

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 108th Congress ¹**

[Date approved: August 27, 2004]²

Bill No. and sponsor: S. 2446 (Sen. Feinstein); 108th Congress.

Proponent name, location:

Thomas J. Klevay
Vice President, Sales and Marketing
Diana Fruit Company
651 Mathew Street
Santa Clara, CA 95050
Phone: 408-727-9631

Other bills on product (108th Congress only): H.R. 4398 (Rep. Honda et al.). [Identical to S. 2446 and introduced on the same day.]

Nature of bill: Permanent HTS amendment, providing that the duty for provisionally preserved cherries be calculated on a “drained weight” basis.

Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)): The bill would amend the duty rates in subheading 0812.10.00 of the Harmonized Tariff Schedule of the United States (HTS) to provide that the calculation of the duty imposed on imported cherries that are provisionally preserved would be imposed only on the fruit itself and would not include the container or the weight of the preservative materials in which the cherries are packed. Currently, the other edible fruits and nuts of chapter 8 of the HTS are not dutiable on a drained weight basis, although certain olives and mushrooms of chapter 7 are given such treatment.

Check one: Same as that in bill as introduced (see technical comments regarding effective date)

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).

Provisionally preserved cherries are cherries packed in a sulphur brine solution, often referred to as “brined cherries.” They are classified in HTS subheading 0812.10.00, covering cherries that are “provisionally preserved (for example, by sulfur dioxide gas, in brine, sulfur water or in other preservative solutions), but unsuitable in that state for immediate consumption.”

Brined cherries include maraschino cherries, fruit cocktail cherries, and other types.³ These products are typically packed in plastic drums each containing 144 kilograms, net weight (net of the container). Maraschino cherries are de-colored with sulfur dioxide (SO₂) and steeped in Marasca, a liqueur distilled from the fermented juice of wild cherries. Maraschino cherries are made mostly from sweet cherries, although a small proportion of sour cherries are brined for this purpose.⁴ Maraschino cherries may be sold with or without the fruit stem.⁵ Fruit cocktail cherries consist mostly of smaller (16-18 mm, rather than 18-20 mm) fruit; they are generally not suitable for the fresh market and are below the size requirement for many maraschino products.⁶ Fruit cocktail cherries may be sold either as the whole fruit or as fruit halves for use in fruit cocktail products by canned fruit processors.⁷ Brined cherries also may include other types of ingredient cherries for use in food processing, such as in ice cream or confectionary products. Information is not available on the share of the brined cherry market among maraschino, fruit cocktail, and other types of ingredient cherries (although such shares likely vary each year depending on carryover stocks).

The U.S. brined cherry market is valued at roughly \$25 million annually (farm level).⁸ Brined cherry production in the United States averaged about 100 million pounds between 1999 and 2003.⁹ Oregon, Michigan, and California account for roughly three-fourths of all U.S.-produced brined cherries. Most premium-quality handpicked cherries with the stems attached (used in making cocktail-style maraschino cherries) are produced in Oregon. Michigan produces the smaller, stemless cherries that are used in fruit cocktail and are usually machine harvested.¹⁰

The value of U.S. brined cherry imports averages about \$4 million per year.¹¹ However, imports tend to be variable year-to-year, depending on domestic supply conditions and carryover stocks. From 1999 to

³ Maraschino cherries and other prepared or preserved canned cherries not in brine solution are classified under HTS subheading 2008.60.00 (HTS heading 2008, “Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or sweetening matter or spirit, not elsewhere specified or included”).

⁴ “Cherries” found at <http://www.uga.edu/fruit/cherry.htm> and retrieved on June 30, 2004.

⁵ Telephone interview with Jim Reynolds, Gray and Company, July 1, 2004.

⁶ Information submitted to the Commission by Tom Klevay, Diana Fruit Company. The diameter of cherries sold in the fresh market is 26 millimeters to 28 millimeters.

⁷ Telephone interview with Tom Klevay, Diana Fruit Company, June 29, 2004.

⁸ Commission estimates based on farm-level price and supply information for brined sweet cherries, reported in “2003 Sweet Cherry Statistical Report” (National Cherry Growers & Industries Foundation), averaged over a 3-year period (2001-2003).

⁹ Information compiled by the Northwest Cherry Briners Association, reported in the “2003 Sweet Cherry Statistical Report” (National Cherry Growers & Industries Foundation).

¹⁰ “The Michigan Sweet Cherry Industry: Economic Trends” by Donald J. Ricks and Mollie Woods, Michigan State University, Department of Agricultural Economics, Staff Paper 01-54 (June 2001). Also “An Economic Assessment of Sweet Cherries” found at <http://www.rma.usda.gov/pilots/feasible/txt/swcherry.txt> and retrieved on June 30, 2004.

