

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

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

[Date approved: December 9, 2004]²

Bill No. and sponsor: H.R. 5020 (Rep. Pascrell); 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. 5019 and H.R. 5021 (Rep. Pascrell).

Nature of bill: Temporary duty suspension through December 31, 2007.

Retroactive effect: None.

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

Pepperoncini, prepared or preserved by vinegar (provided for in subheading 2001.90.38).

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. 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.³ As used, they have a slightly sweet flavor that can range from medium to medium-hot.⁴ Pepperoncini are a commonly used pepper in Italian and Greek

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

⁴ "Cooking Dictionary" available at <http://www.cooksrecipes.com/cooking-dictionary/P-search-results.html> and retrieved on Sept. 29, 2004.

cuisine;⁵ they are most often sold pickled to retailers, food service customers, and institutional users and have a crunchy, salty taste. They are also known as Tuscan peppers, sweet Italian peppers, or golden Greek peppers.⁶

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. 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.⁸ Seed companies supplying pepperoncini do exist.⁹ Limited information suggests that pepperoncini peppers may be grown in Michigan and New Jersey, in conjunction with production of cherry peppers.¹⁰ However, there is no known commercial production of pepperoncini for use in domestic processing.¹¹ 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.¹²

U.S. import data do not differentiate prepared and preserved pepperoncini products from other types of pepper products and related food preparations. Imports under the four possible tariff classifications totaled \$200 million in 2003.¹³ The share attributable to pepperoncini products is not known, but is likely small. Pepperoncini peppers may be imported to the United States in bulk containers for sale to food service firms and to food processors for remanufacture.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

⁵ "A Plethora of Peppers" available at <http://www.plantations.cornell.edu/collections/botanical/peppers.cfm> and retrieved on Sept. 29, 2004.

⁶ "Questions and Answers" available at <http://whatscookingamerica.net/Q-A/pepperoncini.htm> and retrieved on Sept. 28, 2004.

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 "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.

⁹ Telephone interview with Richard Henshel, Pickle Packers International Inc. on Oct. 1, 2004.

¹⁰ Telephone interview with Paul Basland, New Mexico State University, on Oct. 1, 2004. The Commission was not able to confirm production in these states.

¹¹ 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).

¹² 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.

¹³ Based on import data from official U.S. Government statistics. Includes total imports under HTS subheadings 2005.90.5510, 2005.90.5590, 2001.90.3800, and 2005.90.9700.

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.

Estimated effect on customs revenue:

The proposed bill would suspend general duties through year-end 2007 on such products classifiable in HTS subheading 2001.90.38. Under two other concurrent legislative bills, import duties might also be suspended through year-end 2007 on similar products imported under HTS subheadings 2005.90.55 and 2005.90.97.¹⁸

Because U.S. import data do not differentiate prepared and preserved pepperoncini products from other types of pepper products and related food preparations, it is not possible to estimate precisely the expected revenue loss from a suspension in import duties. For this analysis, the Commission assumes that prepared and preserved pepperoncini is imported primarily from Italy, Greece, and Spain.¹⁹ These three countries account for about 10 percent of total volume imports under HTS subheading 2001.90.38. Import volumes are further adjusted to account for the wide range of other products imported under this HTS subheading. Because of lack of definitive information about product imports under this HTS classification, the Commission assumes that 50 percent of imports from Italy, Greece, and Spain approximates dutiable imports of pepperoncini under this HTS subheading (i.e., 50 percent of 10 percent of all volume imports under this category).

U.S. dutiable imports for 2004-2008 are projected assuming a simple linear trend of reported import volumes for 1996 to 2003. Assumed per-unit import value is based on the reported 2-year average of imports from 2001 to 2003. Because the proposed legislation would suspend duties through 2007 only, there is no estimated revenue loss for 2008.

HTS subheading: 2001.90.3800					
	2004	2005	2006	2007	2008
Col. 1-General rate of duty (AVE) <u>1/</u>	9.6 percent	9.6 percent	9.6 percent	9.6 percent	9.6 percent
Estimated value <i>dutiable</i> imports <u>2/</u>	\$5.8 million	\$5.9 million	\$5.9 million	\$6.0 million	\$6.0 million
Customs revenue loss <u>3/</u>	\$560,000	\$570,000	\$570,000	\$576,000	\$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 products from certain countries under negotiated free trade arrangements and also certain countries under the Generalized System of Preferences.

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):

¹⁸ Commission estimates that the combined loss in customs revenue for all three proposed bills, including H.R. 5019 (HTS subheading 2005.90.55), H.R. 5020 (HTS subheading 2001.90.38), and H.R. 5021 (HTS subheading 2005.90.97), would range from about \$0.9 million to \$1.4 million per year, depending on the assumptions used for the purpose of this analysis.

¹⁹ Some supplying nations are entitled to duty free treatment under the Generalized System of Preferences (GSP) or under certain free trade arrangements (e.g., Mexico under the North American Free Trade Agreement).

