

Fresh Atlantic Salmon From Chile

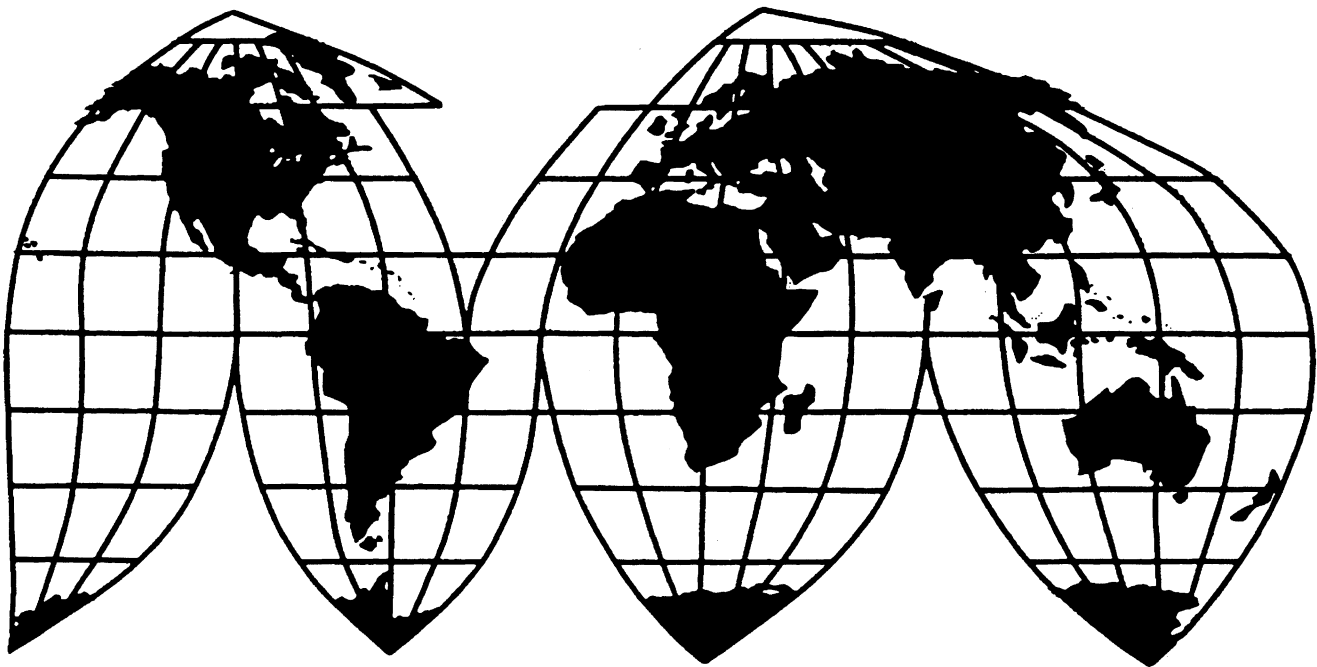
(Views on Second Remand)

Investigation No. 731-TA-768 (Second Remand)

Publication 3347

August 2000

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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THE COMMISSION'S DETERMINATION ON REMAND

In July 1998, the Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that had been found by the Department of Commerce to be sold at less than fair value ("LTFV").¹ That determination was appealed to the U.S. Court of International Trade.

On July 2, 1999, at the request of the Commission, the Court remanded the determination to the Commission.² The Court directed the Commission to "reopen the administrative record to verify the accuracy of its foreign production, shipments and capacity data" and to "take any action necessary after reexamining the foreign production, shipments and capacity data." On remand, the Commission again determined that the industry in the United States producing fresh Atlantic salmon is materially injured or threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that the Department of Commerce ("Commerce") has determined are sold at LTFV.

On July 27, 2000, the Court again remanded the determination to the Commission.³ In its order, the Court directed the Commission to "either (1) adjust the 1998 production data for the consolidated subject producers or (2) justify the determination that the 1998 production data is, as is, the best information available." Once again, the Commission determines that the industry in the United States producing fresh Atlantic salmon is materially injured or threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that Commerce has determined are sold at LTFV.

The views of Commissioner Bragg and Commissioner Miller⁴ comprised the Commission's

¹ *Fresh Atlantic Salmon from Chile*, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 (July 1998)("Original Views").

² *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States International Trade Commission et al.*, Court No. 98-09-02759, Slip Op. 99-58 (July 2, 1999).

³ *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States International Trade Commission et al.*, Court No. 98-09-02759, Slip Op. 00-87 (July 27, 2000).

