> Petitioners themselves have argued that it is this procedure that is responsible for the color and texture of preserved mushrooms.<sup>51</sup> Additionally, both certain preserved mushrooms and marinated mushrooms have extended shelf lives, compared to fresh and chilled mushrooms.<sup>52</sup> On the other hand, marinated mushrooms have a distinctive flavor imparted by the marinade that may limit their use in certain applications.<sup>53</sup> However, while this flavor difference may limit use of marinated mushrooms in cooking, other preserved mushrooms within the like product, such as mushrooms in butter sauce, also have a unique flavor that may limit their uses.<sup>54</sup> Further, whole preserved mushrooms, particularly those sold in jars, are marketed based upon their attractive appearance, and may, like marinated

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<sup>44</sup> Conf. Tr. at 88.

<sup>45</sup> CR at I-5, n. 13.; PR at I-3, n. 13; *See also*, Petition, exhibits A-6-A-11.

<sup>46</sup> CR at I-3-I-4; PR at I-2-I-3.

<sup>47</sup> CR at I-3-I-4; PR at I-2-I-3.

<sup>48</sup> *See, Canned Mushrooms from the People's Republic of China*, Inv. No. 731-TA-115 (Preliminary), USITC Pub. 1089, at A-3 (1982).

<sup>49</sup> 63 Fed. Reg. at 5361.

<sup>50</sup> CR at I-7; PR at I-4-I-5; Pillsbury Postconference Brief at 3.

<sup>51</sup> Petition at 68; Conf. Tr. at 15.

<sup>52</sup> CR at I-7; PR at I-4.

<sup>53</sup> CR at I-6; PR at I-4; Conf. Tr. at 20.

<sup>54</sup> Pillsbury Postconference Brief at 4.

mushrooms, also be used as appetizers, side dishes or garnishes.<sup>55</sup> While marinated mushrooms are usually sold whole, rather than the stems and pieces typical of preserved mushrooms, the highest quality preserved mushrooms are also sold as whole mushrooms.<sup>56</sup>

**b. Interchangeability**

The distinctive flavor of marinated mushrooms limits their interchangeability with most preserved mushrooms used as an ingredient in prepared foods.<sup>57</sup> However, whole preserved mushrooms may be used for many of the same applications as marinated mushrooms: *e.g.*, as appetizers, side dishes or garnishes.<sup>58</sup>

**c. Channels of Distribution**

There is an overlap in the channels of distribution for certain preserved mushrooms and marinated mushrooms in that both are sold to supermarkets for resale as dry goods. Additionally, both are sold to food service distributors.<sup>59</sup> However, marinated mushrooms are not sold to industrial food processors, as are certain preserved mushrooms.<sup>60</sup>

**d. Common Manufacturing Facilities, Employees and Methods**

There is little overlap between the producers of marinated mushrooms and certain preserved mushrooms. \*\*\*.<sup>61</sup> However, the production equipment and methods are identical for both products. Both products must undergo cleaning, blanching, adding of solution, sealing and retorting.<sup>62</sup> Although marinated mushrooms are most often packed in glass jars rather than cans, certain preserved mushrooms may also be packed in jars.<sup>63</sup> Finally, the retorting process may not be as extensive for marinated mushrooms because the marinade acts as a preservative.<sup>64</sup>

**e. Producer and Customer Perceptions**

As with interchangeability, while producers and customers do not perceive the bulk of preserved mushrooms as being similar to marinated mushrooms, there may be similar perceptions for the highest grades of certain preserved mushrooms.<sup>65</sup>

**f. Price**

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<sup>55</sup> CR at II-1; PR at II-1.

<sup>56</sup> CR at II-1; PR at II-1; Pillsbury Postconference Brief at 5.

<sup>57</sup> CR at II-5; PR at II-4. No responding party cited marinated, acidified or pickled mushrooms as a substitute for certain preserved mushrooms.

<sup>58</sup> Additionally, Pillsbury has presented evidence that indicates some perceived interchangeability between preserved and marinated mushrooms among consumers. Pillsbury Postconference Brief at exhibit 1.

<sup>59</sup> Petitioners' Postconference Brief at 16.

<sup>60</sup> *Id.* See also, Pillsbury Postconference Brief at 5.

<sup>61</sup> CR at I-7; PR at I-4; Petitioners' Postconference Brief at 17.

<sup>62</sup> CR at I-7; PR at I-4-I-5.

<sup>63</sup> CR at I-2; PR at I-2.

<sup>64</sup> CR at I-6; PR at I-4.

<sup>65</sup> Pillsbury Postconference Brief at exhibit 1; *but see* CR at II-5; PR at II-4.

The record contains no information on the relative price of marinated, acidified or pickled mushrooms compared to the price of certain preserved mushrooms.

**g. Conclusion**

Some physical characteristics of marinated, acidified and pickled mushrooms are similar to those of certain preserved mushrooms. Additionally, the manufacturing process is very similar for these two products, and there is some overlap in the channels of distribution. However, on the whole there is little interchangeability, with consumers perceiving the two products differently. There are also differences in physical characteristics, particularly taste, between the two products. Consequently, for purposes of these preliminary determinations we find that marinated, acidified and pickled mushrooms are not within the like product subject to these investigations. However, during any final investigations we intend to gather more information on this issue.

**D. Domestic Industry**

The Commission is directed to consider the effect of the subject imports on the domestic industry, defined as “the producers as a [w]hole of a domestic like product.”<sup>66</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.<sup>67</sup>

Petitioners contend that the domestic industry should be limited to domestic producers of certain preserved mushrooms. Respondents have asserted that the special provision for processed agricultural products contained in section 771(4)(E) of the Act applies, and that growers of fresh mushrooms should be included within the industry producing certain preserved mushrooms. In cases involving processed agricultural products, section 771(4)(E) of the Act authorizes the Commission to include growers of a raw agricultural input within the domestic industry producing the processed agricultural product if the processed agricultural product is produced from the raw product<sup>68</sup> through a single continuous line of production, and there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors.<sup>69</sup> The processed product shall be considered to be processed from the raw product in a single continuous line of production if the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product, and the processed agricultural product is produced substantially or completely from the raw product.<sup>70</sup>

The information obtained in these preliminary investigations indicates that the processed agricultural product is not produced from the raw product through a single continuous line of production. Specifically, less than 30 percent of fresh mushrooms was processed in any manner.<sup>71</sup> The remaining 70 percent of fresh mushrooms was sold as fresh mushrooms. Thus, the raw agricultural product, fresh mushrooms, is not substantially or completely devoted to the production of the processed agricultural

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<sup>66</sup> 19 U.S.C. § 1677(4)(A).

<sup>67</sup> See, United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>68</sup> "Raw agricultural product" is defined as any farm or fishery product. 19 U.S.C. §1677(4)(E)(iv).

<sup>69</sup> 19 U.S.C. §1677(4)(E)(i).

<sup>70</sup> 19 U.S.C. § 1677(4)(E)(ii).

<sup>71</sup> CR at I-3; PR at I-2.

product, certain preserved mushrooms.<sup>72</sup> Consequently, we decline to include fresh mushroom growers in the domestic industry producing certain preserved mushrooms.<sup>73</sup>

### **E. Related Parties**

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B).

