

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 109th Congress¹**

[Date approved: July 26, 2005]²

Bill No. and sponsor: H.R. 1702 (Rep. Pascrell); 109th Congress.

Proponent name, location: Association of Food Industries, Inc.
3301 RT 66, Ste. 205, Bldg. C
Neptune, NJ 07753

Other bills on product (109th Congress only): H.R. 1699 and H.R. 1701 (Rep. Pascrell).

Nature of bill: Temporary duty suspension through December 31, 2008.

Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)):

Pepperoncini, prepared or preserved otherwise than by vinegar, not frozen (provided for in subheading 2005.90.97).

Check one: Same as that in bill as introduced
 Different from that in bill as introduced (explain differences in Technical comments section)

Product information, including uses/applications and source(s) of imports:

Pepperoncini peppers are among the many types of peppers classified under the botanical category *Capsicum annuum* and are known as chile peppers rather than sweet peppers. They are also known as Tuscan peppers, sweet Italian peppers, or golden Greek peppers.³ These vegetables are stubby, 2 to 5 inch long, red ripening peppers with a very mild, spicy flavor. Upon ripening, the peppers develop wrinkled skin and taper to a blunt, lobed end.⁴ They have a slightly sweet, medium to medium-hot flavor and a crunchy, salty taste.⁵ The subject goods may be dried (by the sun or by roasting) or may be dry salted or brined. Pepperoncini are commonly used in Italian and Greek cuisine;⁶ they are most often sold pickled to retailers, food service customers, and institutional users.

¹ Industry analyst preparing report: Renee Johnson (202-205-3313); Tariff Affairs contact: Jan Summers (202-205-2605).

² A copy of this memorandum is available at www.usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm.

³ "Questions and Answers" available at <http://whatscookingamerica.net/Q-A/pepperoncini.htm> and retrieved on Sept. 28, 2004.

⁴ "Pepperoncini" available at http://www.tradewindsfruit.com/vegetables/pepperoncini_pepper.htm and retrieved on Sept. 28, 2004.

⁵ "Cooking Dictionary" available at <http://www.cooksrecipes.com/cooking-dictionary/P-search-results.html> and retrieved on Sept. 29, 2004.

⁶ "A Plethora of Peppers" available at <http://www.plantations.cornell.edu/collections/botanical/peppers.cfm> and retrieved on Sept. 29, 2004.

Separate data on worldwide production and processing of pepperoncini peppers are not available. For all types of peppers, a reported 23.2 million metric tons (mt) were produced worldwide in 2003.⁷ Given the large number of different pepper types, pepperoncini likely accounts for a very small share of this overall total. Likewise, no separate U.S. import data exist for prepared and preserved pepperoncini products. Imports under the four possible tariff classifications totaled \$210 million in 2004.⁸ The share attributable to pepperoncini products is not known, but likely is small.

Estimated effect on customs revenue:

For this analysis, using broader official data, it is assumed that the subject dutiable imports are primarily from Italy, Greece, and Spain. These three countries account for about 3 percent of total volume imports under HTS subheading 2005.90.97. Import volumes are further adjusted to account for the wide range of other products imported under this HTS subheading, and it is believed that 50 percent of imports from Italy, Greece, and Spain would approximate pepperoncini’s share of imports under this provision.

HTS subheading: 2005.90.97					
	2005	2006	2007	2008	2009
Col. 1-General rate of duty (AVE) <u>1/</u>	11.2%	11.2%	11.2%	11.2%	11.2%
Estimated value <i>dutiable</i> imports <u>2/</u>	\$1,600,000	\$1,700,000	\$1,700,000	\$1,700,000	\$1,700,000
Customs revenue loss <u>3/</u>	\$179,200	\$190,400	\$190,400	\$190,400	\$190,400

1/ The AVE is the ad valorem equivalent of a specific or compound duty rate expressed as a percent, using the most recent import data available. The rate shown is the “general” or normal trade relations rate. Other preferential rates may apply to eligible products of countries entitled to “special” tariff treatment under free trade agreements, the Generalized System of Preferences (GSP), Caribbean Basin Economic Recovery Act (CBERA), and Andean Trade Preference Act (ATPA).

2/ Source of estimated dutiable import data: U.S. Government statistics.

