Fresh Tomatoes from Mexico

Investigation No. 731-TA-747 (Preliminary)

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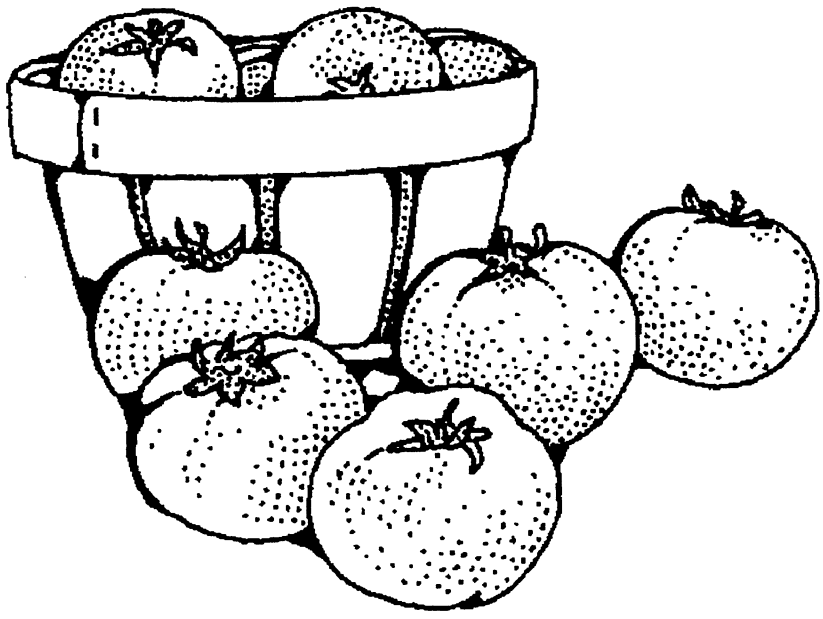
U.S. International Trade Commission



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U.S. International Trade Commission

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Glossary of Abbreviations

Agriculture	U.S. Department of Agriculture
CAADES	Confederacion de Asociaciones Agricolas del Estado de Sinaloa
Census	Bureau of the Census, U.S. Department of Commerce
c.i.f.	Cost, insurance, freight
CFR	Code of Federal Regulations
COGS	Cost of goods sold
Commission	U.S. International Trade Commission
Commerce	U.S. Department of Commerce
FAS	Foreign Agricultural Service, U.S. Department of Agriculture
FOB	Free on Board
FR	Federal Register
HTS	Harmonized Tariff Schedule of the United States
IMF	International Monetary Fund
LTFV	Less than fair value
PRW	Production and related workers
SG&A expenses	Selling, general, and administrative expenses
Transcript	Transcript of the conference in the preliminary investigation

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-747 (Preliminary)

FRESH TOMATOES FROM MEXICO

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Mexico of fresh chilled tomatoes, provided for in subheadings 0702.00.20, 0702.00.40, 0702.00.60, and 9906.07.01 through 9906.07.09 of the Harmonized Tariff Schedule of the United States,[3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 1, 1996, a petition was filed by counsel on behalf of the Florida Tomato Growers Exchange, Orlando, FL, Florida Fruit and Vegetable Association, Orlando, FL, Florida Farm Bureau Federation, Gainesville, FL, South Carolina Tomato Association, Inc., Charleston, SC, Gadsden County Tomato Growers Association, Inc., Quincy, FL, Accomack County Farm Bureau, Accomack, VA, Florida Tomato Exchange, Orlando, FL, Bob Crawford, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, Tallahassee, FL, and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers, with the Commission and Commerce. The petition alleges that an industry in the United States is materially injured or threatened with material injury by reason of less than fair value imports of fresh tomatoes from Mexico. Accordingly, effective April 1, 1996, the Commission instituted antidumping investigation No. 731-TA-747 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 April 10, 1996 (61 F.R. 15968). The conference was held in Washington, DC, on April 22, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Nuzum not participating.

[3] For purposes of this investigation, fresh or chilled tomatoes are all fresh or chilled tomatoes (fresh tomatoes) except those which are grown for processing. Processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Further, such excluded imports of fresh tomatoes for processing are accompanied by an "Importers's Exempt Commodity Form" (FV-6) pursuant to 5 CFR §§ 980.501(a)(2) and 980.212(1). Fresh tomatoes that are imported for cutting up, not further processed (e.g., tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV-6 form are covered by the scope of the investigation.

VIEWS OF THE COMMISSION

Based on the record in this preliminary investigation, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fresh tomatoes from Mexico that are alleged to be sold in the United States at less than fair value ("LTFV").[4]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping investigations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly LTFV imports.[5] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[6] [7]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Background and Product Description

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."[8] Section 771(4)(A) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output

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[4] 19 U.S.C. § 1671 et seq., as amended. Whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded is not an issue in this investigation. Vice Chairman Nuzum did not participate in this investigation.

[5] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

[6] American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[7] Chairman Watson notes his concern that the low threshold of the American Lamb standard often results in an affirmative determination by the Commission, even if the Commission could reasonably have made a negative determination on the merits based on information in a more complete record. See Polyvinyl Alcohol from China, Japan, Korea, and Taiwan, Inv. Nos. 731-TA-726-729 (Preliminary).

[8] 19 U.S.C. § 1677(4)(A).

of a domestic like product constitutes a major proportion of the total domestic production of the product."[9] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ."[10]

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[11] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[12] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[13]

In its notice of initiation, the Department of Commerce has defined the imported articles subject to this investigation as:

> all fresh or chilled tomatoes (fresh tomatoes) except for those which are for processing. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces or purees. Further, imports of fresh tomatoes for processing are accompanied by an "Importer's Exempt Commodity Form" (FV-6) (within the meaning of 7 C.F.R. section 980.501(a)(2) and 980.212(i)). Fresh tomatoes that are imported for cutting up, not further processed (e.g., tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV-6 form are covered by the scope of this investigation.[14]

All commercially grown tomatoes are edible fruit from the genus Lycopersicon. Common forms include common round, roma (also called "plum" or "pear"), and cherry tomatoes.[15] Tomatoes are generally grown in fields but are also grown in greenhouses ("greenhouse" and "hydroponic" tomatoes, the latter grown

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[9] 19 U.S.C. § 1677(4)(A).

[10] 19 U.S.C. § 1677(10).

[11] See, e.g., Nippon Steel Corp. v. United States, 19 CIT __, Slip Op. 95-57 at 11 (Apr. 3, 1995). In analyzing domestic like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See id. at 11 n.4, 18; Timken Co. v. United States, 20 CIT __, Slip Op. 96-8 at 9 (Jan. 3, 1996).

[12] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[13] Torrington Co. v. United States, 747 F. Supp. 744, 748-749 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[14] Initiation of Antidumping Duty Investigation: Fresh Tomatoes from Mexico, 61 Fed. Reg. 18377 (Apr. 25, 1996).

[15] Confidential Report ("CR") at I-2-I-3, II-2, Public Report ("PR") at I-1-I-2, II-2 ; Petition at 11-12.

in water in greenhouses).[16] Tomatoes are grown commercially for two general purposes: consumption as a fresh product ("fresh market" or "fresh" tomatoes) or further processing into such products as paste, sauce, and juice ("processing tomatoes").[17] Fresh market tomatoes can be further divided into two categories depending upon their stage of maturation when they are harvested. "Mature green" tomatoes are harvested when they are fully mature in size but still entirely green in color and then "degreened" through the use of ethylene gas.[18] "Vine ripe" tomatoes are allowed to ripen to a moderate color on the vine prior to harvest.[19]

B. Domestic Like Product Issues in This Investigation

In this investigation, we have addressed two domestic like product issues: (1) whether mature green and vine ripe tomatoes constitute separate domestic like products; and (2) whether the domestic like product includes processing tomatoes.

