

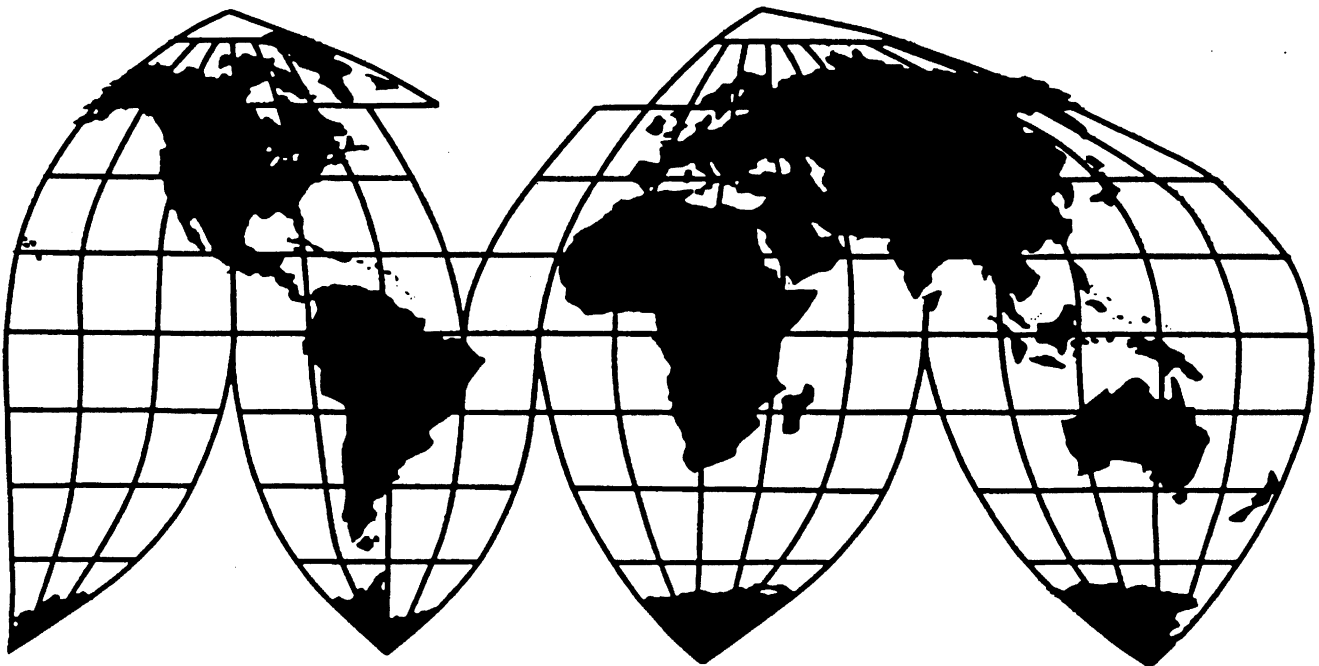
Wheat Gluten: Evaluation of the Effectiveness of Import Relief

Investigation No. TA-204-7

Publication 3478

November 2001

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

INTRODUCTION

On June 1, 2001, the safeguard action imposed by the President on imports of wheat gluten terminated. The action which the President took under section 203 of the Trade Act of 1974 (the Act), was in the form of a quantitative restriction imposed effective June 1, 1998, for a period of 3 years and 1 day. Section 204(d) of the Act requires that the Commission, after termination of any action taken under section 203, is to “evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b).”¹ Accordingly, effective September 21, 2001, the Commission instituted investigation No. TA-204-7, *Wheat Gluten: Evaluation of the Effectiveness of Import Relief*.² The evaluation must be completed no later than 180 days after the termination of the relief, which in this case is November 28, 2001.

BACKGROUND

The roots of this investigation lie in the Commission’s 1998 determination in investigation No. TA-201-67 concerning wheat gluten. On March 18, 1998, the Commission reported to the President that, as a result of an investigation conducted under section 202 of the Act, it had determined that wheat gluten was being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article.^{3 4} Pursuant to section 311(a) of the North American Free-Trade Agreement (“NAFTA”) Implementation Act,⁵ the Commission made negative findings with respect to imports of wheat gluten from Mexico and Canada. The Commission’s finding was the result of a petition filed September 19, 1997, by the Wheat Gluten Industry Council, Atchison, KS.⁶ Subsequent to the receipt of the Commission’s determination and remedy recommendation, the President, on May 30, 1998, issued a proclamation imposing import relief in the form of absolute quantitative limitations on certain imports of wheat gluten for a period of three years and one day.⁷ On December 1, 1999, the Commission submitted to the President and the Congress a midterm report, required under section 204(a) of the Act, that provided the results of the Commission’s monitoring of developments with respect to the wheat gluten

¹ A copy of the report (memorandum), identified as *Action Under Section 203 of the Trade Act of 1974 Concerning Wheat Gluten*, is presented in app. A. 63 FR 30363, June 3, 1998.

² 66 FR 49396, September 27, 2001. A copy of the Commission’s *Federal Register* notice is presented in app. B. No appearances were filed for the Commission’s hearing in this investigation and no written statements were received in conjunction with this investigation.

³ The Commission was unanimous in its affirmative finding.

⁴ 63 FR 14476, March 25, 1998. *See, Wheat Gluten* (Inv. No. TA-201-67), USITC Pub. No. 3088, March 1998. The imported article covered by this finding was wheat gluten provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS).

⁵ 19 U.S.C. § 3371(a).

⁶ The Wheat Gluten Industry Council consists of three U.S. producers: ADM Arkady (ADM), Manildra Milling Corporation (Manildra), and Midwest Grain Products (Midwest). ADM ***; however, on January 6, 2001, ADM advised the Commission it opposed the extension of relief. Letter from Warren E. Connelly, Akin, Gump, Strauss, Hauer and Feld, to Donna R. Koehnke, Secretary, USITC, January 16, 2001. Heartland Wheat Growers LP (Heartland), the fourth producer in the United States, while not a member of the Wheat Gluten Industry Council, ***.

⁷ A copy of Presidential Proclamation 7103 granting relief is presented in app. A.

industry since the imposition of quantitative limitations on imports of wheat gluten effective June 1, 1998.⁸

Despite the quantitative limitations on imports of wheat gluten, during the first quota year (June 1, 1998-May 31, 1999) quantities of wheat gluten from the European Union (EU) entered the United States in excess of the allocated amount. The President then took action to remedy the circumvention of the import quota on wheat gluten by reducing the second quota year allotment for the EU by the amount of wheat gluten that entered the United States in excess of its first quota year allocation.⁹

During the second quota year (June 1, 1999-May 31, 2000), the benefit to the domestic industry of the quantitative limitations was somewhat muted due to the fact that the EU entered its entire second year quota during the first month that the quota was open and also by a surge in imports from Poland.¹⁰ To remedy the quick fill problem, the President issued a proclamation dated May 26, 2000, that required quarterly spacing of the wheat gluten quota for the third quota year.¹¹ The President also removed Poland from the category of non-subject countries because its share of U.S. imports exceeded 3 percent.^{12 13}

On November 30, 2000, the Wheat Gluten Industry Council filed a petition under section 204 of the Act requesting a two-year extension of the relief action in place on imports of wheat gluten. As a result of this action, the Commission, on December 21, 2000, instituted investigation No. 204-4, *Wheat Gluten: Extension of Action*, to determine if such action was warranted. On April 2, 2001, the Commission made an affirmative determination under section 204(c)(1) that “action continues to be necessary to remedy serious injury and that there is evidence the industry is making a positive adjustment to import competition.”¹⁴

On June 1, 2001, the USTR announced that the safeguard action for wheat gluten producers would be allowed to expire and stated:

“Instead of extending the safeguard which would have triggered the continuation of European Union (EU) tariffs on corn gluten exports to Europe, the Administration has ended the safeguard but agreed to provide the wheat gluten industry \$40 million over two years to complete its transition to competitiveness.”¹⁵

⁸ *Wheat Gluten* (Inv. No. TA-204-2), USITC Pub. No. 3258, December 1999.

⁹ A copy of Presidential Proclamation 7202 modifying relief is presented in app. A.

¹⁰ Poland was initially excluded as a developing country pursuant to Article 9.1 of the Agreement on Safeguards, accounting for less than 3 percent of U.S. imports.

¹¹ A copy of Presidential Proclamation 7314 modifying relief is presented in app. A.

¹² During the second quota year, imports from Poland amounted to 9 percent of all imports and would have been 11.8 percent of imports under quota if Poland had been included in the quota for that year.

¹³ The Government of Poland “is of the opinion that U.S. import quotas against Polish wheat gluten violate several provisions of the World Trade Organization Agreement on Safeguards.” Letter from Wieslaw Wodyk, Economic Counselor, Embassy of the Republic of Poland, to Donna R. Koehnke, Secretary, USITC, March 2, 2001.

¹⁴ *Wheat Gluten: Extension of Action* (Inv. No. TA-204-4), USITC Pub. No. 3407, April 2001, p. 3. The Commission noted the domestic industry’s substantial new investments in the plant and equipment and product development and marketing areas as evidence of its positive adjustment to import competition and stated that an additional two years of relief would be necessary to make the additional expenditures to reach the goals of its adjustment plan. *Id.*, pp. 13-14.

¹⁵ USTR Press Release 01-33, June 1, 2001. The USTR also noted:

“In effect, this approach has monetized a possible extension of the quota and enabled the wheat gluten industry to move forward without triggering foreign retaliation against another industry. It

(continued...)