3/ Assumes that tariffs are suspended on imported product for the calendar years 2005 through 2009. Rounded to the nearest ten thousand.

⁷ FAOSTAT data, 2004, last updated February 2004. Includes production under the category of “Chillies & Peppers, green” but does not include production under the category of “Peppers, White, long, black.”

⁸ Commission estimated from official U.S. Government statistics. Includes total imports under HTS statistical reporting numbers 2005.90.5510, 2005.90.5590, 2001.90.3800, and 2005.90.9700.

Contacts with domestic firms/organizations (including the proponent):

Precise information on pepperoncini production in the United States is not available. Across all types of peppers, an estimated 15,000 acres are used to grow pickling peppers, including pepperoncini, in the United States.⁹ Seed companies supplying pepperoncini do exist.¹⁰ Limited information suggests that pepperoncini peppers may be grown in Michigan and New Jersey, in conjunction with production of cherry peppers.¹¹ However, there is no known commercial production of pepperoncini for use in domestic processing.¹² In the past, efforts were made to grow pepperoncini for processing in the United States, but the color and taste did not meet purchaser product specifications; also, the climate conditions were not suitable and labor costs were high.¹³

Pepperoncini peppers may be imported to the United States in bulk containers for sale to food service firms and to food processors for remanufacturing.¹⁴ Mt. Olive, the nation's second largest pickle company, repackages imported pepperoncini under its private label.¹⁵ Other domestic private label packers, such as Vlasic and Dean Foods, may use imported preserved pepperoncini that are not suitable for immediate consumption and further process them in the United States.¹⁶ Because pepperoncini also are imported in retail-size containers, a few food processors repackaging imported pepperoncini under a private label may be affected by a suspension of duties on imports intended for retail sale.¹⁷

The table lists the industry representatives contacted by the Commission and the submissions received in 2004 regarding similar bills of the 108th Congress. (See H.R. 5019, H.R. 5020 and H.R. 5021 (108th Congress, Rep. Garrett) available at the Commission's website.¹⁸) All submissions received by the Commission are attached in the appendices to this report.

⁹ "Pickles and Pickled Pepper Fact Sheet" by the Pickle Packers International, Inc. available at <http://www.ilovepickles.org/articles/factsheet.html> and retrieved Oct. 1, 2004.

¹⁰ Telephone interview with Richard Henshel, Pickle Packers International Inc. on Oct. 1, 2004.

¹¹ Telephone interview with Paul Basland, New Mexico State University, on Oct. 1, 2004. The Commission was not able to confirm production in these states.

¹² Telephone interview with staff at Guiliano Brand (Sept. 29, 2004) and Russo Importers (Sept. 30, 2004), Paul Basland, New Mexico State University (Oct. 1, 2004), Richard Henshel, Pickle Packers International (Oct. 1, 2004), Lou Rosenmayer, M. J. Rosenmayer Co. (Oct. 4, 2004), and Dave Dewitt, Fiery-Foods (Oct. 5, 2004).

¹³ Telephone interview with Richard Henshel, Pickle Packers International Inc. (Oct. 1, 2004) and Louis Rosenmayer, M. J. Rosenmayer Company (Oct. 4, 2004). Written submission by Richard Henshel, Pickle Packers International Inc., received by the Commission on Oct. 12, 2004.

¹⁴ Telephone interview with Louis J. Rosenmayer, M. J. Rosenmayer Company on Oct. 4, 2004.

¹⁵ See Mt. Olive's product line at <http://www.mtolivepickles.com/ProductLine/Products4.html>.

¹⁶ Telephone interview with Louis J. Rosenmayer, M. J. Rosenmayer Company (Oct. 4, 2004) and Gary Tritt, Dean Foods (Oct. 6, 2004).

¹⁷ Recently, U.S. imports of pepperoncini for retail sale have been shipped from Turkey.

¹⁸ Access to electronic copies of these memos is available at http://www.usitc.gov/tata/hts/other/rel_doc/bill_reports/108c.htm.

