

UNITED STATES INTERNATIONAL TRADE COMMISSION

FRESH GARLIC FROM CHINA
Investigation No. 731-TA-683 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3393, February 2001)

UNITED STATES INTERNATIONAL TRADE COMMISSION

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FRESH GARLIC FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on December 1, 1999 (64 FR 67315) and determined on March 3, 2000, that it would conduct a full review (65 FR 13989, March 15, 2000). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on August 30, 2000 (65 FR 52784). The hearing was held in Washington, DC, on December 19, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 21, 2001. The views of the Commission are contained in USITC Publication 3393 (February 2001), entitled *Fresh Garlic from China: Investigation No. 731-TA-683 (Review)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

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

² Commissioner Dennis M. Devaney not participating.

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine¹ under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering fresh garlic from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

The original investigation of fresh garlic from China was instituted based on a petition filed by the Fresh Garlic Producers Association (“FGPA”)² on January 31, 1994. On November 7, 1994, the Commission determined that the domestic fresh garlic industry in the United States was materially injured by reason of imports of fresh garlic from China, that were being sold at less than fair value (“LTFV”).³ The Commission also determined that the domestic dehydrated (“dehy”) garlic and domestic seed garlic industries were neither materially injured nor threatened with material injury by reason of the LTFV imports.⁴ On November 16, 1994, Commerce issued its antidumping duty order on fresh garlic from China.⁵

On December 1, 1999, the Commission instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty order on fresh garlic from China would likely lead to continuation or recurrence of material injury.⁶

In five-year reviews, the Commission determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by each of two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁷ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In the instant review, the Commission received a response to the Notice of Institution from the FGPA,⁸ whose members are producers of the domestic like product and who collectively account for the

¹ Commissioner Dennis M. Devaney did not participate in this determination.

² The FGPA consisted of the following seven firms: A&D Christopher Ranch, Gilroy, CA; Belridge Packing Co., Wasco, CA; Colusa Produce Corp., Colusa, CA; Denice & Felice Packing Co., Hollister, CA; El Camino Packing, Gilroy, CA; The Garlic Co., Shafter, CA; and Vessey and Company, Inc., El Centro, CA.

³ Garlic from China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 (November 1994) (“Original Determination”).

⁴ Original Determination at I-54.

⁵ 59 Fed. Reg. 59209 (November 16, 1994).

⁶ 64 Fed. Reg. 67315 (December 1, 1999).

⁷ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁸ The FGPA currently consists of the following ten members: A&D Christopher Ranch, Gilroy, CA; Colusa (continued...)

majority of domestic fresh garlic production. The Commission also received a joint response from five Chinese exporters⁹ of fresh garlic.

On March 3, 2000, the Commission determined that the domestic and respondent¹⁰ interested party group responses to its notice of institution were adequate. The Commission then voted unanimously to proceed with a full review with respect to fresh garlic from China pursuant to section 751(c)(5) of the Act.¹¹

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making determinations under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹² 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 under this subtitle.”¹³

Commerce has defined the subject merchandise in this review as follows:

all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally prepared, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable

⁸ (...continued)

Produce Corp., Colusa, CA; Crinklaw Farms, King City, CA; Dalena Farms, Madera, CA; Denice & Felice Packing Co., Hollister, CA; Frank Pitts Farms, Five Points, CA; The Garlic Co., Shafter, CA; Spice World (Jenner Fresh), Orlando, FL; Thomson International, Inc., Bakersfield, CA; and Vessey and Company, Inc., El Centro, CA.

⁹ Anhui Cereals, Oils & Foodstuffs Import and Export Corporation; China Fruits, Vegetables & Aquatic Products Import and Export Company; Henan Cereals, Oils & Foodstuffs Import and Export Corporation; Jiangsu Cereals, Oils & Foodstuffs Import; and Export Corporation and Shandong Foodstuffs Import and Export Corporation.

¹⁰ Commissioner Hillman found the respondent interested party response inadequate, but exercised her discretion to proceed to a full review.

¹¹ Explanation of Commission Determination on Adequacy in Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Review).

¹² 19 U.S.C. § 1677(4)(A).

