

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**INDIVIDUALLY QUICK FROZEN RED RASPBERRIES FROM CHILE**  
Investigation No. 731-TA-948 (Final)

**DETERMINATION AND VIEWS OF THE COMMISSION**  
(USITC Publication No. 3524, June 2002)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-948 (Final)

## Individually Quick Frozen Red Raspberries from Chile

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Chile of individually quick frozen (“IQF”) red raspberries,<sup>3</sup> provided for in subheading 0811.20.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### BACKGROUND

The Commission instituted this investigation effective May 31, 2001, following receipt of a petition filed with the Commission and Commerce by the IQF Red Raspberry Fair Trade Committee, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of IQF red raspberries from Chile were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission’s investigation 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* of February 1, 2002 (67 *FR* 4994). The hearing was held in Washington, DC, on May 23, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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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> Vice Chairman Jennifer A. Hillman dissenting.

<sup>3</sup> For purposes of this investigation, the Department of Commerce has defined the subject merchandise as IQF red raspberries, whole or broken, from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (e.g., organic or not), the size of the container in which packed, or the method of packing. The scope of the petition excludes fresh red raspberries and block frozen red raspberries (i.e., puree, straight pack, juice stock, and juice concentrate).

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of imports of individually quick frozen (“IQF”) red raspberries from Chile that are sold in the United States at less than fair value (“LTFV”).<sup>1</sup>

### I. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>2</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic 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>3</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>4</sup>

The 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>5</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>6</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>7</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>8</sup>

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<sup>1</sup> Vice Chairman Jennifer A. Hillman dissenting. She joins sections I. A through D and II. A.

<sup>2</sup> 19 U.S.C. § 1677(4)(A).

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> 19 U.S.C. § 1677(10).

<sup>5</sup> See, e.g., 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) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). 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, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996).

<sup>6</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>7</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>8</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single  
(continued...)

## **B. Product Description**

Commerce's notices of initiation define the imported merchandise within the scope of this investigation as follows:

individually quick frozen (IQF) whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (e.g., organic or not), the size of the container in which packed, or the method of packing. The scope of the petition excludes fresh red raspberries and block frozen red raspberries (i.e., puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this investigation is classifiable under 0811.20.2020 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.<sup>9</sup>

Producers process IQF red raspberries by freezing IQF-quality fresh red raspberries either in a liquid nitrogen bath or by running the berries through a “tunnel” over very cold air.<sup>10</sup> Customers typically use IQF red raspberries in baked goods, yogurt, and fruit drinks, or in place of fresh raspberries after defrosting.<sup>11</sup>

## **C. Domestic Like Product**

In the preliminary phase of this investigation, Petitioner, IQF Red Raspberries Fair Trade Committee,<sup>12</sup> argued that the Commission should find one domestic like product consisting of IQF red raspberries.<sup>13</sup> Respondent, Asociación Gremial de Exportadores de Productos Congelados A.G. (“AGEPCO”),<sup>14</sup> argued that the Commission should find that organic IQF red raspberries are a domestic

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<sup>8</sup> (...continued)

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>9</sup> Initiation of Antidumping Duty Investigation: IQF Red Raspberries from Chile, 66 Fed. Reg. 34407 (June 28, 2001); Initiation of Countervailing Duty Investigation: IQF Red Raspberries from Chile, 66 Fed. Reg. 34423 (June 28, 2001).

<sup>10</sup> Confidential Staff Report (“CR”) at I-11, Public Staff Report (“PR”) at I-9. Processing is commonly performed by the raspberry growers that are also processors (grower/processors) but may also be performed by independent processors. Processing generally includes cleaning, washing, inspecting, sorting, culling, freezing, and packing. CR at I-10-11; PR at I-8-9.

<sup>11</sup> CR at II-3-4; PR at II-3.

<sup>12</sup> The IQF Red Raspberries Fair Trade Committee is an ad hoc committee whose members define themselves as 44 growers, 8 grower/processors, one (non-growing) coop/processor, and one processor of IQF red raspberries. CR and PR at III-1.

<sup>13</sup> Petition at 15; Petitioner’s Postconference Br. at 3. The IQF Committee of the Washington Red Raspberry Commission was subsequently added as a co-petitioner. CR and PR at I-1, n.1.

<sup>14</sup> Respondent is an association of Chilean growers and processors of IQF red raspberries.

like product separate from non-organic IQF red raspberries.<sup>15</sup> The Commission, in its preliminary

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<sup>15</sup> Respondent's Postconference Br. at 7-12.

determination, found that any difference between the two products appeared limited and therefore found one domestic like product consisting of all IQF red raspberries, both organic and non-organic.<sup>16</sup>

In the final phase of this investigation, respondent reiterated its position that organic IQF red raspberries constitute a separate domestic like product from non-organic IQF red raspberries.<sup>17</sup> The petitioners maintained that the Commission's preliminary finding was correct.<sup>18</sup> For the reasons set forth below, we again find that both organic and non-organic IQF red raspberries constitute a single domestic like product.

## 1. Analysis

*Physical characteristics and uses.* All IQF red raspberries, whether organic or non-organic, are frozen whole red raspberries and therefore are physically indistinguishable. Petitioners asserted, and respondent did not refute, that both types look and taste the same.<sup>19</sup> Further, both sides agreed that organic and non-organic IQF red raspberries have the same end uses as a food product.<sup>20</sup>

*Interchangeability.* The record indicates that organic and non-organic IQF red raspberries are substantially interchangeable. Although organic food processing operations cannot use non-organic IQF red raspberries in their products, non-organic food processors can use both organic and non-organic IQF red raspberries in their products. Since the organic and non-organic IQF red raspberries are physically identical, the purchaser not requiring strict adherence to organic standards can use organic or non-organic IQF red raspberries interchangeably. Moreover, the evidence in this case demonstrates that both organic and non-organic IQF red raspberries compete with one another for shelf space at retail outlets.<sup>21</sup>

*Manufacturing facilities, processes, and employees.* Manufacturing facilities, processes, and employees for organic and non-organic IQF red raspberries overlap significantly. Organic red raspberries must be grown without the use of synthetic fertilizers and pesticides.<sup>22</sup> However, the processing procedures and equipment are basically the same for all IQF red raspberries. One domestic producer of organic and non-organic IQF red raspberries indicated that the same processing facilities and workers were used to harvest and process organic and non-organic IQF red raspberries.<sup>23</sup> The respondent's industry witnesses testified that their organic raspberries are processed in the same IQF

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<sup>16</sup> Individually Quick Frozen ("IQF") Red Raspberries from Chile, Invs. Nos. 701-TA-416 and 731-TA-948 (Preliminary), USITC Pub. 3441 at 5 (July 2001).

<sup>17</sup> See Respondent's Prehearing Br. at 3.

<sup>18</sup> See Petitioners' Prehearing Br. at 4.

<sup>19</sup> Hearing Tr. at 24 (Dorn), and Hearing Transcript at 18 (Connelly).

<sup>20</sup> Hearing Tr. at 24 (Dorn), and Respondent's Prehearing Br. at 7.

<sup>21</sup> Hearing Tr. at 92-93 (Rader); Hearing Tr. at 24-25 (Dorn). See, Greenhouse Tomatoes From Canada, USITC Pub. 3499 at 6 (April 2002) (the Commission found that evidence showing that two products compete against each other for shelf space in retail stores indicated interchangeability).