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[16] CR at II-5, PR at II-3; Petition at 13; Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase), USITC Pub. 2881 at I-8 (Apr. 1995) (hereinafter "USITC Pub. 2881").

[17] Petition at 12; USITC Pub. 2881 at II-4-II-5.

[18] Tomatoes ripen themselves through the secretion of natural ethylene gas. The degreening process applies ethylene gas under controlled conditions to speed up or slow down this natural process. CR at I-4-I-5, PR at I-3; Transcript of Commission Staff Conference (Apr. 22, 1996) ("Conf. Tr.") at 90.

[19] CR at II-2, PR at II-1; USITC Pub. 2881 at I-9.

1. Whether Mature Green and Vine Ripe Tomatoes Are Separate Domestic Like Products

Petitioners[20] argue that there is a single domestic like product consisting of all fresh tomatoes, including round, roma and cherry, whether mature green or vine ripe.[21] Respondents[22] argue that mature green fresh tomatoes and vine ripe fresh tomatoes are separate domestic like products.[23] [24]

a. Physical Characteristics and Uses

There is no USDA regulation or other "official definition" that distinguishes a mature green from a vine ripe tomato.[25] All parties agree that mature green tomatoes are those that are picked while they are mature in size but still wholly green in color.[26] Domestic producers consider a tomato that shows any redness whatsoever at the time it is picked to be a vine ripe tomato. Thus, according to the domestic industry, a "breaker" or "number 2" tomato (an otherwise green tomato showing a small star of red when picked) is considered vine ripe.[27] Most domestic producers grow varieties of tomatoes bred to be harvested as mature greens. When they harvest mature greens, they also harvest any tomatoes showing some color and sell the

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[20] Petitioners include the Florida Tomato Growers Exchange, Florida Fruit and Vegetable Association, Florida Farm Bureau Federation, South Carolina Tomato Association, Gadsden County Tomato Growers Association, Accomack County Farm Bureau, Florida Tomato Exchange, Florida Commissioner of Agriculture Bob Crawford, and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers.

[21] Petitioners contend that mature green and vine ripe tomatoes are fully interchangeable, are produced through the same production process, and compete on the basis of price. Conf. Tr. at 59, 69; Petitioners' Postconference Brief at 2-3 (citing Conf. Tr. at 25-26, 34-35); Petition at 13.

[22] Respondents are the Confederacion de Asociaciones Agricolas del Estado Sinaloa ("CAADES") and the Confederation of Mexican Fruit and Vegetable Growers Associations.

[23] Respondents contend that the production processes are different for vine ripe and mature green tomatoes; that vine ripe tomatoes taste better than mature green tomatoes; and that vine ripe tomatoes are perceived by consumers as higher quality products such that they command a price premium in the retail market.g3
Conf. Tr. at 144-146; Respondents' Postconference Brief, Attachment 10 at 1-6.

[24] Chairman Watson and Commissioner Crawford note that many of the differences pointed out by respondents between vine ripe and mature green tomatoes are based on comparisons between Mexican vine ripe tomatoes and domestic mature green tomatoes, rather than comparisons between domestically produced vine ripe and mature green tomatoes. To the extent that differences exist between the imported product and the domestic product, we consider them as a substitutability issue in the context of our discussion of conditions of competition, rather than as a domestic like product issue. Indeed, respondents conceded that their arguments go principally to substitutability rather than domestic like product. Conf. Tr. at 146; Respondents' Postconference Brief, Attachment 10 at 1.

[25] Petitioners' Postconference Brief, Collective Exhibit, Hawkins Affidavit and Attachment 3 thereto.

[26] Conf. Tr. at 88-90.

[27] Conf. Tr. at 88-90; Hawkins Affidavit, Attachment 3 (chart showing tomato colors from #1 to #6).

latter as vine ripe tomatoes.[28] All tomatoes then undergo a ripening process, whether natural or controlled, on their way to the ultimate consumer. At the point of first sale, there may or may not be a difference in appearance between mature greens and vine ripes depending on how much ripening has occurred prior to shipment.

At the point of sale to the ultimate consumer, all fresh market tomatoes are a red ripe fruit that can be sliced or cut up for use in salads, sandwiches, or salsas or as an ingredient in various recipes. At the retail level, round, roma or cherry tomatoes, whether mature green or vine ripe, have the same general physical appearance such that, unless alerted by a sign or label, a grocery store customer generally would not be able to tell the difference between a mature green tomato of a certain shape and a vine ripe tomato of the same shape based on its physical appearance.[29] Due to handlers' greater ability to control the ripening process for mature greens, mature green tomatoes may be a firmer product by the time they reach the ultimate customer than are vine ripe tomatoes, although this may not be true in the case of "extended shelf life" varieties of vine ripes.[30] The materials submitted by the parties concerning taste are conflicting.[31] Accordingly, the record is not clear with respect to whether there are any real taste differences between mature green and vine ripe tomatoes or, if so, whether any difference is attributable to the use of different varieties or different ripening methods.

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[28] Thus, vine ripe tomatoes account for 10 to 15 percent of domestic fresh tomato production. Petitioners' Postconference Brief, Borek Affidavit at ¶1; Petitioners' Request for Leave, Grant Affidavit at ¶1 (10-12%), Lipman Affidavit at ¶1 (12-15%). By contrast, over 90 percent of fresh tomatoes produced in Mexico are vine ripe. Conf. Tr. at 101-102, 107.

[29] Petition at 42-43; Conf. Tr. at 25-26, 34-35, 88-90, 147; Petitioners' Postconference Brief, Hawkins Affidavit at ¶1 (interviews show consumers cannot tell the difference between mature greens and vine ripes). The parties are not consistent in making their comparisons between vine ripe and mature green tomatoes either at the point of first sale or at the retail level. When discussing comparability in terms of physical characteristics, the parties generally make comparisons between vine ripe and mature green tomatoes as they appear and taste at the time when retail consumers purchase them. For other issues, such as pricing, they refer to both retail and wholesale comparisons. See, e.g., Petitioners' Request for Leave, Nobles Affidavit at ¶6 (comparison at wholesale); Conf. Tr. at 126-128, 141 (retail price comparisons).

[30] Conf. Tr. at 25-26, 34-35; Petitioners' Request for Leave, Nobles Affidavit ¶4.

[31] Conf. Tr. at 104-105, 113-114, 125-126; Petitioners' Postconference Brief, Collective Exhibit, Hawkins Affidavit and Attachment 1 thereto, Nobles Affidavit ¶4, and DiMare Affidavit ¶6.

b. Interchangeability

While several domestic producers conceded that some purchasers have preferences for either mature green or vine ripe tomatoes, they indicated that virtually all purchasers will switch between mature greens and vine ripes if the price differential is great enough.[32] A number of domestic growers also indicated that a significant portion of their production of mature green tomatoes is ultimately sold to supermarkets and that they believe that this proportion has remained stable throughout the period of investigation.[33] Respondents' witnesses agreed that mature green and vine ripe tomatoes are technically interchangeable, although different purchasers may have preferences based on taste or firmness.[34] It is clear that mature green and vine ripe tomatoes of all shapes and sizes are sold side by side in grocery produce sections. The record does not contain any evidence with respect to the relative purchases of mature green and vine ripe tomatoes by consumers in the food service industry or by other non-supermarket end users.

c. Channels of Distribution

All growers utilize the services of either independent or related packers to clean, sort, and pack their tomatoes after harvesting. Vine ripe product is generally place packed by hand in 22 lb. flats containing tomatoes of the same size and color.[35] Mature greens are mechanically packed into 25 lb. bulk boxes prior to degreening and then may be sorted and repacked for consistent color and size.[36] Degreening may be performed either by the packer prior to shipment or by a repacker or other purchaser upon receipt of the shipment.[37] Vine ripes and mature greens are handled by the same downstream repackers, distributors, and/or wholesalers who serve both food service and supermarket markets.[38] The record in this preliminary

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[32] Petitioners' Request for Leave, Esformes Affidavit ¶6, Lipman Affidavit ¶3.