¹³ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249, at 90-91 (1979).

under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000 and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS).¹⁴

U.S. standards treat fresh garlic as either USDA Grade No. 1 or unclassified. In recent years, 80-85 percent of fresh garlic was USDA Grade No. 1, the remainder is believed to have been sold for processing.¹⁵ In normal industry practice, fresh garlic bulbs are sorted and packaged according to size, in .25 inch increments, ranging from 1.5 inches in diameter to 2.75 inches or more. Most fresh garlic imported into the United States from China is considered USDA Grade No. 1 and ranges in diameter from 1.5 inches to 2.5 inches.¹⁶

There are three market segments in the fresh garlic industry: (1) wholesalers, distributors, and retailers; (2) food service; and (3) industrial. According to one major U.S. producer, eighty percent of domestic fresh garlic bulbs end up in homes, while the majority of peeled garlic ends up in the food service industry. The industrial segment of the market is quite small and consists mostly of producers of dehy garlic. In the United States, the dehy producers are separate and distinct from the fresh garlic producers. This is generally not true in other countries.¹⁷

In the original investigation, the Commission found three separate like products consisting of fresh garlic, dehy garlic, and seed garlic corresponding with the broader scope of the original investigation.¹⁸ The Commission found that there were pronounced differences in the actual uses for the three types of garlic;¹⁹ actual practice indicated that the products were not interchangeable;²⁰ the three types of garlic did not share channels of distribution;²¹ customer and producer perceptions were different for the three different types of garlic;²² there was virtually no overlap between fresh and dehy producers and therefore no overlap in production facilities or employees;²³ and fresh garlic prices were considerably higher than prices for either dehy or seed garlic.²⁴

In the instant review, the domestic industry argues that the Commission should continue to find all fresh garlic to be a single like product co-extensive with the current scope.²⁵ Respondents disagreed for the first time with the like product definition at the hearing on December 19, 2000, and indicated that dehy garlic should be included in the definition of the like product.²⁶ Respondents also argued for the first

¹⁴ 65 Fed. Reg. 41432 (July 5, 2000).

¹⁵ Confidential Report (“CR”) at I-11; Public Report (“PR”) at I-9.

¹⁶ CR at I-11-12; PR at I-9.

¹⁷ Id.

¹⁸ USITC Pub. 2825 at I-5. The Commission found that the domestic industries producing dehy garlic and seed garlic were neither materially injured nor threatened with material injury by reason of the subject imports from China. Id. at I-54. Commission Crawford found one like product corresponding to the scope of the original investigation, and found that the domestic industry producing that product was materially injured by reason of the LTFV imports. Id. at I-1.

¹⁹ Original Determination at I-10.

²⁰ Id. at I-13.

²¹ Id.

²² Id. at I-14.

²³ Id. at I-17-18.

²⁴ Id.

²⁵ Petitioners’ Prehearing Brief at 2-3.

²⁶ Hearing transcript, (“Tr.”) pp. 124-128.

time in their posthearing brief that seed garlic should be included in any definition of the like product that includes fresh and dehydrated garlic.^{27 28} We find no information in the record of this review to suggest that a different like product definition is appropriate, and note that, as in the original determination, there is only extremely limited, if any, overlap among fresh garlic, dehy garlic, and seed garlic.²⁹ We therefore define the domestic like product in this review as all fresh garlic.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the domestic “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.”³⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.³¹ The Commission bases its analysis on a firm’s production-related activities in the United States.³²

As discussed above, in the original investigation, the Commission found three domestic industries consisting of the domestic producers of fresh garlic, the domestic producers of dehy garlic, and the domestic producers of seed garlic to coincide with the three like products.³³ The Commission also found that crop tenders were not members of the domestic industry based on the limited involvement of the crop tenders in the actual production of fresh garlic and the lack of coincidence of economic interest with producers of fresh garlic.³⁴ Consistent with our definition of the like product, we define a single domestic industry in this review as all producers of fresh garlic.³⁵

²⁷ Respondents’ Posthearing Brief, Exhibit 1 at 5-6.

²⁸ Petitioners argued that respondents raised the issue so late in the proceedings that the Commission, its staff, and petitioners were denied the opportunity to adequately consider and evaluate the issue. Petitioners’ Posthearing Brief at 2-3.

²⁹ Original Determination at I-11; See CR at II-6, PR at II-4 for a discussion of substitute products.

³⁰ 19 U.S.C. § 1677(4)(A).

³¹ See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 8-9 (July 1999); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.19 (November 1995) (“the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry”). See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

³² The Commission typically considers six factors: (1) the extent and source of a firm’s capital investment; (2) the technical expertise involved in U.S. production activity; (3) the value added to the product in the United States; (4) employment levels; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production of the like product. See Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final), USITC Pub. 3273 at 8-9 (January 2000).