<sup>22</sup> Respondent pointed out that the National Organic Program ("NOP") requires that, *inter alia*, organic growers forgo the use of synthetic chemicals and prevent commingling with non-organic foods. See 7 C.F.R. §§ 205-205.699 (2002). However, during the period examined, neither this nor any other national organic regulatory scheme was in place, and therefore no uniform national standards existed that would allow a definitive comparison between the processes involved in the manufacture of organic and non-organic IQF red raspberries. See also Certain Pasta from Italy and Turkey, USITC Pub. 2977 at 6 (July 1996) (finding that distinct regulatory standards do not create a sufficient basis for a finding of separate like products).

<sup>23</sup> \*\*\*; Hearing Tr. at 92 (Dorn).

tunnel as non-organic raspberries, albeit after the machinery has been washed to remove any chemical residue left by non-organic produce.<sup>24</sup>

*Channels of distribution.* The record indicates that there is limited overlap in the initial channels of distribution for organic and non-organic IQF red raspberries. \*\*\* domestically produced organic IQF red raspberries are sold through distributors, while \*\*\* percent of non-organic are sold in the same channel. Most non-organic IQF red raspberries are sold directly to end users.<sup>25</sup> However, both types of berries can be found side by side on the shelves of specialty stores such as Trader Joe's, Whole Foods, and Wild Oats, as well as at traditional retailers such as Giant Foods.<sup>26</sup>

*Customer and producer perceptions.* The evidence is generally mixed regarding customer perceptions. Because organic IQF red raspberries have the same physical characteristics and end uses, many customers may perceive each in a similar fashion. However, customers who value the purported benefits of organic foods may perceive organic produce as distinct from non-organic. Producer perceptions of organic raspberries are distinct from those concerning non-organic IQF red raspberries, as producers readily recognize the higher costs associated with growing organic foods and the higher prices they command at market.<sup>27</sup>

*Price.* Organic IQF red raspberries tend to command a price premium over their non-organic counterparts. The President of Certified Pure Ingredients, a grower and supplier of organic IQF red raspberries, testified that he normally receives at least a 20 percent premium over non-organic raspberries.<sup>28</sup> Respondent presented evidence that between April 2000 and March 2001, two Chilean IQF red raspberry processors, \*\*\* and \*\*\*, received premiums on their organic product of \*\*\* and \*\*\* percent, respectively.<sup>29</sup>

## **2. Conclusion**

We find that organic and non-organic IQF red raspberries constitute a single domestic like product. We base this decision on the fact that the two types of raspberries are identical in physical characteristics and end uses, are substantially interchangeable, and have similar manufacturing facilities, processes, and employees. These similarities outweigh the apparent price premium attached to organically grown IQF red raspberries, the additional cleaning steps involved in the processing of those berries, and some differences in channels of distribution.

### **D. Domestic Industry**

The domestic industry is defined 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>30</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

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<sup>24</sup> Hearing Tr. at 162 (Jobin).

<sup>25</sup> Hearing Tr. at 92-93 (Rader); Hearing Tr. at 24-25 (Dorn).

<sup>26</sup> Hearing Tr. at 25 (Dorn).

<sup>27</sup> Hearing Tr. at 90 (Dobbins).

<sup>28</sup> Hearing Tr. at 154 (Johnson).

<sup>29</sup> Respondent's Prehearing Br. at 11.

<sup>30</sup> 19 U.S.C. § 1677(4)(A).

product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>31</sup> For the reasons discussed below, we define the domestic industry in this investigation as all domestic processors, grower/processors, and growers of IQF red raspberries.

### **1. Whether the Domestic Industry Includes Growers**

Petitioners maintain, and the respondent did not challenge in the final phase of this investigation, that growers of IQF-quality red raspberries should be included in the domestic industry.<sup>32</sup> Section 771(4)(E) of the Act permits the Commission to include growers of a raw agricultural product in the domestic industry producing the processed product if:

- (a) the processed agricultural product is produced from the raw agricultural product,<sup>33</sup> through a single continuous line of production, and
- (b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors.<sup>34</sup>

For the reasons set forth below, we find (1) that the processed agricultural product is produced substantially from the raw agricultural product and (2) that there exists a substantial coincidence of economic interest between the growers and producers of IQF red raspberries.

#### **a. Single Continuous Line of Production**

Under the first prong of the test, a continuous line of production exists if:

- (i) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

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<sup>31</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

<sup>32</sup> Petitioners' Prehearing Br. at 6-7; Respondent's Posthearing Br. at A-4 ("The petitioners have insisted that growers be included in the domestic industry definition, and we do not disagree.") Id.

<sup>33</sup> "Raw agricultural product" is defined as any farm or fishery product. 19 U.S.C. § 1677(E)(iv). We define the raw agricultural product as IQF-quality red raspberries given the segmentation among the growers of red raspberries and differences in the cultivation and harvesting of red raspberries according to end use: fresh market, IQF production, or block freezing. Red raspberries are grown commercially in the United States primarily in California, Washington, and Oregon. Red raspberries grown in California are largely destined for the fresh market, whereas over 95 percent of the red raspberries grown in Washington and Oregon are for processing, and about 20 percent of processed red raspberries in those two states are IQF. CR at I-6-7; PR at I-5-6. Raspberries grown for the fresh market are generally Grade A and are harvested prior to ripening. Hearing Tr. at 84 (Rader). IQF-quality red raspberries are also Grade A but are harvested when ripe, and are often harvested using special machines that pick only the ripe berries and preserve them in whole form. Hearing Tr. at 84 (Rader). Red raspberries for block freezing can be Grade B, do not have to be whole, and need not be harvested as carefully or frequently as IQF red raspberries. In contrast, it is more expensive and time-consuming to grow IQF-quality red raspberries because the berries must be Grade A, hand-picked or picked by special machine, and must remain whole. Hearing Tr. at 73-77 (Dobbins and Rader).

<sup>34</sup> 19 U.S.C. § 1677(4)(E)(i).



- (ii) the processed agricultural product is produced substantially or completely from the raw product.<sup>35</sup>

When determining whether the raw agricultural product is substantially or completely devoted to the production of the processed product, the Commission generally looks to the percentage of the raw product used in the processed product. In addition, the legislative history states that “substantially or completely devoted” does not necessarily imply a fixed percentage but should be interpreted in light of the circumstances of each investigation.<sup>36</sup> The Commission received data in this investigation from growers and grower/processors in Washington and Oregon that account for the vast majority of U.S. production of IQF red raspberries.<sup>37</sup> Their objective is to grow for the IQF market because it commands a higher price than the block frozen market.<sup>38</sup> In the preliminary phase, we found that 66 percent of all IQF-quality red raspberries grown by the growers and grower/processors that provided data were used to produce IQF red raspberries in 2000.<sup>39</sup> That percentage was 46.6 percent in 2001.<sup>40</sup> Of the red raspberries grown by these growers that are IQF-quality when harvested, 78.8 percent were used in IQF production in 2001. In addition, the growers that are not also processors reported that 75 percent of all the red raspberries they grew in 2001 were devoted to IQF production.<sup>41</sup> Accordingly, we find that the raw agricultural product is substantially devoted to the production of the processed agricultural product.

The requirement that the processed agricultural product be produced substantially or completely from the raw agricultural product in order for there to be a continuous line of production is also met. IQF-quality red raspberries are the main raw material used in producing IQF red raspberries.<sup>42</sup> We therefore find that IQF red raspberries are produced through a single continuous line of production.