[33] Petitioners' Postconference Brief, Collective Exhibit, Nobles Affidavit ¶2, Borek Affidavit ¶2, and DiMare Affidavit ¶11.

[34] Respondents' Postconference Brief at 4-5; Conf. Tr. at 112, 157-159.

[35] CR at V-1, PR at V-1; Conf. Tr. at 128, 151-154; Respondents' Postconference Brief, Appendix 1 to Attachment 10.

[36] CR at V-1, PR at V-1; Conf. Tr. at 128, 152; Respondents' Postconference Brief, Appendix 1 to Attachment 10.

[37] Petitioners' Request for Leave, Grant Affidavit ¶3, Esformes Affidavit ¶3, Lipman Affidavit ¶4.

[38] CR at II-3, PR at II-2.

investigation does not contain evidence with respect to the ultimate percentage of vine ripe and mature green tomatoes purchased by the food service or supermarket segments of the market.

d. Common Manufacturing Facilities, Production Processes, and Production Employees

The commercial production of fresh market tomatoes involves planting, irrigation, fertilization, harvesting, cleaning, sorting, grading, and packing. There are a number of varieties of tomato seeds bred to grow in different climates and to be harvested either mature green or vine ripe.[39] Most domestic growers use varieties bred to be harvested as mature greens, but harvest some portion of the crop vine ripe.[40] Since domestic producers grow mature green and vine ripe tomatoes on the same plants, there is virtually no difference in fertilization or irrigation, except that irrigation must be shut off several days before harvest for mature green tomatoes, because the tomatoes must be somewhat dehydrated for the degreening process.[41]

The principal differences between the production processes occur during and after harvest. All fresh market tomatoes are harvested manually. On average, mature green tomatoes are harvested less frequently and in larger numbers than vine ripe tomatoes, but there appears to be a wide and overlapping range of harvesting frequencies for each variety.[42] Once harvested, all fresh market tomatoes are washed, sorted, graded, and packed. Mature greens must then be degreened, either before or after shipment, while vine ripe tomatoes are allowed to complete the ripening process naturally.[43] The degreening process, however, although unique to mature greens, involves the application of the same ethylene gas that the tomatoes themselves emit to cause ripening, but under more controlled conditions. Moreover, all tomatoes are

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[39] Supplement to Petition (Apr. 11, 1996), Exhibit 10 (Petoseed tomato seed catalog, listing some varieties best suited to mature green or vine ripe production but no indication as to others).

[40] Petitioners' Postconference Brief, Borek Affidavit ¶1; Petitioners' Request for Leave, Grant Affidavit ¶1 (10-12% of crop harvested vine ripe), Lipman Affidavit ¶1 (12-15%).

[41] Conf. Tr. at 148-149; Respondents' Brief at 2.

[42] Conf. Tr. at 24-25, 52, 87-88, 150-151; Petitioners' Request for Leave, Esformes Affidavit ¶1.

[43] Because mature green tomatoes are picked before the natural ripening process has progressed very far, the packer can exert significant control over the ripening process through the use of temperature, humidity, and degreening technology. Petitioners' Request for Leave, Grant Affidavit ¶7.

generally kept in controlled temperatures and humidity during storage and shipment. Thus, there does not appear to be a clear dividing line between the production regimens for mature green and vine ripe tomatoes.

e. Customer and Producer Perceptions

While the domestic producers contend that vine ripe tomatoes are not superior to mature greens in taste or quality, they do appear to acknowledge that some consumers perceive vine ripes to be more desirable for their taste, freshness, healthiness, or other reasons.[44] At least one witness also indicated that some wholesalers and other professional tomato buyers have preferences for vine ripes or mature greens.[45] Indeed, petitioners submitted an advertisement being run by Florida growers in magazines aimed at repackers and wholesalers touting test results finding no difference in taste between mature green and vine ripe tomatoes.[46] The existence of such ads suggests that there may be a perception in the market that vine ripe tomatoes are preferable to mature greens due to taste or other reasons, but the evidence before us as to the existence or extent of any such preferences is mixed.[47]

f. Price

In this preliminary investigation, the Commission gathered separate pricing data on comparably graded and sized domestic mature green and vine ripe round tomatoes (products 1 and 2). These data suggest that prices for both products are extremely variable and that there is no consistent or significant price premium for vine ripes.[48]

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[44] Petitioners' Postconference Brief, Hawkins Affidavit ¶1(c); Petitioners' Request for Leave, Grant Affidavit ¶7 (buyers prefer mature greens because they last longer), Esformes Affidavit ¶6 ("Vine ripened tomatoes may be regarded by some persons with superficial knowledge of the characteristics of tomatoes and the color and flavor-developing phase of the ripening process as superior in taste.").

[45] Petitioners' Postconference Brief, Nobles Affidavit ¶4.

[46] Petitioners' Postconference Brief, Hawkins Affidavit, Attachment 2.

[47] Commissioner Crawford also considered additional evidence discussed infra regarding consumer preferences.

[48] CR at V-4, PR at V-3; compare Tables V-1 and V-2 (first column), CR at V-7-V-10, PR at V-5-V-8. As discussed in section IV.B. infra, we view the price comparison data gathered in this investigation with some caution, due to the inherent difficulties in tracking price changes in this volatile market.

g. Conclusion

While there are some differences in physical appearance between mature green and vine ripe tomatoes, they appear to be matters of degree that are significantly reduced, if not eliminated, by the time the tomato reaches the ultimate consumer. The record suggests that vine ripe and mature greens are interchangeable in many applications, are sold in the same channels of distribution, show no consistent price differential at the first sale level, and are produced through very similar processes, sometimes on the same plants. We find that these similarities outweigh any real or perceived differences in taste, to the extent that any such differences may exist. Thus, in our view, the record in this preliminary investigation does not demonstrate a clear dividing line between mature green and vine ripe tomatoes. We therefore find a single domestic like product consisting of all fresh market tomatoes.[49]

2. Whether the Domestic Like Product Includes Processing Tomatoes

Both petitioners and respondents argue that tomatoes grown for further processing ("processing tomatoes") are not the same domestic like product as tomatoes grown for fresh use ("fresh market tomatoes").[50] Although no party has argued that the domestic like product in this investigation should include all domestically grown tomatoes regardless of intended use, we have never addressed this question under the legal standards applicable in a Title VII investigation. Accordingly, we briefly address the issue here.

All commercially grown tomatoes, regardless of intended end use, are edible fruit from the same genus. At harvest, fresh market tomatoes have a more aesthetically pleasing external appearance, while processing tomatoes are not grown or handled with appearance in mind. As is the case with vine ripe and mature green tomatoes, producers tend to plant different varieties of tomatoes for fresh market or processing uses. In particular, varieties intended for processing are bred to be meatier, while fresh market tomatoes tend

[49] Based on the above, Commissioner Crawford finds that mature green and vine ripe tomatoes are sufficiently substitutable to conclude that they represent one domestic like product.