¹¹ Commission estimates of dutiable import data using official U.S. Government statistics (average, 1999-2003). The U.S. also exports an average of about 8.5 million pounds of brined cherries annually, valued at \$4.7 million (1999-2003).

2002, U.S. imports of brined cherries ranged from 4.1 million pounds to 7.2 million pounds (about 1,860 to 3,265 metric tons). In 2003, imports rose sharply to 16.1 million pounds (7,303 metric tons).¹²

The dramatic increase in brined cherry imports during 2003 may have been partly attributable to decreases in overall U.S. cherry production in 2002 and 2003, which likely affected available supplies of processing cherries. In 2001, U.S. production of fresh and processed cherries reached record levels, with a combined total of more than 830 million pounds for all sweet and tart varieties.¹³ The following year, unfavorable weather conditions devastated U.S. cherry production. Compared to 2001, tart cherry production dropped by 80 percent to about 60 million pounds in 2002, reaching its lowest point since 1943. Sweet cherry production was 20 percent below 2001 levels, dropping to about 360 million pounds. Production recovered by 2003, reaching production levels comparable to 1999 and 2000. USDA forecasts for 2004 indicate continued increases in production, projected at roughly 770 million pounds (sweet and tart cherries combined).¹⁴ Brined cherries account for about one-fourth of total sweet cherry utilization (although utilization varies widely by producing state)¹⁵ and about 5 percent of total tart cherry utilization in the United States.¹⁶

Coinciding with sharp decreases in overall U.S. cherry production during 2002 and 2003, imports of brined cherries as a share of U.S. utilization rose dramatically during those two years. Brined cherry imports as a share of use were estimated at 11 percent in 2002 and 17 percent in 2003.¹⁷ This figure compares to import shares ranging from 3 percent to 6 percent annually during the 6-year period from 1996 and 2001. Imports of brined cherries are expected to be lower in 2004 because of surplus inventories and carryover stocks.¹⁸

Foreign suppliers of U.S. imports of brined cherries include Italy, Greece, France, Spain, Hungary, Bulgaria, Turkey, Romania, Chile, Canada, Mexico, and El Salvador.¹⁹ The four largest exporting countries of brined cherries are Italy (34 percent of world exports), Spain and Turkey (10 percent each), and the United States (14 percent).²⁰

¹² This increase consisted almost entirely of increased imports from Turkey, accounting for nearly 40 percent of total brined cherry imports for 2003 (as compared to about 10 percent for previous years). Also, in 2003, imports of brined cherries from Italy were 60 percent higher than average import levels between 1999 and 2002.

¹³ Compiled by Commission staff based on data reported by USDA's National Agricultural Statistics Service (NASS), "Cherry Production" (various years), available at <http://usda.mannlib.cornell.edu/reports/nassr/fruit/zcp-bb/>.

¹⁴ USDANASS, "Cherry Production" (June, 2004) at <http://usda.mannlib.cornell.edu/reports/nassr/fruit/zcp-bb/cher0604.txt>.

¹⁵ Information submitted to the Commission by Philip Korson, Cherry Marketing Institute Commission, based on data reported in "2003 Sweet Cherry Statistical Report" (National Cherry Growers & Industries Foundation). Depending on producing state, brined cherries as a share of total sweet cherry utilization may range from about 70 percent (Michigan), about 40 percent (Oregon, Utah), and between 10 percent and 20 percent (California, Washington, Idaho). Based on these data, the bulk of sweet cherries, between 50 percent and 90 percent, is sold fresh in most major producing states.

¹⁶ Tart cherries: "Cherries" found at <http://www.uga.edu/fruit/cherry.htm> and retrieved on June 30, 2004. This information shows that more than 90 percent of all tart cherry supplies is for use in food processing (frozen, canned, juice, jam, etc.).

¹⁷ Estimated using Commission estimates of dutiable import data using official U.S. Government statistics and utilization data from USDA/NASS and USDA/ERS (available at <http://www.ers.usda.gov/Briefing/FruitAndTreeNuts/fruitnutpdf/cherries.pdf>).

¹⁸ "Oregon Cherry Growers gets dramatic makeover," *Orchards, Nuts & Vines*, May 14, 2004. Telephone interview with Jim Reynolds, Gray and Company on July 1, 2004, regarding expected U.S. imports of brined cherries for 2004.

¹⁹ Based on import data from official U.S. Government statistics (1996-2003).