⁴ During the original investigation and at the time of the first remand, Commissioner Bragg was

(continued..)

affirmative determination in the original investigation. At that time, Commissioner Crawford dissented, determining that domestic industry was not materially injured or threatened with material injury by reason of the subject imports.⁵ In this second remand, the Court has remitted the Commission's determination for explanation of or correction to a data set relied upon by Commissioner Bragg. Commissioner Bragg thus has reevaluated her determination in light of the Court's instructions, and the Commission now submits Commissioner Bragg's "Views on Second Remand" as the explanation and correction requested by the Court's order. Commissioners Miller and Crawford both reaffirmed their determinations during the first remand proceeding and nothing in the Court's subsequent order has affected those decisions.

⁴(...continued)

Chairman and Commissioner Miller was Vice Chairman. The Chairmanship and the Vice Chairmanship have since changed. This opinion will refer to the Commissioners by their current titles.

⁵ Original Views at 35-47.

VIEWS ON SECOND REMAND OF COMMISSIONER BRAGG

In accordance with the order of the U.S. Court of International Trade (“CIT”) in *Asociacion de Productores de Salmon Y Trucha de Chile AG v. United States International Trade Commission, et al.*, Court No. 98-09-02759, Slip Op. 00-87 (July 27, 2000) (“Second Remand Order”), I have examined the record evidence and reconsidered my affirmative determination in *Fresh Atlantic Salmon from Chile*, Inv. No. 731-TA-768 (Final).⁶ In the Second Remand Order, I have been instructed to “either (1) adjust the 1998 production data for the consolidated subject producers or (2) justify the determination that the 1998 production data is, as is, the best information available.” I have elected to do both. Relying upon either adjusted or unadjusted 1998 data, I again reach the same conclusion – that the industry producing fresh Atlantic salmon in the United States is threatened with material injury by reason of subject Chilean imports. For the reasons discussed below, I reaffirm my determination that the industry in the United States producing fresh Atlantic salmon is threatened with material injury by reason of imports of fresh Atlantic salmon from Chile that were found to be sold at less than fair value.

Background

On July 2, 1999, at the request of the Commission, the Court remanded the original determination to the Commission to “reopen the administrative record to verify the accuracy of its foreign production, shipments and capacity data” and to “take any action necessary after reexamining the foreign production, shipments and capacity data.”⁷ On July 30, 1999, the Commission sent questions to the Plaintiff in the CIT litigation (a respondent in the Commission proceedings), *Asociacion de Productores de Salmon y Trucha de Chile AG* (“Asociacion”). These questions were designed to establish whether the production, shipments, and capacity data for *Fiordo Blanco, S.A.* (“*Fiordo Blanco*”), a Chilean producer of fresh Atlantic salmon,

⁶USITC Pub. 3116 (July 1998) (“Original Views”).

⁷Slip Op. 99-58 (July 2, 1999) (“First Remand Order”).

were double-counted by Commission staff during the original investigation.⁸ On August 17, 1999, the Asociacion provided its methodology for calculating its production, shipments and capacity data for the Chilean industry.

For the 1994-97 data, the Asociacion obtained official export statistics for each company producing salmon in Chile and assumed that their level of exports equaled their level of production.⁹ The Asociacion added the export quantities for all Chilean producers together to calculate the total production for the entire Chilean industry (*i.e.* aggregate production for the Chilean industry). It then deducted from the total that production reported by the six individual Chilean producers that it was aware had filed separate questionnaire responses. It reported the remaining amount as the production of the remainder of the Chilean producers (*i.e.* the consolidated producers). The Asociacion then derived capacity levels by applying declining mortality loss rates to the consolidated producers' production levels to obtain a mortality loss amount.¹⁰ It added together the resultant mortality levels with the production quantity and deemed this amount to be the capacity level in each year for the consolidated producers.¹¹

As to the 1998 projections, the Asociacion was not able to provide such clear numbers which could then be verified by the Commission. The Asociacion explained that "the only individual producer data used by the Asociacion was for 1994-97 exports of fresh Atlantic salmon."¹² It derived its 1998 estimates by "rely[ing] upon an annual production projection [the Asociacion] makes in the spring of each year."¹³ In its remand questionnaire response, the Asociacion did not provide the Commission with information about the

⁸INV-W-201.

⁹INV-W-201. The Asociacion also reported production as being equal to shipments. August 17, 1999, Questionnaire Response ("Remand Quest. Response") at Q1. Thus, as reported, the shipments and production numbers are the same, and they are both equal to exports.