[50] Conf. Tr. at 59, 69, 161; Petition at 12-13.

to be juicier.[51] With respect to end uses, fresh market tomatoes are sold to supermarkets or food service establishments for fresh consumption, while processing tomatoes are sold to canneries for processing into tomato paste, sauce, juice, and other downstream products.[52] On a technical level, fresh market and processing tomatoes are interchangeable; tomato paste can be made from a fresh market tomato and a processing tomato can be eaten fresh. Substitution in either direction is rare, however, due to the inferior aesthetics of processing tomatoes and the much higher prices of fresh tomatoes.[53]

Processing tomatoes are generally grown under advance contract with canneries. After harvesting, they are sent directly to the cannery by the truckload. By contrast, fresh market tomatoes are washed, sorted, packed, graded, and sold in cartons by packers through a series of middlemen and ultimately to food service establishments and retail chains. They are not grown under contract with any processor or end user. Packers and other middlemen that handle fresh market tomatoes do not deal in processing tomatoes.[54]

Fresh and processing tomatoes are grown from different seed varieties. One of the principal differences is that fresh market varieties tend to yield tomatoes over a period of weeks, while processing varieties tend to mature all at once for a single harvest.[55] Fresh market tomatoes are generally grown staked in fields and harvested by hand to avoid bruising the fruit. Processing tomatoes are generally grown on the ground and are mechanically harvested.[56] Processing tomatoes are picked ripe and therefore are not degreened.[57]

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[51] Conf. Tr. at 59-60, 61-62; USITC Pub. 2881 at II-4.

[52] Conf. Tr. at 59-60, 61-62; Supplement to Petition at 9 and Exhibit 4, Hawkins Affidavit (less than 1% of Florida fresh market tomatoes are used for processing); USITC Pub. 2881 at II-5.

[53] Conf. Tr. at 59-64; Supplement to Petition at 9 and 11; USITC Pub. 2881 at II-5-II-6 and II-9.

[54] Conf. Tr. at 61-62; Supplement to Petition at 12-13; USITC Pub. 2881 at II-6-II-7.

[55] Supplement to Petition at 10 and Exhibit 10; USITC Pub. 2881 at I-14.

[56] Conf. Tr. at 60; USITC Pub. 2881 at II-8-II-9. In California, some fresh market tomatoes are also grown on the ground rather than staked. Petitioners' Request for Leave, Esformes Affidavit ¶1.

[57] Processing tomatoes are trucked directly from the field to the cannery, so that the ability to ripen slowly while traveling to distant consumer markets is not an issue. Supplement to Petition at 12; USITC Pub. 2881 at II-9.

Based on the differences in appearance and end uses, channels of distribution, production methodology, and price and on very limited interchangeability, and in the absence of any party arguments to the contrary, we conclude that the domestic like product does not include processing tomatoes.[58]

C. Domestic Industry

In making its determination, the Commission is directed to consider the effect of the imports on the industry, defined as "the producers as a [w]hole of a domestic like product..."[59] In this investigation, we must determine whether the domestic industry producing fresh market tomatoes is limited to fresh tomato growers or also includes packers of fresh tomatoes.[60] This determination turns essentially on the meaning of who contributes to the "collective output" of fresh market tomato production.[61]

In a number of previous investigations, the Commission has explored whether growers of a raw agricultural product should be included as part of the domestic industry that produces a processed or otherwise more advanced form of the fresh product pursuant to section 771(4)(E) of the Act, 19 U.S.C. §1677(4)(E).[62] Unlike the situations contemplated by that statutory provision, however, the question in this investigation is whether the "downstream" packers and handlers of a raw agricultural product should be included in the domestic industry producing that raw product along with the growers. In Fresh Kiwifruit from New Zealand, the Commission concluded that the guidelines of section 771(4)(E), although not directly

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[58] Based on the above, Commissioner Crawford does not find sufficient substitutability to conclude that the domestic like product includes tomatoes for processing.

[59] 19 U.S.C. § 1677(4)(A).

[60] Petitioners state that they are indifferent as between the two possible definitions of the industry, but argue that limiting the industry to growers is more consistent with Commission precedent. Conf. Tr. at 70; Petitioners' Answers to Staff Questions at 3-6. Respondents state that they do not have sufficient facts to evaluate whether packers should be included in the domestic industry, but caution that vertically integrated grower/packers may have considerable leeway in assigning profits between their growing and packing operations. Respondents' Postconference Brief, Attachment 10 (Answers to Staff Questions) at 6-7.

[61] See 19 U.S.C. § 1677(4)(A).

[62] See, e.g., Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Final), USITC Pub. 2907 (July 1995); Honey from the People's Republic of China, Inv. No. 731-TA-722 (Preliminary), USITC Pub. 2832 (Nov. 1994); Tart Cherry Juice and Tart Cherry Juice Concentrate from Germany and Yugoslavia, Inv. Nos. 731-TA-512-513 (Preliminary), USITC Pub. 2378 (May 1991).

applicable, were nevertheless useful by analogy in determining whether to include packers and handlers in an industry producing a raw agricultural product.[63]

In determining whether growers should be included as part of the industry producing a processed agricultural product, we employ a two-part test.[64] The first inquiry is whether there is a single continuous line of production from raw to processed product. The second inquiry concerns whether there is a substantial coincidence of economic interest between the growers and the processors.[65] The Commission has employed the economic interest test to distinguish those cases in which growers are merely arm's-length suppliers of a product to processors with inherently divergent economic interests.

In this investigation, the record demonstrates that there is a single continuous line of production involving both growers and packers. Virtually all commercially grown fresh market tomatoes (with the possible exception of some sold at farm stands) are washed, sorted, graded, and packed prior to the first sale by packers.[66] Mexican fresh market tomatoes are imported packed, so competition in the market is among packed tomatoes.

The evidence with respect to coincidence of economic interests is mixed. Petitioners' witness testified that, when the packer and seller are unrelated, the packer charges the grower a packing and sales charge of about 8-10 cents per pound, sells the product, and pays the grower the sales price received less the packer's charges. Consequently, the packer can be making a profit on transactions even when the price received represents a loss to the grower, suggesting a lack of coincidence of economic interest.[67]

On the other hand, however, if prices in the market are weak, packers suffer along with the growers.

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[63] Inv. No. 731-TA-516 (Final), USITC Pub. 2510 (May 1992) (determining not to include packers in the industry based, inter alia, on the limited degree of vertical integration between growers and packers).

[64] See, e.g. Tart Cherry Juice, USITC Pub. 2378 at 12-15; Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Final), USITC Pub. 2218 at 4-10 (Sept. 1989).

[65] In addressing coincidence of economic interest, the statute provides that the Commission may, in its discretion, consider price, added market value, or other economic interrelationships. 19 U.S.C. § 1677(4)(E)(i).

[66] CR at III-2 (90.9 percent of reporting growers' shipments are to packers), PR at III-2.

[67] Conf. Tr. at 71-72, 77; CR at VI-1, PR at VI-1.

If the price falls below the growers' pick and pack costs, the growers will leave the tomatoes in the field.[68] As the volume of tomatoes handled by a packer declines, the packer's per carton costs increase, because it must continue to meet fixed costs for its facilities and staff.[69] It is a practice in the industry for packers to forego any portion of their packing charges that exceed the price they are able to obtain for a grower's tomatoes.[70] In addition, when the market price is low, the packer may forego certain other charges that are usually passed on to the purchaser (such as charges for degreening and palletizing) in order to make a sale. These charges may amount to as much as 85-95 cents per carton.[71] Thus, when prices fall, the fees packers receive from both growers and purchasers tend to decline. Accordingly, while the packer may profit despite poor returns to growers, once prices fall beyond a certain point packers and growers will both suffer.

Finally, there is a substantial degree of vertical integration between growers and packers in the domestic tomato industry.[72] Based on growers' questionnaire responses, over 87 percent of domestic production in 1995 was shipped to related packers.[73]

On balance, based on the existence of a single continuous line of production, a significant degree of vertical integration and some evidence of a coincidence of economic interests between growers and packers, we conclude that both growers and packers should be included in the domestic industry for purposes of this preliminary investigation.[74]

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[68] Conf. Tr. at 28-29, 29-33, 36-37.