The assistance program for the wheat gluten producers, is being administered and funded by the U.S. Department of Agriculture (USDA), and is to provide funding for marketing, product development, and capital expenditures over a two-year period.¹⁶ To date, USDA has approved program funds in the amount of \$25.6 million for Midwest and \$10.0 million for Manildra.¹⁷

THE WORLD TRADE ORGANIZATION (WTO) WHEAT GLUTEN RULING

The U.S. wheat gluten safeguard measure and underlying Commission injury determination were challenged by the EU under the WTO dispute settlement procedures in mid-1999. In July 2000, the WTO panel formed to review the matter found that certain aspects of the U.S. measure were inconsistent with U.S. WTO obligations. The United States and EU appealed certain panel findings, and the WTO Appellate Body, in December 2000, affirmed in part and reversed in part findings of the panel. The Appellate Body's findings against the United States included findings with respect to both the action taken by the President and aspects of the Commission's injury determination. The Appellate Body's report was adopted by the WTO Dispute Settlement Body on January 19, 2001, and under WTO rules the United States was given until February 18, 2001, to explain how it intended to bring its measure into conformity with the Appellate Body's ruling. In response to the Appellate Body's ruling and continuation of the U.S. wheat gluten safeguard measure, effective January 24, 2001, the EU imposed retaliatory measures on imports of corn gluten.¹⁸ Section 129 of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3538) authorizes the USTR, in the event of a finding by the Appellate Body that an action by the Commission is not in conformity with U.S. obligations under the Safeguards Agreement, to request that the Commission issue an advisory report on whether the U.S. safeguards law permits the Commission to take steps that would render its action not inconsistent with the findings of the Appellate

¹⁵ (...continued)

also makes clear the nature of U.S. support. Extension of the 201 safeguard measure beyond the existing three-year period would have exposed U.S. exporters (particularly its corn gluten exporters) to approximately \$50 million in trade retaliation over two years." *Id.*

¹⁶ *Id.*

¹⁷ Midwest's funds are allocated for the following: (1) production of value-added products; (2) product and market development; (3) advertising and promotions; and (4) marketing. Manildra's funds are allocated for the following: (1) capital expenditures for production of value added wheat starch and gluten products and (2) market development. U.S. Energy Partners, the successor company to Heartland, has an application pending for \$4.4 million in funds. USDA, Value-Added Wheat Gluten and Wheat Starch Product Market Development Program.

¹⁸ The Corn Refiners Association testified at the Commission's hearing in investigation No. 204-4 in opposition to the extension of relief. Among the nine members of the Association are Cargill, Cerestar USA, and Roquette America, all of which have wheat gluten operations in the EU. Additionally, ADM, a U.S. wheat gluten producer, is a member of the Association.

Body concerning those obligations.¹⁹ If the Commission issues an affirmative report,²⁰ the USTR may request that the Commission issue a determination to such effect.

On April 3, 2001, the Commission received a request from the USTR that the Commission issue a determination under section 129(a)(4) of the URAA²¹ that would render the Commission's action in connection with *Wheat Gluten*²² not inconsistent with the findings of the Appellate Body of the WTO in its report in *United States – Wheat Gluten*.²³ In response to USTR's request and on the basis of the record in the Commission's 1998 *Wheat Gluten* injury investigation, the reports of the WTO Panel²⁴ and the Appellate Body in *United States – Wheat Gluten*, and comments received in the section 129 proceeding in response to the Commission's notice published in the *Federal Register*,²⁵ the Commission again determined, pursuant to section 202(b) of the Act, that wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic wheat gluten industry. Pursuant to section 311(a) of the NAFTA Implementation Act,²⁶ the Commission made negative findings with respect to imports of wheat gluten from Mexico and Canada.²⁷

¹⁹ On March 15, 2001, the Commission received a request from the USTR under Section 129(a)(1) of the URAA. The request enclosed a copy of the Appellate Body report, and stated that the Appellate Body had found, *inter alia*, that action by the Commission in connection with its *Wheat Gluten* investigation, Investigation No. TA-201-67, was not in conformity with the obligations of the United States under the WTO *Agreement on Safeguards*. The request referred to three findings of the Appellate Body in that regard, contained in paragraphs 80 through 92, 93 through 100, and 156 through 163, respectively, of its report. USTR requested, pursuant to Section 129(a)(1), that the Commission issue an advisory report on whether Title II of the Trade Act permits the Commission to take steps in connection with Investigation No. TA-201-67 that would render its action in that proceeding not inconsistent with those Appellate Body findings.

²⁰ On March 22, 2001, the Commission transmitted to the USTR its advisory report under Section 129(a)(1), which reported that Title II of the Trade Act permits the Commission to take steps in connection with its action in *Wheat Gluten*, Investigation No. TA-201-67, that would render its action in that proceeding not inconsistent with the findings of the Appellate Body.

²¹ 19 U.S.C. § 3538(a)(4).

²² *Wheat Gluten* (Inv. No. TA-201-67), USITC Pub. 3088, March 1998.

²³ *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, Report of the Appellate Body, WT/DS/166/AB/R (22 December 2000).

²⁴ *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, Report of the Panel, WT/DS166/R (31 July 2000) (“*United States – Wheat Gluten Panel Report*”).

²⁵ 66 FR 18510, April 9, 2001. The Commission based its determination on evidence in the original record as of January 15, 1998, the date of the Commission's vote as to serious injury; the reports of the WTO Panel and Appellate Body in *United States – Wheat Gluten*; and the submissions in the section 129(a)(4) proceeding, excluding new information not of record as of January 15, 1998.

²⁶ 19 U.S.C. § 3371(a).

²⁷ In the Section 129 proceeding, Commissioners Bragg and Miller adopted their original views on injury and supplemented those views as appropriate to address those issues raised by the section 129 request and the WTO Appellate Body's findings. Chairman Koplán, Vice Chairman Okun, and Commissioners Hillman and Devaney conducted a *de novo* review of the record, and based on that review, adopted the original views of the Commission on injury, as supplemented by the determination in the section 129 proceeding. See, *Wheat Gluten* (Inv. No. TA-201-67 (Consistency Determination)), USITC Pub. No. 3423, May 2000.

U.S. PRODUCERS ²⁸

As noted earlier in this report, during the period of relief there were four U.S. producers of wheat gluten: Midwest, Manildra, ADM, and Heartland. The Wheat Gluten Industry Council consists of all of the producers with the exception of Heartland. ADM *** and, as noted earlier, opposed the extension of relief.²⁹ The three firms that supported of the extension of relief represented *** percent of U.S. production in the year ending June 30, 2000.

Midwest, headquartered in Atchison, KS, has plant locations in Atchison, KS, and Pekin, IL. Midwest is the largest U.S. producer of wheat gluten, accounting for *** percent of production in 2000. Its other products include wheat starch and food-grade and fuel-grade alcohol. The company's raw materials consist of wheat, which is processed into all products, and corn and milo, which are processed into alcohol and alcohol byproducts. Midwest also produces modified wheat gluten products, which accounted for just over *** percent of the value of its overall wheat gluten sales in 2000. Modified wheat gluten products include ***. Other modified wheat gluten products that the company sells commercially include ***.

Midwest's Atchison plant comprises four different operating units – a flour mill, wheat gluten recovery facility, wheat starch recovery facility, and distillery. The Pekin plant consists of a modernized distillery, wheat gluten unit, and wheat starch recovery operation. Since 1992, both plants have undergone several expansions and upgrades. During the period examined, Midwest continued to implement cost reductions with existing equipment and to expand production capacity for new products. In 1999, ***. In late 2000, to further diversify and expand, Midwest ***.

Manildra, headquartered in Shawnee Mission, KS, has wheat gluten/wheat starch plants in Minneapolis, MN, and Hamburg, IA. Manildra accounted for *** percent of U.S. wheat gluten production in 2000. Manildra was established in 1974 as a subsidiary company and sales office by the Manildra Group of Australia to market its Australian wheat products. The company began production of wheat gluten in the United States in 1979 through the acquisition of a plant that had been recently built and operated by Pillsbury in Minneapolis.³⁰ Manildra doubled the capacity of the Minneapolis plant in 1992. The Hamburg plant, originally an ethanol facility, began producing wheat gluten/wheat starch in 1994. Since 1998, Manildra has invested \$*** in the construction of a new modified wheat starch facility at the Hamburg plant, which became operational in September 2000. Since neither plant includes a flour mill, Manildra buys ***. Manildra is ***-percent-owned by Honan Holdings USA, Inc., a Delaware corporation, which is ***-percent-owned by Honan Investments Pty., Ltd., a privately held company in Australia. The Manildra Group is the parent company of the Australian wheat gluten producer, Shoalhaven Starches Pty., Ltd., NSW, which exports to the United States.³¹

ADM, headquartered in Decatur, IL, is a \$14 billion multinational company specializing in procuring, transporting, storing, processing, and merchandising agricultural commodities and products. ADM's Arkady Division, headquartered in Shawnee Mission, KS, has a wheat gluten/wheat starch plant and flour mill in Keokuk, IA. ADM accounted for nearly *** percent of U.S. wheat gluten production in

²⁸ Except as noted, information in this section is extracted from the report in *Wheat Gluten: Extension of Action* (Inv. No. TA-204-4), USITC Pub. No. 3407, April 2001. Information gathered in that investigation covered all but the final five months of the period of import relief. A detailed description of the product, its end uses, and production processes is presented in app. C.

²⁹ ADM questionnaire response in investigation No. TA-204-4. ADM indicated that its reason for opposing the extension of relief was “***.” See also, Letter from Warren E. Connelly, Akin, Gump, Strauss, Hauer and Feld, to Donna R. Koehnke, Secretary, USITC, January 16, 2001.

³⁰ Petitioner's prehearing brief on injury in investigation No. TA-201-67, p. 8.

³¹ During the past four years, Shoalhaven ***. Manildra questionnaire response in investigation No. TA-204-4.

2000. ADM became a U.S. producer of wheat gluten in 1993 through the acquisition of Ogilvie Flour Mills, a Canadian flour milling company.³² ADM has a ***-percent-owned wheat gluten plant in Candiatic, Quebec, and closed its Thunder Bay, Ontario, plant in 1996.

Heartland, headquartered in Russell, KS, operated as a regional wholesale cooperative during the period of relief. Heartland accounted for *** percent of U.S. production of wheat gluten in 2000 and supported the extension of relief. In July 2001, Heartland closed and, in September 2001, U.S. Energy Partners announced that it had an option to acquire the facility.³³ U.S. Energy Partners hopes to reopen the gluten operations early in 2002.³⁴ Heartland was conceived in 1992/93 by local wheat growers looking for an investment into a value-added product.³⁵ It was ***-percent owned by Farmland Industries, Kansas City, MO; ***. Construction began on Heartland's Russell plant in July 1993 and production began in June 1996 with the plant consisting of a flour mill and wheat gluten/wheat starch production facilities.

