

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 108th Congress¹**

[Date approved: November 29, 2004]²

Bill No. and sponsor: H.R. 4813 (Rep. Garrett); 108th Congress.

Proponent name, location:

Association of Food Industries, Inc.
3301 RT 66, Ste. 205, Bldg. C
Neptune, NJ 07753
Phone: (732) 922-3008
Fax: (732) 922-3590

Other bills on product (108th Congress only): H.R. 4814 and H.R. 4815 (Rep. Garrett).

Nature of bill: To temporarily suspend the general rate of duty on certain prepared or preserved pimiento (*capsicum annuum*) imports through December 31, 2006.

Retroactive effect: None.

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

This bill and H.R. 4815 cover goods classifiable in the same tariff rate line. Accordingly, it would be possible, in order to suspend the general duty rate, to create a single chapter 99 heading for the entire scope of subheading 2005.90.50, as pimientos (Capsicum annuum),³ prepared or preserved otherwise than by vinegar or acetic acid, not frozen. As discussed below, however, enacting a single chapter 99 heading would likely result in a higher customs revenue loss than would be desired. Harmonized Tariff Schedule of the United States (HTS) statistical reporting number 2005.90.5020 covers the subject vegetables as "Pimientos (Capsicum annuum [sic]) in containers each holding not more than 227 g[rams]." The description should read "Pimientos (Capsicum annuum), prepared or preserved..., in containers each holding not over 227 g (provided for...)."

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:

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

² Access to an electronic copy of this memorandum is available at <http://www.usitc.gov/billrpts.htm>. Access to a paper copy is available at the Commission's Law Library (202-205-3287) or at the Commission's Main Library (202-205-2630).

³ The correct spelling of the species name for pimiento is *annuum*. See "United States Standards and Grades for Canned Pimientos" by the U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division (October 23, 1967) found at <http://www.ams.usda.gov/standards/cnpiment.pdf>.

The genus *Capsicum* and species *annuum* may be grouped into two broad categories: (1) sweet peppers, which are mild and non-pungent, and (2) chile peppers,⁴ which are hot and pungent.⁵ Sweet peppers include bell peppers (green, red, purple, and yellow), pimientos (or pimentos), rellenos, and sweet banana peppers, among others.⁶ The pimiento (the Spanish word for “pepper”) is a vigorous, highly productive plant that produces early maturing fruit measuring 3-4 inches long and 2-3 inches wide.⁷ It is a sweet, succulent miniature pepper that is more aromatic and has a more distinctive flavor than the red bell pepper.⁸ The pimiento fruit pods are smooth, typically conical or heart-shaped, pointed at the blossom end, thick walled, and red to reddish-yellow in color.⁹

Prepared or preserved pimientos are classified under separate headings of chapter 20 of the HTS. Two import categories prepared or preserved other than by vinegar or acetic acid fall under HTS heading 2005: those in statistical reporting numbers 2005.90.5020 (in containers each holding not more than 227 grams) and 2005.90.5040 (other). A third import category falls under HTS heading 2001, as vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid, and specifically under subheading 2001.90.35.^{10 11}

Production data on peppers are generally aggregated across all types of peppers (hot and sweet). Separate data for certain types, such as pimientos, are limited. Across all types of peppers, a reported 23.2 million metric tons (mt) of peppers were produced worldwide in 2003.¹² China was the largest producer of peppers, accounting for 50 percent of world production in 2003. Mexico and Turkey each accounted for another 8 percent of world production, followed by Spain and the United States each with 4 percent. Another major producing country is Nigeria, accounting for 3 percent of world production in 2003.¹³

The Commission was unable to obtain complete information on pimiento production in the United States. Data from USDA’s National Agricultural Statistics Service (NASS) and the California Agriculture Statistics Service (CASS) aggregate all data under one of two categories: bell peppers or chile peppers.¹⁴

⁴ Chile (chili) peppers are tapered, slender, thin walled hot peppers. Common chile pepper groups and varieties include cayenne, paprika, jalapeno, anaheim, serano, and poblano peppers. See “Chile Pepper Production in California,” University of California-Davis (Publication 7144), found at <http://anrcatalog.ucdavis.edu/pdf/7244.pdf>.