²⁰ Commission estimates based on the 3-year average (2000-2002) of reported data from United Nations Statistics Division.

Estimated effect on customs revenue:

The proposed legislative changes would effectively result in a volume reduction in dutiable imports. For this analysis, drained weight is assumed to account for roughly 64 percent of imported net weight.²¹ U.S. volume imports for 2004-2008 are projected assuming a simple linear trend of reported import data for the 8-year period from 1996 to 2003 (but exclude imports from Turkey in 2003).²² The value of dutiable imports is calculated using the 2-year average (2002-2003) of the estimated customs value per unit quantity for major nation groupings, including the European Union, other European countries, and Chile, among others. Estimated changes in tariff revenue take into account the application of the general or special rates on product imports, depending on their country of origin. The current general duty rate is not scheduled for further staged reductions.

HTS subheading: 0812.10.00					
 	2004	2005	2006	2007	2008
Col. 1-General rate of duty (AVE) <u>1/</u>	13.4 percent	13.4 percent	13.4 percent	13.4 percent	13.4 percent
Estimated value <i>dutiable</i> imports <u>2/</u>	\$4.0 million	\$4.2 million	\$4.4 million	\$4.6 million	\$4.8 million
Customs revenue loss	\$230,000	\$240,000	\$260,000	\$270,000	\$280,000

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 goods of countries entitled to special tariff treatment, including duty-free access for originating goods of Canada and of Mexico (North American Free Trade Agreement) or products of El Salvador (Caribbean Basin Economic Recovery Act) and certain countries under the Generalized System of Preferences (GSP). A reduced rate of 11.7 percent ad valorem is available for originating goods of Chile (U.S.-Chile Free Trade Agreement).

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

²¹ Information submitted to the Commission by Diana Fruit Company indicate that the combined net weight of cherries and brine for a standard drum container used for imported product is 493.83 lbs. (224 kg.) compared to 317 lbs. (143.79 kg.) for the drained weight of cherries. Information from National Cherry Growers & Industries Foundation indicate a ratio of about 55 percent for retail-size containers (available at <http://www.nationalcherries.com/canned.html>).

²² U.S. imports from Turkey in 2003 are excluded from the analysis based on comments from a telephone interview with Jim Reynolds, Gray and Company, July 1, 2004. Gray and Company was the principal importer of brined cherries from Turkey in 2003 and does not expect similar shipments in 2004.

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)		
Thomas J. Klevay, Diana Fruit Company 651 Mathew Street, Santa Clara, CA 95050, Ph 408-727-9631 (ext. 114)	June 29, 2004		Yes	
Chris Mitchell, Representative Honda's office, Ph 202-225-2699	June 25, 2004		No	
Kevin Laussen, Senator Feinstein's office, Ph 202-224-3841	June 25, 2004		No	
Joshua Reynolds, Gray & Company (HQ Office), 1634 SW Alder, Portland, OR 97205, Ph 503-552-3900	June 30, 2004		No	
Craig Bell, EOLA Cherry Company, 3213 Waconda Road, Gervais, OR 97026, Ph 503-390-1425	June 30, 2004	Yes (grower-manufacturer)	No	
Ed Johnson, Oregon Cherry Growers, P.O. Box 7357, Salem, OR 97303, Ph 503-364-8421	June 30, 2004	Yes (grower-manufacturer)	No	
Douglas M. Burroughs, Del Monte Foods, Modesto, CA, Ph 209-527-3850	June 30, 2004		No	
Stewart Johnson, Signature Fruit Company LLC, 2260 Tenaya Drive, Modesto, CA 95354, Ph 209-572-5644	June 30, 2004		No	
George McMillion, Pacific Coast Producers (HQ), 631 N. Cluff Avenue Lodi, CA 95240, Ph 209-367-6213	June 30, 2004		No	
Mark Powers, Northwest Horticultural Council, 6 S. Second Street, Ste 600, Yakima, WA 98901, Ph 509-453-3193	June 25, 2004		No	Yes
Philip J. Korson II, Cherry Marketing Institute, P.O. Box 30285, Lansing, MI 48909, Ph 517-669-4264	June 29, 2004	Yes (MI growers)	Yes	Yes
BJ Thurlby, Washington State Fruit Commission, 105 S. 18th Street, Ste 205, Yakima, WA 98901, Ph 509-453-4837	June 29, 2004	Yes (WA, OR, ID, UT growers)	No	Yes