Information collected during investigation No. TA-204-4 regarding U.S. producers' trade and financial data, as well as imports and apparent U.S. consumption, are presented in table 1.

³² Petitioner's prehearing brief on injury in investigation No. TA-201-67, p. 8.

³³ www.sajournal.com/stories/092201/new_gluten.html, September 23, 2001.

³⁴ *Id.*

³⁵ Interview with Heartland officials, Kansas City, MO, October 21, 1997.

Table 1

Wheat gluten: Summary data concerning the U.S. market, years ended June 30, 1998-2000, July-December 1999, and July-December 2000

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	Year ended June 30			July-December		1998-2000	1998-1999	1999-2000	July-Dec. 1999-2000
	1998	1999	2000	1999	2000				
U.S. consumption quantity:									
Amount	313,042	364,817	321,179	149,281	171,069	2.6	16.5	-12.0	14.6
Producers' share (1)	46.1	41.6	54.4	59.0	45.3	8.3	-4.5	12.8	-13.7
Importers' share (1)									
EU	31.2	27.8	4.3	0.3	18.5	-26.8	-3.4	-23.5	18.2
Australia	16.2	18.9	22.6	24.1	21.2	6.4	2.7	3.6	-2.9
Poland (2)	0.2	1.5	4.6	3.6	2.9	4.4	1.3	3.1	-0.7
Other quota countries	1.0	1.2	2.2	1.8	2.1	1.2	0.2	1.0	0.2
Total quota countries	48.5	49.4	33.7	29.8	44.6	-14.8	0.9	-15.7	14.8
Canada	4.3	8.0	9.1	9.4	7.9	4.8	3.7	1.1	-1.5
Other non-quota countries	1.0	1.0	2.8	1.8	2.2	1.7	-0.0	1.8	0.4
Total non-quota countries	5.3	9.0	11.9	11.2	10.1	6.5	3.6	2.9	-1.1
Total imports	53.9	58.4	45.6	41.0	54.7	-8.3	4.5	-12.8	13.7
U.S. consumption value:									
Amount	166,571	223,967	209,761	97,745	100,129	25.9	34.5	-6.3	2.4
Producers' share (1)	49.5	44.4	56.7	60.6	47.3	7.2	-5.1	12.3	-13.4
Importers' share (1)									
EU	28.2	26.0	3.8	0.2	16.8	-24.4	-2.3	-22.2	16.6
Australia	15.6	18.1	20.9	22.6	20.5	5.3	2.6	2.8	-2.0
Poland (2)	0.2	1.6	4.6	3.8	2.9	4.4	1.4	3.0	-0.9
Other quota countries	1.0	1.1	2.1	1.7	2.1	1.1	0.1	1.0	0.4
Total quota countries	45.1	46.8	31.4	28.3	42.4	-13.6	1.8	-15.4	14.1
Canada	4.5	7.9	9.1	9.4	8.2	4.6	3.4	1.2	-1.2
Other non-quota countries	0.9	0.9	2.7	1.7	2.2	1.8	0.0	1.8	0.5
Total non-quota countries	5.5	8.8	11.9	11.0	10.3	6.4	3.3	3.1	-0.7
Total imports	50.5	55.6	43.3	39.4	52.7	-7.2	5.1	-12.3	13.4
Table continued on next page.									

Table 1--Continued

Wheat gluten: Summary data concerning the U.S. market, years ended June 30, 1998-2000, July-December 1999, and July-December 2000

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	Year ended June 30			July-December		1998-2000	1998-1999	1999-2000	July-Dec. 1999-2000
	1998	1999	2000	1999	2000				
U.S. imports from--									
EU:									
Quantity	97,531	101,408	13,946	440	31,581	-85.7	4.0	-86.2	7,075.3
Value	47,007	58,142	7,970	218	16,831	-83.0	23.7	-86.3	7,633.7
Unit value	\$0.48	\$0.57	\$0.57	\$0.49	\$0.53	18.6	19.0	-0.3	7.8
Ending inventory quantity	10,421	23,350	38,512	15,563	31,305	269.6	124.1	64.9	101.2
Australia:									
Quantity	50,737	69,105	72,488	35,914	36,266	42.9	36.2	4.9	1.0
Value	25,945	40,613	43,866	22,057	20,549	69.1	56.5	8.0	-6.8
Unit value	\$0.51	\$0.59	\$0.61	\$0.61	\$0.57	18.3	14.9	3.0	(8)
Ending inventory quantity	...	...	...	...	...	...	...	...	...
Poland: (2)									
Quantity	660	5,532	14,786	5,411	4,948	2,138.7	737.6	167.3	-8.6
Value	401	3,599	9,716	3,730	2,947	2,324.5	798.1	170.0	-21.0
Unit value	\$0.61	\$0.65	\$0.66	\$0.69	\$0.60	8.3	7.2	1.0	-14.0
Ending inventory quantity	...	...	...	...	...	...	...	...	...
Other quota countries:									
Quantity	3,021	4,308	7,043	2,748	3,510	133.2	42.6	63.5	27.7
Value	1,715	2,508	4,395	1,669	2,122	156.2	46.2	75.3	27.1
Unit value	\$0.57	\$0.58	\$0.62	\$0.61	\$0.60	9.9	2.5	7.2	(1)
Ending inventory quantity	...	...	...	...	...	...	...	...	...
Total quota countries:									
Quantity	151,949	180,353	108,262	44,513	76,305	-28.8	18.7	-40.0	71.4
Value	75,068	104,862	65,947	27,674	42,448	-12.2	39.7	-37.1	53.4
Unit value	0	\$0.58	\$0.61	\$0.62	\$0.56	23.3	17.7	4.8	-10.5
Ending inventory quantity	14,474	28,554	50,619	20,260	45,718	249.7	97.3	77.3	125.7
Table continued on next page.									

Table 1--Continued

Wheat gluten: Summary data concerning the U.S. market, years ended June 30, 1998-2000, July-December 1999, and July-December 2000

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	Year ended June 30			July-December		1998-2000	1998-1999	1999-2000	July-Dec. 1999-2000
	1998	1999	2000	1999	2000				
U.S. imports from--									
Canada:									
Quantity	13,457	29,056	29,240	14,005	13,496	117.3	115.9	0.6	-3.6
Value	7,567	17,695	19,149	9,155	8,170	153.1	133.8	8.2	-10.8
Unit value	\$0.56	\$0.61	\$0.65	\$0.65	\$0.61	16.5	8.3	7.5	-7.0
Ending inventory quantity	...	...	...	...	...	...	...	...	...
Other non-quota countries:									
Quantity	3,248	3,692	8,907	2,676	3,732	174.3	13.7	141.3	39.5
Value	1,559	2,050	5,740	1,635	2,154	268.1	31.5	180.0	31.7
Unit value	\$0.48	\$0.56	\$0.64	\$0.61	\$0.58	34.2	15.6	16.1	-6.0
Ending inventory quantity	...	...	...	...	...	...	...	...	...
Total non-quota countries:									
Quantity	16,705	32,747	38,147	16,681	17,227	128.4	96.0	16.5	3.3
Value	9,127	19,745	24,889	10,789	10,324	172.7	116.3	26.1	-4.3
Unit value	\$0.55	\$0.60	\$0.65	\$0.65	\$0.60	19.4	10.4	8.2	-7.3
Ending inventory quantity	...	...	...	...	...	...	...	...	...
All sources:									
Quantity	168,653	213,100	146,409	61,194	93,533	-13.2	26.4	-31.3	52.8
Value	84,195	124,606	90,836	38,464	52,772	7.9	48.0	-27.1	37.2
Unit value	\$0.50	\$0.58	\$0.62	\$0.63	\$0.56	24.3	17.1	6.1	-10.2
Ending inventory quantity	...	...	...	...	...	...	...	...	...
Table continued on next page.									

Table 1--Continued

Wheat gluten: Summary data concerning the U.S. market, years ended June 30, 1998-2000, July-December 1999, and July-December 2000

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	Year ended June 30			July-December		1998-2000	1998-1999	1999-2000	July-Dec. 1999-2000
	1998	1999	2000	1999	2000				
U.S. producers':--									
Average capacity quantity	275,212	275,212	274,512	137,256	137,256	-0.3	0.0	-0.3	0.0
Production quantity	149,355	169,110	176,074	93,821	89,151	17.9	13.2	4.1	-5.0
Capacity utilization (1)	54.3	61.4	64.1	68.4	65.0	9.9	7.2	2.7	-3.4
U.S. shipments::									
Quantity	144,389	151,717	174,770	88,087	77,536	21.0	5.1	15.2	(12)
Value	82,376	99,361	118,925	59,281	47,357	44.4	20.6	19.7	-20.1
Unit value	\$0.57	\$0.65	\$0.68	\$0.67	\$0.61	19.3	14.8	3.9	-9.2
Export shipments:									
Quantity	...	...	...	...	...	...	...	...	...
Value	...	...	...	...	...	...	...	...	...
Unit value	...	...	...	...	...	...	...	...	...
Ending inventory quantity	6,966	15,755	8,052	15,957	16,747	15.6	126.2	-48.9	5.0
Inventories/total shipments (1)	...	...	...	...	...	...	...	...	...
Production workers	129	128	133	133	139	3.1	-0.8	3.9	4.5
Hours worked (1,000s)	258	269	267	133	143	3.5	4.3	-0.7	7.5
Wages paid (\$1,000)	3,847	4,203	4,062	2,084	2,248	5.6	9.3	-3.4	7.9
Hourly wages	\$14.91	\$15.62	\$15.21	\$15.67	\$15.72	2.0	4.8	-2.6	0.3
Productivity (lbs per hour)	483.0	537.0	562.8	608.4	534.2	16.5	11.2	4.8	-12.2
Unit labor costs	\$0.03	\$0.03	\$0.03	\$0.03	\$0.03	-12.4	-5.8	-7.1	14.3
Table continued on next page.									