In these investigations, \*\*\*.<sup>74</sup> Because \*\*\*, it meets the definition of a related party. Accordingly, the Commission must consider whether appropriate circumstances exist to exclude \*\*\* from the domestic industry.<sup>75</sup>

In 1996, \*\*\* of domestic production of certain preserved mushrooms.<sup>76</sup> Further, \*\*\*.<sup>77 78</sup> While the financial data obtained in these preliminary investigations indicate that \*\*\* and does not skew the overall industry data.<sup>79</sup> Moreover, \*\*\*.<sup>80</sup> This, in turn, suggests that \*\*\* primary interest lies in domestic production. On balance we find that appropriate circumstances do not exist for excluding this producer from the domestic industry.

### **III. CUMULATION**

Section 771(7)(G)(i) requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports

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<sup>72</sup> The Commission must determine whether the portion of the raw agricultural product destined for processing is “substantial” on a case-by-case basis. We note, however, that in Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Final), USITC Pub. 2907, at II-4, n. 10, cited by many of the parties here, the Commission found that section 771(4)(E) was not satisfied even though 65 percent of fresh pineapple was used for processing. However, in that case information on the record indicated that much of the pineapple destined for processing was processed into products other than canned pineapple, e.g. pineapple juice. Therefore, in concluding that the amount of pineapple processed into canned pineapple was not “substantial,” the Commission was considering a figure lower than 65 percent.

<sup>73</sup> Pillsbury also raised the issue of whether manufacturers who import mushrooms which have been provisionally preserved in heavy brine (“brined mushrooms”) and use them to produce the domestic like product should be considered a part of the domestic industry. Pillsbury Postconference Brief at 7-14. However, information gathered in these preliminary investigations indicates that there were no imports of brined mushrooms during the period of investigation, and thus no manufacturers engaged in the activity referred to by Pillsbury. CR at I-8, n. 34; PR at I-5, n. 34. Consequently this issue is moot.

<sup>74</sup> CR at III-2; PR at III-1.

<sup>75</sup> 19 U.S.C. § 1677(4)(B). Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the related party will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for related producers; and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). See also Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997) at 10 n.26.

<sup>76</sup> CR at VI-3; PR at VI-1.

<sup>77</sup> CR at III-2; PR at III-1.

<sup>78</sup> Based on this information, Commissioner Crawford finds that \*\*\* primary interest lies in production, not importation, and thus should not be excluded from the domestic industry.

<sup>79</sup> CR at VI-3 and table VI-2; PR at VI-1.

<sup>80</sup> CR at III-2; PR at III-1.

compete with each other and with domestic like products in the United States market.<sup>81</sup> There is no dispute that the petitions on all four countries were filed on the same day. The only cumulation issue is whether the subject imports compete with each other and with the domestic like product. In assessing whether imports compete with each other and with the domestic like product,<sup>82</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.<sup>83</sup>

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.<sup>84</sup> Only a "reasonable overlap" of competition is required.<sup>85 86</sup>

For purposes of these preliminary determinations we find a sufficient degree of fungibility among subject imports from all four countries. The record at this stage reveals little physical differentiation among certain preserved mushrooms from the four subject countries. Although there have been historical quality-control problems at the facilities of both domestic and foreign producers, such problems largely appear to be a thing of the past.<sup>87</sup> All of the domestic producers and a majority of the responding importers stated in their responses that certain preserved mushrooms were interchangeable regardless of whether they were sourced from domestic producers or from any of the subject countries.<sup>88</sup> In any final phase investigations, however, parties are invited to provide further evidence to support their allegations of physical and quality differences, as well as further evidence of customers' perceptions of differences between imports from the various subject countries.

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<sup>81</sup> 19 U.S.C. § 1677(7)(G)(i). There are four exceptions to the cumulation provision, none of which applies to these investigations. *See id.* at 1677(7)(G)(ii).

<sup>82</sup> The Statement of Administrative Action submitted to Congress in connection with the Uruguay Round Agreements Act (P.L. 103-465, approved Dec. 8, 1994) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994) ("SAA") at 848 *citing* Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), *aff'd* 859 F.2d 915 (Fed. Cir. 1988).

<sup>83</sup> *See* Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

<sup>84</sup> *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>85</sup> *See* Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685-86 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>86</sup> Commissioner Crawford finds that there is no reasonable overlap of competition between subject imports from Chile and subject imports from India or Indonesia. Consequently, she does not cumulate subject imports from these countries. *See*, Views of Commissioner Carol T. Crawford, *infra*.

<sup>87</sup> CR at I-8; PR at I-5. However, because of contamination found in imports from China in 1990, such imports are subject to inspection by the FDA.

<sup>88</sup> CR at I-8-I-9; PR at I-6.

Channels of distribution for imports from the various subject countries differ somewhat. The market for certain preserved mushroom in the United States is divided among three distinct channels of distribution: retail, food service and industrial users. While, contrary to arguments by the respondents, the record for these investigations indicates that imports from all countries were sold to customers in the food service sector, evidence reveals that only \*\*\* percent of imports from India and 7.4 percent of imports from Indonesia were sold to this sector, which was the predominant focus of imports from Chile. Imports from China largely are sold to the food service and retail sectors, while the U.S. producers sold in all three sectors.<sup>89</sup> In any final phase investigations we intend to review the significance of this pattern of differing channels of distribution for imports from the subject countries. In particular, parties are invited to address the issues of: the appropriate threshold for finding the existence of “common or similar channels of distribution” in these investigations; whether the Commission may find a reasonable overlap of competition among four countries based upon one country’s (in this case China’s) overlap with the other three; and whether the Commission should find a reasonable overlap of competition, despite limited overlap in channels of distribution, where the other three criteria for analyzing the competition requirement are met.

The parties do not dispute that imports from the subject countries have been present in the U.S. market throughout the period of investigation.<sup>90</sup> They also agree that subject imports from all four countries were sold in the same geographic markets.

Based on the indication in the record at this time of the general fungibility among the subject imports and the domestic like product, sales in the same geographical market, at least limited overlap in channels of distribution, and simultaneous presence of all the subject imports in the U.S. market during the period of investigation, we find a reasonable overlap of competition among imports from Chile, China, India, and Indonesia and the domestic like product for purposes of these preliminary determinations. Consequently, we cumulate the subject imports from Chile, China, India, and Indonesia for purposes of analyzing whether there is a reasonable indication that the domestic industry is materially injured by reason of the LTFV imports from these countries.<sup>91</sup>

#### **IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**

In preliminary antidumping investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the allegedly LTFV imports under investigation.<sup>92</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>93</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on

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<sup>89</sup> CR and PR at table I-1.

<sup>90</sup> CR and PR at table I-2.

<sup>91</sup> Although determining to cumulate the subject imports for purposes of these preliminary investigations, Chairman Miller takes particular note that prices for subject imports from Chile, India, and Indonesia are generally higher than prices for preserved mushrooms from China. She also notes the level and frequency of overselling by the imports from Chile, India, and Indonesia vis-a-vis the domestic product. Finally, she takes note of the decline in import volume and market share for Chile. In any final investigation, Chairman Miller requests the parties to address the appropriateness of cumulation in light of these economic factors.

<sup>92</sup> 19 U.S.C. § 1673b(a).