#### **b. Substantial Coincidence of Economic Interest**

In addressing coincidence of economic interest under the second prong of the test, the Act allows the Commission to consider any factors it deems relevant to the issue.<sup>43</sup> As noted above, the growers and grower/processors that provided data to the Commission account for virtually all IQF production in the United States, and the objective of these growers is to grow for IQF production.<sup>44</sup> The vast majority of IQF red raspberries are processed by growers of red raspberries.<sup>45</sup> The interests of these firms as both growers and processors are closely linked.

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<sup>35</sup> 19 U.S.C. § 1677(4)(E)(ii).

<sup>36</sup> H.R. Rep. 40, Part I, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess (1987) (H.R. Rep. 40, Part I) at 121; S. Re. 71 at 109.

<sup>37</sup> CR and PR at III-1.

<sup>38</sup> Hearing Tr. at 73 (Rader).

<sup>39</sup> Preliminary Determination at Tables III-1 and III-2.

<sup>40</sup> CR at I-9; PR at I-8. We note that petitioners also argued that in 2000 and 2001, much of their IQF quality red raspberries had to be sold as non-IQF quality (*i.e.*, for the bulk-frozen or straight pack market) due to market conditions. Petitioners, Prehearing Br. at 33-34.

<sup>41</sup> U.S. producer summation worksheet.

<sup>42</sup> CR and PR at I-5, V-1.

<sup>43</sup> 19 U.S.C. §1677(4)(E)(iii).

<sup>44</sup> CR and PR Table III-1; Hearing Tr. at 73.

<sup>45</sup> Approximately 80 percent of IQF red raspberries were produced (processed) by growers in 2001. Another \*\*\* percent were produced by a processor that was owned by a cooperative of growers. CR and PR at Table III-1.

Further, the Act instructs the Commission to “consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product . . . .”<sup>46</sup> When the price of the raw agricultural product fluctuates in consonance with the price of the processed product, such evidence demonstrates a significant coincidence of economic interest. The petitioners’ industry witness who operates an IQF raspberry farm testified that he, and other growers like him, grow only for the IQF market, and thus, the price they can receive for their product is directly related to the market price for IQF red raspberries. Evidence on the record supports this testimony as the declining average unit sales value that growers received for their raspberries mirrored the decline in the average unit value of IQF red raspberries in each year of the period of investigation.<sup>47</sup>

In addition, the Act instructs the Commission to determine “whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.”<sup>48</sup> In past Commission decisions, when the cost of the raw product constituted a substantial percentage of the cost of the processed product, we have found that such evidence supports a finding of significant coincidence of economic interests between the growers and processors.<sup>49</sup> The evidence in this case demonstrates that the cost of IQF-quality red raspberries constitutes between 50 and 64 percent of the value of the finished IQF red raspberries.<sup>50</sup> Therefore the value of the raw products comprises a significant percentage of the value of the processed product and supports our finding that there is a substantial coincidence of economic interest between the growers and processors.

Based on the above, we include growers in the domestic industry. We note that excluding growers would still result in an affirmative determination in favor of the domestic producers.<sup>51</sup> The trends and results in the financial performance of the growers and grower/processors over the period are similar,<sup>52</sup> and the grower/processors accounted for over 80 percent of IQF-quality red raspberry production in 2001.<sup>53</sup>

## **2. 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) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.<sup>54</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each

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<sup>46</sup> 19 U.S.C. §1677(4)(E)(iii)(I).

<sup>47</sup> CR and PR Tables VI-3 and VI-6. Average unit sales values for raspberries grown by growers were \$0.79, \$0.51, and \$0.51 in 1999, 2000, and 2001, respectively.

<sup>48</sup> 19 U.S.C. §1677(4)(E)(iii)(II).

<sup>49</sup> See Frozen Concentrated Orange Juice From Brazil, Inv. No. 731-TA-326, USITC Pub. 1970 at 15 (April 1987)(Finding that evidence showed that 80 percent of the cost of the processed product could be attributed to the raw agricultural product).

<sup>50</sup> In 1999, the operating expenses for growers of IQF-quality red raspberries comprised 50 percent of the processors’ operating expenses. In 2000 and 2001, the figures were 64.3 and 51.3 percent, respectively. We note that these data represent approximations, as several growers and processors failed to respond to Commission questionnaires. CR and PR Tables VI-3 and VI-6.

<sup>51</sup> Vice Chairman Hillman does not join this sentence.

<sup>52</sup> See CR and PR at Tables VI-2, VI-5, and C-4.

<sup>53</sup> CR and PR Table III-2 and Producer Questionnaires.

<sup>54</sup> 19 U.S.C. § 1677(4)(B).

case.<sup>55</sup>

\*\*\* of IQF red raspberries, imported subject merchandise from Chile in 1999 and therefore is a related party under the statute.<sup>56</sup> \*\*\* accounted for \*\*\* percent of U.S. IQF red raspberry production in 1999, and its imports from Chile were equivalent to \*\*\* percent of its production that same year.<sup>57</sup> \*\*\* did not import subject merchandise in 2000 or 2001. Data in the record indicate that \*\*\* financial performance is similar to that of a substantial portion of the domestic producers,<sup>58</sup> and that it does not appear to derive a significant benefit from its importation of subject product.

\*\*\* is a processor and a member of the petitioning IQF Red Raspberries Fair Trade Committee, and its interests appear to lie primarily in domestic production, not importation. It reported that it \*\*\*.<sup>59</sup> Accordingly, we find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry as a related party.

## **II. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS THAT ARE SOLD AT LESS THAN FAIR VALUE**

In the final phase of an antidumping duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.<sup>60</sup> In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>61</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>62</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the

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<sup>55</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the less than fair value sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd mem., 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

<sup>56</sup> CR and PR at IV-3.

<sup>57</sup> CR and PR at IV-3.

<sup>58</sup> CR and PR Table VI-7.

<sup>59</sup> CR and PR at IV-3.

<sup>60</sup> 19 U.S.C. § 1673d(b).

<sup>61</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 . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); *see also Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>62</sup> 19 U.S.C. § 1677(7)(A).

state of the industry in the United States.<sup>63</sup> 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>64</sup>

#### **A. Conditions of Competition**

We find several conditions of competition pertinent to the U.S. market for IQF red raspberries.

First, demand for IQF red raspberries depends on the demand for downstream food products that use them as ingredients, along with consumer and institutional demand for retail IQF red raspberries.<sup>65</sup> Both petitioners and respondent indicated that demand for IQF red raspberries has been relatively stable since 1998.<sup>66</sup> The record indicates that apparent U.S. consumption was relatively stable, increasing from 24.5 million pounds in 1999 to 26.0 million pounds in 2000, and then decreasing to 25.9 million pounds in 2001.<sup>67</sup>

Second, the domestic supply of IQF red raspberries increased between 1999 and 2001. U.S. producers' capacity rose from 19.3 million pounds in 1999 to 21.1 million pounds in 2001, a net increase of 9.6 percent.<sup>68</sup> U.S. production rose slightly from 16.8 million pounds in 1999 to 16.9 million pounds in 2001.<sup>69</sup> U.S. producers' capacity utilization, however, fell from 87.2 percent in 1999 to 79.8 percent in 2001.<sup>70</sup>

Third, virtually all imports of IQF red raspberries are from Chile. Of those IQF red raspberries imported from Chile, approximately \*\*\* are nonsubject imports. Nonsubject imports from other countries (e.g., Canada, Macedonia, Mexico, and the Netherlands) were present in only limited quantities throughout the period examined.<sup>71</sup>

Fourth, both U.S. and foreign producers have the ability to process other IQF fruit and vegetables in the same facilities in which they produce IQF red raspberries, and have the ability to switch production from one product to another should market conditions warrant.<sup>72</sup> The equipment used for IQF processing, however, cannot be used to produce block frozen red raspberries.