[69] Petitioners' Request for Leave, Grant Affidavit ¶5.

[70] Petitioners' Request for Leave, Grant Affidavit ¶5.

[71] Petitioners' Request for Leave, Grant Affidavit ¶¶3-5, Esformes Affidavit ¶3, Lipman Affidavit ¶4.

[72] Although the fresh tomato industry is vertically integrated, the statute's captive production provision is not implicated, because packers do not consume fresh market tomatoes in the production of a downstream product. See 19 U.S.C. § 1677(7)(C)(iv). They are more closely analogous to finishers of a manufactured product, because the product they "produce" is fresh tomatoes in a more marketable form.

[73] Calculated from Table VI-1, CR at VI-2, PR at VI-2. See also Conf. Tr. at 23 (Six L's Packing Co. packs 10% of Florida production of which 85-90% is grown on its own farms); 29-30 (Nobles Packing Co. packs production of related farms); 40-41 (Mr. Grant's various packing interests handle related and independent production); 49-50 (Mr. Esformes owns growing and packing operations in Florida and California). All but one of the Florida and California growers who testified on behalf of petitioners were integrated grower/packers.

[74] Commissioner Crawford and Commissioner Bragg intend to reconsider this issue in any final investigation. At that time, they will seek additional information with respect to the extent of vertical integration in the industry, how costs and

(continued...)

D. Related Parties

In this preliminary investigation, petitioners have alleged the existence of a number of related parties, principally, but not exclusively, among California growers.[75] A domestic producer is a related party if it is either related to the exporters or importers of subject merchandise, or is itself an importer of the subject merchandise.[76] If the Commission determines that a domestic producer satisfies the definition of a related party, the Commission may exclude such producer from the domestic industry if "appropriate circumstances" exist.[77] Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case.[78]

No responding U.S. grower or packer reported direct imports of fresh market tomatoes.[79] Nor has any responding U.S. producer reported a relationship to any Mexican producer of fresh market tomatoes.[80] Thus, the information available in the record does not indicate that any responding domestic producer is a related party. For purposes of this preliminary investigation, therefore, we do not find any domestic

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[74] (...continued)
profits are allocated between related grower and packer operations, and other factors bearing on the coincidence of economic interests between growers and packers.

[75] Petition at 8-9 and n.1 (petitioners estimate that one third of all California growers and handlers are related to foreign producers by virtue of their operations in Mexico) and Exhibit 2; Supplement to Petition, Exhibit 6, Hawkins Affidavit ¶4 (***).

[76] Parties are considered to be related if one party directly or indirectly controls another party. Direct or indirect control exists when "the party is legally or operationally in a position to exercise restraint or direction over the other party." 19 U.S.C. § 1677(4)(B).

[77] 19 U.S.C. § 1677(4)(B).

[78] Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd, 991 F.2d 809 (Fed. Cir. 1993); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987); S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979).

[79] CR at IV-1, PR at IV-1.

[80] CR at III-1 nn.2 & 4., PR at III-1. The record does not indicate whether any U.S. producer is related to any importer of the subject merchandise. Among those alleged related parties identified by petitioners in the petition, all but one were sent grower questionnaires. Although three returned importer questionnaires, none provided data in response to our grower questionnaire; thus we are unable to determine whether any of the non-responding companies is a related party or even a domestic producer of fresh tomatoes. See generally Commission mailing list and questionnaire responses.

producers to be related parties.[81] We will seek further information with regard to the existence of any related parties in any final investigation.

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of allegedly LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[82] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[83]

There are several conditions of competition pertinent to our analysis of the domestic fresh tomato industry. First, while fresh tomatoes are produced year-round both in the United States and Mexico, they are produced in different parts of each country at different times of the year. Fresh tomatoes are available from Florida principally from November through May, while production from California is available principally from June through November. Fresh tomatoes are also grown in a number of states in the Southeast, Mid-Atlantic and Midwest, and are available principally in June through October.[84] Similarly, with respect to the subject imports, fresh tomatoes are available from the Mexican state of Sinaloa principally from January

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[81] We note that, to the extent any non-responding domestic producer is a related party, the question whether appropriate circumstances exist to exclude that producer is largely moot, since we have no questionnaire data from such producers that might have to be excluded from our data set. Such is not the case, however, with respect to production, for which we rely on public data. Nevertheless, absent further information with respect to the existence of any related parties, such public data represent the "facts otherwise available" for purposes of this preliminary investigation. 19 U.S.C. § 1677e(a).

[82] 19 U.S.C. § 1677(7)(C)(iii).

[83] 19 U.S.C. § 1677(7)(C)(iii).

[84] CR at I-4 and II-3-II-5, PR at I-3.

through May, and from Baja California from June through November.[85] [86] Because fresh tomatoes are perishable, producers compete for a particular sale only with other producers located in regions that are harvesting tomatoes at the same time. Further, in order to serve their customers year-round, many larger tomato producers have interests in growing and packing operations in several states so that they can take advantage of the different growing seasons.[87]

Second, the supply of tomatoes is affected both by the growing cycle of the tomato plant and by the weather. Once planted, tomato plants take about 90 days to mature and then bear fruit over a period of four to six weeks. During that time, growers cannot easily increase production from the same fields in response to an increase in price.[88] Thus, within a particular growing season, the supply of tomatoes cannot be increased.[89] Production can, however, be reduced. Growers may leave mature tomatoes unpicked in the field if prices do not make it economic to pick them.[90] In addition, adverse weather conditions at any point in the growing cycle can damage the plants and reduce or eliminate a crop. Growers in both Florida and Sinaloa have experienced significant losses due to bad weather in recent years.[91] Thus, due to the interaction between

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[85] CR at I-3 and II-3-II-5, PR at I-2; Respondents' Postconference Brief, Attachment 1.

[86] Chairman Watson and Commissioner Crawford note that there is evidence that Florida yields have been flat in recent years due, at least in part, to the use of essentially the same technology package for the last 20 years, while yields among export growers in Mexico have been rising with the introduction of new technologies, such as drip irrigation and plastic mulch, and new varieties. See Love and Lucier, "Florida-Mexico Competition in the U.S. Market for Fresh Vegetables," Economic Research Service, USDA (Apr. 29, 1996) (hereinafter "Love and Lucier"), and Plunkett, "Mexican Tomatoes--Fruit of New Technology," Economic Research Service, USDA (Apr. 29, 1996) (hereinafter "Plunkett").

[87] Conf. Tr. at 23-24, 40-41, 49-50, 80.

[88] Chairman Watson and Commissioner Crawford note that there is some evidence that higher prices encourage more frequent pickings, which can raise yields and therefore production. See Love and Lucier.

[89] CR at II-6, PR at II-4; Conf. Tr. at 52.

[90] CR at II-6, PR at II-4; Conf. Tr. at 28-29, 29-33, 36-37. When tomatoes are not picked, the presence of overripe tomatoes compromises the entire plant, so that the plant is taken out of production for the rest of the crop cycle. Conf. Tr. at 29-30.