<sup>93</sup> 19 U.S.C. § 1677(7)(A).

domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>94</sup> Although the Commission may consider causes of injury to the industry other than the allegedly LTFV imports,<sup>95</sup> it is not to weigh causes.<sup>96 97</sup>

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>98</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>99 100</sup>

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<sup>94</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination,” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>95</sup> Alternative causes may include the following:

[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

<sup>96</sup> See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

<sup>97</sup> Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the allegedly LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of LTFV imports, not by reason of the LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the LTFV imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997).

For a detailed description of Commissioner Crawford’s analytical framework, see Views of Commissioner Carol T. Crawford, *infra*. Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

<sup>98</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>99</sup> *Id.*

<sup>100</sup> We have not considered the captive consumption provision, 19 U.S.C. § 1677(7)(C)(iv), in these investigations because there does not appear to be any internal transfers of the domestic like product for further

(continued...)

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing certain preserved mushrooms is materially injured by reason of allegedly LTFV imports from Chile, China, India, and Indonesia.

**A. Conditions of Competition**<sup>101</sup>

As noted above, a significant condition of competition for this industry is the division of the market for certain preserved mushrooms among three segments: retail, food service and industrial users.<sup>102</sup> Retail customers (*e.g.* supermarkets and grocery distributors) purchase certain preserved mushrooms primarily in 4- and 8-ounce cans or jars, while food service and industrial users purchase 1-pound and “number 10” cans that contain between 62 and 68 ounces.<sup>103</sup> During 1996, the retail, food service, and industrial users consumed 42.6, 36.7 and 20.7 percent, respectively, of domestic production of certain preserved mushrooms.<sup>104</sup>

Over the past 30 years, the domestic consumption of mushrooms has shifted steadily from preserved to fresh mushrooms, although consumption of both of these products has increased.<sup>105</sup> This shift in consumption from preserved to fresh mushrooms continued, although only modestly, during the period of investigation. Demand for certain preserved mushrooms remained relatively stable throughout the period. Apparent consumption declined from approximately \*\*\* million pounds in 1994 to approximately \*\*\* million pounds in 1996, and was lower in interim 1997, \*\*\* million pounds, compared to apparent consumption of \*\*\* million pounds in interim 1996.<sup>106</sup>

The primary input in the manufacture of certain preserved mushrooms is fresh mushrooms, which represent approximately \*\*\* percent of the cost of producing the domestic like product.<sup>107</sup> Some producers are partially integrated, and grow a portion of the fresh mushrooms needed for their processing operations.<sup>108</sup> However, even integrated producers purchase a portion of their fresh mushroom needs from unrelated growers, and processors that are not integrated must purchase all of their fresh mushroom requirements from unrelated growers.<sup>109</sup> The ability of the domestic industry to increase its output of certain preserved mushrooms depends partly on its ability to purchase fresh mushrooms. While certain growers have traditionally dedicated their output to the preserved mushroom industry,<sup>110</sup> most growers appear to grow primarily for the fresh mushroom market.<sup>111</sup> The price paid for fresh mushrooms fell from approximately \$0.72 per pound in January, 1995, to approximately \$0.45 per pound in June, 1996.<sup>112</sup> This

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<sup>100</sup> (...continued)  
processing into a downstream product.

<sup>101</sup> According to the official import statistics and Commission questionnaire responses, imports of certain preserved mushrooms from Chile, China, India, and Indonesia were \*\*\* percent, respectively of the total quantity of U.S. imports of the subject merchandise in 1996. CR and PR at table IV-1. Consequently, we find that imports from none of the subject countries should be deemed negligible.

<sup>102</sup> CR at II-1; PR at II-1.

<sup>103</sup> *Id.*

<sup>104</sup> CR and PR at table I-1.

<sup>105</sup> CR and PR at appendix D.

<sup>106</sup> CR and PR at table IV-3.

<sup>107</sup> CR at I-5, n.13; PR at I-3.

<sup>108</sup> CR at VI-1; PR at VI-1.

<sup>109</sup> *Id.*

<sup>110</sup> CR at III-2; PR at III-2.

<sup>111</sup> Conf. Tr. at 55-56.

<sup>112</sup> CR at II-3; PR at II-2; Conf. Tr. at 31.

drop in price allegedly has prompted growers to try to shift the focus of their sales to the fresh mushroom market, rather than to the preserved mushroom producers.<sup>113</sup>

For purposes of the final determinations we intend to gather further information about the shift in consumer preferences to fresh mushrooms as well as the increasing preference by growers to supply the fresh market, and the effect, if any, such shifts have had on the domestic industry.<sup>114</sup>

## **B. Volume of Subject Imports**

The quantity and value of the subject imports were significant, and increased overall during the period of investigation. By quantity, subject imports increased from \*\*\* million pounds in 1994 to \*\*\* million pounds in 1996. Subject imports were higher in interim (January to September) 1997, at \*\*\* million pounds, than in interim 1996, at \*\*\* million pounds.<sup>115</sup> Measured by value, the cumulated subject imports rose from \*\*\* million in 1994 to \*\*\* million in 1996.<sup>116</sup> The value of subject imports was higher in interim 1997, \*\*\* million, than in interim 1996, \*\*\* million.<sup>117</sup> The market share held by subject imports, measured by quantity, increased from \*\*\* percent in 1994 to \*\*\* percent in 1996.<sup>118</sup> While the market share of the domestic industry also increased during the period from 1994 to 1996, data show that the domestic industry lost market share to the subject imports during interim 1997. The domestic industry's market share was \*\*\* percent by quantity in interim 1996 but only \*\*\* percent in interim 1997.<sup>119</sup> The market shares of the subject imports was higher in interim 1997, \*\*\* percent, compared to interim 1996, \*\*\* percent. The market share of imports from non-subject countries was \*\*\* percent in interim 1996 and \*\*\* percent in interim 1997.

Based on the rising volume and market share of the subject imports over the period of investigation as a whole, as well as their displacement of domestic production in 1997, we find that both the volume of subject imports and the increase in that volume over the period of investigation are significant.

## **C. Price Effects of Subject Imports**

Purchasers view the price of certain preserved mushrooms to be an important factor in purchasing decisions.<sup>120</sup> While there is a difference between the size of cans used in the retail sector and those used in the food service and industrial sectors, within sectors the information available for these preliminary determinations indicates that purchasers view preserved mushrooms as substitutable.<sup>121</sup> Although there

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<sup>113</sup> Conf. Tr. at 31.

<sup>114</sup> Commissioner Crawford does not join the remainder of this analysis. As noted above, Commissioner Crawford did not cumulate subject imports from Chile with subject imports from India or Indonesia. Consequently, her determinations are based on cumulated imports that differ from those on which her colleagues' determinations are based. See, Views of Commissioner Carol T. Crawford, *infra*.

<sup>115</sup> CR and PR at table IV-1.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> CR and PR at table IV-3. Measured by value the market share of the subject imports increased from \*\*\* percent in 1994 to \*\*\* percent in 1996.

<sup>119</sup> *Id.*

<sup>120</sup> CR at V-17-V-19; PR at V-11-V-12.

<sup>121</sup> CR at II-6; PR at II-4.

were also reports of differences in appearance, quality and lead times as significant considerations, these seemed to be less important than price considerations.<sup>122</sup>

The record reveals a mixed pattern of over- and underselling by the subject imports, with underselling occurring in about half of the comparisons of domestic and subject import prices. Margins of underselling increased, however, towards the end of the period, particularly in 1997.<sup>123</sup> Based on both the frequency of underselling over the period as a whole and the increasing magnitude of the margins of underselling at the end of the period, we find the underselling to be significant for purposes of our determination of whether there is a reasonable indication of material injury.