¹⁰The Asociacion stated that it applied a loss rate of 15 percent in 1994, 14 percent in 1995, 13 percent in 1996, 12 percent in 1997, and 11 percent in 1998. Remand Quest. Response at Q1.

¹¹INV-W-201.

¹²Remand Quest. Response at Q2.

¹³Remand Quest. Response at Q1.

methodology that it used in developing this projection or the numbers that formed the basis for it. The only piece of information that the Asociacion did provide about its methodology, however, has been particularly instructive in rendering this second remand determination. The Asociacion has stated that for the 1998 projections “company-specific projections were not made, since the Commission had requested only aggregate data.”¹⁴

Reasons for not adjusting the 1998 data

The Asociacion’s explanation of its reporting methodology thus has varying degrees of completeness, and I therefore treat the two sets of numbers, one for 1994-97 and one for 1998, differently. Based on the export data submitted to the Commission and the explanation of the methodology employed by the Asociacion, it was evident that the staff had included some representation of Fiordo Blanco’s production twice in its total production, shipments, and capacity levels for the entire Chilean industry for the 1994-97 period. Staff combined the numbers reported by Fiordo Blanco and the Asociacion, unaware that the latter numbers already contained an estimate for Fiordo Blanco.¹⁵ To eliminate this duplicative data, I was able to deduct the quantities that the Asociacion had demonstrated were included for Fiordo Blanco in its consolidated response from the aggregate data calculated by staff; I then used this new total as the adjusted production level of all the subject Chilean producers in the first remand.

In contrast, the Asociacion was not able to clearly identify the double-counting for the 1998 projections. Again, the Asociacion, itself, admitted that “the only individual producer data [it] ... used was for the 1994-97 exports of fresh Atlantic salmon.”¹⁶ Unlike with the 1994-97 data, therefore, the

¹⁴Remand Quest. Response at Q1.

¹⁵In the strictest sense, Fiordo Blanco’s data was not “double-counted” because two unequal sets of data were combined. One data set was derived from export statistics and the other was based on the actual data provided by Fiordo Blanco. Indeed, there is no “counting” at all in one set of data because it was merely a compilation of estimates.

¹⁶Remand Quest. Response at Q2.

Asociacion did not derive its 1998 projections from specific quantities of production for Fiordo Blanco or any other Chilean producer in 1998. The Asociacion has informed me that “company-specific projections were not made”¹⁷ for the 1998 projections. It thus seems anomalous that it is now asking for some form of a company-specific deduction. I simply cannot estimate how much should be deducted to eliminate any double-counting that might have occurred.

In the Second Remand Order, the Court expressed concerns that the Commission did not “verify the accuracy of the 1998 production data for the consolidated subject producers.” The Asociacion has informed the Commission that it does not have data that can be verified for its 1998 projections, however. As the Asociacion explained, the 1998 projections were not based on company-specific estimates. In 1997, the Asociacion merely estimated the production of the entire Chilean industry for 1998 on an aggregated basis, and it used this estimation as the basis for its calculations to derive the reported 1998 projections. The Commission has already asked for an explanation of the Asociacion’s data in an attempt to derive the best means of eliminating any double-counting that may have occurred. As a result of the Asociacion’s method of compiling its 1998 projections, however, no clear assessment of double-counting can be made. In the end, there is no more accurate data that I can rely on in making my current determination than the information that was originally provided to me for the 1998 projections.

With no specific data for 1998 from the consolidated producers, I am left in a position of choosing between two imperfect sets of data. On the one hand, I can adjust the projections for 1998 downward by an amount for Fiordo Blanco, even though I do not have any basis for determining how much of Fiordo Blanco’s production is represented in the unadjusted aggregate figure. On the other hand, I can leave the 1998 projections unadjusted and retain potentially double-counted figures for Fiordo Blanco. As I explain

¹⁷Remand Quest. Response at Q2.

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below, the 1998 projections already are underestimated,¹⁸ and, therefore, I find that leaving the data unadjusted is the better option.

The Asociacion's data for the 1994-97 period clearly are understated because it used two different data sets in its calculation of the consolidated producers' production. The Asociacion calculated total Chilean production by adding together export data for individual producers. From this level of total exports, it then subtracted the amount of production reported by the six individual producers.¹⁹ Based on the information provided to me in the first remand proceeding, I can see that the amount of production reported by these individual producers was significantly higher than the level of exports reported for them in the export statistics.²⁰ Thus, the amount of whole salmon production by the individual producers that went into the compilation of aggregate Chilean production for the entire industry is significantly smaller than the amount removed from the total for these producers. The Asociacion acknowledged that using these two different methodologies in tandem resulted in understated production numbers for the consolidated producers.²¹ Had the Asociacion instead subtracted out what it had added in (official export statistics for each company), then there would have been no under reporting.