⁵ “Sweet Peppers: Saved by the Bell” by U.S. Department of Agriculture’s Economic Research Service, published in *Agriculture Outlook* (December 2001), found at <http://www.ers.usda.gov/publications/agoutlook/dec2001/ao287e.pdf>.

⁶ “Sweet Peppers” at ChiliPepperPlants.com found at http://www.chili-pepper-plants.com/html/sweet_peppers.html.

⁷ *Ibid.*

⁸ “Sweet Peppers,” University of Georgia, found at <http://www.uga.edu/vegetable/pepper.html>.

⁹ “United States Standards and Grades for Canned Pimientos” by the U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division (October 23, 1967). Found at <http://www.ams.usda.gov/standards/cnpiment.pdf>.

¹⁰ Some processed pimiento product might also be imported under HTS heading 2004, “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006” (HTS statistical reporting number 2004.90.8580, “Other, including mixtures”). These data include a number of other products and mixtures and are difficult to separate out precisely.

¹¹ Fresh sweet peppers are classified under HTS subheading 0709.60, “Fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., allspice).” Dried product is classified under HTS subheading HTS heading 0904, “Pepper of the genus *Piper*; dried or crushed or ground fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., allspice).”

¹² FAOSTAT database maintained by the United Nations available at <http://www.fao.org>. Includes production under the category of “Chillies & Peppers, green” but does not include production under the category of “Peppers, White, long, black.”

¹³ *Ibid.*

¹⁴ Telephone discussion with Biz Wallingsford at USDA NASS (Aug. 30, 2004) indicate that USDA defines chile peppers as all peppers excluding bell peppers. Also see footnote to table on chile peppers for fresh market and processing in NASS’ *Vegetables 2003 Summary* at <http://usda.mannlib.cornell.edu/reports/nassr/fruit/pvg-bban/vgan0104.txt>. Email communication with Gary Nelson, California Agriculture Statistics Service (Aug. 31, 2004) indicate that data for pimientos are reported with bell peppers in the annual County Agricultural Commissioners’ Report (<http://www.nass.usda.gov/ca/bul/agcom/indexcac.htm>). Also see “A

Limited production data on pimientos are available for some key producing counties in California, where the majority of domestically-produced pimientos are grown. These data indicate that pimientos production (fresh and processed) in 2003 totaled about 10,900 mt.¹⁵ This figure reflects production in the California counties of Monterey, Ventura, San Benito, and Santa Clara. Data are not available on the volume or value of any pimientos production for other U.S. states, including Florida,¹⁶ Georgia, North Carolina, Texas, Arizona, New Mexico,¹⁷ among others. Estimates of U.S. production presented in this report are based on data for California only and likely reflect a lower bound of all domestically-produced pimientos. The farm-level value of pimientos production in California in 2003 was approximately \$3 million, on an estimated 600 acres.¹⁸ Information is not available on the number of growers, or on the share of total pimientos production sold fresh versus that sold for further processing.

In 2003, the combined volume of U.S. imports of all processed pimientos, including products imported under each of the three import categories for prepared or preserved pimientos totaled 21,000 mt, net weight.¹⁹ On a drained weight basis, excluding the preserving solution and other packing media, the estimated volume of processed pimientos imports totaled about 14,700 mt.²⁰

Based on these estimates of U.S. production (California-grown fresh and processed pimientos), and U.S. imports of processed pimientos (expressed on a drained weight basis), and on the assumption that there are no U.S. exports of these products, the Commission estimates that imported products account for approximately 40 percent of U.S. annual commercial sales.

Across all import categories of prepared and preserved pimientos, Spain is the largest supplier of U.S. imports, accounting for about 70 percent of volume imports in 2003. Other major foreign suppliers of processed pimientos in 2003 included Turkey (10 percent of U.S. imports) and Mexico and Greece (each with 7 percent of import volumes).²¹ By value, imports totaled \$24.1 million in 2003.²²

U.S. imports of goods imported under HTS statistical reporting number 2005.90.5020 totaled only 2,700 mt in 2003 (as pimientos shipped in containers each holding not more than 227 grams), valued at \$4.0 million.²³ Compared to 1999, the volume of imports has risen by 43 percent. Spain supplied nearly all (97 percent) of the import volume, with Italy, Turkey, and Greece, among other countries, accounting together for another 3 percent of imports in 2003.