Prices generally declined during the latter portion of the period investigated.<sup>124</sup> Prices obtained by domestic producers on sales of 4-ounce cans, which are almost exclusively sold to the retail sector, peaked in the second quarter of 1994, and then fell steadily through the rest of the period of investigation.<sup>125</sup> Prices for 68-ounce cans, which are sold to the food service and industrial sectors, followed a similar pattern, peaking in the first quarter of 1995 before falling through the rest of the period.<sup>126</sup> Import prices followed similar patterns.

In light of the evidence of the substitutability of subject imports with the domestic like product, mixed underselling, and declines in prices for both the domestic like product and subject imports, for purposes of our determination of whether there is a reasonable indication of material injury, we find that the imports from Chile, China, India, and Indonesia have depressed prices for the domestic like product to a significant degree.

#### **D. Impact of Subject Imports**<sup>127 128</sup>

The increased volume, market share, and declining prices of subject imports have adversely affected the domestic industry, particularly during the latter part of the period investigated, from 1996 through interim 1997. Overall, domestic production, employment, and profitability declined over the period, and were lower in interim 1997 relative to interim 1996.<sup>129</sup> The adverse impact of the subject imports is also reflected in the number of confirmed instances of sales and revenues lost to those

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<sup>122</sup> CR at II-6-II-7 and V-17-V-19; PR at II-4 and V-11-V-12..

<sup>123</sup> CR and PR at table V-3.

<sup>124</sup> CR and PR at tables V-1 and V-2.

<sup>125</sup> CR and PR at table V-1.

<sup>126</sup> CR and PR at table V-2.

<sup>127</sup> As part of its consideration of the impact of imports, the statute as amended by the Uruguay Round Agreements Act (URAA) specifies that the Commission is to consider “the magnitude of the margin of dumping.” 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment “does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis.” SAA at 850. New section 771(35)(C), 19 U.S.C. § 1677(35)(C), defines the “margin of dumping” to be used by the Commission in a preliminary determination as the margin or margins published by Commerce in its notice of initiation. In its notice of initiation, Commerce estimated a dumping margin for Chile of 83.30; estimated dumping margins for China ranging from 85.38 to 198.63 percent; estimated dumping margins for India of 31.76 to 274.05 percent; and estimated dumping margins for Indonesia ranging from 35.40 to 42.30 percent. 62 Fed. Reg. at 5362-3.

<sup>128</sup> Vice Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731(Final), USITC Pub. 2968 (June 1996).

<sup>129</sup> CR at II-3 and VI-3; PR at II-1 and VI-1.

imports.<sup>130</sup> As the volume of cumulated subject imports increased and subject import prices declined through the period of investigation, the domestic industry's sales quantities dwindled and its unit sales values declined faster than its costs.<sup>131</sup> The result has been a decrease in net sales value for preserved mushrooms and falling profitability for the domestic industry.<sup>132</sup> Particularly in 1996, when unit sales values declined by \$0.18 per pound, and sales quantities decreased by 14 percent from the year before, the profitability of the industry declined by all measures.<sup>133</sup> The results are the same in comparisons of interim data for 1996 and 1997; unit sales values were \$0.12 lower and sales quantities 16 percent lower in interim 1997 than in interim 1996, resulting in significantly lower net sales values. Although unit costs decreased by \$0.10 between the interim periods, reflecting, in part, decreases in prices paid for fresh mushrooms, such declines did not keep pace with decreases in unit sales values, resulting in declining profitability.<sup>134</sup> This declining profitability, in turn, has had an adverse effect on employment.<sup>135</sup>

Given the domestic industry's weak financial performance at a time of generally declining prices and increasing subject imports, and the general substitutability of subject imports for the domestic like product, we find that the subject imports have had a significant adverse impact on the domestic industry producing certain preserved mushrooms.

## CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing certain preserved mushrooms is materially injured by reason of allegedly LTFV imports from Chile, China, India and Indonesia.

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<sup>130</sup> CR at V-13, PR at V-10.

<sup>131</sup> At the same time production fell overall from approximately 92 million pounds in 1994 to approximately 85 million pounds in 1996. CR and PR at table III-1; CR at III-3; PR at III-2. By contrast, the capacity of the domestic industry increased sharply during the period 1994-1996, from approximately 204 million pounds to approximately 220 million pounds. Capacity was lower, however, in interim 1997, at 145.9 million pounds, than in interim 1996, at 166.6 million pounds, as \*\*\*. *Id.* As a result of the combination of expanded capacity and declines in production, capacity utilization fell from 45.3 percent in 1994 to 38.5 percent in 1996. *Id.* Industry representatives have explained that they made the decision to increase capacity before the beginning of the price decline. Conf. Tr. at 30 and 62.

<sup>132</sup> Industry profitability declined from 1994 to 1996, and was lower in interim 1997 than in interim 1996. CR and PR at table VI-1. The value of the domestic industry's net sales fell from approximately \$137 million in 1994 to approximately \$101 million in 1996. Net sales value was lower in interim 1997, \$70.5 million than in interim 1996, \$92.4 million. Gross profits for the domestic industry fell from \$18.7 million in 1994 to \$12.6 million in 1996, and followed a similar pattern in the interim periods. Gross profits were higher in interim 1996, \$12.2 million, than in interim 1997, \$9.5 million. Similarly, operating income fell from \$5.7 million in 1994 to \$1.1 million in 1996, and was lower in interim 1997, at \$1.4 million, than in interim 1996, at \$3.1 million. On the other hand, the domestic industry's total domestic shipments rose from approximately 85 million pounds in 1994 to approximately 92 million pounds in 1996. However, domestic shipments were lower in interim 1997, at approximately 59 million pounds, than in interim 1996, at approximately 71 million pounds. CR and PR at table III-1.

<sup>133</sup> CR at VI-3; PR at VI-1.

<sup>134</sup> Moreover, the domestic industry's ability to cut costs further is limited because the prices it pays for fresh mushrooms appear to be near the lowest level that mushroom growers can accept. CR at II-3; PR at II-2.

<sup>135</sup> The number of production and related workers in the industry has declined from 503 in 1994 to 488 in 1996. The number of such workers was also lower in interim 1997, at 416 workers, as compared to interim 1996, at 485 workers. Hourly wages have also decreased from \$11.33 in 1994 to 10.63 in 1996. Further, hourly wages were lower in interim 1997, \$11.19, than in interim 1996, \$11.76. CR and PR at table III-4.

## IEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these preliminary investigations, I determine that there is a reasonable indication that the industry in the United States producing certain preserved mushrooms is materially injured by reason of imports of certain preserved mushrooms from Chile, China, India, and Indonesia that are allegedly sold in the United States at less-than-fair-value ("LTFV"). I join my colleagues in finding a single like product and in the definition of the domestic industry. I also concur in the determination that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports. However, I do not concur in my colleagues' decision to cumulate the subject imports from all four countries. Because my findings on cumulation differ from my colleagues, my separate views follow.