Fifth, U.S. and Chilean IQF-quality fresh red raspberries are harvested in different seasons. U.S. producers harvest IQF-quality fresh red raspberries from late June through early August. In contrast, Chile has two harvests, with the first occurring between November and January, and the second occurring between March and May (with most imports entering from January through June).<sup>73</sup> Respondent argues that the different growing seasons make Chile an attractive alternate supply source of IQF red raspberries

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<sup>63</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>64</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>65</sup> CR and PR at II-3.

<sup>66</sup> CR at II-4, PR at II-3.

<sup>67</sup> CR and PR Table C-1.

<sup>68</sup> CR and PR Table C-1

<sup>69</sup> CR and PR Table C-1.

<sup>70</sup> CR and PR Table C-1.

<sup>71</sup> CR and PR Table IV-1.

<sup>72</sup> Petition at Exh. 16; CR at I-5-6; PR at I-4.

<sup>73</sup> Between 85 to 90 percent of Chilean product entered the United States from February through June during 1999-2000 and 60 percent during the same months of 2001. CR and PR at IV-1.

for some buyers because frozen storage time is reduced.<sup>74</sup> However, IQF red raspberries can be stored for indefinite periods of time and, once in cold storage, may be shipped year round.<sup>75</sup> For this reason, seasonality plays a limited role in the pricing of IQF red raspberries as the industry is characterized by large, year-round cold storage inventories. The domestic industry held \*\*\* percent, \*\*\* percent, and \*\*\* percent of domestic shipment quantities in inventory in 1999, 2000, and 2001, respectively.<sup>76</sup> We note, however, that the cost of cold storage limits the length of time that IQF red raspberries can be stored profitably.<sup>77</sup>

Sixth, the record indicates that there is a high degree of substitutability between imported and domestically-produced IQF red raspberries.<sup>78</sup> In their questionnaire responses, all responding domestic producers and nine of 13 responding importers indicated that the domestic like product and subject imports are used interchangeably.<sup>79</sup> Domestic processors and importers both sell IQF red raspberries to distributors, food processors, and retail stores, and certain importers also purchase domestic product.<sup>80</sup> Some importers indicated that certain purchasers prefer IQF red raspberries from Chile because they are predominately of the Heritage variety and are hand-picked,<sup>81</sup> while others preferred U.S.-produced IQF red raspberries because they are of the Meeker variety and machine-picked.<sup>82</sup> However, nothing in the record of this investigation indicates that purchasers are willing to pay a premium based on either the horticultural variety or harvesting method.<sup>83</sup>

## **B. Volume of Subject Imports**<sup>84</sup>

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>85</sup>

Import data based on official Commerce statistics adjusted to exclude nonsubject imports from Chile as reported in foreign producer questionnaires show that subject imports from Chile decreased from \*\*\* million pounds in 1999, to \*\*\* million pounds in 2000, and then increased to \*\*\* million pounds in

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<sup>74</sup> Conf. Tr. at 71 (Button).

<sup>75</sup> CR at I-11 and III-3; PR at I-9 and III-3.

<sup>76</sup> CR and PR Table C-1. Cold storage inventories held by U.S. producers, U.S. importers, and U.S. purchasers were at significant and increasing levels during the period of investigation. They increased from 7.5 million pounds in the first quarter of 1999 to 17.6 million pounds in the fourth quarter of 2001, peaking at 22.1 million pounds in the third quarter of 2001. CR and PR Table IV-4.

<sup>77</sup> Hearing Tr. at 103-104 (Rader). Further, respondent asserts that some buyers believe that over time IQF red raspberries lose quality because of dehydration and crystallization. See respondent’s Postconference Br. at Exh.1-7.

<sup>78</sup> CR at II-7; PR at II-5.

<sup>79</sup> CR at II-13; PR at 9.

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

<sup>81</sup> CR at II-13; PR at II-9.

<sup>82</sup> CR at II-13; PR at II-9.

<sup>83</sup> Conf. Tr. at 97 (Button) and 108 (Dorn), CR at II-6, PR II-4.

<sup>84</sup> Vice Chairman Hillman does not join the rest these views. See Separate and Dissenting Views of Vice Chairman Jennifer A. Hillman.

<sup>85</sup> 19 U.S.C. § 1677(7)(C)(i).

2001.<sup>86</sup> The share of the U.S. market held by subject imports followed a similar trend, decreasing from \*\*\* percent in 1999, to \*\*\* percent in 2000, and then increasing to \*\*\* percent in 2001.<sup>87</sup> The domestic producers' share of the U.S. market increased from 59.1 percent in 1999, to 66.0 percent in 2001.<sup>88</sup>

Despite an overall decrease from 1999 to 2001, the volume of subject imports remained significant throughout the period examined both in absolute terms and relative to apparent U.S. consumption. The volume of subject imports ranged from \*\*\* million pounds to \*\*\* million pounds, and from \*\*\* percent to \*\*\* percent of market share over the period.<sup>89</sup> Given that this investigation deals with a fungible agricultural product, we find these levels to be particularly significant. Furthermore, when measured as U.S. shipments, reported subject imports from Chile increased from \*\*\* million pounds in 1999 to \*\*\* million pounds in 2001, an increase of 10.3 percent.<sup>90</sup> When measured as U.S. importers' sales, subject imports increased from 5.3 million pounds in 1999 to 6.0 million pounds in 2001.<sup>91</sup> Thus, although subject imports declined over the period, shipments of imports increased. These differing trends are consistent with an overall build-up in subject import inventory over the period.

We determine that the subject import volume, both in absolute terms and relative to consumption in the United States, is significant.<sup>92</sup>

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

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>93</sup>

As noted earlier, the record indicates that the domestic like product and IQF red raspberries from Chile are highly substitutable.<sup>94</sup> Moreover, the record indicates that price is an important factor in purchasing decisions.<sup>95</sup>

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<sup>86</sup> CR and PR Table C-1.

<sup>87</sup> CR and PR Table C-1.

<sup>88</sup> CR and PR Table C-1.

<sup>89</sup> CR and PR Table C-1.

<sup>90</sup> U.S. importer summation worksheet.

<sup>91</sup> CR and PR Table IV-4.

<sup>92</sup> Our standard reporting period is three years and we focused our attention on the period 1999 to 2001 for which the Commission collected data. Respondent argues that the Commission should examine the volume of subject imports beginning in 1996 rather than 1999, because the volume of all red raspberries imported from Chile declined from 1996 to 2001. Petitioners, on the other hand, advocate examining the period from 1998 to 2001 because the volume of subject imports increased significantly from 1998 to 2001.

<sup>93</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>94</sup> CR at II-7-13; PR at II-5-9.

<sup>95</sup> CR at II-8 and V-16 - V-22, PR at II-6 and V-8.

We find that the subject Chilean product was consistently priced lower than the domestic product over the period examined with the lowest prices occurring in 2001.<sup>96</sup> With respect to the four products for which competitive pricing data were reported, subject merchandise undersold the domestic like product in 31 out of 45 quarters observed, with margins of underselling averaging 22.6 percent.<sup>97</sup> With respect to product 1, the record indicates that subject imports undersold the domestic like product in 10 out of 12 quarters observed with margins of underselling averaging 16.3 percent.<sup>98</sup> The underselling margins for product 1 were greatest in the latter half of 1999 and the first half of 2000, a period which preceded a steep decline in domestic prices.<sup>99</sup> We find significant underselling by the subject imports during the period examined.