Table 1--Continued

Wheat gluten: Summary data concerning the U.S. market, years ended June 30, 1998-2000, July-December 1999, and July-December 2000

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	Year ended June 30			July-December		1998-2000	1998-1999	1999-2000	July-Dec. 1999-2000
	1998	1999	2000	1999	2000				
U.S. producers ¹ --									
Net sales:									
Quantity	129,416	140,123	158,914	80,989	67,581	22.8	8.3	13.4	-16.6
Value	72,900	91,521	109,562	55,113	43,158	50.3	25.5	19.7	-21.7
Unit value	\$0.56	\$0.65	\$0.69	\$0.68	\$0.64	22.4	16.0	5.6	-6.2
Cost of goods sold (COGS)	71,150	79,574	90,298	46,561	43,129	26.9	11.8	13.5	-7.4
Gross profit or (loss)	1,750	11,947	19,264	8,552	29	1,000.8	582.7	61.2	-99.7
SG&A expenses	4,100	4,050	5,264	2,343	2,743	28.4	-1.2	30.0	17.1
Operating income or (loss)	-2,350	7,897	14,000	6,209	-2,714	(4)	(4)	77.3	(4)
Unit COGS	\$0.55	\$0.57	\$0.57	\$0.57	\$0.64	3.4	3.3	0.1	11.0
Unit SG&A expenses	\$0.03	\$0.03	\$0.03	\$0.03	\$0.04	4.6	-8.8	14.6	40.3
Unit operating income or (loss)	\$-0.02	\$0.06	\$0.09	\$0.08	\$-0.04	(4)	(4)	56.3	(4)
COGS/sales (1)	97.6	86.9	82.4	84.5	99.9	-15.2	-10.7	-4.5	15.5
Operating income or (loss)/sales (1)	-3.2	8.6	12.8	11.3	-6.3	16.0	11.9	4.1	-17.6
¹ "Reported data" are in percent and "period changes" are in percentage points. ² Subject to quota effective June 1, 2000. ³ Not applicable. ⁴ Undefined.									
Note 1.--EU quantities for year ended June 30, 2000 and July-December 2000 adjusted pursuant to reconciliation of import data for those periods by Customs and Commerce. EU values for those periods are estimated using unadjusted unit values.									
Note 2.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to totals shown. Unit values and shares are calculated from the unrounded figures.									
Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.									

U.S. IMPORTERS AND U.S. IMPORTS

In investigation No. TA-204-4, eight firms provided responses for the period from July 1997 through December 2000. Two U.S. producers, ADM and Manildra, imported wheat gluten during that period. The principal importers of wheat gluten from the EU were ***, while *** was the principal importer of wheat gluten from Canada and *** was the principal importer from Australia.

The President imposed quantitative restrictions on imports of wheat gluten beginning on June 1, 1998 for the EU, Australia, and all other countries with the exception of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act, and the Andean Trade Preference Act, and developing countries listed in general note 4(a) to the HTS. Thus, the quota year ran from June 1 to May 31 of each year. In year one of the quota (June 1, 1998-May 31, 1999), imports of wheat gluten from Australia were limited to 62.4 million pounds; imports from the EU were limited to 54.0 million pounds; and imports from other non-excluded countries were limited to 10.3 million pounds. Import limits for the second quota year were: 66.2 million pounds from Australia; 57.3 million pounds from the EU; and 11.0 million pounds from other countries. Limits for the third quota year were: 70.1 million pounds from Australia; 60.7 million pounds from the EU; and 11.6 million pounds from other countries. The third-year quota was administered on a quarterly basis. Official Commerce data on U.S. imports of wheat gluten, by source and by quota year and quarter, are presented in table 2.

Table 2

Wheat gluten: U.S. imports for consumption, by source and by quota year and quarter

Item	June-Aug.	Sept.-Nov.	Dec.-Feb.	Mar.-May	Total
Quantity (1,000 pounds)					
Quota year one: June 1998-May 1999					
Countries subject to quota:					
EU ¹	38,777	29,274	0	0	68,050
Australia	16,525	16,701	18,360	10,895	62,481
Poland ²	572	1,014	1,229	2,190	5,004
Other sources	937	892	1,134	1,184	4,147
Subtotal	56,810	47,881	20,723	14,269	139,683
Countries not subject to quota:					
Canada	4,253	7,283	8,043	8,535	28,115
Other sources	747	956	777	786	3,265
Subtotal	5,000	8,239	8,820	9,321	31,380
Total	61,810	56,120	29,543	23,590	171,063
Quota year two: June 1999-May 2000					
Countries subject to quota:					
EU ¹	45,698	0	0	0	45,698
Australia	24,854	18,098	21,886	1,651	66,489
Poland ²	2,329	2,599	3,073	5,801	13,802
Other sources	1,401	1,417	1,828	2,297	6,944
Subtotal	74,282	22,113	26,788	9,749	132,932
Countries not subject to quota:					
Canada	6,790	7,341	7,349	7,684	29,164
Other sources	1,206	1,472	2,205	3,354	8,236
Subtotal	7,996	8,812	9,554	11,038	37,400
Total	82,278	30,926	36,341	20,788	170,333
Table continued on next page.					

Table 2--Continued

Wheat gluten: U.S. imports for consumption, by source and by quota year and quarter

Item	Jun.-Aug.	Sept.-Nov.	Dec.-Feb.	Mar.-May	Total
Quantity (1,000 pounds)					
Quota year three: June 2000-May 2001					
Countries subject to quota:					
EU ¹	14,730	15,181	15,176	15,719	60,806
Australia	20,041	17,258	17,534	10,395	65,228
Poland ²	2,486	3,614	581	1,965	8,645
Other sources	1,732	698	1,598	1,050	5,078
Subtotal	38,989	36,750	34,889	29,129	139,757
Countries not subject to quota:					
Canada	7,344	6,745	6,921	9,511	30,521
Other sources	2,576	2,239	1,468	586	6,868
Subtotal	9,920	8,983	8,389	10,096	37,390
Total	48,909	45,733	43,278	39,226	177,147
¹ EU quantities for the third quota year adjusted pursuant to reconciliation of import data by Customs and Commerce. ² Subject to quota effective June 1, 2000. Note 1.—1998/99 quota levels: EU-54.0 million pounds; Australia-62.4 million pounds; other sources-10.3 million pounds. 1999/2000 quota levels: EU-57.3 million pounds (reduced by 11.9 million pounds); Australia 66.2 million pounds; other sources- 11.0 million pounds. 2000/01 quota levels, annual/quarterly: EU-60.7/15.2 million pounds; Australia-70.1/17.5 million pounds; other sources (including Poland)-11.6/2.9 million pounds. Source: Compiled from official Commerce statistics.					

ADJUSTMENT EFFORTS ³⁶

The U.S. wheat gluten industry's adjustment plan, submitted to the Commission in January 1998, focused on the development and marketing of products made from modified wheat gluten and modified wheat starch. The plan identified products in various stages of development for such uses as meat- or milk-protein replacers, coatings, films, cosmetics, and biodegradable serviceware. It was the industry's expectation that import relief under section 201 would enable it to sell more wheat gluten in the United States at higher prices, and thereby generate increased revenues that would help it fund its development and marketing efforts.

As noted earlier in the report, the benefit to the domestic industry of the quantitative limitations was somewhat limited during the first quota year due to import overages from the EU, and in the second year due to the timing of import entries from the EU and a surge in imports from Poland. The latter led to including imports from Poland as subject to quota and administering of the quota on a quarterly basis in the third quota year.

During the period of relief, U.S. firms focused on several categories of products which are in varying stages of development. Table 3 shows U.S. firms' proposed new products as described in petitioner's adjustment plan and efforts made to achieve the goals outlined in the plan.

During the 1990s, Midwest moved from a commodity-production orientation to a market focus. Over the period of relief, Midwest ***.³⁷ As noted earlier, with the expiration of relief, a two-year \$40 million program administered by the USDA was announced to allow the domestic industry to complete its transition to competitiveness. To date, USDA has approved program funds in the amount of \$25.6 million for Midwest.³⁸ ***.³⁹ ***.

Midwest's new modified products are currently in different stages of development and can be divided into modified wheat glutens and modified wheat starches. The modified wheat glutens include ***. Midwest's various modified starch products provide ***.

During the relief period, the emphasis at Manildra was on ***. At the hearing in investigation No. TA-204-4, Manildra testified: "****."⁴⁰ ***.⁴¹ ***.⁴² ***.

Manildra is also currently testing modified wheat gluten for use as ***. Modified wheat gluten sales, however, are ***. Manildra has been approved to receive \$10.0 million of assistance from the USDA program announced in conjunction with the expiration of relief. Manildra's funds are allocated

³⁶ Except as noted, information in this section is extracted from the report in *Wheat Gluten: Extension of Action* (Inv. No. TA-204-4), USITC Pub. No. 3407, April 2001. Information gathered in that investigation covered all but the final five months of the period of import relief.

³⁷ Testimony of Sukh Bassi, VP, Research and Development and Marketing and Sales, Midwest, transcript of hearing in inv. No. TA-204-4 (TR), pp. 110-118, and Ladd M. Seaberg, President, Midwest, TR, pp. 118-120.

³⁸ Midwest's funds are allocated for the following: (1) production of value-added products; (2) product and market development; (3) advertising and promotions; and (4) marketing. USDA, Value-Added Wheat Gluten and Wheat Starch Product Market Development Program.

³⁹ Interview with *** officials, August 26, 1999.

⁴⁰ Testimony of Jay Piester, VP, Sales and Marketing, Manildra, TR, pp. 157-158.

⁴¹ ***. Manildra questionnaire response.

⁴² *Id.*

Table 3
U.S. firms' proposed products, description, uses, proposals, and stages of development

* * * * *

for the following: (1) capital expenditures for production of value added wheat starch and gluten products and (2) market development.⁴³

ADM began selling ***.⁴⁴

As noted earlier, Heartland closed in July 2001 and, in September 2001, U.S. Energy Partners announced it had an option to acquire the facility with the hope of reopening the gluten operations early in 2002.⁴⁵ During the period of relief, due to Heartland's ***. Three potential alternative uses for wheat gluten were researched during the period of relief at a cost of \$***. The development of wheat gluten to be used as ***.