### I. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the allegedly LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .<sup>1</sup>

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."<sup>2</sup> In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>3</sup>

The statute directs that we determine whether there is a reasonable indication of "material injury by reason of the dumped imports." Thus we are called upon to evaluate the effect of allegedly dumped imports on the domestic industry and determine if there is a reasonable indication that they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the alleged dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether there is a reasonable indication that any injury "by reason of" the allegedly dumped imports is material. That is, the Commission must determine if there is a reasonable indication that the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry."<sup>4</sup> It is important, therefore, to assess the effects of the allegedly dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been

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<sup>1</sup> 19 U.S.C. § 1677(7)(B)(i).

<sup>2</sup> 19 U.S.C. § 1677(7)(B)(ii).

<sup>3</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>4</sup> S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997).

fairly priced. I then determine whether the change in conditions constitutes material injury.<sup>5</sup>

In my analysis of material injury, I evaluate the effects of the alleged dumping<sup>6</sup> on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the alleged dumping on domestic prices, I compare domestic prices that existed when the imports were allegedly dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,<sup>7</sup> I compare the level of domestic sales that existed when imports were allegedly dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the effects on the statutory impact factors<sup>8</sup> (e.g., employment, wages, etc.) are derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the alleged dumping, either separately or together, demonstrate that there is a reasonable indication that the domestic industry would have been materially better off if the imports had been priced fairly. If so, there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly dumped imports.

For the reasons discussed below, I determine that there is a reasonable indication that the domestic industry producing certain preserved mushrooms is materially injured by reason of allegedly LTFV imports of certain preserved mushrooms from Chile, China, India, and Indonesia.

## II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

### A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us

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<sup>5</sup> Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, at 1361 (Fed.Cir. 1996), *aff'g* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

<sup>6</sup> As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

<sup>7</sup> In examining the quantity sold, I take into account sales from both existing inventory and new production.

<sup>8</sup> 19 U.S.C. § 1677(7)(C)(iii).

whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for certain preserved mushrooms is relatively low.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (e.g., an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the downstream product, and, by extension, demand for the input.

Certain preserved mushrooms constitute a relatively small cost share of the downstream food products in which they are used, ranging from less than \*\*\* percent in most products to \*\*\* percent for products in which the mushroom content is the predominant ingredient. For retail purchases, the price of mushrooms is a small share of a consumer's food expenses.<sup>9</sup> This low cost share indicates that demand is quite inelastic.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Available alternative products that can substitute for certain preserved mushrooms essentially are limited to other types of mushrooms. Fresh mushrooms appear to be a viable substitute, as evidenced by the fact that Pizza Hut and other pizza chains have switched from purchasing canned mushrooms to purchasing fresh mushrooms.<sup>10</sup> The availability of fresh mushrooms as a substitute product indicates that demand is somewhat elastic.

Even though the availability of fresh mushrooms as a substitute product indicates a somewhat elastic demand, the low cost share reduces the elasticity of demand substantially. Therefore, I find that demand for certain preserved mushrooms is relatively inelastic. That is, purchasers will not reduce significantly the amount of certain preserved mushrooms they buy in response to a general increase in the price of certain preserved mushrooms.

## B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative

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<sup>9</sup> CR at II-5 to II-6; PR at II-4.

<sup>10</sup> CR at II-5; PR at II-3.

price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand elasticity for certain preserved mushrooms is relatively low, overall purchases will not decline significantly if the overall prices of certain preserved mushrooms increase. However, purchasers can avoid price increases from one source by seeking other sources of certain preserved mushrooms. In addition to any changes in overall demand, the demand for certain preserved mushrooms from different sources will decrease or increase depending on their relative prices and their substitutability. If certain preserved mushrooms from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have three potential sources of certain preserved mushrooms: domestically produced certain preserved mushrooms, subject imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among certain preserved mushrooms from different sources as follows.

For purposes of these preliminary determinations, I find that subject imports, nonsubject imports, and the domestic product are, overall, at least moderate substitutes for each other. Thus, a shift in demand away from subject imports likely would increase demand for both nonsubject imports and the domestic product. However, the substitutability among sources of subject imports varies, which, as discussed below, affects the shift in demand among the sources of certain preserved mushrooms.

Overall, there is a basic substitutability among all subject imports and the domestic like product because all must meet USDA and FDA requirements. As a result, there is little or no difference between purchasers' specifications in terms of style and grade.

The substitutability among subject imports and between subject imports and the domestic product is reduced somewhat by nonprice factors. A majority of importers and some producers reported nonprice factors between subject imports and the domestic product. Some nonprice factors include differences in taste and color and differences in terms and lead times that would indicate a preference for the domestic product. On the other hand, a minority of importers reported that their imports were better quality than the domestic product, which would indicate a preference for those imports.<sup>11</sup>

In particular, Pillsbury maintains that it uses Indonesian imports in its "Green Giant" brand because of the quality.<sup>12</sup> Pricing data confirm that purchasers pay a premium for Pillsbury's product.<sup>13</sup> Therefore, I find that subject imports from Indonesia are, at best, moderate substitutes for the domestic product and the subject imports from China and India. As discussed below, I find that subject imports from Indonesia are poor substitutes for subject imports from Chile.

Similarly, the Chilean producer maintains that it has long-term relationships with a small number of customers in the food service and industrial segments that have high quality standards and prefer Chilean imports to the domestic product.<sup>14</sup> Indeed, the fact that one of the Chilean producer's major customers, Pizza Hut, switched to fresh mushrooms<sup>15</sup> indicates that, for this purchaser, subject imports from Chile substitute directly with fresh mushrooms, which reduces their substitutability with certain preserved mushrooms from other sources. Nearly all of the remainder of the subject imports from Chile is sold in the food service and industrial market segments in competition with the domestic product and

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<sup>11</sup> CR at II-6 to II-7; PR at II-4.

<sup>12</sup> Pillsbury Postconference Brief at 14 - 15.

<sup>13</sup> Table V-1.

<sup>14</sup> Nature's Farm Postconference Brief at 5 - 6.

<sup>15</sup> Nature's Farm Postconference Brief at 36.

subject imports from China. Nevertheless, given the substitutability with fresh mushrooms, subject imports from Chile are, at best, moderate substitutes for the domestic product and subject imports from China. On the other hand, subject imports from India and Indonesia \*\*\* while subject imports from Chile \*\*\*.<sup>16</sup> Thus, subject imports from India and Indonesia are not very good substitutes for subject imports from Chile. Therefore, I find that subject imports from Chile are poor substitutes for subject imports from India and Indonesia and, at best, moderate substitutes for the domestic product and subject imports from China.

There is no specific information to indicate that subject imports from China and India are not good substitutes for each other and the domestic product. All three are sold in substantial proportions \*\*\*,<sup>17</sup> which indicates at least a basic degree of substitutability. Therefore, I find that subject imports from China and India are good substitutes for each other and for the domestic product.

In sum, subject imports from Chile are, at best, moderate substitutes for the domestic product and subject imports from China, but poor substitutes for subject imports from India and Indonesia. Subject imports from China are good substitutes for the domestic product and the subject imports from India, and, at best, are moderate substitutes for subject imports from Chile and Indonesia. Subject imports from India are poor substitutes for subject imports from Chile; good substitutes for the domestic product and subject imports from China; and, at best, moderate substitutes for subject imports from Indonesia. Subject imports from Indonesia are, at best, moderate substitutes for the domestic product and the subject imports from China and India, but poor substitutes for the subject imports from Chile. Although the poor substitutability between subject imports from Chile and subject imports from India and Indonesia reduces overall substitutability, the substitutability among subject imports from Indonesia, China and India and with the domestic product increases the overall substitutability. Therefore, I conclude that overall there is at least moderate substitutability among subject imports and the domestic product.