The prices for Chilean subject products 1, 2, and 3 declined over the period examined.<sup>100</sup> Significantly, the price of Chilean product 1 fell steadily over the period examined, decreasing by 27 percent. Only product 4 failed to follow this trend, as it reached its lowest price in the second quarter of 2001 before rising in the third quarter of that year.<sup>101</sup> Domestic prices for product 1 fell by 25 percent between the first and third quarters of 2000 and stayed depressed for the remainder of the period examined.<sup>102</sup> The average U.S. price dipped below the average subject import price in the third quarter of 2000, falling to \$0.98 per pound.<sup>103</sup> The subject import price then dropped quickly to \$\*\*\* per pound by the first quarter of 2001, keeping the U.S. price at under \$1.00 per pound for most of 2001.<sup>104</sup> We note that U.S. producers must sell their product at well over \$1.00 per pound to be profitable.<sup>105</sup> The depressing and suppressing effect of lower-priced subject imports at steady and significant volumes did not allow prices for domestic products (most notably product 1) to rise above this threshold for much of the period examined, particularly in 2001. Pricing data for the three other products examined by the Commission also indicated falling prices for the U.S. product from 1999 to 2001, as U.S. prices for products 2, 3, and 4 decreased by 19, 30, and 15 percent, respectively, with the Chilean prices for products 3 and 4 consistently below the U.S. price.<sup>106</sup> In addition, the average unit values of subject imports, as well as of U.S. shipments and net sales, declined from 1999 to 2001, further corroborating the declining price trend in the U.S. market.

Consequently, we find that the record indicates significant underselling and significant depression and suppression of domestic prices by subject imports during the period examined.

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<sup>96</sup> CR and PR Tables V-1-4 and Figures V-2-5.

<sup>97</sup> CR at V-14; PR at V-7.

<sup>98</sup> CR and PR Table V-1 and Figure V-2. For purposes of our price effects analysis, we largely relied on the pricing data collected for product 1 (see Table V-1 and Figure V-2) since this product accounted for approximately 58 percent of reported domestic shipments of IQF raspberries during the period of investigation and represents 69 percent of the pricing data for the United States and 52 percent of the data for Chile.

<sup>99</sup> CR and PR Table V-1.

<sup>100</sup> CR and PR Tables V-1-2-3.

<sup>101</sup> CR and PR Table V-4.

<sup>102</sup> CR and PR Table V-1.

<sup>103</sup> CR and PR Table V-1 and Figure V-2.

<sup>104</sup> CR and PR Table V-1 and Figure V-2.

<sup>105</sup> CR and PR Table VI-6.

<sup>106</sup> CR and PR Figures V-3, V-4, and V-5. Chilean prices for product 2 were generally flat and above the U.S. prices between 1999 and 2001. CR and PR Figure V-3. As noted above, product 1 represents the vast majority of U.S. shipments of subject imports. Product 2, by contrast, represents only 4 percent of U.S. shipments of subject imports.

#### **D. Impact of the Subject Imports**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>107</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>108 109 110</sup>

From 1999 to 2001, domestic producers reported relatively moderate swings in performance trends, while industry indicators reveal poor performance overall. Consolidated net sales, measured in terms of total revenue, declined 20 percent from \$25.6 million in 1999 to \$20.4 million in 2001.<sup>111</sup> Although processed fruit shipment data show an increase between 1999 and 2001 from 27.0 million pounds to 29.1 million pounds,<sup>112</sup> the record indicates that the U.S. producers held on to market share by significantly reducing prices. The steady and significant erosion of domestic prices during this period resulted in persistent operating income losses. In 1999 the domestic industry experienced a \$948,000

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<sup>107</sup> 19 U.S.C. § 1677(7)(C)(iii). See also, SAA at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885.)

<sup>108</sup> 19 U.S.C. § 1677(7)(C)(iii). See also, SAA at 851 and 885 and Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

<sup>109</sup> The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of subject imports. 19 U.S.C. § 1677(7)(C)(iii) (V). Commerce determined that the dumping margin for subject imports of IQF red raspberries from Chile was 6.33 percent. See Commerce’s Notice of Amended Final Determination, 67 FR 40270, June 12, 2002.

Respondent claims that the data from which Commerce derived its weighted average dumping margin indicate that Fruticola Olmue’s only sales at LTFV were of organic raspberries, and that all of its sales of non-organic raspberries were at more than fair value (“MTFV”). For this reason, respondent urges the Commission to look behind Commerce’s weighted average findings and determine that all non-organic subject imports are sold at MTFV and thus should be excluded from the Commission’s injury analysis. Nothing in the statute or the legislative history authorizes the Commission to compute LTFV margins. Instead, Congress established a specific bifurcated procedure which directs Commerce to determine dumping margins and the Commission to make injury determinations. Nor is there anything in the statute or legislative history that directs the Commission to go behind the specific dumping margins provided by Commerce, under the guise of conducting a more thorough investigation. Moreover, we note that Commerce’s weighted average margins factor in sales at MTFV. Thus, the margins take into account the number and volume of sales at MTFV.

<sup>110</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the 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); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

<sup>111</sup> CR and PR Table C-4.

<sup>112</sup> We note that financial data are reported on a fiscal basis and are not comparable to shipment data reported on a calendar basis. Nonetheless, we further note that the apparent difference between net sales and net shipments may be attributed to significant quantities of product held over in cold storage after sales are completed and before shipments are made.



operating income profit.<sup>113</sup> Yet in 2000, the domestic industry posted an operating loss of \$1,392,000, and in 2001, it posted an operating loss of \$552,000.<sup>114</sup> Further, 16 out of 22 domestic producers reported losses in 2000 and 12 of 22 domestic producers reported losses the following year.<sup>115</sup> The domestic industry's capacity utilization decreased from 87.2 percent in 1999 to 79.8 percent in 2001, and the industry held over 50 percent of domestic shipment quantities in inventory throughout the period.<sup>116</sup> As a ratio to net sales, operating losses were 7.2 percent in 2000 and 2.7 percent in 2001.<sup>117</sup> Industry unit costs were relatively stable throughout the period.<sup>118</sup> Total operating expenses did not decline proportionately with reduced sales revenue from 1999 to 2000, resulting in an operating loss which continued into 2001.<sup>119</sup>

We find that the decline in the industry's profitability over the period resulted from falling prices, which, as found above, were due to a significant and steady volume of low-priced subject imports which depressed and suppressed U.S. prices. We also find that the significant import volumes during the period examined forced the domestic industry to hold large quantities of merchandise in storage, thereby compounding the problem caused by the price depressing and suppressing effect of subject imports. While cold storage theoretically allows for inventory to be held indefinitely, the cost of cold storage—approximately \$0.01 per pound per month—prohibits long term storage and provides incentive for producers to lower their prices in order to clear inventory.<sup>120</sup> Thus, as domestic prices continued to decline throughout the period examined, domestic producers held IQF red raspberries in cold storage for shorter durations in order to keep costs down. This is reflected in the consistent decline in the absolute and relative quantities of IQF red raspberries held in inventory during the period examined.

In sum, we find that the consistent presence of significant volumes of subject imports at low and declining prices led to the domestic producers' falling prices and the resultant drop in their profitability over the period examined. We therefore find that the subject imports are having a significant adverse impact on the domestic industry.

## CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of subject imports of IQF red raspberries from Chile that are sold in the United States at less than fair value.

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<sup>113</sup> CR and PR Table C-4.

<sup>114</sup> CR and PR Table C-4.

<sup>115</sup> CR and PR Table VI-1.

<sup>116</sup> CR and PR at Table C-1.