Stanley Hopard, U.S. Customs and Border Protection, Office of Regulations & Rulings, National Commodity Specialist Division, New York, NY 10119, Ph 646-733-3110.	July 1, 2004		No	
Dana Branson, National Cherry Growers & Industries Foundation, 105 S. 18th Street, Ste 205, Yakima, WA 98901, Ph 541-386-5761	June 25, 2004		Yes	Yes
Pamela Walther, McDermott Will & Emery, 600 13th St., N.W., Washington, DC 20005, Ph 202-756-8220	June 29, 2004		No	
Keira Franz, United Fresh Fruit & Vegetable Assoc., 1901 Pennsylvania Ave. NW, Washington, DC 20006, Ph 202-303-3400	June 25, 2004		No	

Technical comments:²³

The bill itself does not display technical problems, but we would suggest that it be made effective on the 15th day after its date of enactment at a minimum, to permit Customs to begin to administer the change in treatment. This formulation would likely apply the change to unliquidated entries in Customs’ system at the time, and importers interested in this product may be able to time the filing of certain entry documents. It does not seem necessary to include the text about a possible “expiration” of the addition of this criterion to the existing duty rates, given that any legal instrument that might later reduce the duty rate to free would in any event be deleting the existing duty rate without specifically setting it forth.

All submissions received by the Commission in connection with this bill prior to approval of the report are included in appendix B (statements by proponent) and appendix C (statements by other firms and organizations).

The Commission’s discussions with U.S. customs officials indicate that administrating the proposed tariff change should not pose a problem, provided that all the necessary paperwork is included with the shipped product.

²³ 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.]

July 19, 2004

Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E Street SW, Room 514
Washington, D.C. 20436

Subject: S 2446/HR 4398

Dear Renee:

I am writing to express our organization's opinion on the proposed legislation referenced above. If the tariff calculation is changed so that the rate is applied on the drained weight of the imported cherries that will effectively reduce the tariff charges by as much as 50%. In turn, the cost to import cherries will go down and could reduce the market price offered for cherries grown in the United States.

Sweet cherry growers would be negatively affected by the change. Some varieties of cherries are grown specifically for the brine market. Sweet cherries that do not make grade to sell in the fresh market due to size or quality issues can also be sold for brine. This allows a grower to recoup some of the costs of growing and harvesting a crop instead of showing a loss.

As President of the National Cherry Growers & Industries Foundation and on behalf of Oregon, Washington and Michigan Sweet Cherry producers, I request that the change in the tariff calculation be dropped from this legislation. Thank you.

Sincerely yours,

Norm Gutzwiler, President
National Cherry Growers & Industries Foundation
P.O. Box 271
Hood River, OR 97031
541-386-5761
nickerson9@earthlink.net



July 9, 2004

Ms Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E. Street SW Room 514
Washington, 20436

Dear Ms Johnson:

The Diana Fruit Co., Inc. appreciates the opportunity to provide comments for the U.S. International Trade report regarding S.2446 and H.R.4398. Diana Fruit supports the passage of these bills. The basis for our support is outlined below:

1. In our experience, prior to 1997, a duty was applied only to the drained weight of the cherries when importing brine cherries. Brine that was used to safely store, package and ship cherries was exempt from any import duty. The proposed legislation modifies the existing tariff schedule to exclude a duty on brine, as had been the usual practice for over 50 years.
2. Brine that is used to preserve cherries must be disposed of prior to processing and hence is solely a holding medium with no other value to the importer. Importers of other agricultural products held in brine (olives, mushrooms, capers) are not required to pay a duty on the weight of the brine.
3. The Diana Fruit Company's preference is to utilize domestically available cherries for all its maraschino and fruit cocktail products. The quality and price of domestic cherries makes these cherries the obvious first choice. However, as a major supplier of fruit cocktail cherries to California canners, the Diana Fruit Company must import some smaller sized cherries to meet customer specification.
4. The mistaken practice of charging a duty on brine is resulting in the passing on of this cost to the canners and raising the price to consumers of fruit cocktail products. Failure to provide competitive pricing and/or meet the fruit cocktail canners cherry size specifications could lead the canners to consider the importation of finished fruit cocktail sized cherries. This would hurt our business and undoubtedly reduce domestic demand for cherries and thus negatively impact domestic growers.
5. Imported brine cherries are a source of last resort to domestic manufacturers to augment supplies when the current year crop quality, availability and cherry size are impacted by the weather. Correction in the application of the duty to only the drained weight of brine cherries will not create an incentive which would lead to an increase in imported brine cherries.

Please contact me if the above information raises any questions or requires further elaboration.

Respectfully,

Eugene Acronico
President

DIANA FRUIT COMPANY, INC.