The record contains little information concerning nonsubject imports. Data on apparent consumption and market shares indicate that by quantity the market share of nonsubject imports decreased from \*\*\* percent in 1994 to \*\*\* percent in 1996. At the same time, the market shares of subject imports from China and the domestic product both increased. Combined, these increases were greater than the decrease in the market share of nonsubject imports, apparently displacing the nonsubject imports.<sup>18</sup> Based on this apparent displacement, I find that nonsubject imports are moderate to good substitutes for subject imports from China and the domestic product. As stated above, subject imports from China are good substitutes for subject imports from India, and, at best, moderate substitutes for subject imports from Chile and Indonesia. Since nonsubject imports and subject imports from China are moderate to good substitutes for each other, I find that nonsubject imports are also good substitutes for subject imports from India, and, at best, moderate substitutes for subject imports from Chile and Indonesia.

For these reasons, I find that subject imports, nonsubject imports, and the domestic product are overall at least moderate substitutes for each other. Therefore, I find that purchasers would have switched from purchases of subject imports to purchases of both nonsubject imports and the domestic product had the subject imports been fairly priced.

### C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine

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<sup>16</sup> Table I-1.

<sup>17</sup> Table I-1.

<sup>18</sup> Table IV-3.

how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of certain preserved mushrooms is quite high.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. The domestic industry's capacity utilization was \*\*\* percent in 1996.<sup>19</sup> Thus, \*\*\* percent of capacity was not used and therefore was available to increase production. Unused capacity \*\*\* the volume of subject imports in 1996.<sup>20</sup> Consequently, the domestic industry had substantial and sufficient capacity available to supply the demand for subject imports.

Inventories and Exports. The domestic industry had \*\*\* million pounds of certain preserved mushrooms in inventories available at the end of 1996 that it could have shipped into the U.S. market.<sup>21</sup> However, the domestic industry's exports are small, and thus do not represent a significant source of supply of certain preserved mushrooms.<sup>22</sup> Notwithstanding its small volume of exports, the domestic industry had large inventories available that could have filled the demand supplied by subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, there are 11 domestic producers of certain preserved mushrooms, and thus there is significant competition within the domestic industry. Nonsubject imports are not a substantial source of competition in this market, accounting for only \*\*\* percent of consumption in 1996.<sup>23</sup> Notwithstanding the limited competition from nonsubject imports, there is significant competition among domestic producers. Consequently, I find that there is a significant level of competition in the U.S. market for certain preserved mushrooms.

Based on the level of competition in the U.S. market, and the domestic industry's substantial unused capacity and large inventories, I find that the elasticity of supply is quite high.

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<sup>19</sup> Table III-1.

<sup>20</sup> Table III-1 and Table IV-1.

<sup>21</sup> Table III-3.

<sup>22</sup> Table III-2.

<sup>23</sup> Table IV-3.

### III. CUMULATION

The statute requires cumulation only if the subject imports compete with each other and with the domestic like product.<sup>24</sup> In my view, the substitutability between and among the domestic product and the subject imports most accurately reflects the competition requirement of the statute.<sup>25</sup> Based on my evaluation of competition between and among the domestic product and the subject imports, I do not concur in my colleagues' decision to cumulate the subject imports from all four countries.

In my analysis of substitutability, I made the following findings. Subject imports from Chile are, at best, moderate substitutes for the domestic product and subject imports from China. Therefore, these three sources generally compete with each other. Subject imports from China are good substitutes for the domestic product and the subject imports from India, and are, at best, moderate substitutes for subject imports from Chile and Indonesia. Therefore, subject imports from China generally compete with the domestic product and subject imports from the other three countries. Consequently, subject imports from China, India and Indonesia all compete with each other and with the domestic product. However, subject imports from Chile are poor substitutes for subject imports from India and Indonesia, and thus competition among these subject imports is limited.

Based on this limited competition, I find that there is not a "reasonable overlap of competition" between subject imports from Chile and subject imports from India or Indonesia. My finding follows from an analysis of the market segments in which these subject imports are sold.

Subject imports from India and Indonesia are \*\*\*, while subject imports from Chile \*\*\*. As the record demonstrates, only \*\*\* percent of subject imports from India and only 7.4 percent of subject imports from Indonesia are sold in the food service segment, while \*\*\* percent of subject imports from Chile are sold in this segment. On the other hand, only \*\*\* of subject imports from Chile is sold in the retail segment, while \*\*\* percent of subject imports from India and 92.6 percent of subject imports from Indonesia are sold in this segment.<sup>26</sup> The disparate concentration of sales to different market segments demonstrates that there is little competition between subject imports from Chile and subject imports from India or Indonesia. Thus there is not a reasonable overlap of competition between subject imports from these sources. Therefore, I do not cumulate subject imports from Chile with subject imports from India or Indonesia.<sup>27</sup>

Subject imports from Chile do not compete with subject imports from India or Indonesia, and thus for purposes of my determination with respect to Chile I have cumulated subject imports from Chile and China only. For purposes of my determination with respect to China, I have cumulated subject imports from all four countries. For purposes of my determinations with respect to India and Indonesia, I have cumulated subject imports from India and Indonesia with subject imports from China, but not with subject imports from Chile.

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<sup>24</sup> 19 U.S.C. § 1677(7)(G).

<sup>25</sup> See, Dissenting Views of Commissioner Carol T. Crawford, in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub.2856 (February 1995).

<sup>26</sup> Table I-1.

<sup>27</sup> My decision not to cumulate subject imports from Chile with subject imports from India or Indonesia is consistent with Commission precedent in Steel wire Rod from Brazil and Japan, Inv. Nos. 731-TA-646 and 648 (Final) USITC Pub. 2761 (March 1994).

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF CERTAIN PRESERVED MUSHROOMS FROM CHILE

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn, based on my decision to cumulate subject imports from Chile and China for my determination with respect to Chile.

A. Volume of Subject Imports

Cumulated subject imports from Chile and China increased from \*\*\* million pounds in 1994 to \*\*\* million pounds in 1995, and then decreased to \*\*\* million pounds in 1996. In the first 9 months of 1997, these subject imports were \*\*\* million pounds. The value of subject imports from Chile and China was \$\*\*\* million in 1994, \$\*\*\* million in 1995, \$\*\*\* million in 1996, and \$\*\*\* million in interim 1997.<sup>28</sup> By quantity, subject imports from Chile and China held a market share of \*\*\* percent in 1994, \*\*\* percent in 1995, \*\*\* percent in 1996, and \*\*\* percent in interim 1997. Their market share by value was \*\*\* percent in 1994, \*\*\* percent in 1995, \*\*\* percent in 1996, and \*\*\* percent in interim 1997.<sup>29</sup> While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of cumulated subject imports from Chile and China and the conditions of competition in the domestic market, the volume of these subject imports is significant in light of its price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the certain preserved mushrooms market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if the subject imports had not been unfairly priced.