<sup>117</sup> CR and PR Table VI-1.

<sup>118</sup> CR and PR Tables VI-3 and VI-6. Capital expenditures in the industry increased from \$1.4 million in 1999 to \$2.7 million in 2000, then declined to \$1.5 million in 2001. CR and PR Table VI-9. Reported depreciation amounts indicated that most of the reported capital expenditures were likely some form of capitalized maintenance or repair of existing facilities. CR at VI-16, PR at VI-9.

<sup>119</sup> CR and PR at VI-3 and Table C-4.

<sup>120</sup> As discussed *supra*, holding inventory for long periods is prohibited by cost. Hearing Tr. at 103-104 (Rader).

## DISSENTING VIEWS OF VICE CHAIRMAN JENNIFER A. HILLMAN

Based on the record in this final investigation, I determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of IQF red raspberries from Chile that the U.S. Department of Commerce (“Commerce”) has determined to be sold in the United States at less than fair value (“LTFV”).

I join the majority’s analysis of domestic like product, industry, and conditions of competition. These views address the issues of volume, price effects, impact, and threat of material injury.

### II. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>121</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 domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>122</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>123</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.<sup>124</sup> 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>125</sup>

#### A. Conditions of Competition

As mentioned above, I join the majority’s views concerning the conditions of competition that are pertinent to my analysis in this investigation.

#### B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>126</sup>

Subject import volume decreased from \*\*\* million pounds in 1999 to \*\*\* million pounds in 2000, then increased to \*\*\* million pounds in 2001, for an overall decrease of 6.6 percent from 1999 to

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<sup>121</sup> 19 U.S.C. § 1673d(b).

<sup>122</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 . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>123</sup> 19 U.S.C. § 1677(7)(A).

<sup>124</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>125</sup> Id.

<sup>126</sup> 19 U.S.C. § 1677(7)(C)(i).

2001.<sup>127</sup> The market share of subject imports followed the same pattern. The market share of subject imports fell from \*\*\* percent in 1999 to \*\*\* percent in 2000, then increased to \*\*\* percent in 2001.<sup>128</sup>

I find this pattern of subject import volume to be mixed. The absolute volume and market share of imports during all three years of the period examined could be viewed as significant. However, volume and market share decreased over the period. Moreover, domestic market share increased steadily over the period, from 59.1 percent in 1999, to 62.9 percent in 2000, to 66.0 percent in 2001.<sup>129</sup>

Petitioners claim that the Commission should find the volume of subject imports to be significant because total imports from Chile more than doubled from 1998 (4.2 million pounds) to 1999 (9.7 million pounds).<sup>130</sup> I decline to place much weight on the 1998 data for several reasons. First, 1998 is outside the Commission's three-year period examined.<sup>131</sup> Second, 1998 was an aberrational year, as weather difficulties caused poor harvests in both Chile and the United States.<sup>132</sup> Third, the 1998 data cited by petitioners include both subject imports and non-subject imports from Chile. Fourth, as respondent points out, the annual volumes of imports from Chile in 1996 and 1997 were well above the volumes of imports from Chile during each of the years of the period examined.<sup>133</sup> If one were to consider years prior to the period examined, it is not evident why 1998 would be a better starting point than either 1996 or 1997 in assessing the significance of the volume of subject imports.

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

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>134</sup>

The Commission collected pricing data on four non-organic and four organic IQF red raspberry products. No domestic producers provided data on organic products. Product 1 (certain whole IQF non-

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<sup>127</sup> CR and PR at IV-1.

<sup>128</sup> CR and PR at Table C-1.

<sup>129</sup> CR and PR at Table C-1. Respondent AGEPCO argues that the Commission should measure imports based on AGEPCO's own data on exports of IQF red raspberries from Chile to the United States, on grounds that official statistics include non-IQF red raspberries and are therefore overly broad. AGEPCO Posthearing Brief at Appendix, pp.9-10. I note that the Commission does not typically rely on foreign export data to measure subject imports. I also note that the use of AGEPCO's data would show a steeper decline in subject import volume than official statistics over the period examined. See CR and PR at Table D-7.

<sup>130</sup> Petitioners' Prehearing Brief at 19. See CR and PR at Table D-4.

<sup>131</sup> Although the Commission has on occasion considered periods longer than three years, petitioners did not request that the Commission seek data for 1998 in this investigation.

<sup>132</sup> Individually Quick Frozen Red Raspberries from Chile, Inv. No. 701-TA-416, 731-TA-948 (Preliminary), USITC Pub. 3441 (July 2001) at 9 n.51.

<sup>133</sup> Total volumes of imports of IQF red raspberries from Chile were 13.0 million pounds in 1996 and 11.5 million pounds in 1997, as compared to 9.7 million pounds in 1999. CR and PR at Table D-4.

<sup>134</sup> 19 U.S.C. § 1677(7)(C)(ii).

organic red raspberries sold in bulk containers) accounted for a substantial majority (69 percent) of domestic pricing data, and just over half of subject import pricing data (52 percent).<sup>135</sup> Given the importance of this product both to U.S. producers and to subject imports of Chilean IQF red raspberries, I have placed considerable weight on the pricing data for Product 1. Domestic prices of Product 1 increased starting in the second quarter of 1999, reaching a peak in the first quarter of 2000 that was over 30 percent above first quarter 1999.<sup>136</sup> Domestic prices of Product 1 then returned to the original level in third quarter 2000, remained steady for several quarters, and then fell slightly lower in the second half of 2001. Subject import prices of Product 1 fluctuated within a narrow range for most of the period examined, and then fell in 2001 to a level 25-30 percent lower.

Although Product 1 shows fairly consistent underselling by subject imports, I do not find that the underselling was the reason for domestic prices falling following their initial rise. Rather, in my view it was the growing quantities of domestic shipments of Product 1 that drove prices of that product. Domestic shipments of Product 1 increased from 7.2 million pounds in 1999 to 9.7 million pounds in 2000, an increase of 35 percent. Domestic shipments of Product 1 increased further to 11.1 million pounds in 2001, for an overall increase of 55 percent in two years. By contrast, the volume of subject imports of Product 1 fell from 2.3 million pounds in 1999 to 1.4 million pounds in 2000, before rising to 2.7 million pounds in 2001, for an overall increase of 15 percent. Importantly, the quantity of subject import shipments of Product 1 fell by 38 percent in 2000, the year in which domestic prices of Product 1 fell back to early 1999 levels.<sup>137</sup> In my view, this information corroborates and reinforces the overall declining import volume and market share data described above in the section on Volume of Subject Imports, as well as underscoring the lack of correlation between import volumes and price trends.

Pricing Product 2 (whole IQF non-organic red raspberries sold in retail packs) was the next most significant product in terms of domestic shipments. Domestic prices of Product 2 were flat during 1999 before falling by approximately 15 percent at the beginning of 2000, and by another 6 percent at the beginning of 2001.<sup>138</sup> Subject import prices were flat during most of the period, and then declined slightly starting in fourth quarter 2000. However, subject import prices oversold domestic prices in all quarterly comparisons, by margins greater than 25 percent in most instances. Shipments of subject imports of Product 2 increased somewhat over the period, but remained only a small fraction of domestic shipments of that product. Given the consistent overselling and small volume of imports vis-a-vis domestic product, I conclude that subject imports were not responsible for any domestic price declines of Product 2.