651 Mathew Street, Santa Clara CA 95050 • P.O. Box 268, Santa Clara CA 95052-0268
phone: 408-727-9631 • fax: 408-727-9890 • www.dianafruit.com

July 1, 2004

Ms. Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 East Street SW, Room 514
Washington, DC 20436

Dear Ms. Johnson:

The Cherry Marketing Institute interest represents over 500 sweet cherry farmer's from the State of Michigan. Michigan is a large producer of cherries that are sold for brining. On an annual basis, Michigan will produce 26,000 tons with approximately 73 percent of this production going into brine.

The Michigan Sweet Cherry Industry is opposed to any reduction in tariffs on brine cherries. Therefore, the grower's are opposed to H.R. 4398 and S. 2446. We believe these bills are a creative way to reduce the tariff on brine cherries grown abroad. Most cherries that are placed in brine are later manufactured into maraschino cherries. This market currently is a flat market. As an organization that represents farmers, we believe that if this tariff reduction goes into place, it will create the incentive for Maraschino cherry manufactures to source cheaper brine cherries abroad and will displace U.S. brine cherry production.

Sweet cherry production in Michigan the past two years has been lower than normal. This phenomenon played out nationally as noted in attachment number 1. In 2002 we had almost a complete crop failure, producing only 2,700 tons; with the 2003 crop at 13,000 tons. These two years of smaller production will not be the norm in the future. The total acres of bearing sweet cherries in Michigan in 1994 totaled 7,400 acres (attachment number 2, page 2). This compares to the current sweet bearing acres listed at 7,400 (attachment number 3, page 2). This fall the 2004 tree survey data will be released and I would expect to see bearing acres up from these figures. Nationally, the total cherry trends are more dramatic. In 1994 there were 2,125,000 sweet cherry trees, in the U.S. today there are 6,000,000 trees. Markets are strong for fresh sweet cherries which have spurred on plantings. Cherries that are destined for the fresh market, many times, will find their way to the processing market and specifically to the brine market as a result of the growing conditions. In a recent telephone conversation with a grower from Hood River, Oregon, his whole crop of Rainier sweet cherries were diverted to the brine market because they didn't make size.

Ms. Renee Johnson
Page 2

Michigan is especially concerned about lowering the tariff, as we produce tree run cherries for the processing market. We are a processing State and our farmer's have perfected their ability to grow high quality fruit and mechanically harvest it. This allows Michigan cherry grower's to keep their production cost very low. This processing market is paramount to this State economy and the grower's future.

The sweet cherry crop in Michigan for 2004 was forecasted by the processors on June 23 at the 49th Annual Michigan Frozen Food Packers Association Meeting (attachment #4) to be 50,500 tons. I have attached articles from California (attachment #5) and Washington State (attachment #6) which notes the big sweet cherry crop nationally for 2004.

In closing, it is important to note that a 50 percent reduction in the tariff on brine cherries will have a negative impact on U.S. cherry growers. We would estimate that imports would double in the short term and triple in the mid-term as more brine cherries would be destined toward the U.S. markets. We firmly believe that this market, in the long term, would be totally lost to foreign competition.

Thank you for the opportunity to comment on this issue and please feel free to give me a call at (517) 669-4264 if you have any questions.

Sincerely,

Philip J. Korson, II
President

108TH CONGRESS
2D SESSION

S. 2446

To amend the Harmonized Tariff Schedule of the United States to provide that the calculation of the duty imposed on imported cherries that are provisionally preserved does not include the weight of the preservative materials of the cherries.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2004

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Harmonized Tariff Schedule of the United States to provide that the calculation of the duty imposed on imported cherries that are provisionally preserved does not include the weight of the preservative materials of the cherries.

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

1 **SECTION 1. MODIFICATION OF CALCULATION OF DUTY IM-**
2 **POSED ON IMPORTED CHERRIES THAT ARE**
3 **PROVISIONALLY PRESERVED.**

4 (a) **AMENDMENTS.**—Subheading 0812.10.00 of the
5 Harmonized Tariff Schedule of the United States is
6 amended—

7 (1) in the general subcolumn of the column 1
8 rate of duty, by inserting “on drained weight” after
9 “13.4¢/kg”; and

10 (2) in the special subcolumn of the column 1
11 rate of duty, by inserting “on drained weight” after
12 “2.6¢/kg” and “11.7¢/kg”.

13 (b) **EFFECTIVE DATE.**—The amendments made by
14 subsection (a) shall be effective for the period beginning
15 on the date of the enactment of this Act and ending on
16 the date on which the specific rate of duty involved is re-
17 duced to free.

○