⁴³ USDA, Value-Added Wheat Gluten and Wheat Starch Product Market Development Program.

⁴⁴ Interview with *** officials, January 30, 2001.

⁴⁵ www.sajournal.com/stories/092201/new_gluten.html, September 23, 2001. Insofar as assistance from the USDA program announced in conjunction with the expiration of relief, U.S. Energy Partners has an application pending for \$4.4 million in funds. USDA, Value-Added Wheat Gluten and Wheat Starch Product Market Development Program.

APPENDIX A
PRESIDENTIAL DOCUMENTS

Presidential Documents

Title 3—

Proclamation 7103 of May 30, 1998

The President

To Facilitate Positive Adjustment to Competition From Imports of Wheat Gluten**By the President of the United States of America****A Proclamation**

1. On March 18, 1998, the United States International Trade Commission (USITC) transmitted to the President a unanimous affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2252), with respect to imports of wheat gluten provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States ("HTS"). Under section 202 of the Trade Act, the USITC determined that such wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article. Further, the USITC, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act ("NAFTA Implementation Act") (19 U.S.C. 3371(a)), made negative findings with respect to imports of wheat gluten from Canada and Mexico. The USITC also transmitted its recommendation made pursuant to section 202(e) of the Trade Act with respect to the action that would address the serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

2. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and taking into account the considerations specified in section 203(a)(2) of the Trade Act, I have determined to implement action of a type described in section 203(a)(3). Such action shall take the form of quantitative limitations on imports of wheat gluten, provided for in HTS subheadings 1109.00.10 and 1109.00.90, imposed for a period of 3 years plus one day, with annual increases in such quota limits of six percent in the second year and in the third year. Except for products of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act (ATPA), and other developing countries that have accounted for a minor share of wheat gluten imports, which shall be excluded from any restriction, such quantitative limitations shall apply to imports from all countries and the quota quantity shall be allocated among such countries. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have further determined that these actions will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

3. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203 and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

- (1) In order to establish quantitative limitations for wheat gluten classified in HTS subheadings 1109.00.10 and 1109.00.90, subchapter III of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.
- (2) Wheat gluten that is the product of Canada, of Mexico, of Israel, of beneficiary countries under the CBERA and the ATPA, and of developing countries listed in general note 4(a) to the HTS shall be excluded from the quantitative limitations established by this proclamation, and such imports shall not be counted toward such limitations for any quota period created herein.
- (3) In the event that a quota quantity established by this proclamation and allocated to a country or to "other countries" is significantly underutilized, the United States Trade Representative is authorized to reallocate all or part of the unfilled portion of such quota quantity to any other country or countries and, upon publication of notice in the *Federal Register*, to modify the HTS provisions created by the Annex to this proclamation to reflect any such reallocation.
- (4) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.
- (5) The modifications to the HTS made by this proclamation, including the Annex hereto, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT on June 1, 1998, and shall continue in effect as provided in the Annex to this proclamation, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William Clinton

Annex

Modifications to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after June 1, 1998, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the following new U.S. note, subheadings and superior text thereto, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", and "Quota Quantity", and upon the close of June 1, 2002, these provisions and superior text shall be deleted from the HTS:

"	7. For purposes of subheadings 9903.11.05, 9903.11.06, and 9903.11.07, the term: " <i>European Community</i> " means Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom."	
	Wheat gluten, whether or not dried, except products of Canada, of Mexico, of Israel, of beneficiary countries under the Caribbean Basin Economic Recovery Act (as enumerated in general note 7 to this schedule) or of the Andean Trade Preference Act (as enumerated in general note 11 to this schedule), or of countries enumerated in general note 4(a) to this schedule as that note existed on June 1, 1998 (provided for in subheadings 1109.00.10 and 1109.00.90):	
9903.11.05	If entered during the period from June 1, 1998, through May 31, 1999, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	28,315,000 kg
	European Community	24,513,000 kg
	Other countries	4,693,000 kg
9903.11.06	If entered during the period from June 1, 1999, through May 31, 2000, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	30,014,000 kg
	European Community	25,983,000 kg
	Other countries	4,975,000 kg
9903.11.07	If entered during the period from June 1, 2000, through June 1, 2001, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	31,814,000 kg
	European Community	27,543,000 kg
	Other countries	5,273,000 kg

Presidential Documents

Title 3—

Memorandum of May 30, 1998

The President

**Action Under Section 203 of the Trade Act of 1974
Concerning Wheat Gluten**

Memorandum for the Secretary of the Treasury[,] the Secretary of Agriculture[, and] the United States Trade Representative

On March 18, 1998, the United States International Trade Commission (USITC) submitted to me a report that contained: (1) a determination pursuant to section 202 of the Trade Act of 1974 (19 U.S.C. 2252) (the "Trade Act") that imports of wheat gluten are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry; and (2) negative findings made pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act") (19 U.S.C. 3371(a)) with respect to imports of wheat gluten from Canada and Mexico.

After considering all relevant aspects of the investigation, including the factors set forth in section 203(a)(2) of the Trade Act (19 U.S.C. 2253), I have implemented actions of a type described in section 203(a)(3). Specifically, I have determined that the most appropriate action is a quantitative limitation on imports of wheat gluten. I have proclaimed such action for a period of approximately 3 years in order to provide time for the domestic industry to implement an adjustment plan that will facilitate its positive adjustment to import competition. I have set the quantitative limitation at an amount equal to 126.812 million pounds in the first year, an amount which represents total average imports in the crop years ending June 30, 1993, through June 30, 1995. This amount will increase by six percent annually for the duration of the relief period. I believe that this amount is the relief necessary to remedy the serious injury and to promote positive adjustment. The quota is allocated based on average import shares in the period covered by the crop years ending June 30, 1993, through June 30, 1995. Shares of countries excluded from the quota are assigned on a pro rata basis to countries subject to the quota. To ensure that the quota is substantially filled, I have authorized the United States Trade Representative to reallocate any significant unused quota allocations. I considered taking other forms of action, such as increasing tariffs on imports of wheat gluten, and have determined that action in such forms would not, in light of the nature of trade in wheat gluten, meet the goals of remedying serious injury and facilitating industry adjustment.

I agree with the USITC's findings under section 311(a) of the NAFTA Implementation Act, and therefore determine, pursuant to section 312(a) of the NAFTA Implementation Act, that imports of wheat gluten produced in Canada do not contribute importantly to the serious injury caused by imports and that imports of wheat gluten produced in Mexico do not account for a substantial share of total imports of such wheat gluten. Therefore, pursuant to section 312(b) of the NAFTA Implementation Act, the quantitative limitation will not apply to imports of wheat gluten from Canada or Mexico. Similarly, the limitation will not apply to imports of wheat gluten from Israel, and beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act (ATPA), in light of the USITC's statement that its recommendation does not apply to imports from those countries. Moreover, other developing countries that have ac-

counted for a minor share of wheat gluten imports are excluded from the quantitative limitation.

As an additional means of arriving at a long-term solution to this trade issue, I have directed the United States Trade Representative, with the assistance of the Secretary of Agriculture, to seek to initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury found to exist.

I have determined that the actions described above will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. This action provides the domestic industry with necessary temporary relief from increased import competition, while also assuring our trading partners significant continued access to the United States market.

I also note that, pursuant to section 204 of the Trade Act, the USITC will monitor developments with respect to the domestic industry, including progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, and will provide to me and to the Congress a report of its monitoring no later than the date that is the midpoint of the period the action is in effect.

The United States Trade Representative is authorized and directed to publish this determination in the Federal Register.



THE WHITE HOUSE,
Washington, May 30, 1998.

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Billing code 3190-01-P

Presidential Documents

Title 3—

Proclamation 7202 of May 28, 1999

The President

**To Eliminate Circumvention of the Quantitative Limitations
Applicable to Imports of Wheat Gluten**

By the President of the United States of America

A Proclamation

1. On March 18, 1998, the United States International Trade Commission (USITC) transmitted to the President a unanimous affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2252), with respect to imports of wheat gluten provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS). Under section 202 of the Trade Act, the USITC determined that such wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article. Further, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act) (19 U.S.C. 3371(a)), the USITC made negative findings with respect to imports of wheat gluten from Canada and Mexico. Pursuant to section 202(e) of the Trade Act (19 U.S.C. 2253(e)), the USITC also transmitted to the President its recommendation on the action that would address the serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.
2. On May 30, 1998, I issued Proclamation 7103, which implemented action of a type described in section 203(a)(3) of the Trade Act (19 U.S.C. 2253(a)(3)). Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and taking into account the considerations specified in section 203(a)(2) of the Trade Act, I determined to establish quantitative limitations on imports of wheat gluten, provided for in HTS subheadings 1109.00.10 and 1109.00.90, imposed for a period of 3 years plus 1 day, with annual increases in such quota limits of 6 percent in the second year and in the third year. These limitations were to apply to imports from all countries, and the quota quantity was to be allocated among such countries, except for products of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act, and other developing countries that accounted for a minor share of wheat gluten imports that I determined to exclude from any restriction. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I further determined that these actions would facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.
3. Despite the quantitative limitations on imports of wheat gluten, during the first restraint period quantities of wheat gluten the product of the European Community have been entered in excess of the allocated amount.
4. Section 204(b)(2) of the Trade Act (19 U.S.C. 2254(b)(2)) authorizes the President to take such additional action under section 203 of the Trade Act as may be necessary to eliminate any circumvention of any action previously taken under such section. Pursuant to section 204(b)(2) of the Trade Act, I have determined it is appropriate and feasible to take additional action pursuant to section 203(a)(3) of the Trade Act. Such action shall take the form of a reduction in the European Community's 1999/2000 wheat

gluten quota allotment in the amount of 5,204,000 kg, which represents the amount of wheat gluten that entered the United States in excess of the European Community's 1998 quota allocation. I determine this action is necessary to eliminate circumvention of the safeguard action previously undertaken in Proclamation 7103.

5. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203, 204, and 604 of the Trade Act, do proclaim that:

(1) The allocation of the quota quantity for wheat gluten for the restraint period from June 1, 1999, through May 31, 2000, inclusive, that was accorded to wheat gluten the product of the European Community by the Annex to Presidential Proclamation 7103 of May 30, 1998, as set forth in subheading 9903.11.06 of subchapter III, chapter 99 of the HTS, is modified by striking the allocated quota quantity set forth for the European Community "25,983,000 kg" from such subheading and by inserting in lieu thereof the new allocated quota quantity for the European Community "20,581,000 kg".

(2) In order to ensure that any imports of wheat gluten the product of any country, or the product of the European Community, having an allocated share of the quantitative restraints set forth in subheadings 9903.11.05 through 9903.11.07, inclusive, of the HTS and superior text thereto, are limited to the specified share during a quota period, the HTS is modified by adding at the end of U.S. Note 7 to subchapter III of chapter 99 the following new paragraph:

"Whenever a quantity is allocated to a country, to 'other countries' or to the European Community under such subheadings, and the quota quantity specified for such country or countries or for the European Community has been entered for the specified restraint period, any shipments of wheat gluten the product of such country or countries or of the European Community entered in excess of such allocated quota quantity shall be charged to the allocation for such country or countries or for the European Community for the subsequent restraint period. If the allocated quantity for a country or countries or for the European Community under subheading 9903.11.07, including any quantity carried over from the restraint periods provided for in subheadings 9903.11.05 and 9903.11.06 and charged against the appropriate allocation under subheading 9903.11.07, has been entered, any imports in excess of the allocated quota quantity for a country or countries or for the European Community shall be entered into bonded warehouse or shall be exported, and shall not be entered into the customs territory of the United States until 12:00 a.m. e.d.t. June 1, 2001. The Secretary of the Treasury is authorized to take any necessary action in order to ensure that no shipments in excess of the allocation for a country or countries or for the European Community for the period from June 1, 2000 through June 1, 2001, inclusive, is entered into the customs territory of the United States."

(3) Subheading 9903.11.06 is modified by inserting after "Other" the word "countries".

(4) Any provision of any previous proclamation or Executive order that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

(5) The modifications made in this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.d.t. on June 1, 1999, and shall continue in effect as provided until 11:59 p.m. e.d.t. on June 1, 2001, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William Clinton

[FR Doc. 99-14150
Filed 6-1-99; 10:59 am]
Billing code 3195-01-P

Presidential Documents

Title 3—

Proclamation 7314 of May 26, 2000

The President

To Modify the Quantitative Limitations Applicable to Imports of Wheat Gluten

By the President of the United States of America

A Proclamation

1. On May 30, 1998, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), I issued Proclamation 7103, which imposed quantitative limitations on certain wheat gluten imports provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS) for a period of 3 years plus 1 day, with annual increases in such quota limits of 6 percent during the second and the third year. I exempted imports of wheat gluten that is the product of certain countries, including designated beneficiary countries under the Generalized System of Preferences ("GSP countries"), from the application of the quantitative limitations.
2. On December 1, 1999, the United States International Trade Commission (USITC) issued a report, as required under section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)), on the results of its monitoring of developments with respect to the domestic wheat gluten industry. The USITC report notes that in the 12-month period prior to the imposition of the quota (June 1, 1997–May 31, 1998), 440,000 pounds of wheat gluten entered the United States from Poland. During the first quota year (June 1, 1998–May 31, 1999), imports from Poland grew to 5,004,000 pounds, or more than eleven times the amount of the previous year, accounting for 2.9 percent of total U.S. imports. The USITC report has been provided to me (Investigation Number TA–204–2). More recent data from the United States Customs Service indicate that in the first 10 months of the second quota year (June 1999–March 2000), imports from Poland totaled 8,965,800 pounds, accounting for 6.9 percent of total U.S. imports.
3. Section 204(b)(1)(A) of the Trade Act (19 U.S.C. 2254(b)(1)(A)) authorizes the President, after taking into account the report of the USITC required under section 204(a)(2) of the Trade Act and seeking advice from the Secretary of Commerce and the Secretary of Labor, to reduce, modify, or terminate an action taken under section 203 of the Trade Act when the President determines that changed economic circumstances so warrant.
4. After taking into account the information provided in the USITC's report, and after receiving advice from the Secretary of Commerce and the Secretary of Labor, I have determined, on the basis that increased imports of wheat gluten the product of Poland have impaired the effectiveness of the action I proclaimed in 1998 under section 203 of the Trade Act, that changed economic circumstances warrant a modification in the action. Accordingly, I have decided to include in the action imports of wheat gluten the product of Poland, beginning June 1, 2000.
5. Pursuant to section 203(g) of the Trade Act (19 U.S.C. 2253(g)), I have further determined to provide for the efficient and fair administration of the quantitative limitation on imports of wheat gluten by allocating on a quarterly basis the quantitative limitations applicable during the third year of the action.

6. Pursuant to section 503(b)(2) of the Trade Act (19 U.S.C. 2463(b)(2)), no article shall be eligible for duty-free treatment provided under section 501 of the Trade Act if that article is subject to an action proclaimed under section 203.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 204, 503, and 604 of the Trade Act, do proclaim that:

(1) In order to modify the scope of the quantitative limitations applicable to imports of wheat gluten under HTS heading 1109, and to allocate the quota quantities for the third quota year on a quarterly basis, subchapter III of chapter 99 of the HTS is modified as set forth in the Annex to this proclamation.

(2) Such imported wheat gluten that is the product of Poland shall be included within the scope of the quantitative limitations during the third quota year, as provided in the Annex.

(3) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) Effective at the close of June 1, 2002, or such other date that is 1 year from the close of the action taken under section 203 of the Trade Act, as modified by this proclamation, HTS subheadings 9903.11.08 through 9903.11.11 and the superior text thereto shall be deleted from the HTS.

(5) Pursuant to section 503(b)(2) of the Trade Act (19 U.S.C. 2463(b)(2)), duty-free treatment for certain wheat gluten that is the product of beneficiary countries under the Generalized System of Preferences (GSP) (Title V of the Trade Act, as amended (19 U.S.C. 2461-2467)), is suspended.

(6) The modifications to the HTS made by this proclamation and the Annex thereto shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT June 1, 2000, and shall continue in effect through the close of June 1, 2001, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



ANNEX

Section A

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:00 a.m. EDT June 1, 2000, subheading 1109.00.10 and subheading 1109.00.90 of the Harmonized Tariff Schedule of the United States are each modified by deleting the symbol "A" in the rates of duty 1-special subcolumn.

Section B

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:00 a.m. EDT June 1, 2000, subheading 9903.11.07 is deleted and the following new subheadings and superior text thereto are inserted in lieu thereof, with the superior text at the same level of indentation as the article description of subheading 9903.11.06:

	":Wheat gluten, whether or not dried, except products of Canada,	:
	:of Mexico, of Israel, of beneficiary countries under the Caribbean	:
	:Basin Economic Recovery Act (as enumerated in general note 7 to	:
	:this schedule) or the Andean Trade Preference Act (as enumerated	:
	:in general note 11 to this schedule), or of countries (except Poland)	:
	:enumerated in general note 4(a) to this schedule as that note	:
	:existed on June 1, 1998 (provided for in subheadings 1109.00.10	:
	:and 1109.00.90), if entered during the period from June 1, 2000,	:
	:through June 1, 2001, inclusive:	:
9903.11.08	: If entered during the period from June 1, 2000, through	:
	: August 31, 2000, in the respective aggregate quantity of	:
	: goods the product of a foreign country specified below,	:
	: after which no wheat gluten the product of such country	:
	: may be entered during the remainder of such period:	:
	: Australia	: 7,953,500 kg
	: European Community	: 6,885,750 kg
	: Other countries	: 1,318,250 kg
9903.11.09	: If entered during the period from September 1, 2000, through	:
	: through November 30, 2000, in the respective aggregate	:
	: quantity of goods the product of a foreign country specified	:
	: below, after which no wheat gluten the product of such	:
	: country may be entered during the remainder of such period:	:
	: Australia	: 7,953,500 kg
	: European Community	: 6,885,750 kg
	: Other countries	: 1,318,250 kg
9903.11.10	: If entered during the period from December 1, 2000, through	:
	: February 28, 2001, in the respective aggregate quantity of	:
	: goods the product of a foreign country specified below, after	:
	: which no wheat gluten the product of such country may be	:
	: entered during the remainder of such period:	:
	: Australia	: 7,953,500 kg
	: European Community	: 6,885,750 kg
	: Other countries	: 1,318,250 kg

9903.11.11 : If entered during the period from March 1, 2001, through :
: June 1, 2001, in the respective aggregate quantity of goods :
: the product of a foreign country specified below, after which :
: no wheat gluten the product of such country may be entered :
: during the remainder of such period: :

: Australia : 7.953.500 kg
: European Community : 6.885.750 kg
: Other countries : 1.318.250 kg

[FR Doc. 00-13789
Filed 5-30-00; 8:45 am]
Billing code 3190-01-P

APPENDIX B
***FEDERAL REGISTER* NOTICES**

of Import Relief, for the purpose evaluating the effectiveness of the relief action imposed by the President on imports of wheat gluten under section 203 of the Act, which terminated on June 1, 2001.

The President imposed the relief action on May 30, 1998, in the form of a quantitative restriction following receipt of an affirmative injury determination and relief recommendation from the Commission on March 18, 1998. The relief was imposed for a period of 3 years and 1 day. See Proclamation 7103 of May 30, 1998 (63 FR 30359), as modified by Proclamation 7202 of May 28, 1999 (64 FR 29773), and Proclamation 7314 of May 26, 2000 (65 FR 34899). Section 204(a) of the Act requires the Commission, following termination of a relief action, to evaluate the effectiveness of the action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Act. The Commission is required to submit a report on the evaluation made to the President and the Congress no later than 180 days after the day on which the relief action terminated 203(b) of the Act.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, subparts A through and E), and part 206, subparts A and F (19 CFR part 206, subparts A and F).

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION: B-3

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-204-7]

Wheat Gluten:¹ Evaluation of the Effectiveness of Import Relief

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation and scheduling of a hearing under section 204(d) of the Trade Act of 1974 (19 U.S.C. 2254(d)) (the Act).