[91] CR at II-5, PR at II-3. Both domestic and Mexican producers have invested in crop protection systems such as plastic mulch that protects fertilizer against running off in the rain and flood irrigation that provides some protection against freezes. However, these systems are no guarantee against the effects of adverse weather conditions, such as those which damaged the Florida winter tomato crop in the winters of 1994/95 and 1995/96. CR at I-3-I-4, PR at I-2-I-3; Conf. Tr. at 28, 32-34, 36-37, 39, 48, 117-123. Commissioner Crawford intends to explore more fully in any final investigation the effects of weather conditions on competition in the U.S. market for fresh tomatoes.

unpredictable weather and a predictable crop cycle, the market for fresh tomatoes is characterized by significant volatility in supply.[92]

Third, fresh tomato prices in the U.S. market are extremely volatile and may change as much as several times in a single day. As a result of this volatility, and because competition in the fresh tomato market is based primarily on price, purchasers generally require packers, who handle the sales of growers' tomatoes, to provide "price protection." Thus, the packer will agree to an initial price with the buyer over the telephone, but, if market prices are falling, the packer or importer will either delay sending an invoice or "rebill" the buyer some days later when the market reaches bottom.[93] Rebilling is widely practiced both by packers of domestic tomatoes and importers of Mexican tomatoes.[94]

Finally, there has been considerable debate in this investigation about whether consumer preferences have resulted in a shift in demand from mature green tomatoes, which account for the majority of domestic production, to vine ripe round and roma tomatoes, which are supplied primarily by Mexican importers. Petitioners contend that there is no difference in taste or quality between domestic mature green and Mexican vine ripe tomatoes and that all such tomatoes compete head to head.[95] Respondents contend that grocery shoppers are increasingly demanding Mexican vine ripe tomatoes, which they perceive to be better tasting or healthier than domestic mature greens, while food service purchasers prefer the more easily sliced mature greens.[96] We find the evidence with respect to consumer preferences for the domestic product and the subject imports to be mixed at this stage in the investigation.[97] In any final investigation, we will seek additional

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[92] Chairman Watson and Commissioner Crawford note that there is evidence that production costs in Mexico have declined due to the devaluation of the peso in 1995. See Love and Lucier.

[93] CR at V-3, PR at V-2.

[94] Conf. Tr. at 42-43.

[95] Petitioners' Postconference Brief, Collective Exhibit, Hawkins Affidavit and Attachment 1 thereto, Nobles Affidavit ¶4, and DiMare Affidavit ¶6.

[96] Conf. Tr. at 104-105, 113-114, 125-126, 155-157; Respondents' Postconference Brief at 4-5.

[97] Chairman Watson and Commissioner Crawford note that the USDA reported that tomato growers in Sinaloa and Baja, which account for most exports, have completely converted to extended shelf life ("ESL") varieties. Mexican ESL tomatoes, which are vine ripened, are reportedly increasingly perceived by U.S. wholesalers and retailers as qualitatively different from Florida's mature green tomatoes. With these new varieties, Mexico has reportedly increased market share (continued...)

information with regard to any real or perceived taste or other quality differences among supermarket purchasers and non-supermarket end users, and as to whether any such real or perceived differences are reflected in price differences at the first sale or retail levels. We will also consider the extent to which any such differences have been affected by the increasing Mexican cultivation of "extended shelf life" vine ripe tomatoes.

Before turning to the industry data, we note that the record in this investigation contains a number of different data sets. For apparent consumption, production, and imports, we have relied on public data from the Departments of Agriculture and Commerce.[98] For shipments, employment, financial data, and pricing, we have relied on questionnaire data. Questionnaire data fall into two categories, solicited and unsolicited, the latter being questionnaire responses received from domestic growers and packers that were not on the Commission's mailing list, which we discuss separately.[99] [100] [101] [102] [103] Because the aggregated solicited and

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[97] (...continued)
of sales in U.S. supermarkets. Florida tomatoes reportedly are preferred for slicing in many food service operations. See Love and Lucier, Plunkett.

[98] The Department of Agriculture's production data are more extensive than our questionnaire data. That agency refused to provide the Commission with a copy of its list of domestic producers.

[99] In this investigation, we did not use a sampling methodology, but rather sent questionnaires to all domestic producers that we were able to identify, including all domestic producers identified to us by petitioners. In addition to responses from these questionnaire recipients (the solicited responses), we received questionnaire responses from a significant number of growers and packers that were not on our mailing list (the unsolicited responses). These producers received copies of our questionnaire from petitioners' counsel. As the Court of International Trade has previously noted, "counsel are not empowered to act as an independent investigator to the proceeding." SNR Roulements v. United States, 704 F. Supp. 1103, 1109 (Ct. Int'l Trade 1989). In the future, we expect that counsel will furnish Commission staff with the names of all domestic producers reasonably ascertainable by them and that all questionnaires will be issued by Commission staff.

[100] Chairman Watson has considered both the solicited and unsolicited data. The Commission has discretion to determine what weight to give various data and how to organize that data for analytical purposes, and that discretion is not circumscribed by 19 U.S.C. § 1677m(e). As such, I have given the unsolicited data less weight in this preliminary investigation. Nonetheless, I note that my determination would have been the same regardless of the weight that I afforded to the unsolicited questionnaire data.

[101] Commissioner Rohr considered whether it was appropriate to aggregate the data from the questionnaires issued by the Commission with those sent out by one of the parties. Because there was insufficient time in the preliminary investigation to investigate certain anomalies in those responses, such as similarities in the data contained in these questionnaires, he finds that such data cannot be used for purposes of this preliminary determination without undue difficulties. 19 U.S.C. § 1677m(e)(5).

[102] Commissioner Newquist and Commissioner Bragg note that the statute mandates that the Commission

> not decline to consider information that is submitted by an interested party [e.g., a domestic producer]

(continued...)

unsolicited questionnaire data are presented in our public report, the disaggregated data are confidential. Finally, in order to avoid double counting and other distortions, we discuss data for growers and packers separately.[104] Nevertheless, our analysis is based on the condition of the domestic fresh tomato industry as a whole.

The quantity of apparent U.S. consumption of fresh tomatoes rose over the period of investigation from 4.14 billion pounds in 1993 to 4.2 billion pounds in 1994 and 4.36 billion pounds in 1995, for an overall increase of 5.5 percent. The value of apparent consumption declined, however, from $1.39 billion in 1993 to $1.28 billion in 1994 and $1.27 billion in 1995, an overall decline of 8.7 percent.[105]

The acreage planted by domestic fresh tomato growers declined by 1.8 percent over the period of investigation, from 138,390 acres in 1993 to 136,380 acres in 1994 and 135,910 acres in 1995. Area

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[102] (...continued)

> and is necessary to the determination but does not meet all the applicable requirements established by the . . . Commission, if -- (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the . . . Commission with respect to the information, and (5) the information can be used without undue difficulties.

19 U.S.C. § 1677m(e). They find that the information submitted by the unsolicited growers and packers meets these criteria, and find no reason to doubt the accuracy of the data. Indeed, the fact that data for "unsolicited" growers show more positive trends in many instances than do data for "solicited" growers indicates that the "unsolicited" data do not appear to have been improperly influenced or manipulated by petitioners' counsel. Consequently, Commissioner Newquist and Commissioner Bragg have considered all data submitted by growers and packers from whom usable questionnaire responses were received. See generally Tables VI-1 and VI-2, CR at VI-2 and VI-4, PR at VI-1-VI-2, and Tables C-2 and C-3, CR at C-4-C-5, PR at C-4-C-5. They note that the trends in financial performance reflected in the aggregated data on which they relied generally mirror those reflected in the solicited questionnaire responses discussed in the text of the opinion.

[103] Commissioner Crawford did not consider the unsolicited data as part of the data set compiled from questionnaire responses collected by the Commission. Rather, she considered the unsolicited data in the same fashion as other information submitted by petitioners in support of their position. She notes that petitioners were requested to and had ample opportunity to present the names and addresses of all producers they knew of but failed to do so. Nor did they provide the names of those submitting unsolicited questionnaires.

[104] Commissioner Newquist and Commissioner Bragg note that they accorded more weight in their analysis to the condition of growers, which appear to be more immediately adversely affected by allegedly unfair import competition than packers due to the way in which sales transactions are structured. As discussed supra, packers receive a standard fee in most cases, even when sales prices decline, and thus can make a profit on transactions even when the price received represents a loss to the grower. Consequently, it appears that growers bear the lion's share of the risk of price volatility, including any price pressure caused by allegedly LTFV imports.