Pest Management Strategic Plan for Pepper Production in California Production” by the California Pepper Commission.

¹⁵ Information submitted to the Commission by the Agricultural Commissioners’ offices for Monterey and Ventura counties, August 31, 2004. Other information provided by Gary Nelson, California Agriculture Statistics, Aug. 31, 2004. Equivalent to about 24 million pounds. 1 metric ton = 2,205 pounds.

¹⁶ Telephone conversation with Dan Bosch, Florida Fruit & Vegetable Association on Aug. 18, 2004, suggests that there is limited pimientos production for processing in Florida.

¹⁷ Telephone conversation with Paul Basland, New Mexico State University (Chili Pepper Institute) on August 18, 2004, suggests that there is limited pimientos production in New Mexico.

¹⁸ Commission estimates based on information submitted by the California Agricultural Commissioners’ offices for Monterey and Ventura counties, Aug. 31, 2004.

¹⁹ Based on import data from official U.S. Government statistics. Reflects combined imports under HTS statistical reporting numbers 2005.90.5020 and 2005.90.5040 and subheading 2001.90.35.

²⁰ Commission estimates based on information indicating that the drained weight of pimientos is roughly 70 percent compared to its net weight that contains both fruit and packing media (larger container sizes). Information is from “Pimientos and Peppers” found at <http://www.fufesa.com/Webingles/Pimientos.htm> and retrieved on Sept. 2, 2004.

²¹ Based on import data from official U.S. Government statistics and reflects combined imports under HTS subheadings 2005.90.50 and 2001.90.35.

²² Ibid.

²³ Based on import data from official U.S. Government statistics.

Estimated effect on customs revenue:

The proposed legislative changes would temporarily suspend import duties through year-end 2006 on covered pimiento shipments.²⁴ To determine the possible customs revenue loss, U.S. imports for 2004-2008 are projected assuming a simple linear trend of reported import data for the 5-year period from 1999 to 2003. Commission estimates of the potential reduction in tariff revenue under these proposed changes are adjusted to try to account for available preferential tariff treatment. Accordingly, the Commission's estimates of customs revenue loss account for goods that would likely be imported at special duty rates.

HTS subheading: 2005.90.50 (stat. no. 2005.90.5020)					
	2004	2005	2006	2007	2008
Col. 1-General rate of duty (AVE) <u>1/</u>	8.1 percent	8.1 percent	8.1 percent	8.1 percent	8.1 percent
Estimated value <i>dutiable</i> imports <u>2/</u>	\$4.4 million	\$4.7 million	\$5.0 million	\$5.4 million	\$5.7 million
Customs revenue loss <u>3/</u>	\$350,000	\$380,000	\$410,000	\$0	\$0

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 countries entitled to special tariff treatment, including duty-free access for eligible products from Canada and Mexico (North America Free Trade Agreement), some Central American nations (Caribbean Basin Economic Recovery Act), Israel (U.S.-Israel Free Trade Area), and certain countries under the Generalized System of Preferences. A reduced rate of 6.0 percent ad valorem applies to eligible imports from Chile (U.S.-Chile Free Trade Agreement).

2/ Source of estimated dutiable import data: Commission estimates using official U.S. Government statistics.

3/ Assumes that tariffs are suspended on imported product for the calendar years 2004, 2005, and 2006. Rounded to the nearest ten thousand.

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

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	August 19, 2004		Yes	

²⁴ Commission estimates that the combined loss in customs revenue across all three concurrently proposed bills, including H.R. 4813 (HTS 2005.90.5020), H.R. 4814 (HTS 2001.90.35), and H.R. 4815 (HTS 2005.90.5040) would be about \$2 million per year.