³³ Original Determination at I-23.

³⁴ Original Determination at I-25. The record in the original investigation indicated that crop tenders lease their land to a garlic producer and perform only minor “custodial” services on the producer’s behalf. Therefore, the crop tenders’ involvement in the production of garlic is minimal.

³⁵ There are no related party issues in this review.

III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³⁶ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”³⁷ Thus, the likelihood standard is prospective in nature.³⁸ The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”³⁹ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{40 41}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports

³⁶ 19 U.S.C. § 1675a(a).

³⁷ SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).

³⁸ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [*sic*] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

³⁹ 19 U.S.C. § 1675a(a)(5).

⁴⁰ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁴¹ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

of the subject merchandise on the industry if the order is revoked.”⁴² It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.^{43 44}

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.⁴⁵ We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors, and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁴⁶ No respondent interested parties that produce the subject merchandise in China provided questionnaire responses or participated in this review. Accordingly, we have relied on the facts available in this review, which consist primarily of the evidence in the record from the Commission’s original investigation, the information collected by the Commission since the institution of this review, and information submitted by interested parties in this review.

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.⁴⁷ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁴⁸

In evaluating the likely price effects of subject imports if the order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁴⁹

⁴² 19 U.S.C. § 1675a(a)(1).

⁴³ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁴⁴ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to this review.

⁴⁵ 19 U.S.C. § 1675(e).

⁴⁶ SAA at 869.

⁴⁷ 19 U.S.C. § 1675a(a)(2).

⁴⁸ 19 U.S.C. § 1675(a)(2)(A)-(D).

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In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁵⁰ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁵¹ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁵²

For the reasons stated below, we determine that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵³

Fresh garlic is a perishable crop which is subject to adverse weather conditions and disease. In the Western Hemisphere, garlic is grown in the relatively dry areas of California, Mexico, Argentina, and Chile. The lower the latitude of the growing area, the earlier the planting and harvesting. Garlic has traditionally been available from the various sources in the Western Hemisphere throughout the year and the various sources have not seriously affected one another in the U.S. market.⁵⁴ In California, garlic is planted in the fall and harvested the following summer; in Mexico garlic is planted during the summer and harvested the following spring. In Argentina and Chile, where the seasons are reversed from those of North

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⁵⁰ 19 U.S.C. § 1675a(a)(4).

⁵¹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In the final results of its five year review of fresh garlic from China, Commerce published a rate of 376.67 percent. 65 Fed. Reg. 52784 (July 5, 2000).

⁵² The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁵⁴ CR at I-9, PR at I-8. See also Tr. at 13, 28.

America, garlic is planted March-May and harvested the following December-February.⁵⁵ The difference in growing seasons allows domestic producers to supplement their own harvests with nonsubject imports, primarily from Mexico, Argentina, and Chile, as the crop year progresses, thereby ensuring a constant supply to their customers. In contrast, the crop year in China coincides with that of California, except that garlic is harvested somewhat earlier in China, allowing it to enter the U.S. market in direct competition with the domestic industry at the time of the U.S. harvest.⁵⁶ Chinese garlic is highly substitutable for domestic garlic.⁵⁷

In crop year 2000, the domestic industry accounted for 75.5 percent of the consumption value in the United States, compared to 58.4 percent in crop year 1994.⁵⁸ Non-subject imports have grown since 1994 and have paralleled the growth in the domestic industry.⁵⁹

Grower-packers and importers have increasingly invested in the use of cold storage and controlled atmosphere storage to extend the shelf life of fresh garlic, thus moderating somewhat the seasonal nature of domestic supply.⁶⁰ Fresh garlic in dry storage will remain of marketable quality for 3 months. Cold storage extends shelf life to 6 months while controlled atmosphere extends shelf life to 11 months, but these storage methods involve additional costs.⁶¹ Domestic producers store about one third of their crop by each of the storage methods.⁶² The record indicates that cold storage is also increasingly common in China.⁶³

Demand for garlic is increasing in the United States.⁶⁴ The largest area of growth has been in the food service sector, which primarily uses peeled garlic. Thirty-five percent of the garlic consumed in 2000 was peeled, compared to 10 percent in 1995.⁶⁵

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within a reasonably foreseeable time.

C. Likely Volume of Subject Imports

⁵⁵ CR at I-9, PR at I-8.