In its Remand Questionnaire, the Asociacion explained the discrepancy between the sum of the

¹⁸The 1998 numbers are based on projections that the Asociacion calculated, using an unexplained methodology, in 1997. I assume that it based this projection, at least on some level, on the data that it had for 1997. The 1997 data, as the Asociacion admits, is understated. Remand Quest. Response at Q2. Therefore, I find it likely that the 1998 projections are understated to some extent as well.

¹⁹Remand Quest. Response at Q1.

²⁰According to the Asociacion, the production data it provided for years 1994 to 1997 can be calculated from the chart provided in Annex B to its Remand Questionnaire Response by summing the Atlantic salmon production in metric tons, and then converting the metric tons to 1,000 pounds by multiplying by 2.2046. Remand Questionnaire Response at Q1. When this calculation is performed for 1997 for the individual producers subject to investigation, the resulting export/production levels are substantially lower than the actual production reported by the individual producers for that year. For example, Pesquera Mares Australes reported total production of dressed salmon at [[]] million pounds, but the export amount for that company found in Annex B yields exports of whole salmon of only [[]] million pounds.

²¹Remand Quest. Response at Q2. ("A tabulation of the export data for all exporters other than the six nonconsolidated will result in a total somewhat higher than that reported by the Asociacion.").

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export values for the consolidated producers and the consolidated producers' production as reported to the Commission. The Asociacion stated that, in making its calculations, it accidentally included home market shipments in the firm-specific data but did not include home market shipments in the industry-wide number.²² In other words, it calculated production for the six individual producers as their export shipments *plus* their home market shipments whereas the aggregate production number included only export numbers. Thus, more was deducted for these individual firms from the aggregate data than originally had been included for them in that total. While at first characterizing this as a mathematical error *overstating* the 1994-97 and 1998 production estimates,²³ the Asociacion correctly acknowledges that this error resulted in an *understatement* of the production levels for the consolidated producers.²⁴

As a result of these errors²⁵ and the fact that I do not know what numbers constitute the basis for

²²The reason the Asociacion equated exports with production was because home market shipments supposedly were negligible. Apparently, based on the discrepancy described above, inclusion of home market shipments could have some effect on the data, however.

²³It is not clear that this was, in fact, overstating production. In my opinion, this was merely reporting production in a more appropriate manner than the method employed by the Asociacion to report production for all producers. In any event, for the purposes of the current remand, I am only concerned with the fact that the different methodologies resulted in lower production numbers for the consolidated producers.

²⁴*See e.g.* Remand Quest. Response at Q1 for the full explanation of the error as explained by the Asociacion. While the Asociacion attempted to provide purportedly corrected data to address this problem during the first remand proceedings, I did not accept the new data. Remand Views at 19 n.76. I continue to reject the amended data because it does not correct the problem it is designed to address. As I have just explained, the error in the data resulted in the consolidated producers' production in 1997 being too low. In the later submission by the Asociacion, for some unexplained reason, the consolidated producers' production was even lower than the production levels originally submitted. *Compare* Annex D at 34 ("Data for consolidated group as originally filed") with Annex D at 35 ("Corrected Submission"). In submitting these revisions, the Asociacion simply stated that they were a "revised consolidated table, recalculating the data to correct for this and any other clerical errors." Remand Quest. Response at Q1 & Annex D. In light of the problem that I have identified, and without an explanation of the bases for this calculation, I cannot accept the Asociacion's revisions to the data.

In any event, when I sum together the export data for the individual producers to derive their total production of whole Atlantic salmon and then deduct this amount from the aggregate data provided to me by the Asociacion in Annex D, I get a substantially higher production level than the Asociacion provides in the "corrected submission" table of Annex D. Whereas their corrections result in a consolidated producers' production level of [[]] million tons, my calculations yield a production level of [[]] million tons for these same producers.