The remaining two products for which domestic pricing data were supplied (Products 3 and 4) show somewhat erratic pricing patterns, but do generally show domestic price declines and underselling by subject imports.<sup>139</sup> However, the volume of domestic shipments of these two products represents only 3.9 percent of domestic pricing data. In my view, this volume is too small to support the conclusion that subject imports depressed domestic prices to a significant degree.<sup>140</sup>

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<sup>135</sup> CR at V-5, PR at V-4. Product 1 represented 58 percent of reported domestic shipments over the period examined. Compare CR and PR at Table V-1 with CR and PR at Table III-3.

<sup>136</sup> CR and PR at Table V-1.

<sup>137</sup> Petitioners inappropriately seek to augment the volume of subject import shipments of Product 1 by including data of a firm that reported prices of a different product (\*\*\*) and data of a firm that acted as a trader for another firm whose data are already included (\*\*\*). See Petitioners' Final Comments at 6 n.19.

<sup>138</sup> CR and PR at Table V-2.

<sup>139</sup> CR and PR at Tables V-3-4.

<sup>140</sup> I also note that respondent has asserted that domestic prices for Product 4 (crumbled IQF red raspberries) are affected by the price of straight pack, a non-IQF product that is priced lower than IQF crumbles. It asserts that the  
(continued...)

I have considered petitioners' argument that the influx of subject imports starting in 1999 led to higher inventory levels that depressed prices.<sup>141</sup> Cold storage stocks of IQF red raspberries in the United States appear to follow a yearly pattern in which they increase substantially in July/August as a result of the U.S. harvest and then are drawn down over the course of the next 12 months. Our data on cold storage stocks run from 1998 through mid-2002.<sup>142</sup> These data show that cold storage stocks were at their lowest level in mid-1999, and then increased substantially as a result of the U.S. harvest in 1999, to a level higher than the same months in 1998. I find this increase in 1999 reflects the natural replenishing of cold storage stocks following the atypical occurrence of a poor 1998 harvest in both the United States and Chile.

Cold storage stocks for the months of July-September in 2000 and 2001 were each higher than the levels in the same months of the immediately preceding year. Because subject imports and domestic product were largely substitutable, it is likely that the presence of subject imports in the U.S. market during each year of the period examined contributed to some degree to the pattern of cold storage stocks observed. However, I find that domestic shipments were the driving force behind the increase in these stocks. U.S. shipments of the products for which pricing data were collected increased more than five times the amount by which shipments of subject imports of those products increased over the period examined.<sup>143</sup>

In addition, I find that other factors further attenuated the role of subject imports in the any price declines experienced by the domestic industry. First, the domestic industry's unit costs fell significantly over the period examined, due in part to improved yields.<sup>144</sup> The unit cost reduction was only slightly less than the decline in the unit value of domestic sales.<sup>145</sup> In a competitive market such as the IQF red raspberries market, one would expect lower costs to be passed on to purchasers at least to some degree. Second, as a result of Commerce's negative antidumping determination concerning two significant Chilean producers, more-than-minor quantities of imports from Chile during the period examined were non-subject imports.<sup>146</sup> These non-subject imports show a mixture of overselling and underselling vis-a-vis subject imports.<sup>147</sup> Thus, at least some of any price impact of imports of IQF red raspberries from Chile must be attributed to non-subject imports.

Finally, I observe that purchasers did not confirm any of the lost sales or lost revenues allegations made by domestic IQF red raspberry producers.<sup>148</sup>

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<sup>140</sup> (...continued)

two products are sold to industrial users for the same general uses (*e.g.*, purees, juices). AGEPCO Prehearing Brief at 20-21. Tr. at 206 (testimony of Mr. Johnson). There is a close correlation between the trends in domestic prices of Product 4 and straight pack. See CR and PR at Figure V-7.

<sup>141</sup> Petitioners' Prehearing Brief at 19-20.

<sup>142</sup> CR and PR at Table III-4.

<sup>143</sup> CR and PR at Table IV-4 (displaying trends in shipments and cold storage stocks, and showing that domestic shipments and subject import shipments increased by 3.4 million pounds and 0.6 million pounds, respectively, from 1999 to 2001).

<sup>144</sup> CR at VI-8 n.14, PR at VI-6 n.14.

<sup>145</sup> CR and PR at Table VI-6 (from 1999 to 2001, unit operating expenses fell by 17 cents, compared to a decline in unit sales value of 21 cents).

<sup>146</sup> CR and PR at Table IV-3 (non-subject imports from Chile held between \*\*\* percent and \*\*\* percent of the U.S. market during 1999-2001).

<sup>147</sup> CR and PR at Table V-6 and Tables V-1-4. For Product 1, which was by far the highest volume domestic product, the non-subject imports were priced below subject imports in all but one quarterly comparison.

<sup>148</sup> CR and PR at Tables V-7-8.

In sum, while the mere presence of subject imports in the U.S. market at more than *de minimis* quantities may have had some impact on prices, I find that the subject imports did not depress or suppress domestic prices to a significant degree. Although the prices of subject imports typically undersold domestic prices, I do not find this underselling to be significant, as it did not negatively impact domestic prices to a significant degree nor result in significant gains in sales or market share by subject imports.

#### **D. Impact of the Subject Imports**

In examining the impact of the subject imports on the domestic industry, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.<sup>149</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>150 151</sup>

The trade and employment indicators of the domestic industry were either steady or positive when considered over the entire period examined. Domestic capacity decreased from 1999 to 2000, but then rose in 2001 to a level 10 percent above 1999 capacity.<sup>152</sup> Production of IQF red raspberries fell from 1999 to 2000, then returned to the 1999 level in 2001.<sup>153</sup> Domestic shipments rose sharply over the period (by 18.5 percent).<sup>154</sup> Domestic inventories of IQF red raspberries decreased steadily over the period examined, both in absolute terms (by 9.7 percent) and as a share of domestic shipments (by 16.1 percentage points).<sup>155</sup> The number of production and related workers and hours worked showed slight increases from 1999 to 2001.<sup>156</sup> Productivity fell in 2000 but then returned to the 1999 level in 2001. None of these indicators suggests that

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<sup>149</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885).

<sup>150</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

<sup>151</sup> The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce published its final antidumping determination in its investigation of IQF red raspberries from Chile on May 21, 2002. Commerce found the following margins: Comercial Fruticola -- 0.50 (*de minimis*); Exportadora Frucol -- 0.00; Fruticola Olmue -- 5.98 percent; All others -- 5.98 percent. The latter two margins were subsequently amended to 6.33 percent.

I disagree with AGEPCO’s claim that, because Commerce’s margin for Fruticola Olmue was based on sales of organic product only, the Commission should consider subject imports from Chile of non-organic product to be fairly traded. See AGEPCO Prehearing Brief at 28-29. The statute requires the Commission to determine whether a domestic industry is injured or threatened with injury by reason of imports “with respect to which the administering authority has made an affirmative determination.” 19 U.S.C. § 1673d(b)(1). Commerce’s affirmative determination covers all imports of IQF red raspberries from Chile other than those of the two companies for which Commerce reached a negative determination.

<sup>152</sup> CR and PR at Table III-3.

<sup>153</sup> CR and PR at Table III-3.

<sup>154</sup> CR and PR at Table III-3.

<sup>155</sup> CR and PR at Table III-3.

<sup>156</sup> CR and PR at Table III-3.

the domestic industry was experiencing injury during the period examined.