⁵⁶ *Id.*

⁵⁷ CR at II-8, PR at II-5.

⁵⁸ CR and PR at Table I-1. The crop year runs from June of one calendar year through May of the following calendar year and is numerically labeled by the year in which the crop year ends. The original antidumping duty order of November 16, 1994, was implemented six months into crop year 1995.

⁶⁰ CR at I-11, PR at I-8-9. See also Original Determination at I-33-34.

⁶¹ *Id.*; Tr. at 49.

⁶² Tr. at 51.

⁶³ Tr. at 38.

⁶⁴ CR at I-17, PR at I-12. See also Tr. at 13, 92; Petitioners' Posthearing brief at 10; Respondents' Prehearing brief at 2.

⁶⁵ CR and PR at II-1; Tr. at 27.

The Commission's volume analysis in the original investigation focused on the subject imports' ability to increase their U.S. market presence rapidly in terms of both volume and market share.⁶⁶ Imports of fresh garlic from China into the United States increased from 9.4 million pounds in crop year 1993 to 63.5 million pounds in crop year 1994, the year the order was implemented. The order resulted in an immediate and massive reduction in the volume of imports from China, from 63.5 million pounds in 1994 to 3.7 million pounds in 1995.⁶⁷ The order clearly continues to have a restraining effect on subject import volumes as virtually no imports of fresh garlic from China entered the United States during the period of review.⁶⁸

The record information on the Chinese industry is limited. Nonetheless, the available data, which all parties agree are reliable, indicate that garlic production in China has risen from 10.7 billion pounds in 1994 to about 13.7 billion pounds in 2000.⁶⁹ The 63.5 million pounds of fresh garlic imported into the United States from China in crop year 1994, the crop year before the antidumping duty order was implemented, would be only 0.5 percent of current Chinese production.⁷⁰

The Chinese garlic industry is known to be highly export-oriented.⁷¹ Total Chinese exports to the world in 1999 were 642 million pounds.⁷² There are also substantial barriers to imports from China in other markets that would make the U.S. market attractive to Chinese exporters, if the antidumping duty order is revoked.⁷³ Importantly, the markets that currently restrict imports of garlic from China (the EU, Canada, Mexico, and South Africa)⁷⁴ account for more than 25 percent of fresh garlic consumption worldwide.⁷⁵

Overall, we conclude that the likely volume of subject imports would be significant both in absolute terms and relative to consumption in the United States if the order is revoked.⁷⁶ We base this conclusion on a number of factors, including: the demonstrated ability of producers in China to increase their U.S. market penetration rapidly;⁷⁷ the existence of China's very large capacity to produce fresh garlic;

⁶⁶ Original Determination at I-43-44.

⁶⁷ Petitioners' Prehearing Brief at 20.

⁶⁸ CR at II-5 and IV-3, PR at II-3 and IV-1.

⁶⁹ CR and PR at Table IV-4; Tr. at 69 (Love), 146 (Fisher).

⁷⁰ Petitioners' Posthearing Brief at 8.

⁷¹ Tr. at 30-33.

⁷² *Id.* at 43.

⁷³ The Mexican government imposed a phytosanitary ban on garlic from China in 1993. Chinese exports of garlic have been subject to quotas in the European Union since 1994 and antidumping duties were imposed by Canada in 1997 and in South Africa in 2000. The Korean government imposed a temporary increase in import duties on garlic from China but significantly reduced the duty in the face of retaliatory import bans by China on mobile phones and polyethylene. CR at IV-4-5, PR at IV-3-4.

⁷⁴ CR at IV-4, PR at IV-3-4.

⁷⁵ Petitioners' Prehearing Brief at 13-18; Petitioners' Final Comments (February 1, 2001) at 10.

⁷⁶ We note that Respondents submitted a letter from the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") indicating that the Chinese government would consider increasing the export license fee for fresh garlic if there were a threat of material injury to U.S. producers of fresh garlic. (Respondents' Prehearing Brief at 4-5 and Exhibit 1; Respondents' Posthearing Brief at 7). However, the letter is non-binding in nature and the prices of fresh garlic from China have continued to decline notwithstanding the existing export license fees already imposed by the Chinese government.

⁷⁷ Commissioner Bragg infers that, upon revocation, subject producers would revert to their historical emphasis
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the demonstrated export-orientation of the Chinese industry; the existence of third country restrictions which limit market access for exports from China; the restraining effect that the order has had on subject import volumes; and the attractiveness of the growing U.S. market as an outlet for Chinese production.