²⁵The Asociacion only brings to my attention the particular error of including home market shipments in the production levels of the six nonconsolidated producers. In providing me with revised data to correct this

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the 1998 projections, I do not believe it is appropriate to further downward adjust the consolidated producers' production, shipments, and capacity data. When any correction to the data only further exacerbates overall data problems, it does not seem logical to make those adjustments and perpetuate the flaws in the data. In this instance, because of the very specific information provided to me about the 1994-97 data, adjustments to the data from this earlier period were pertinent. The ambiguity surrounding the 1998 projections, however, does not permit me to make corresponding adjustments to those numbers.²⁶ I thus find that the best use of the data is to leave the 1998 projections unadjusted.²⁷

Adjusting the 1998 projections

In any event, even if I were to adjust the 1998 numbers, I find that the subject producers' aggregate production, shipments, and capacity data do not change significantly from the data set I relied on in the

²⁵(...continued)

problem, however, it says that it has "recalculat[ed] the data to correct for this and any other original clerical errors." Remand Quest. Response at Q2. What these "other clerical errors" are is not clear.

²⁶I recognize that by not adjusting the data I am basing my threat of injury determination, in part, on numbers which potentially exaggerate the threat to the domestic industry. After actually adjusting the data, as discussed below, and calculating production levels that I find underestimate the threat to the domestic industry, there appears to be only a narrow range in which the actual data could possibly fall.

I expect that the actual production level is closer to the upper limit (represented by the unadjusted numbers) than to the lower limit I have calculated. I believe that the Asociacion's estimates of production generally under report the amount of production for each producer. Their estimates for Fiordo Blanco, for example, were far off the mark and substantially under the amount reported by Fiordo Blanco for its future production. It is likely that the Asociacion underestimated the production levels of other Chilean producers in this same manner whenever it was feasible to do so. Moreover, the Asociacion's methodology requires production to be equal to exports. In fact, they have admitted that production does not equal exports because some production does go to home market shipments. Remand Quest. Response at Q2 (whereas home market shipments for the individual producers were included in their total production levels, home market shipments for the aggregated total production were not included). Consequently, the Asociacion's production numbers understate the actual production of the Chilean producers. In light of these inherent understatements in the production data, any errors resulting from calculations based on those numbers aside, I prefer to rely on the overestimated numbers because they are more likely to represent the actual situation of the aggregate production levels in Chile.

²⁷In light of the issues I have just articulated, I find that information necessary to my determination is not available on the record, and the unadjusted data are the facts otherwise available for me to reach my determination. 19 U.S.C. § 1677e(a). This statutory provision replaces the "best information available" rule applicable to pre-URAA cases.

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original investigation. Consequently, I find that I would reach the same conclusions as I did during the original investigation even with the minor adjustments to the 1998 projections.

In making an adjustment, the Asociacion has suggested that I remove the amount reported by Fiordo Blanco for its expected production in 1998. I believe that this approach would lose sight of the objective of making changes to the 1998 numbers -- to extract from the consolidated producers' production total that amount that is attributable to Fiordo Blanco. The Asociacion derived its 1998 projections in 1997.²⁸ It would thus appear that the amount of production the Asociacion inputted into its calculation for 1998 was related, not to Fiordo Blanco's actual production, but to the amount of production the Asociacion assigned to Fiordo Blanco for 1997. There is nothing in the Asociacion's methodology that leads me to believe that it was aware of or took into account the magnitude of Fiordo Blanco's upcoming, significant production increases when it calculated its 1998 projections.²⁹ Consequently, deducting out Fiordo Blanco's actual numbers would cause me to subtract out substantially more than the Asociacion apparently put in. In selecting an appropriate number to deduct from the 1998 projections of the consolidated producers' production in order to account for Fiordo Blanco's share of that production, I have chosen to remove the amount exported (which the Asociacion used as a proxy for production) by Fiordo Blanco in 1997.³⁰

²⁸Remand Quest. Response at Q1.

²⁹Fiordo Blanco's reported actual production increase is over [[]] million pounds from 1997 to 1998. This does not reflect the pattern of production increases that both Fiordo Blanco reported for itself over the 1994-1997 period or the increases reported by Asociacion for Fiordo Blanco from the 1994-97 period.