SUMMARY: Pursuant to section 204(a) of the Act, the Commission has instituted investigation No. TA-204-7, Wheat Gluten: Evaluation of the Effectiveness

¹ Wheat gluten is provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS).

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 14 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Public Hearing

As required by statute, the Commission has scheduled a hearing in connection with this investigation. The hearing will be held beginning at 9:30 a.m. on October 25, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 16, 2001. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 18, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is October 18, 2001. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is November 1, 2001. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement concerning the matters to be addressed in the report on or before November 1, 2001. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other

parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(d) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: September 24, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01-24282 Filed 9-26-01; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. TA-204-4]

Wheat Gluten: Extension of Action**Determination**

On the basis of the information in this investigation, the Commission unanimously determines, pursuant to section 204(c) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2254(c)), that action under section 203 of the Trade Act with respect to imports of wheat gluten continues to be necessary to prevent or remedy serious injury and that there is evidence that the domestic wheat gluten industry is making a positive adjustment to import competition.

Background

Following receipt of a petition filed on behalf of the Wheat Gluten Industry Council, the Commission, effective November 30, 2000, instituted investigation No. TA-204-4, Wheat Gluten: Extension of Action, under section 204(c) of the Trade Act to determine whether action under section 203 of the Trade Act with respect to imports of wheat gluten continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic wheat gluten industry is making a positive adjustment to import competition.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 21, 2000 (65 FR 80455). The hearing was held in Washington, DC, on February 27, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on April 2, 2001. The views of the Commission are contained in USITC Publication 3407 (April 2001), entitled Wheat Gluten: Extension of Action, Investigation No. TA-204-4.

Issued: April 5, 2001.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01-0908 Filed 4-10-01; 8:45 am]

BILLING CODE 7020-02-P

B-5

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-201-67 (Consistency Determination)]

Wheat Gluten: Procedures for Determination Under Section 129(a)(4) of the URAA

AGENCY: United States International Trade Commission.

ACTION: Procedures relating to determination under section 129(a)(4) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3538(a)(4)).

SUMMARY: The Commission adopted these procedures following receipt on April 3, 2001, of a request from the United States Trade Representative (USTR) for a determination under section 129(a)(4) of the URAA that would render the Commission's action in investigation No. TA-201-67, Wheat Gluten, not inconsistent with the findings of the WTO Appellate Body in its report entitled "United States—Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities," AB-2000-10. **EFFECTIVE DATE:** April 9, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202-205-3172), Office of Investigations, or John Henderson (202-708-2310), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1820. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record of investigation No. TA-201-67 may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>. The non-confidential versions of any submissions received as well as the staff report prepared for this phase of the investigation will also be available for viewing as they are received.

SUPPLEMENTAL INFORMATION: Background. On March 18, 1998, the

Commission transmitted to the President a unanimous affirmative determination and remedy recommendation in its investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) that wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic wheat gluten industry (investigation No. TA-201-67, Wheat Gluten, USITC Pub. 3088 (March 1998)). The President issued Proclamation 7103 and applied a safeguard measure on imports of wheat gluten. The European Union subsequently requested review under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes. A WTO Appellate Body issued its report on December 22, 2000, and found, *inter alia*, that the action of the Commission in its investigation No. TA-201-67, Wheat Gluten, is not in conformity with the obligations of the United States under the WTO Agreement on Safeguards. The Appellate Body made three findings in this regard, which it set out in paragraphs 80 through 92, 93 through 100, and 156 through 163, of its report.

The USTR transmitted his request for this determination following receipt from the Commission on March 22, 2001, of an advisory report under section 129(a)(1) stating that the Commission has concluded that title II of the Trade Act of 1974 permits it to take steps in connection with its action in investigation No. TA-201-67, Wheat Gluten, that would render its action in that proceeding not inconsistent with the findings of the Appellate Body.

Participation in the Investigation and Service List

Persons wishing to participate in this phase of the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than April 13, 2001. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties in this phase of the investigation upon the expiration of the period for filing entries of appearance. Notwithstanding section 201.16 of the Commission's rules, written submissions provided for below filed by the parties shall be served by hand or by overnight mail or its equivalent.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Because all parties receiving CBI under the APO in the original investigation were required to return or destroy all CBI received under the APO, parties wishing to receive CBI under an APO in this phase of the investigation must file a new application. Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI which was gathered during the original investigation (No. TA-201-67) available to authorized applicants under the APO issued in this phase of the investigation, provided that the application is made not later than April 13, 2001. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO. By the close of business April 16, 2001, the Secretary will make available to authorized parties a copy of the confidential version of the record of the original investigation (No. TA-201-67) and a copy of the staff report for this phase of the investigation.

Written Comments

Parties wishing to file written comments with the Commission in connection with this determination must file such comments with the Secretary to the Commission not later than the close of business April 23, 2001. Any responses to such comments must be filed with the Secretary not later than the close of business April 30, 2001. Comments by parties shall not exceed 40 pages double-spaced, and responses shall not exceed 20 pages double-spaced, excluding exhibits; exhibits shall not contain any argumentation. Non-parties may file a single set of comments with the Secretary not later than the close of business April 23, 2001, which shall not exceed 10 pages double-spaced. All comments shall be limited solely to information in the record of the original investigation (No. TA-201-67), and may include comments regarding the Commission's conclusion in the advisory report under section 129(a)(1). All written comments must conform with the provisions of section 201.8 of the Commission's rules (19 CFR 201.8); any comments that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize the filing of submissions with the Secretary by facsimile or electronic means. The Commission will not hold a public hearing.

hearing in connection with this
determination.

Issued: April 5, 2001.

By order of the Commission.

Donna R. Koehnke.

Secretary.

[FR Doc. 01-8827 Filed 4-6-01; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION****[Investigation No. TA-204-4]****Wheat Gluten; Extension of Action****AGENCY:** United States International Trade Commission.**ACTION:** Institution and scheduling of an investigation under section 204(c) of the Trade Act of 1974 (19 U.S.C. 2254(c)) (the Act).

SUMMARY: Following receipt of a petition on November 30, 2000, requesting extension of the relief action currently in place on imports of wheat gluten, the Commission instituted investigation No. TA-204-4 under section 204(c) of the Act to determine whether the action taken by the President under section 203 of the Act with respect to wheat gluten, provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS), continues to be necessary to prevent or remedy serious injury and whether the domestic industry is making a positive adjustment to import competition. The petition was filed on behalf of the Wheat Gluten Industry Council, Washington, DC.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, subparts A-E), and part 206, subparts A and F (19 CFR part 206, subparts A and F).

Background

Following receipt of a report from the Commission in March 1998 under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) containing an affirmative determination and remedy recommendation, the President, on May 30, 1998, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253), issued Proclamation 7103 (as amended by Proclamation 7202 of May 28, 1999), imposing import relief in the form of quantitative limitations on imports of wheat gluten for a period of 3 years and 1 day.

EFFECTIVE DATE: November 30, 2000.**FOR FURTHER INFORMATION CONTACT:** Jim McClure (202-205-3191), Office of

Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the *Federal Register*. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to section 206.54(e) of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation in accordance with the procedures set forth in section 206.17 of the rules, provided that the application is made not later than 21 days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearing.—The Commission has scheduled a hearing in connection with this investigation, to be held beginning at 9:30 a.m. on February 27, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 20, 2001. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 22, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to

present a portion of their hearing testimony in *camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is February 20, 2001. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is March 6, 2001. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information on or before March 6, 2001. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(c) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: December 15, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00-32444 Filed 12-20-00; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. TA-204-2]

**Wheat Gluten: Monitoring
Developments in the Domestic
Industry**

AGENCY: United States International
Trade Commission.

ACTION: Institution and scheduling of an
investigation under section 204(a) of the
Trade Act of 1974 (19 U.S.C. 2254(a))
(the Act).

SUMMARY: The Commission instituted
the investigation for the purpose of
preparing the report to the President
and the Congress required by section
204(a)(2) of the Trade Act of 1974 on the
results of its monitoring of
developments with respect to the
domestic wheat gluten industry since
the President imposed quantitative
limitations on imports of wheat gluten¹
effective June 1, 1998.

For further information concerning
the conduct of this investigation,
hearing procedures, and rules of general
application, consult the Commission's
rules of practice and procedure, part
201, subparts A through E (19 CFR part
201), and part 206, subparts A and B (19
CFR part 206).

Background

Following receipt of a report from the
Commission in March 1998 under
section 202 of the Trade Act of 1974 (19
U.S.C. 2252) containing an affirmative
determination and remedy
recommendation, the President, on May
30, 1998, pursuant to section 203 of the
Trade Act of 1974 (19 U.S.C. 2253),
issued Proclamation 7103 (as amended
by Proclamation 7202 of May 28, 1999),
imposing import relief in the form of
quantitative limitations on imports of
wheat gluten for a period of 3 years and
1 day. Section 204(a)(1) of the Trade Act
of 1974 (19 U.S.C. 2254(a)(1)) requires
that the Commission, so long as any
action under section 203 of the Trade
Act remains in effect, monitor

¹Wheat gluten is classified in subheadings
1109.00.10 and 1109.00.90 of the Harmonized Tariff
Schedule of the United States.

developments with respect to the
domestic industry, including the
progress and specific efforts made by
workers and firms in the domestic
industry to make a positive adjustment
to import competition. Section 204(a)(2)
requires that whenever the initial period
of an action under section 203 of the
Trade Act exceeds 3 years, the
Commission shall submit a report on the
results of the monitoring under section
204(a)(1) to the President and the
Congress not later than the mid-point of
the initial period of the relief, or by
December 1, 1999, in this case. Section
204(a)(3) requires that the Commission
hold a hearing in the course of
preparing each such report.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT:
Joanna Bonarriva (202-708-4083),
Office of Investigations, U.S.

International Trade Commission, 500 E
Street SW, Washington, DC 20436.
Hearing-impaired persons can obtain
information on this matter by contacting
the Commission's TDD terminal on 202-
205-1810. Persons with mobility
impairments who will need special
assistance in gaining access to the
Commission should contact the Office
of the Secretary at 202-205-2000.
General information concerning the
Commission may also be obtained by
accessing its internet server ([http://
www.usitc.gov](http://www.usitc.gov)).