Name of firm/organization	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		
Steve Hofmann, Sandler, Travis & Rosenberg, 1300 Pennsylvania Ave., Ste 400, Washington, DC 20004, Ph: 202-216-9307 <u>Representing:</u> Association of Food Industries, Inc., 301 RT 66, Ste. 205, Bldg. C, Neptune, NJ 07753, Ph: 732-922-3008	9/28/2004	No	Yes	No
Louis J. Rosenmayer, M. J. Rosenmayer Co., 449 South Beverly Dr., Ste. 213, Beverly Hills, CA 90212, Ph: 310-551-1357.	9/28/2004	No	Yes	No
John Fressie, Bascom Sales, LLP, 495 River St., Paterson, NJ 07524, Ph: 973-345-1802.	10/ 12/2004	No	Yes	No
Jerry Hensley, Saticoy Foods Corp. P.O. Box 4547, Saticoy, CA 93007, Ph: 805-647-5266	9/30/2004	No	No	No
Gary Tritt, Dean Foods, 3600 N. River Rd., Franklin Park, IL 60131, Ph: 920-497-7131.	10/6/2004	Yes	No	No
Jim Tersky, Vlastic Pickles (Pinnacle Foods Corp., 6 Executive Campus, Ste. 100, Cherry Hill, NJ 08002), PH: 810-724-3006.	10/6/2004	Yes	No	No
Richard Henshel, Pickle Packers International P.O. Box 606, One Pickle and Pepper Plaza, St. Charles, IL 60174, Ph: 630-584-8950.	9/29/2004	No	Yes	No
Paul Basland, New Mexico State University (Chili Pepper Institute). P.O. Box 30001, Las Cruces, NM 88003, Ph: 505-646-5171.	10/1/2004	No	No	No
Dave Dewitt, Fiery-Foods, 3825 Beall Ct. Albuquerque, NM 87105, Ph: 505-873-8680.	10/5/2004	No	No	No
Russo Importers, 628 Columbia Ave., Sinking Spring, PA 19608, Ph: 610-678-6160	9/30/2004	No	No	No
Guiliano Brand, 256.11 Hillside Ave., Floral Park, NY 11001, Ph: 718-347-4071	9/29/2004	No	No	No
Lynn Williams, Mt. Olive Pickle Co., Inc. 812 N. Chestnut St., P.O. Box 609, Mt. Olive, NC 28365, Ph: 919-658-2535	10/1/2004	Yes	No	No

Gary Nelson, California Ag Statistics Service, 650 Capitol Mall, Sacramento, CA 95814, Sacramento, CA 95812, Ph: (916) 498-5161	9/29/2004	No	No	No
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Technical comments:¹⁹

It is suggested that the description be amended as shown on page one. The words “or acetic acid” should be omitted from the duty suspension provision, despite the inclusion of this language in the permanent tariff provision, because the entry of food labeled as containing acetic acid is reportedly not allowed under Food and Drug Administration regulations. Further, it is suggested that “not frozen” be added to track the permanent tariff category. Last, the phrase about the level of concentration of vinegar should be omitted because it is not relevant for purposes of distinguishing among types of products and because it may be confusing to importers and hard for Customs officials to administer.

¹⁹ The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

109TH CONGRESS
1ST SESSION

H. R. 1702

To suspend temporarily the duty on certain pepperoncini prepared or preserved otherwise than by vinegar or acetic acid in concentrations less than 0.5 percent.

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2005

Mr. PASCRELL introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To suspend temporarily the duty on certain pepperoncini prepared or preserved otherwise than by vinegar or acetic acid in concentrations less than 0.5 percent.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CERTAIN PEPPERONCINI PREPARED OR PRE-**
4 **SERVED OTHERWISE THAN BY VINEGAR OR**
5 **ACETIC ACID IN CONCENTRATIONS LESS**
6 **THAN 0.5 PERCENT.**

7 (a) IN GENERAL.—Subchapter II of chapter 99 of
8 the Harmonized Tariff Schedule of the United States is

1 amended by inserting in numerical sequence the following
 2 new heading:

“ 9902.20.07	Pepperoncini, prepared or preserved otherwise than by vinegar or acetic acid in concentrations less than 0.5 percent (provided for in sub-heading 2005.90.97)	Free	No change	No change	On or before 12/31/2008	”.
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3 (b) **EFFECTIVE DATE.**—The amendment made by
 4 subsection (a) applies to articles entered, or withdrawn
 5 from warehouse for consumption, on or after the 15th day
 6 after the date of the enactment of this Act.

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