[105] Table IV-2, CR at IV-3, PR at IV-3.

harvested similarly declined by 2.2 percent, from 134,650 acres in 1993 to 132,620 acres in 1994 and 131,720 acres in 1995. The percentage of planted acreage actually harvested declined slightly from 97.3 percent in 1993 to 97.2 percent in 1994 and 96.9 percent in 1995. Domestic production volume rose from 3.56 billion pounds in 1993 to 3.66 billion pounds in 1994, then fell to 3.28 billion pounds in 1995, for an overall decline of 7.8 percent. Domestic yield rose from 26,438 pounds per acre in 1993 to 27,625 pounds per acre in 1994, then fell to 24,932 pounds per acre in 1995.[106]

Because our questionnaire data do not account for all domestic production and because the questionnaire data are reported for crop years rather than calendar years, our shipment data do not necessarily correspond to the production data discussed above. Total U.S. shipments by volume reported in solicited grower questionnaires rose by over five percent from crop year 1993 to crop year 1994, then remained relatively constant from crop year 1994 to crop year 1995. By contrast, the value of such shipments declined over the entire period, as did unit values.[107] Total U.S. shipments reported in solicited packer questionnaires declined over the entire 1993 to 1995 period, as did the value and unit value of such shipments.[108] Because fresh tomatoes are a perishable product that can be stored for less than three weeks, inventories are not a relevant measure of industry performance.[109]

U.S. growers of fresh tomatoes employ both contract and salaried employees.[110] The average number

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[106] Table III-1, CR at III-2, PR at III-2.

[107] E-Mail dated May 16, 1996, from James Stewart, Office of Investigations, attaching Solicited Tomato Growers' Summary Financial Data Table (hereinafter "Solicited Growers Table"). Growers reported trade data for crop years. Each grower's crop year generally corresponds to its fiscal year, which varies from grower to grower. Unsolicited growers fared somewhat better than solicited growers. They experienced a greater relative increase in shipments; their shipment values rose from 1993 to 1994 before leveling off in 1995; and they experienced a smaller overall decline in unit values. Data on unsolicited growers is derived from Table VI-1, CR at VI-2, PR at VI-2, and the Solicited Growers Table.

[108] E-mail dated May 16, 1996, from James Stewart, Office of Investigations, attaching Solicited Packers' Summary Financial Data Table (hereinafter "Solicited Packers Table"). Unsolicited packers experienced *** shipments, *** shipment values and *** unit values. Data for unsolicited packers is derived from Table VI-2, CR at VI-4, PR at VI-3, and the Solicited Packers Table.

[109] CR at II-6 n.28, PR at II-4.

[110] Growers' employment data is based on solicited questionnaire responses. Questionnaire responses for unsolicited growers indicated that each grower employed the same *** contract employees in each year of the period of investigation. CR at III-3 and n.6, PR at III-3.

of salaried production and related workers (PRWs) employed by domestic fresh tomato growers rose from 8,907 in crop year 1993 to 10,678 in crop year 1994 and 10,990 in crop year 1995. The average number of contract PRWs employed by growers fell from 9,879 in crop year 1993 to 9,791 in crop year 1994, and then rose to 9,983 in crop year 1995. Hours worked by growers' salaried PRWs as well as total and hourly wages paid to such PRWs rose from crop year 1993 to crop year 1994, then declined from crop year 1994 to crop year 1995, although hours worked and total wages in crop year 1995 exceeded crop year 1993 levels. Growers' unit labor costs fluctuated, rising from $0.05 per pound in crop year 1993 to $0.07 per pound in crop year 1994, then falling back to $0.05 in crop year 1995.[111]

The average number of PRWs employed by domestic fresh tomato packers rose from 4,608 in crop year 1993 to 4,788 in crop year 1994 and 4,902 in crop year 1995. Hours worked by packers' PRWs declined from 2,734,000 in crop year 1993 to 2,529,000 in crop year 1995. Wages paid to packers' PRWs rose from $18.5 million in crop year 1993 to $18.8 million in crop year 1994, then fell to $18.3 million in crop year 1995. Productivity of PRWs employed by domestic packers fell from 432 pounds per hour in crop year 1993 to 424 pounds per hour in crop year 1994, then rose to 427 pounds per hour in crop year 1995. Packers' unit labor costs remained constant at $0.02 per pound over the period of investigation.[112]

Both growers and packers experienced declining financial performance over the period of investigation. Domestic growers' net sales revenues declined from fiscal year 1993 to fiscal year 1995 and were lower in interim 1996 (July 1995-February 1996) than in interim 1995 (July 1994-February 1995).[113] Growers' total operating expenses remained relatively constant over the period of investigation, falling slightly from fiscal 1993 to fiscal 1995, and were lower in interim 1996 than in interim 1995. Due to their

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[111] Table III-2, CR at III-3, PR at III-3.

[112] Table III-3, CR at III-4, PR at III-3.

[113] Solicited domestic growers' net sales by value declined from *** in fiscal year 1993 to *** in fiscal year 1994 and *** in fiscal year 1995, an overall decline of *** percent. Solicited growers' net sales by value were *** in interim 1995 compared with *** in interim 1996. Solicited Growers Table. Net sales by value for unsolicited growers rose over the 1993 to 1995 period by *** percent, but were lower in interim 1996 than in interim 1995. Table VI-1, CR at VI-2, PR at VI-2, and Solicited Growers Table. Growers reported data by fiscal year; the starting point of the fiscal year varied considerably among growers. CR at VI-1 n.1, PR at VI-1 n.1.

declining sales revenues, however, growers' net income before taxes fell from a positive value in fiscal 1993 to losses in fiscal 1994 and 1995, and showed a larger loss in interim 1996 than in interim 1995.[114] Similarly, growers' net income before taxes as a percentage of net sales declined from fiscal 1993 through fiscal 1995, falling to negative values, and showed greater losses in interim 1996 than in interim 1995.[115]

Domestic packers' net sales revenues declined from fiscal year 1993 through fiscal year 1995 and were lower in interim 1996 than in interim 1995.[116] Packers' total operating expenses declined from fiscal 1993 to fiscal 1994, remained the same in fiscal 1995, and were lower in interim 1996 than in interim 1995. Packers' operating income rose from fiscal 1993 to fiscal 1994, then declined in fiscal 1995 to below its 1993 level. Packers' operating income was lower in interim 1996 than in interim 1995.[117] As a percentage of net sales, packers' operating income rose from fiscal 1993 to fiscal 1994, declined to below its 1993 level in fiscal 1995, and was lower in interim 1996 than in interim 1995.[118]

Domestic growers' capital expenditures rose from 1993 to 1994, then returned to their 1993 level in

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[114] Solicited growers' total operating expenses fell from *** in fiscal 1993 to *** in fiscal 1994 and to *** in fiscal 1995. Solicited growers' operating expenses were *** in interim 1995 compared with *** in interim 1996. Solicited growers' net income before taxes fell from *** in fiscal 1993 to *** in fiscal 1994 and *** in 1995. Solicited growers' net income was *** in interim 1996 compared with *** in interim 1995. Solicited Growers Table. Unsolicited growers' operating expenses rose by *** percent between 1993 and 1995, but were lower in interim 1996 than in interim 1995. Their net income ***. Table VI-1, CR at VI-2, PR at VI-2, and Solicited Growers Table.