SUPPLEMENTARY INFORMATION:

*Participation in the investigation and
service list.*—Persons wishing to
participate in the investigation as
parties must file an entry of appearance
with the Secretary to the Commission,
as provided in § 201.11 of the
Commission's rules, not later than 14
days after publication of this notice in
the Federal Register. The Secretary will
prepare a service list containing the
names and addresses of all persons, or
their representatives, who are parties to
this investigation upon the expiration of
the period for filing entries of
appearance.

Public hearing.—As required by
statute, the Commission has scheduled
a hearing in connection with this
investigation. The hearing will be held
beginning at 9:30 a.m. on October 7,
1999 at the U.S. International Trade
Commission Building. Requests to
appear at the hearing should be filed in
writing with the Secretary to the
Commission on or before September 28,
1999. All persons desiring to appear at
the hearing and make oral presentations
should attend a prehearing conference
to be held at 9:30 a.m. on October 1,
1999, at the U.S. International Trade
Commission Building. Oral testimony

and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is October 1, 1999. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is October 15, 1999. In addition, any person who has not entered an appearance as a party to the investigation may submit, on or before October 15, 1999, a written statement concerning the matters to be addressed in the Commission's report to the President. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(a) of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

Issued: July 28, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-19743 Filed 7-30-99; 8:45 am]

BILLING CODE 7020-02-P

imports of wheat gluten from Canada and Mexico.

Findings and Recommendations With Respect to Remedy

The Commission unanimously—

(1) Recommends that the President impose a quantitative restriction, for a 4-year period, on imports of wheat gluten that are the subject of this investigation, in the amount of 126 million pounds in the first year, to be increased by 6 percent each subsequent year that the action is in effect;

(2) Recommends that, within the overall quantitative restriction, the President allocate separate quantitative restrictions for the European Union, Australia, and "all other" non-excluded countries, taking into account the disproportional growth and impact of imports of wheat gluten from the European Union;

(3) Having made negative findings with respect to imports of wheat gluten from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, recommends that such imports be excluded from the quantitative restriction;

(4) Recommends that this import relief action not apply to any imports of wheat gluten from Israel, or to any imports of wheat gluten entered duty free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act; and

(5) Recommends that the President undertake international negotiations to address the underlying cause of the increase in imports of wheat gluten or otherwise to alleviate the injury to the domestic industry.

The Commission finds that this remedy will address the serious injury that it has found to exist and will be the most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

Background

Following receipt of a petition filed on September 19, 1997, on behalf of the Wheat Gluten Industry Council, the Commission, effective September 19, 1997, instituted investigation No. TA-201-67, Wheat Gluten, under section 202 of the Trade Act of 1974 to determine whether wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of October 1, 1997 (62 FR 51488). The hearing in connection with the injury phase of the investigation was held on December 16, 1997, and the hearing on the question of remedy was held on February 10, 1998. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on March 18, 1998. The views of the Commission are contained in USITC Publication 3088 (March 1998), entitled "Wheat Gluten: Investigation No. TA-201-67."

Issued: March 19, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-7742 Filed 3-24-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-201-67]

Wheat Gluten

Determination

On the basis of the information in the investigation, the Commission unanimously—

(1) determines, pursuant to section 202(b) of the Trade Act of 1974, that wheat gluten¹ is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article; and

(2) makes negative findings, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act, with respect to

¹ The imported article covered by this investigation is wheat gluten, the natural protein portion of wheat that is extracted after wheat is milled into flour. Wheat gluten is provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS).

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. TA-201-67]

Wheat Gluten Industry Council

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) (the Act).

SUMMARY: Following receipt of a petition filed on September 19, 1997, on behalf of the Wheat Gluten Industry Council, the Commission instituted investigation No. TA-201-67 under section 202 of the Act to determine whether wheat gluten, provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: September 19, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-

impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

SUPPLEMENTARY INFORMATION:
Participation in the Investigation and Service list

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the *Federal Register*. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List.

Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearings on Injury and Remedy

The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on December 16, 1997, at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on February 10, 1998. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before December 5, 1997, and January 30, 1998, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing

conferences to be held at 9:30 a.m. on December 9, 1997 and February 3, 1998, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is December 10, 1997; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is February 3, 1998. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is December 23, 1997; that for filing posthearing briefs on remedy is February 18, 1998. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before December 23, 1997, and pertinent to the consideration of remedy on or before February 18, 1998. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: September 26, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97-26020 Filed 9-30-97; 8:45 am]

BILLING CODE 7020-02-P

APPENDIX C

**PRODUCT DESCRIPTION, PHYSICAL CHARACTERISTICS
AND USES, AND PRODUCTION PROCESS**

THE PRODUCT

Physical Characteristics and Uses

Wheat gluten is produced from wheat flour. Wheat contains a relatively high amount of gluten, the protein that provides the elasticity necessary for excellent bread making. Though there are over 30,000 varieties of wheat, the three major types are hard wheat, soft wheat, and durum wheat. Hard wheat is high in protein (10 to 14 percent) and yields a flour rich in gluten, making it particularly suitable for yeast breads. The low-protein (6 to 10 percent) soft wheat yields a flour lower in gluten and therefore better suited for tender baked goods such as biscuits and cakes. Durum wheat, although high in gluten, is not good for baking. Instead, it is most often ground into semolina, the basis for pasta. In the United States, wheat is also categorized according to the time of the year in which it is sown, namely, spring wheat and winter wheat (which is actually sown in the fall).¹

The unprocessed wheat kernel, commonly known as a wheat berry, is made up of three major portions: bran, germ, and endosperm. Wheat bran, the rough outer covering, has a high proportion of fiber. During milling, the bran is removed from the kernel. It is sold separately and used to add flavor and fiber to baked goods. Wheat germ, essentially the embryo of the berry, is a concentrated source of vitamins, minerals, and proteins. It is sold in both toasted and natural forms and is used to add nutrition to a variety of foods. The wheat endosperm, which makes up the majority of the kernel, is full of starch, protein, niacin, and iron. It is the primary source of many wheat flours. The protein found in wheat endosperm constitutes the wheat gluten.

Vital wheat gluten is about 75 percent protein.² U.S. wheats tend to be higher in protein content than European wheats. According to the U.S. industry, because of the differential in protein content, the European manufacturers of wheat gluten require more, and costlier, equipment.³

Wheat and other cereals that are made into flour contain proteins, one of which is glutenin, commonly known as gluten. Viewed alone, gluten is a tough, elastic grayish substance resembling chewing gum. It is the gluten in flour that, when a dough is kneaded, helps hold in the gas bubbles formed by the leavening agent. Gas contained within a dough or batter helps a bread or other baked good rise, creating a light structure. Most (but not all) flours contain gluten in varying amounts. Bread (or hard wheat) flour has a high gluten content and is therefore good for yeast breads, which require an elastic framework. On the other hand, low-protein (and therefore low-gluten) cake flour has a softer, less elastic quality and is better suited for cakes.⁴

About 80 percent of wheat gluten consumed in the United States serves as an input to the baking industry, with some slight year-to-year variations depending upon the quality of the wheat crop.⁵ Non-bakery users, including the pet food industry, account for the remaining 15-20 percent of consumption.⁶

Wheat gluten is used by bakers to supplement the gluten in the flours used to make baked goods. Thus, in years when the protein content of wheat is low, bakers have an increased need for wheat gluten. Conversely, in years of high-protein-content wheat, the need for wheat gluten declines. Wheat gluten must be used in the production of high-fiber and multi-grain breads, which has been increasing in recent years as consumers have become more health conscious. While bakers prefer not to use wheat gluten in white breads, they may need to use some in order to produce bread in modern high-speed facilities, or in those years when the wheat crop tends to have a lower protein content.

¹ Herbst, Sharon Tyler, *The Food Lover's Companion*, 2nd edition, Barron's Educational Services, Inc.

² Interview with Manildra officials, Kansas City, MO, October 20, 1997.

³ *Id.*

⁴ Herbst, *op cit.*

⁵ Interview with Interstate Brands Corporation officials, Kansas City, MO, October 21, 1997, and petitioner's prehearing brief on injury in investigation No. TA-201-67, p. 8.

⁶ Petitioner's prehearing brief on injury in investigation No. TA-201-67, p. 8.

The uses of gluten in alternative products has been changing quite rapidly. Modified glutes, many of which are not within the scope of the original investigation, are used in a number of applications including hydrolyzed wheat protein, calf milk replacer, high-protein beverages, shampoos and conditioners, moisturizers, soap and bath gels, hair sprays, and hand creams.

Wheat gluten produced in Australia, Canada, and the EU is perceived to be roughly of the same quality as that produced in the United States. Wheat gluten has no substitutes with the functional properties of “vitality” (i.e., visco-elastic properties) that bakers need to produce consistent loaves of bread in high-speed facilities, particularly high-fiber and multi-grain loaves of bread.

Production Process

The process of manufacturing wheat gluten always results in two products: one part of gluten and approximately five parts of starch. The process is somewhat akin to taking a ball of dough (flour and water) and rinsing it until all the starch is washed away, leaving only the gluten. The starch in the effluent is then extracted. Any remaining starch slurry is sent to either a waste processing plant or to a distillery for utilization in the production of ethanol or food-grade alcohol.

According to industry officials, wheat that is #1 grade will yield gluten that is 75 percent protein.⁷ Two types of starch are produced, which are separated by centrifuges. Premium, or “A,” starch is sold for use in various food applications, or can be further modified. Low-grade, or “B,” starch is not as economically viable a form of starch and is used as an input into alcohol production by some manufacturers and disposed of by others. One hundred pounds of flour yields approximately 11 to 13 pounds of gluten, 50 to 52 pounds of “A” starch, and 13 pounds of “B” starch; the remainder is fiber and water.⁸

A wheat gluten/starch production facility is a capital intensive operation. It is believed that all U.S. plants utilize similar technology. U.S. wheat gluten operations are located primarily in the Midwest, close to the production of winter wheat, the wheat of choice for gluten production.

⁷ Interview with Midwest officials, Atchison, KS, October 22, 1997.

⁸ *Id.*