D. Likely Price Effects of the Subject Imports

In the original investigation, the Commission found that the pervasive underselling by the subject imports from China was significant, with margins of underselling reaching as high as 70.0 percent.⁷⁸ As noted above, the U.S. market for fresh garlic remains one in which sales are made principally on the basis of price.⁷⁹ In the absence of the order, the significantly higher prices in the United States (\$0.51-\$0.58/lb. for non-subject imports during the period of review),⁸⁰ compared to China's export market price (\$0.16/lb.),⁸¹ would give Chinese exporters considerable incentive to divert product to the U.S. market at lower prices in order to regain market share.

The record contains limited price information for fresh garlic from China. The average unit value of U.S. producers' domestic shipments of fresh garlic increased from \$0.87 per pound in 1998 to \$1.07 per pound in 1999 and decreased to \$0.70 per pound in 2000.⁸² Weighted average prices for domestic fresh garlic from the first quarter of 1998 through the third quarter of 2000 also declined, except during most quarters of crop year 1999, when production was reduced by a garlic fungus.⁸³

As discussed above, we have found that the volume of cumulated subject imports is likely to increase significantly if the order is revoked. In light of the priced-based competition in the U.S. market and given the comparable quality of Chinese garlic and the domestic product, it is likely that subject imports from China would undersell the domestic like product in order to increase exports to the United States at prices that would likely have a significant depressing or suppressing effect on prices for the domestic like product.

E. Likely Impact of the Subject Imports

In the original investigation, the Commission found that, due to falling prices, the domestic industry was unable to operate profitably despite rising apparent consumption and sales revenues.⁸⁴ The industry's condition has improved somewhat since the original investigation, but recent data indicate that the industry is currently in a weakened condition. Production capacity increased overall, although production and capacity utilization declined in crop year 1999 because of a fungus that damaged the U.S.

⁷⁷ (...continued)

on exporting to the United States, as evidenced in the Commission's original determination. Based upon the record in this review, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the order is revoked.

⁷⁸ Original Determination at I-45.

⁷⁹ CR at II-7-8, PR at II-4; Tr. at 27.

⁸⁰ CR and PR at Table I-1.

⁸¹ Tr. at 117.

⁸² CR and PR at Table III-2.

⁸³ CR and PR at Tables V-1-V-4 and figures V-2-V-3.

⁸⁴ Original Determination at I-47.

fresh garlic crop, reducing both bulb size and crop yield.⁸⁵ The domestic industry has increased its market share from 45.5 percent in 1994 to 68.9 percent in 2000, although its market share was only 43.8 percent in 1999⁸⁶ because of the aforementioned garlic fungus.⁸⁷ Per-pound sales values for the domestic like product increased from crop years 1998 to 1999, while unit cost of goods sold also increased for that period.⁸⁸ Operating income per pound declined from 1998 to 1999 and declined further in 2000.⁸⁹ Net sales values, operating income, and per-unit profitability decreased for the entire period of review. Per-pound sales values declined from \$1.12 in 1999 to \$0.71 in 2000, a decline of almost 37 percent. One of the six domestic producers had an operating loss in 1998, another producer had an operating loss in 1999, and four had operating losses in 2000.⁹⁰ Based on the above information, we find the domestic industry to be vulnerable to material injury if the order is revoked.

Given the highly substitutable nature of the subject and domestic products, we find that the significant volume of low-priced subject imports, when combined with the expected negative price effects of those imports, would likely have a significant adverse impact on the production, shipments, sales, and revenues of the domestic industry. This reduction in the industry's production, sales, and revenues would have a direct adverse impact on the industry's profitability and employment levels, as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to the domestic industry producing fresh garlic within a reasonably foreseeable time.

⁸⁵ CR and PR at Table I-1.

⁸⁶ CR and PR at Table I-1.

⁸⁷ CR and PR at III-1-2.

⁸⁸ CR at III-6; PR at III-4.

⁸⁹ CR and PR at Table III-5.

⁹⁰ The four firms reporting losses in crop year 2000 represented *** percent of total domestic production that year. CR and PR at Table I-4. With respect to the two domestic firms that did not experience losses at any point during the period reviewed, the record nonetheless indicates that the operating margins for these two firms declined sharply over the period (***). CR and PR at Table III-6.