³⁰I am not adjusting the 1997 production figure because I have no indication what the Asociacion expected Fiordo Blanco's production to be in 1998. As a result of the fact that the Asociacion did not provide me with an explanation of its methodology used for calculating the 1998 projections, I can only speculate about what it seemingly believed about Fiordo Blanco's production. The record about the anticipated production levels is conflicting, however, and I therefore have no basis for departing from the 1997 estimate. On the one hand, the Asociacion reported an overall decrease in production for the Chilean industry, but on the other hand, the Asociacion makes claims that some of the larger producers will be increasing their production in the future. Seen in the best light for the Asociacion, it would seem that the Asociacion anticipated some production increase for
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There are two methods that I could use in making this adjustment. Using either approach, I find that my original determination would not change and I still find a threat of material injury. The first, and less desirable,³¹ approach is consistent with the methodology the Commission employed in making adjustments to the 1994-97 data. To determine the new 1998 production level, I have simply taken the 1997 production ascribed to Fiordo Blanco in the Asociacion's production figure for the consolidated producers³² and deducted it from the total production that I had originally used for 1998. I also deducted the amount that the Asociacion would have used for Fiordo Blanco's capacity from the total capacity that I found in the original investigation.³³ In making these deductions, I note the following changes to the data:

YEAR	CAPACITY ¹	PRODUCTION ¹	CAP. UTILIZATION
1998			
Original	[[]]	[[]]	[[]]
Revised	[[]]	[[]]	[[]]

1. In thousands of pounds

³⁰(...continued)

Fiordo Blanco because it is one of the larger producers of salmon in Chile. Even if I could discern whether the Asociacion expected the production for any particular firm to increase or decrease, however, I further cannot glean from the record any indication of the magnitude of the changes for any firm that the Asociacion anticipated from 1997 to 1998. As a result, I am using an unadjusted 1997 production amount and applying it to 1998.

³¹This approach is less desirable because of further problems with the Asociacion's reported data that have come to light during this proceeding. I explain below why those reporting errors have made me inclined to recalculate all the data.

³²In 1997, the Asociacion attributed [[]] million pounds of production to Fiordo Blanco. Remand Quest. Response at Annex F.

³³To calculate Fiordo Blanco's capacity, I followed the methodology that the Asociacion stated it used in calculating capacity for the producers as a whole. I took the 1997 production level, multiplied that number by the 11 percent mortality rate that the Asociacion said applied for 1998 to get the mortality loss figure, and then added the mortality loss to the production to get capacity.

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In my first remand opinion, I only relied on the 1998 projections to reach two conclusions. Both of these conclusions are still supported by substantial evidence despite the adjustments to the data. The new aggregated data still indicate that “overall capacity and production levels of the subject producers were projected to increase significantly in 1998 over their 1997 levels.”³⁴ Whereas I had found a reported capacity level of [[]] million pounds in 1998,³⁵ capacity is now expected to be at least [[]] million pounds. Thus, capacity levels still are expected to increase by at least [[]] million pounds from 1997 to 1998. This increased capacity would be enough to capture at least [[]] percent of the increase in U.S. domestic consumption over that period. In addition, capacity use rates will remain at the same [[]] percent rate I originally found. None of these changes alter my finding as to the threat of injury faced by the domestic industry.

The better approach to the data at this point simply is to recalculate it anew employing the Asociacion’s stated methodology. In attempting to discern an appropriate adjustment, if any, to the 1998, I examined the data for the 1994-97 period even more closely than I had done as a result of the First Remand Order. I have documented at length in both my First Remand Views and, to a lesser degree, in this determination thus far my disappointment with the data reporting procedures employed by the Asociacion and with its methodology. At this point, I am compelled to highlight yet another discrepancy between the reporting method that the Asociacion stated it used and the information that it provided to the Commission. Yet again, it seems that the Asociacion has skewed the data in a self-serving manner by reporting data that does not accord with the stated methodology on which it purportedly relied, and on which it expected the agency to rely.

³⁴*Fresh Atlantic Salmon from Chile*, Inv. No. 731-TA-768 (Remand), USITC Pub. No. 3244 (October 1999) (“First Remand Views”) at 21.

³⁵First Remand Views at 20.

As explained above, in recalculating the 1994-97 data in the first remand, I deducted from the totals the amounts that the Asociacion reported for Fiordo Blanco. As to capacity, the Asociacion did not provide an amount for Fiordo Blanco, and I simply applied its methodology for calculating the capacity of that company -- applying specific decreasing mortality loss rates to production to get a mortality figure and then adding the mortality loss to the production to reach capacity. As it turns out, however, in the original data provided to me, the Asociacion did not use the mortality loss rates that it represented it used. Instead of using mortality loss rates which decreased from 15 percent in 1994 to 11 percent in 1998, as it stated it employed,³⁶ the data provided by the Asociacion reflects mortality rates of approximately 14 percent in 1994, 14 percent in 1995, 12 percent in 1996, 6 percent in 1997, and 8 percent in 1998.³⁷ Clearly, for many of the years, the mortality rates that the Asociacion employed in making its calculations were lower than the ones it had stated that it used.³⁸

This discrepancy in the mortality rates has the ultimate effect of understating the capacity levels used in the first remand.³⁹ In the first remand, staff deducted the newly calculated capacity for Fiordo Blanco from the original total. As a result, the staff removed a higher percentage of capacity for Fiordo Blanco than should have been removed to accurately adjust for the double-counting. For example, the staff calculated the 1997 data by using a 12 percent mortality rate, when, in reality, the Asociacion's calculation

³⁶Remand Quest. Response at Q1.