If the subject imports had not been dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to the domestic product. In such a case, if subject imports are good substitutes with other certain preserved mushrooms, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the alleged dumping margins vary by country, but generally are quite large, 83.30 percent for Chile and 85.38 percent to 198.63 percent for China. Therefore, subject imports from Chile and China likely would have been priced significantly higher had they been fairly traded.

At fairly traded prices, all or nearly all of the demand supplied by subject imports from China likely would have shifted away from this source. Since this source accounted for a market share of \*\*\* percent in 1996,<sup>30</sup> the shift in demand away from subject imports from China likely would have been quite

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<sup>28</sup> Table IV-1.

<sup>29</sup> Table IV-3.

<sup>30</sup> Table IV-3.

large. It is likely that most of this demand would have shifted to the domestic product and nonsubject imports because they are all good substitutes for each other. On the other hand, it is likely that very little of this demand would have shifted to the other subject imports because they too, at fairly traded prices, would have been priced significantly higher. In addition, it is likely that at fairly traded prices some, and perhaps most, of the \*\*\* percent market share in 1996 held by subject imports from Chile also would have shifted away from this source. Because subject imports from India and Indonesia are poor substitutes for subject imports from Chile, it is likely that very little of the demand for subject imports from Chile would have shifted to these sources. In addition, it is likely that very little of the demand for subject imports from Chile would have shifted to subject imports from China because they too, at fairly traded prices, would have been priced significantly higher. Thus it is likely that some, and perhaps most, of the demand for subject imports from Chile would have shifted to the domestic product and nonsubject imports even though they are, at best, moderate substitutes for each other.

Overall, a substantial portion of the demand for subject imports from Chile and China likely would have shifted away from subject imports from these two sources. Since subject imports from Chile and China held a cumulated market share of \*\*\* percent by quantity in 1996,<sup>31</sup> the shift in demand away from these subject imports would have been fairly large. Nonsubject imports accounted for only \*\*\* percent of the market in 1996,<sup>32</sup> and thus represent only limited competition for the domestic industry. Therefore, most of the demand for subject imports from Chile and China likely would have shifted to the domestic product.

The elasticity of demand indicates that domestic suppliers should have been able to increase prices in response to this shift in demand. However, any attempt by the domestic industry to increase its prices in response to the shift in demand would have been unsuccessful. Although competition from nonsubject imports is limited, there is significant competition among producers within the domestic industry. The domestic industry has substantial unused production capacity available, as well as large inventories, with which producers would have competed for sales, had demand shifted away from subject imports from Chile and China. This competition would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of these subject imports. Consequently, I find that subject imports from Chile and China are not having significant effects on prices for domestic certain preserved mushrooms.

### C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.<sup>33</sup> These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices significantly if subject imports from Chile and China had been sold at fairly traded prices. Therefore, any impact of the allegedly dumped imports on the domestic industry would have been on the domestic industry's output and sales.

As I have discussed above, competition from nonsubject imports is limited, and thus, had the

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<sup>31</sup> Table IV-3.

<sup>32</sup> Table IV-3.

<sup>33</sup> 19 U.S.C. § 1677(7)(C)(iii).

subject imports not been dumped, the domestic industry would have captured most of the demand satisfied by subject imports from Chile and China. The increase in demand for the domestic product likely would have been substantial, and the domestic producers could have increased their production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports from Chile and China that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped. Consequently, the domestic industry likely would have been materially better off if the subject imports from Chile and China had been fairly traded.

D. Conclusion

On the basis of the foregoing analysis, I determine that there is a reasonable indication that the domestic industry producing certain preserved mushrooms is materially injured by reason of allegedly LTFV imports from Chile.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF CERTAIN PRESERVED MUSHROOMS FROM CHINA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn, based on my decision to cumulate subject imports from all four countries for my determination with respect to China.

A. Volume of Subject Imports

Cumulated subject imports from Chile, China, India, and Indonesia increased from \*\*\* million pounds in 1994 to \*\*\* million pounds in 1995, and then decreased to \*\*\* million pounds in 1996. In the first 9 months of 1997, these subject imports were \*\*\* million pounds. The value of subject imports from Chile, China, India, and Indonesia was \$\*\*\* million in 1994, \$\*\*\* million in 1995, \$\*\*\* million in 1996, and \$\*\*\* million in interim 1997.<sup>34</sup> By quantity, subject imports from Chile, China, India, and Indonesia held a market share of \*\*\* percent in 1994, \*\*\* percent in 1995, \*\*\* percent in 1996, and \*\*\* percent in interim 1997. Their market share by value was \*\*\* percent in 1994, \*\*\* percent in 1995, \*\*\* percent in 1996, and \*\*\* percent in interim 1997.<sup>35</sup> While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of cumulated subject imports from Chile, China, India, and Indonesia and the conditions of competition in the domestic market, the volume of these subject imports is significant in light of its price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the certain preserved mushrooms market are relevant. Examining

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<sup>34</sup> Table IV-1.

<sup>35</sup> Table IV-3.

demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports had not been dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to the domestic product. In such a case, if subject imports are good substitutes with other certain preserved mushrooms, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the alleged dumping margins vary by country, but generally are quite large: 83.30 percent for Chile; 85.38 percent to 198.63 percent for China; 31.76 percent to 274.05 percent for India; and 35.40 percent to 42.30 percent for Indonesia. Therefore, subject imports from all four countries likely would have been priced significantly higher had they been fairly traded.

At fairly traded prices, all or nearly all of the demand supplied by subject imports from China likely would have shifted away from this source. Since this source accounted for a market share of \*\*\* percent in 1996,<sup>36</sup> the shift in demand away from subject imports from China likely would have been quite large. It is likely that most of this demand would have shifted to the domestic product and nonsubject imports because they are all good substitutes for each other. On the other hand, it is likely that very little of this demand would have shifted to the other subject imports because they too, at fairly traded prices, would have been priced significantly higher. In addition, it is likely that at fairly traded prices some, and perhaps most, of the combined \*\*\* percent market share in 1996 held by subject imports from Chile and India also would have shifted away from these sources. However, it is likely that very little of this demand would have shifted to the other subject imports because they too, at fairly traded prices, would have been priced significantly higher. Since the domestic product and nonsubject imports are good substitutes for subject imports from India, and, at best, moderate substitutes for subject imports from Chile, it is likely that most of the demand for subject imports from Chile and India would have shifted to the domestic product and nonsubject imports. On the other hand, because subject imports from Indonesia are poor substitutes for subject imports from Chile, and only moderate substitutes, at best, for the domestic product, nonsubject imports and subject imports from the other countries, the shift in demand away from subject imports from Indonesia likely would have been more limited. Thus, it is likely that only some of the \*\*\* percent market share in 1996 held by subject imports from Indonesia would have shifted to the domestic product and nonsubject imports.

Overall, a substantial portion of the demand for subject imports likely would have shifted away from subject imports from all four sources. Since subject imports from all four countries held a cumulated market share of \*\*\* percent by quantity in 1996,<sup>37</sup> the shift in demand away from subject imports would have been fairly large. Nonsubject imports accounted for only \*\*\* percent of the market in 1996,<sup>38</sup> and thus represent only limited competition for the domestic industry. Therefore, most of the demand for subject imports likely would have shifted to the domestic product.

The elasticity of demand indicates that domestic suppliers should have been able to increase prices in response to this shift in demand. However, any attempt by the domestic industry to increase its prices in response to the shift in demand would have been unsuccessful. Although competition from nonsubject imports is limited, there is significant competition among producers within the domestic industry. The

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<sup>36</sup> Table IV-3.