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 Representing: Association of Food Industries, Inc., 301 RT 66, Ste. 205, Bldg. C, Neptune, NJ 07753, Ph: 732-922-3008	Sept. 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.	Sept. 28, 2004	No	Yes	No
John Fressie, Bascom Sales, LLP, 495 River St., Paterson, NJ 07524, Ph: 973-345-1802.	Oct. 12, 2004	No	Yes	No
Jerry Hensley, Saticoy Foods Corp. P.O. Box 4547, Saticoy, CA 93007, Ph: 805-647-5266	Sept. 30, 2004	No	No	n/a
Gary Tritt, Dean Foods, 3600 N. River Rd., Franklin Park, IL 60131, Ph: 920-497-7131.	Oct. 6, 2004	Yes (value-added food processor)	No	n/a
Jim Tersky, Vlastic Pickles (Pinnacle Foods Corp., 6 Executive Campus, Ste. 100, Cherry Hill, NJ 08002), PH: 810-724-3006.	Oct. 6, 2004	Yes (value-added food processor)	No	n/a
Richard Henshel, Pickle Packers International P.O. Box 606, One Pickle and Pepper Plaza, St. Charles, IL 60174, Ph: 630-584-8950.	Sept. 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.	Oct. 1, 2004	No	No	n/a
Dave Dewitt, Fiery-Foods, 3825 Beall Ct. Albuquerque, NM 87105, Ph: 505-873-8680.	Oct. 5, 2004	No	No	n/a
Russo Importers, 628 Columbia Ave., Sinking Spring, PA 19608, Ph: 610-678-6160	Sept. 30, 2004	No	No	n/a
Guiliano Brand, 256.11 Hillside Ave., Floral Park, NY 11001, Ph: 718-347-4071	Sept. 29, 2004	No	No	n/a
Lynn Williams, Mt. Olive Pickle Co., Inc. 812 N. Chestnut St., P.O. Box 609, Mt. Olive, NC 28365, Ph: 919-658-2535	Oct. 1, 2004	Yes (value-added food processor)	No	n/a

Gary Nelson, California Ag Statistics Service, 650 Capitol Mall, Sacramento, CA 95814, Sacramento, CA 95812, Ph: (916) 498-5161	Sept. 29, 2004	No	No	n/a
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See appendices to this report for submissions received by the Commission.

Technical comments:²⁰

It is suggested that “or acetic acid” 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, we suggest omitting the phrase about the level of concentration of vinegar 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.

²⁰ 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.]



Association of Food Industries, Inc.

3301 Route 66 • Suite 205, Bldg. C • Neptune, NJ 07753

732-922-3008 • Fax 732-922-3590

www.afi.us.org • afi@afi.us.org

October 12, 2004

Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E. Street SW
Washington DC 20436

Dear Ms. Johnson,

The Association of Food Industries is composed of more than 400 U.S. companies involved in importing food products to the United States. . Citing minimal domestic production, several members came to us expressing the desire to request a suspension of the duties on imported pepperoncini.

AFI is writing to you to express its support for HR 5019, HR 5020 and HR 5021 pertaining to duty suspension for pepperoncini. They were introduced by Congressman William Pascrell of New Jersey.

Among the companies that have contacted AFI in support of these bills are:

Arguimbau & Company, Greenwich, CT
Bascom Sales, LLP, Paterson, NJ
Borges USA, Inc., Fresno, CA
Gus Sclafani Corp., Norwalk, CT
Mooney International, Inc., Jersey City, NJ
Musco Food Corp., Maspeth, NY
Orleans Packing Company, Hyde Park, MA
Paradise Products Corp., Bronx, NY
The Pastene Companies, Ltd., Canton, MA
Safe Food Corporation, Jersey City, NJ
Tee Pee Olives, Inc., Scarsdale, NY
Victoria Packing Corp., Brooklyn, NY
Vigo Importing Company, Tampa, FL
World Finer Foods, Inc., Bloomfield, NJ
Worldly Delights, Inc., Valley Stream, NY

Pepperoncini products are currently imported into the United States under general “basket” categories within the Harmonized Tariff Schedule. The products are subject to duties ranging from 9.6 percent to 14.9 percent. Congressman Pascrell’s bills will create three new HTS numbers specifically for pepperoncini.

Since there is no domestic production of pepperoncini, the duties paid do nothing to protect a domestic industry. It does, however, needlessly raise costs to consumers and impacts the profitability of U.S. companies such as members of AFI and the companies they sell product to. Congressman Pascrell's bills will take these needless costs out of the system and help many companies and consumers.

I look forward to working with you and your office on this issue. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Bob Bauer". The signature is written in black ink and is positioned below the word "Sincerely,".