³⁷Asociacion April 13, 1998, Questionnaire Response ("Original Quest. Response") at p. 4.

³⁸As stated above, during the first remand proceeding, the Asociacion attempted to provide revised numbers for the production and capacity of the consolidated producers because the numbers it had reported were based on a mathematical miscalculation whereby exports *and* home market shipments for the six individually reporting producers were subtracted out of the total exports. Remand Quest. Response at Q1. In attempting to put this new information before the Commission, it provided an entirely new, corrected version of the data, which happened to have mortality losses that reflected the declining rates it articulated in its description of its methodology. Remand Quest. Response at Annex D. The Asociacion never brought to my attention, however, that there was a problem with the mortality loss rates or suggested, as now appears to me to be the case, that correcting such loss rates bore on the purpose of the remand proceeding, *i.e.* to correct any double-counting of data.

³⁹Capacity is production plus mortality loss and mortality loss is derived from applying the mortality rate to the production.

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included a mortality loss of only 6 percent of production.⁴⁰ The resultant decrease in total Chilean capacity, coincidentally, works to the advantage of the Asociacion and other Chilean subject producers. To correct this misreporting, I have recalculated capacity for the subject Chilean producers in each year of the period of investigation. I have applied the methodology that the Asociacion claims to have used to compile its data during the original investigation.⁴¹ Production for the 1994-97 period would not have been affected by this error. Therefore, except for 1998, the amounts as recalculated in this proceeding for production are the same numbers as those used in the first remand. For 1998, I have calculated adjusted projections for the first time in this proceeding. I find that this data set is the most reliable data available to me in this investigation for the 1994-97 data and reflects the most appropriate means of adjusting the 1998 numbers, to the extent that any adjustment of those projections is appropriate. In making these calculations, I note the following changes to the data:

⁴⁰ Original Questionnaire Response at 4. Consequently, when adjusting for double counting, the staff applied a 12 percent mortality loss rate to Fiordo Blanco's production, calculating a capacity of [[] million pounds. Deducting [[] from the [[] million pounds of total capacity that it calculated for the original investigation led to an adjusted capacity level of [[] million pounds in the first remand proceeding for that year. If, instead, the staff had applied the 6 percent mortality rate to Fiordo Blanco's production, comensurate with the 6 percent applied to the total consolidated producers' production, a mortality loss of [[] million pounds for Fiordo Blanco and a total capacity for the remaining consolidated producers of [[] million pounds would have been the result. The only year that was not affected was 1995, where the Asociacion's figures reflect a 14 percent mortality rate, the same as the one in the methodology for that year.

⁴¹In other words, production and shipments are equal to exports, and capacity equals production plus mortality losses, with mortality losses being derived from applying a decreasing mortality loss rate to production in each year.

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<u>YEAR</u>	<u>CAPACITY</u> ¹	<u>PRODUCTION</u> ¹	<u>CAP. UTILIZATION</u>
1994			
Original	[[]]	[[]]	[[]] percent
First Remand	[[]]	[[]]	[[]] percent
Second Remand	[[]]	[[]]	[[]] percent
1995			
Original	[[]]	[[]]	[[]] percent
First Remand	[[]]	[[]]	[[]] percent
Second Remand	[[]]	[[]]	[[]] percent
1996			
Original	[[]]	[[]]	[[]] percent
First Remand	[[]]	[[]]	[[]] percent
Second Remand	[[]]	[[]]	[[]] percent
1997			
Original	[[]]	[[]]	[[]] percent
First Remand	[[]]	[[]]	[[]] percent
Second Remand	[[]]	[[]]	[[]] percent
1998			
Original	[[]]	[[]]	[[]] percent
First Remand	N/A	N/A	N/A
Second Remand	[[]]	[[]]	[[]] percent

1. In thousands of pounds.

One of the most important effects of these recalculations is that the capacity levels for the subject Chilean producers, after having adjusted for the double-counting of Fiordo Blanco, is *higher* in many years than the capacity levels originally reported, which counted Fiordo Blanco twice.