<sup>37</sup> Table IV-3.

<sup>38</sup> Table IV-3.

domestic industry has substantial unused production capacity available, as well as large inventories, with which producers would have competed for sales, had demand shifted away from subject imports. This competition would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of these subject imports. Consequently, I find that subject imports from Chile, China, India, and Indonesia are not having significant effects on prices for domestic certain preserved mushrooms.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.<sup>39</sup> These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices significantly if subject imports from Chile, China, India, and Indonesia had been sold at fairly traded prices. Therefore, any impact of the allegedly dumped imports on the domestic industry would have been on the domestic industry's output and sales.

As I have discussed above, competition from nonsubject imports is limited, and thus, had the subject imports not been dumped, the domestic industry would have captured most of the demand satisfied by subject imports from Chile, China, India, and Indonesia. The increase in demand for the domestic product likely would have been substantial, and the domestic producers could have increased their production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped. Consequently, the domestic industry likely would have been materially better off if the subject imports from Chile, China, India, and Indonesia had been fairly traded.

D. Conclusion

On the basis of the foregoing analysis, I determine that there is a reasonable indication that the domestic industry producing certain preserved mushrooms is materially injured by reason of allegedly LTFV imports from China.

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<sup>39</sup> 19 U.S.C. § 1677(7)(C)(iii).

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF CERTAIN PRESERVED MUSHROOMS FROM INDIA AND INDONESIA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn, based on my decision to cumulate subject imports from China, India, and Indonesia for my determinations with respect to India and Indonesia.

A. Volume of Subject Imports

Cumulated subject imports from China, India, and Indonesia increased from \*\*\* million pounds in 1994 to \*\*\* million pounds in 1995, and then decreased to \*\*\* million pounds in 1996. In the first 9 months of 1997, these subject imports were \*\*\* million pounds. The value of subject imports from China, India, and Indonesia was \$\*\*\* million in 1994, \$\*\*\* million in 1995, \$\*\*\* million in 1996, and \$\*\*\* million in interim 1997.<sup>40</sup> By quantity, subject imports from China, India, and Indonesia held a market share of \*\*\* percent in 1994, \*\*\* percent in 1995, \*\*\* percent in 1996, and \*\*\* percent in interim 1997. Their market share by value was \*\*\* percent in 1994, \*\*\* percent in 1995, \*\*\* percent in 1996, and \*\*\* percent in interim 1997.<sup>41</sup> While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of cumulated subject imports from China, India, and Indonesia and the conditions of competition in the domestic market, the volume of these subject imports is significant in light of its price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the certain preserved mushrooms market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports had not been dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to the domestic product. In such a case, if subject imports are good substitutes with other certain preserved mushrooms, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the alleged dumping margins vary by country, but generally are quite large: 85.38 percent to 198.63 percent for China; 31.76 percent to 274.05 percent for India; and 35.40 percent to 42.30 percent for Indonesia. Therefore, subject imports from these three countries likely would have been priced significantly higher had they been fairly traded.

At fairly traded prices, all or nearly all of the demand supplied by subject imports from China

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<sup>40</sup> Table IV-1.

<sup>41</sup> Table IV-3.

likely would have shifted away from this source. Since this source accounted for a market share of \*\*\* percent in 1996,<sup>42</sup> the shift in demand away from subject imports from China likely would have been quite large. It is likely that most of this demand would have shifted to the domestic product and nonsubject imports because they are all good substitutes for each other. On the other hand, it is likely that very little of this demand would have shifted to the other subject imports because they too, at fairly traded prices, would have been priced significantly higher. In addition, it is likely that at fairly traded prices at least some of the combined \*\*\* percent market share in 1996 held by subject imports from India and Indonesia also would have shifted away from these sources. Because subject imports from India and Indonesia are poor substitutes for subject imports from Chile, it is likely that very little of the demand for subject imports from these sources would have shifted to subject imports from Chile. In addition, it is likely that very little of the demand for subject imports from India and Indonesia would have shifted to subject imports from China because they too, at fairly traded prices, would have been priced significantly higher. Since the domestic product and nonsubject imports are good substitutes for subject imports from India, it is likely that most of the \*\*\* percent market share in 1996 held by subject imports from India would have shifted to the domestic product and nonsubject imports. On the other hand, because subject imports from Indonesia are only moderate substitutes, at best, for the domestic product and nonsubject imports, the shift in demand away from subject imports from Indonesia likely would have been more limited. Thus, it is likely that only some of the \*\*\* percent market share in 1996 held by subject imports from Indonesia would have shifted to the domestic product and nonsubject imports. Therefore, it is likely that at least some of the combined demand for subject imports from India and Indonesia would have shifted to the domestic product and nonsubject imports.

Overall, a substantial portion of the demand for subject imports from China, India, and Indonesia likely would have shifted away from subject imports from these three sources. Since subject imports from China, India, and Indonesia held a cumulated market share of \*\*\* percent by quantity in 1996,<sup>43</sup> the shift in demand away from these subject imports would have been fairly large. Nonsubject imports accounted for only \*\*\* percent of the market in 1996,<sup>44</sup> and thus represent only limited competition for the domestic industry. Therefore, most of the demand for subject imports from China, India, and Indonesia likely would have shifted to the domestic product.

The elasticity of demand indicates that domestic suppliers should have been able to increase prices in response to this shift in demand. However, any attempt by the domestic industry to increase its prices in response to the shift in demand would have been unsuccessful. Although competition from nonsubject imports is limited, there is significant competition among producers within the domestic industry. The domestic industry has substantial unused production capacity available, as well as large inventories, with which producers would have competed for sales, had demand shifted away from subject imports from China, India, and Indonesia. This competition would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of these subject imports. Consequently, I find that subject imports from China, India, and Indonesia are not having significant effects on prices for domestic certain preserved mushrooms.

### C. Impact of Subject Imports on the Domestic Industry

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<sup>42</sup> Table IV-3.

<sup>43</sup> Table IV-3.

<sup>44</sup> Table IV-3.

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.<sup>45</sup> These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices significantly if subject imports from China, India, and Indonesia had been sold at fairly traded prices. Therefore, any impact of the allegedly dumped imports on the domestic industry would have been on the domestic industry's output and sales.

As I have discussed above, competition from nonsubject imports is limited, and thus, had the subject imports not been dumped, the domestic industry would have captured most of the demand satisfied by subject imports from China, India, and Indonesia. The increase in demand for the domestic product likely would have been substantial, and the domestic producers could have increased their production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports from China, India, and Indonesia that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped. Consequently, the domestic industry likely would have been materially better off if the subject imports from China, India, and Indonesia had been fairly traded.

#### D. Conclusion

On the basis of the foregoing analysis, I determine that there is a reasonable indication that the domestic industry producing certain preserved mushrooms is materially injured by reason of allegedly LTFV imports from India and Indonesia.

### VII. CONCLUSION

On the basis of the foregoing analyses, I determine that there is a reasonable indication that the domestic industry producing certain preserved mushrooms is materially injured by reason of allegedly LTFV imports of certain preserved mushrooms from Chile, China, India, and Indonesia.

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<sup>45</sup> 19 U.S.C. § 1677(7)(C)(iii).