Chris Russell, Representative Garrett's office, Ph: 202-225-4465	August 18, 2004		No	
Schreiber Foods International, Inc. 48 South Franklin Turnpike, P.O. Box 299 Ramsey, NJ 07446, Ph: 201-327-3535	August 17 2004		Yes <u>1/</u>	
Jerry Hensley, Saticoy Foods Corp. P.O. Box 4547, Saticoy, CA 93007, Ph: 805- 647-5266	August 18, 2004	Yes (processor)	Yes	Yes
Glen Fisher, California Advisory Board, California Pepper Commission, 531 N. Alta Ave, Dinuba, CA 93618, Ph: 559-591-3925	August 17, 2004	Yes (grower organization)	Yes	Yes
Ed Simerly, Moody Dunbar, Inc., P.O. Box 6048, Johnson City, TN 37602, Ph: 423-952-0100	August 18, 2004	Yes (processor)	Yes	Yes
Richard Henshel, Pickle Packers, International, Inc. P.O. Box 606, One Pickle and Pepper Plaza, St. Charles, IL 60174, Ph: 630-584-8950.	August 20, 2004		No	
Darryl Fryman, Central Kentucky Growers, 2190 Cincinnati, Georgetown, KY 40324, Ph: 502-863-0002	August 17, 2004	No	No	
Clinch Mountain Farmers Market Inc. 210 US Hwy 23 N, Weber City, VA 24290, Ph: 276-386-7663	August 17, 2004	No	No	
Dan Bosch, Florida Fruit & Vegetable Assoc. P.O. Box 140155, Orlando, FL 32814, Ph: 407-894-1351	August 18, 2004	No	No	
Paul Basland, New Mexico State University (Chili Pepper Institute). P.O. Box 30001, Las Cruces, NM 88003, Ph: 505-646-5171.	August 18, 2004	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	August 18, 2004		No	
Peggy Rochette, National Food Processors Association, 1350 I Street, NW, Ste 300, Washington, DC 20005, Ph: 202-639-5900	August 20, 2004		No	

1/ The Commission received multiple letters supporting the proposed legislation that are similar to that submitted by Schreiber Foods International, Inc. Many of these same companies are also noted as supporting the proposed legislation in the submission from the Association of Food Industries, Inc. The Commission cannot, in the context of this memorandum, make any statement concerning the validity of these claims.

Technical comments:²⁵

We would suggest that the botanical name of the product be written as “Capsicum annuum,” that the word “each” be inserted in the article description before “holding,” and that the period after “227 g.” be deleted. These changes would make the description consistent with other tariff provisions. We would also suggest that the permanent tariff provision, HTS subheading 2005.90.50, be amended by deleting “anuum” and by inserting in lieu thereof “annuum” so that the correct botanical name is reflected.

²⁵ 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.

APPENDIX A

**SELECTED PORTIONS OF THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

[Note: Appendix may not be included in the electronic version of this memorandum.]

APPENDIX B

STATEMENTS SUBMITTED BY THE PROPONENTS

[Note: Appendix B may not be included in the electronic version of this memorandum posted on the Commission's website if an electronic copy of the statement was not received by the Commission.]

APPENDIX C

STATEMENTS SUBMITTED BY OTHER FIRMS/ORGANIZATIONS

[Note: Appendix C may not be included in the electronic version of this memorandum posted on the Commission's website if an electronic copy of the statement was not received by the Commission.]

108TH CONGRESS
2D SESSION

H. R. 4813

To suspend temporarily the duty on certain pimientos (capsicum anuum), prepared or preserved otherwise than by vinegar or acetic acid.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2004

Mr. GARRETT of New Jersey introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To suspend temporarily the duty on certain pimientos (capsicum anuum), prepared or preserved otherwise than by vinegar or acetic acid.

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 PIMIENTOS, PREPARED OR PRE-**
4 **SERVED BY VINEGAR OR ACETIC ACID.**

5 (a) IN GENERAL.—Subchapter II of chapter 99 of
6 the Harmonized Tariff Schedule of the United States is
7 amended by inserting in numerical sequence the following
8 new heading:

“	9902.20.03	Pimientos (capsicum anuum), prepared or pre- served otherwise than by vinegar or acetic acid, not frozen, in containers holding not more than 227 g. (pro- vided for in subheading 2005.90.50)	Free	No change	No change	On or before 12/31/2006	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
 2 subsection (a) applies to goods entered, or withdrawn from
 3 warehouse for consumption, on or after the 15th day after
 4 the date of enactment of this Act.

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