By contrast, the financial performance of the domestic industry over the period was weak. Unit sales values fell from \$1.28 in 1999 to \$1.07 in 2001.<sup>157</sup> As a result, the industry's net sales revenue fell by 18.6 percent from 1999 to 2001.<sup>158</sup> The industry recorded an operating profit in 1999, and then had two years of operating losses in 2000 and 2001. The ratio of industry operating profits to net sales was 1.9 percent in 1999, negative 4.3 percent in 2000, and negative 2.2 percent in 2001.<sup>159</sup> Although the domestic industry was negatively affected by lower unit sales values, as discussed above I find that subject imports were not responsible for the falling prices experienced by the domestic industry over the period examined.

Because I have included growers in the domestic industry, I must also consider the experience of growers of IQF-quality (fresh) red raspberries. The data collected by the Commission concerning IQF-quality red raspberries followed a trend similar to the trend of the data described above concerning IQF (frozen) red raspberries. Growers' harvest, and shipments for processing, decreased from 1999 to 2000, but then rose in 2001 to levels above 1999 levels.<sup>160</sup> Employment indicators remained generally steady or improved from 1999 to 2001.<sup>161</sup> Financial results of growers that are not also processors exhibit trends similar to the trends for IQF red raspberries; namely, an operating profit in 1999, a loss in 2000, and a smaller loss in 2001.<sup>162</sup> While growers, like processors of IQF red raspberries, suffered from a falling unit sales value on their IQF-quality red raspberries, I do not find that subject imports were responsible for any price decline.

Accordingly, I find that the subject imports did not have a significant negative impact on the domestic industry.

### **III. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS**

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."<sup>163</sup> The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat

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<sup>157</sup> CR and PR at Table VI-6.

<sup>158</sup> CR and PR at Table VI-5.

<sup>159</sup> CR and PR at Table VI-5. I note that the industry's operating loss in 2001 is explained in large part by \*\*\*. Removing the data of \*\*\* would yield an overall industry operating profit in 2001 \*\*\*. See CR and PR at Table VI-7, CR at VI-8 n.14, PR at VI-6 n.14, questionnaire response of \*\*\* at p. 6.

<sup>160</sup> CR and PR at Table III-2.

<sup>161</sup> CR and PR at Table III-2.

<sup>162</sup> CR and PR at Table VI-2. I note that growers who are not also processors account for less than 20 percent of IQF-quality red raspberry production. CR and PR at Table III-2 and Producer Questionnaires.

<sup>163</sup> 19 U.S.C. §§ 1673d(b)(1), 1677(7)(F)(ii).

factors “as a whole.”<sup>164</sup> In making my determination, I have considered all factors that are relevant to this investigation.<sup>165</sup>

As discussed above, subject imports of IQF red raspberries decreased by 6.6 percent from 1999 to 2001, and fell in market share from \*\*\* percent to \*\*\* percent. Accordingly, I find that there is no significant rate of increase of the volume or market penetration of subject merchandise indicating the likelihood of substantially increased imports.<sup>166</sup>

Capacity of subject Chilean producers increased modestly over the period examined.<sup>167</sup> While there is arguably substantial available capacity in Chile, such capacity did not result in a substantial increase in exports to the United States over the period examined. Moreover, the amount of the excess capacity fell from \*\*\* million pounds in 1999 to \*\*\* million pounds in 2001, as the capacity utilization rate of subject Chilean producers increased from \*\*\* percent in 1999 to \*\*\* percent in 2001.<sup>168</sup>

Chile has a small but growing home market for IQF red raspberries. Most of the Chilean harvest is exported to other markets, principally the countries of the European Union. Petitioners argue that Chile’s export opportunities to the EU will be hindered as a result of the EU’s elimination of tariffs on imports of IQF red raspberries from Serbia and Poland in December 2000 - January 2001, and the retention of a 20.8 percent tariff on IQF red raspberries from Chile.<sup>169</sup> However, respondent submitted data indicating that exports from Chile to the EU actually increased by \*\*\* percent from 2000 to 2001, despite the elimination of tariffs on Serbia and Poland.<sup>170</sup> Accordingly, while it is possible that the EU’s action will have some negative impact on Chile’s exports to the EU, I do not find that this action indicates that a substantial quantity of IQF red raspberries from Chile will be diverted from the EU market to the United States in the imminent future.

Inventories of IQF red raspberries held by subject Chilean producers and by U.S. importers increased somewhat over the period examined, but did not reach levels that would be indicative of an imminent threat of injury by subject imports.<sup>171</sup> There appears to be little potential for product-shifting with respect to IQF red raspberries.<sup>172</sup>

I found above that subject imports are not currently having negative effects on domestic prices of

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<sup>164</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

<sup>165</sup> 19 U.S.C. § 1677(7)(F)(i). Factor I is not applicable because Commerce reached a negative countervailing duty determination. Factor VII regarding raw and processed agricultural products is inapplicable in this investigation because the subject merchandise includes a processed agricultural product only. See 19 U.S.C. § 1677(7)(F)(i)(I),(VII).

<sup>166</sup> 19 U.S.C. § 1677(7)(F)(i)(III).

<sup>167</sup> CR and PR at Table VII-1. 19 U.S.C. § 1677(7)(F)(i)(II).

<sup>168</sup> CR and PR at Table VII-1. Subject Chilean producers project a modest rise in both capacity and exports to the United States in 2002.

<sup>169</sup> Petitioners’ Prehearing Brief at 39-41.

<sup>170</sup> AGEPCO’s Prehearing Brief at 45, Exhibit 6R. The recent conclusion of a free-trade agreement between the EU and Chile suggests that EU duties on IQF red raspberries from Chile may eventually be reduced or eliminated.

<sup>171</sup> Foreign producer inventories increased from \*\*\* million pounds in 1999 to \*\*\* million pounds in 2001. CR and PR at Table VII-1. U.S. importer inventories increased from \*\*\* million pounds in 1999 to \*\*\* million pounds in 2001. CR and PR at Table VII-3. 19 U.S.C. § 1677(7)(F)(i)(V).

<sup>172</sup> 19 U.S.C. § 1677(7)(F)(i)(VI).



IQF red raspberries. Nor is there any information to suggest that this situation is likely to change in the imminent future. Accordingly, I conclude that subject imports are not entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and find that subject import prices are not likely to increase demand for further imports.<sup>173</sup>

I have considered the current condition of the domestic industry and whether it is vulnerable to injury by subject imports. As described above, the industry's trade and employment indicators were generally positive or steady over the period examined, whereas the industry's financial performance was generally poor. Accordingly, I find that the data presents a mixed picture. However, even if I were to consider the industry to be in a vulnerable state, for the reasons discussed in this section I see no basis to conclude that the subject imports will increase significantly in volume or market share or have significant negative price effects so as to cause material injury in the imminent future.<sup>174</sup>

I further find that subject imports are not having actual or potential negative effects on the existing development and production efforts of the domestic industry.<sup>175</sup> The industry's capital expenditures increased slightly over the period examined.<sup>176</sup>

Finally, I do not find any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the subject imports.<sup>177</sup>

### CONCLUSION

For the foregoing reasons, I determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of IQF red raspberries from Chile that are being sold in the United States at less than fair value.

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<sup>173</sup> 19 U.S.C. § 1677(7)(F)(i)(IV).

<sup>174</sup> As discussed above, the industry's operating loss in 2001 was explained in part by \*\*\*.

<sup>175</sup> 19 U.S.C. § 1677(7)(F)(i)(VIII).

<sup>176</sup> CR and PR at Table VI-9 (capital expenditures were \$1.4 million in 1999, \$2.7 million in 2000, and \$1.5 million in 2001). The industry reported very small R&D expenses. CR at VI-16, PR at VI-9.

<sup>177</sup> 19 U.S.C. § 1677(7)(F)(i)(IX).