Bob Bauer
President

BASCOM
SALES, LLP

October 12, 2004

Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E. Street SW
Washington, DC 20436

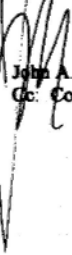
Dear Ms. Johnson,

I, on behalf of Bascom Sales, am writing to you to express our support for HR 5019, HR 5021 and HR 5021 pertaining to duty suspension for pepperoncini. They were introduced by Congressman William Pascrell of New Jersey.

The goal of the duty is to protect domestic production from being hurt by imports. In the case of pepperoncini, there is no domestic production. That means companies such as Bascom pay an unnecessary duty ranging from 9.6 percent to 14.9 percent that results in higher costs for us and higher costs for consumers. We speak for many who hope this legislation passes.

I look forward to working with you and your office on this issue.

Sincerely,


John A. Fressie
Cc: Congressman William Pascrell

(973) 345-1802 Fax: (973) 684-6544 495 River Street, Paterson, New Jersey 07524 e-mail: basfood@aol.com

PICKLE PACKERS INTERNATIONAL, INC.

'For those who think pickles'

One Pickle & Pepper Plaza



Executive Vice President: RICHARD HENTSCHEL
P.O. BOX 606 ST. CHARLES, ILLINIOS 60174-0606 U.S.A.

Counsel: RICHARD SILVERMAN Hogan & Hartson, L.L.P.
555 13th Street N.W. Washington, D.C. 20004-1109

October 4, 2004

Renee Johnson
U.S INTERNATIONAL TRADE COMMISSION
Office of Industries, Agricultural Div.
500 E. Street SW
Washington, DC 20436

RE: Suspending Import Duty on Pepperoncini

Dear Ms. Johnson:

Thank you for contacting Pickle Packers International, Inc. and providing the opportunity to provide input on the possible suspension of import duty on Pepperoncini into the United States.

PPI is a voluntary not for profit trade association representing pickled vegetable processors in North America and 11 other countries worldwide.

To the best of my knowledge there is no domestically grown Pepperoncini in the United States. There have been several attempts in the past 35 years by pepper growers and seed companies to produce the Pepperoncini peppers here, but they have never measured up against the Greek Golden Pepperoncini.

Members responding to my request for information on Pepperoncini were in favor of the removal of the import duty to vegetable processors.

Thank you again for allowing **PPI** this opportunity, Please contact me with any questions you may have.

Sincerely,

Richard Hentschel

Executive Vice President
Pickle Packers International, Inc.

PHONE: (630) 584-8950 .FAX: (630) 584-0759 .WEBSITE: www.ilovepickies.org .EMAIL: staff@ppii.org

October 12, 2004

Ms. Renee Johnson
U.S. INTERNATIONAL TRADE COMMISSION
Office of Industries, Agriculture Division
500 E Street, Southwest, Room 514
Washington, DC 20436

Dear Ms. Johnson:

We appreciate the opportunity to discuss the future bills to justifiably eliminate duties on Greek Golden Peppers from Greece. In this respect, it is unequivocally true that there are no Greek Golden Peppers grown, or produced, in the United States of America. This product can only be grown and harvested on a regular basis in Greece, as well as other foreign countries for production and usage in the United States. At the current time the major percentage of Peppers are from Greece, provisionally preserved for reprocessing only, and shipped to the United States for final processing.

The current duty on this product results in the passing of additional costs to the consumer. Failure to provide product on a more competitive basis will lead not only to unfair advantages, but will lead manufacturer's costs to increase as well as that of the final consumer.

Therefore, we feel it is not appropriate to have any levee or duty on this particular product, insomuch as it does not interfere with any producer or manufacturer in the United States. I have provided you with the information needed, together with our recent phone conversations. In addition, I am hopeful you have contacted other individuals we discussed, and received their input as well. Therefore, we support submission of all current bills regarding this product.

Being a buyer of this product for many years, I can again unequivocally state that it is impossible to provide this product from the United States, and as such it is obvious the pending bills should be approved as soon as possible.

If you have any questions in the interim, please do not hesitate to contact our office.

Sincerely,

Louis J. Rosenmayer
M.J. ROSENMYER COMPANY

108TH CONGRESS
2D SESSION

H. R. 5020

To suspend temporarily the duty on certain pepperoncini prepared or preserved by vinegar or acetic acid in concentrations at .5% or greater.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2004

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 by vinegar or acetic acid in concentrations at .5% or greater.

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 BY VINEGAR OR ACETIC ACID IN**
5 **CONCENTRATIONS AT .5% OR GREATER.**

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

“	9902.20.04	Pepperoncini, prepared or preserved by vinegar or acetic acid in concentrations at .5% or greater (provided for in subheading 2001.90.38) ..	Free	No change	No change	On or before 12/31/2007	”.
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1 (b) **EFFECTIVE DATE.**—The amendment made by
2 subsection (a) applies to articles entered, or withdrawn
3 from warehouse for consumption, on or after the 15th day
4 after the date of the enactment of this Act.

○