This recalculation has had no effect on my finding of threat of material injury by reason of subject imports. After recalculating the data in the first remand, I found that “the subject producers added very

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substantial amounts of capacity during the period from 1995 to 1997.”⁴² This fact continues to be true, and some of the capacity levels are even higher with the newly adjusted calculation.⁴³ The expected [[]] million pound increase in capacity from 1997-1998 that I found in the first-remand⁴⁴ is no longer evident, as Chilean subject producers’ capacity is now expected to increase by less than [[]] million pounds over this period.⁴⁵ Notably, although this newly calculated increase in capacity from 1997 to 1998 is substantially lower than the increase calculated in the first remand, the difference does not stem from any significant decrease in capacity levels in 1998, as the Asociacion has argued. Instead, the originally calculated [[]] million pound increase between 1997 and 1998 is offset by the newly calculated large increase in capacity between 1996 and 1997, which thus results in a smaller difference between the 1998 and 1997 capacity levels. In any event, the recalculated numbers show that even after the over [[]] million pound increase from 1996-1997, capacity was expected to increase further in 1998.

Even more telling, despite these large capacity increases, capacity utilization is expected to increase. In the first remand, I found that the subject producers had significant unused capacity available, and this fact is even more evident from the generally lower capacity utilization rates that result from the revised calculations.⁴⁶ As I found in the first remand proceeding, “[i]n 1997, [the subject producers’]

⁴²First Remand Views at 20.

⁴³In the first remand, I found increases of nearly [[]] percent from 1995-97. Now, increases are [[]] percent over that same period. I also noted that the 1998 reported capacity was [[]] million pounds, and now the data show an increase to slightly over [[]] million pounds in 1998.

⁴⁴First Remand Views at 21 & n.82.

⁴⁵The change in capacity from 1997 to 1998 is lower as a result of two recalculations made during this second remand. First, as explained above, I have recalculated 1997 capacity using the Asociacion’s stated methodology. After performing this recalculation, capacity increased by nearly [[]] million pounds from the capacity level that I had used for 1997 in the first remand. Second, after removing Fiordo Blanco’s purportedly double-counted capacity in 1998, capacity for the subject Chilean producers decreased for that year by [[]] pounds. Thus, instead of deducting [[]] million pounds from [[]] million pounds as I did during the first remand to get a [[]] million pound increase from 1997 to 1998, I now deduct [[]] million pounds from [[]] million pounds for a [[]] pound increase over that same period.

⁴⁶In the first remand, I found subject producers had “capacity utilization rates of [[]] percent, [[]] (continued...)

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aggregate capacity utilization rate for whole salmon ... declined by over five percentage points from the prior year.”⁴⁷ In making my first remand determination, I also considered the fact that the aggregate capacity use rate would increase in 1998 over their 1997 levels, and this continues to be true.⁴⁸

Thus, the data set in this remand proceeding is not materially different from the data leading me to my conclusion that the industry in the United States producing fresh Atlantic salmon is threatened with material injury by reason of subject imports from Chile. If anything, the recalculated data, including a recalculation of the 1998 numbers, using the Asociacion’s methodology, even more strongly leads me to this conclusion.

Conclusion

I find that I reasonably relied upon the information available in my First Remand Views and that it continues to be reasonable to rely on this same information during this second remand. As a result, I continue to find that the information on the record supports a finding of a threat of material injury to the domestic industry producing fresh Atlantic salmon by reason of subject Chilean imports. In attempting to discern whether adjustments to the 1998 projections were warranted, I found new problems with the data reported by the Asociacion, over and above the data problems I have already noted in my First Remand Views. Notwithstanding these further data problems and the fact that I think using the unadjusted projections is the most appropriate course of action in light of the self-serving reporting methods that the Asociacion has used, I have also adjusted the 1998 projections to see if making these adjustments would alter the record such that it would alter my decision. It does not. The trends that I found to be significant

⁴⁶(...continued)

percent, and [[]] percent during 1995, 1996, and 1997, respectively.” First Remand Views at 21 n.83. With the revised data, these producers now have capacity utilization rates of [[]] percent, [[]] percent, and [[]] percent in 1995, 1996, and 1997, respectively.

⁴⁷First Remand Views at 21.

⁴⁸Whereas in the first remand, capacity utilization was expected to increase [[]] percent, at this time, I find that the increase will be [[]] percent.

previously only are reinforced after making adjustments to the 1998 projections. Based on the foregoing, I reaffirm my determination that the domestic industry producing fresh Atlantic salmon is threatened with material injury by reason of subject Chilean imports.