[115] Solicited growers' net income before taxes as a percentage of net sales fell from *** percent in fiscal 1993 to *** percent in fiscal 1994 and *** percent in fiscal 1995. Solicited growers' net income as a percentage of net sales was *** percent in interim 1996 compared with *** percent in interim 1995. Solicited Growers Table. Unsolicited growers' net income margin declined by *** percentage points between 1993 and 1995, remaining in the positive range, then declined to ***. Table VI-1, CR at VI-2, PR at VI-2, and Solicited Growers Table.

[116] Solicited packers' net sales by value declined from *** in fiscal year 1993 to *** in fiscal year 1994 and *** in fiscal year 1995, an overall decline of *** percent. Solicited packers' net sales by value were *** in interim 1995 compared with *** in interim 1996. Solicited Packers Table. Unsolicited packers' net sales by value ***. Table VI-2, CR at VI-4, PR at VI-3, and Solicited Packers Table. Packers reported data by fiscal year; the starting point of the fiscal year varied between packers. CR at VI-1 n.2, PR at VI-1 n.2.

[117] Solicited packers' total operating expenses declined from *** in fiscal 1993 to *** in fiscal 1994 and then remained the same in fiscal 1995. Solicited packers' operating expenses were *** in interim 1995 compared with *** in interim 1996. Solicited packers' operating income rose from *** in fiscal 1993 to *** in fiscal 1994, then fell to *** in fiscal 1995. Solicited packers' operating income was *** in interim 1996 compared with *** in interim 1995. Solicited Packers Table. Unsolicited packers' operating expenses ***. Their operating income ***. Table VI-2, CR at VI-4, PR at VI-3, and Solicited Packers Table.

[118] Solicited packers' operating income as a percentage of net sales rose from *** percent in fiscal 1993 to *** percent in fiscal 1994, then declined to *** percent in fiscal 1995. Solicited packers' operating income as a percentage of net sales was *** percent in interim 1996 compared with *** percent in interim 1995. Solicited Packers Table. Unsolicited packers' operating income margin ***. Table VI-2, CR at VI-4, PR at VI-3, and Solicited Packers Table.

1995. Domestic packers' capital expenditures also rose from 1993 to 1994, but fell below their 1993 level in 1995.[119] [120]

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In preliminary antidumping investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[121] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[122] Although the Commission may consider causes of injury to the industry other than the allegedly LTFV imports,[123] it is not to weigh causes.[124] [125] [126] [127]

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[119] Solicited Growers Table and Solicited Packers Table. Unsolicited growers reported ***. Unsolicited packers reported ***. Tables VI-1 and VI-2, CR at VI-2 and VI-4, PR at VI-2 and VI-3; Solicited Growers and Packers Tables.

[120] Based on examination of the relevant statutory factors, Commissioner Rohr and Commissioner Newquist find that there is a reasonable indication that the domestic fresh tomato industry is presently experiencing material injury.

[121] 19 U.S.C. § 1673b(a). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

[122] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B)(ii).

[123] Alternative causes may include the following: "the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry." S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

[124] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

[125] For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement and Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 at I-14 n.68 (May 1994).

[126] Commissioner Rohr and Commissioner Newquist further note that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. No. 249, at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, 704 F. Supp. at 1101.

[127] Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the allegedly LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of allegedly LTFV imports, not by reason of the allegedly LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st

(continued...)

For the reasons discussed below, we find that there is a reasonable indication that the domestic industry producing fresh tomatoes is materially injured by reason of the subject imports.

A. Volume of the Subject Imports

The quantity of subject imports declined by 6.1 percent from 1993 to 1994, falling from 883 million to 829 million pounds. The quantity of subject imports then rose to 1.3 billion pounds in 1995, an increase of 57.7 percent over their 1994 level. The quantity of subject imports was 417 million pounds in interim (January-February) 1996 compared with 345 million pounds in interim 1995.[128] This rise in the quantity of imports significantly exceeded the rise in apparent consumption over the same period.[129]

The value of subject imports also rose from $342 million in 1993 to $347 million in 1994 and $452 million in 1995, for an overall increase of 32.2 percent. The value of subject imports was $134 million in interim 1996, compared with $154 million in interim 1995.[130] The unit value of subject imports, however, rose from $0.39 per pound in 1993 to $0.42 per pound in 1994, but then fell to $0.35 per pound in 1995 and was $0.32 per pound in interim 1996 compared with $0.44 per pound in interim 1995.[131]

The market share of the subject imports by quantity also rose over the period of investigation, declining first from 21.3 percent in 1993 to 19.8 percent in 1994, then rising to 30.0 percent in 1995.

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[127] (...continued)
Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the allegedly LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the allegedly LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

[128] Table IV-1, CR at IV-2, PR at IV-2. Because they cover only a two month period, we give little weight to the interim data on import volume, value and unit value.

[129] Table IV-2, CR at IV-3, PR at IV-3.

[130] Table IV-1, CR at IV-2, PR at IV-2.

[131] Table IV-1, CR at IV-2, PR at IV-2.

Subject imports' market share by value rose consistently over the period, from 24.6 percent in 1993 to 27.1 percent in 1994 and 35.6 percent in 1995.[132] [133]

Given the sizeable increases in both the quantity of, and market share held by, the subject imports, we find that the volume of imports is significant, both in absolute terms and relative to production and consumption in the United States.

B. Price Effects of the Subject Imports

As we noted above, the extreme volatility of prices in the U.S. market for fresh tomatoes has resulted in widespread use of the practice of rebilling. Responding producers indicated that rebilling occurred on up to 50 percent of their sales during the period of investigation. Such rebilling generally accounted for about 10 percent of the total cost of the tomatoes sold, but in at least one instance was as high as 50 percent.[134] In light of the prevalence of rebilling in this industry, we sought pricing data net of rebilling discounts, rather than initial selling prices. Nevertheless, we view the pricing data with some caution, both because, as a result of the practice of rebilling, reported prices may not always match the volumes reported for the same month, and because our data reflect monthly average prices and therefore may not accurately capture all price movements in this volatile market.[135] [136]

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[132] Table IV-3, CR at IV-4, PR at IV-4.

[133] Commissioner Crawford does not join the rest of this volume section. Commissioner Crawford notes that the significance of the volume of subject imports cannot be determined in a vacuum. She makes her finding of the significance of volume in the context of the price and impact effects of these imports. For the reasons discussed below, she finds that the volume of subject imports is significant in this investigation.

[134] CR at V-3, PR at V-2.

[135] CR at V-5, PR at V-4.

[136] Commissioner Crawford does not join the rest of this pricing discussion. Commissioner Crawford finds that subject imports are having significant effects on domestic prices for tomatoes. To evaluate the effects of dumping on domestic prices, Commissioner Crawford compares the domestic prices that existed when the imports were dumped with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In this investigation, the alleged dumping margin ranged from 12.86 to 273.42 percent. Thus, prices for the subject imports likely would have risen by a significant amount if they had been priced fairly, and they would have become more expensive relative to the domestic product and nonsubject imports.

In this investigation, non-subject imports supplied 1.4 percent by volume of the domestic market. Therefore, most of the demand for subject imports, which had a 30 percent share of the U.S. market by quantity in 1995, would have shifted to the domestic product had subject imports been fairly priced.

(continued...)

Our monthly pricing data for four products showed significant fluctuations, with no discernible trends. This result is not unexpected, given the volatility of prices in this market and the inherent difficulty in tracking daily price changes. We did, however, obtain 120 monthly price comparisons between domestic and Mexican fresh tomatoes. These show a mixture of underselling and overselling by the subject imports.[137] While our data show a predominance of overselling by subject imports of vine ripe tomatoes, they show a predominance of underselling by subject imports of mature green tomatoes and roma tomatoes.[138] Although mature green tomatoes represent a relatively small share of total subject imports, they represent the vast

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[136] (...continued)

The extent of any shift in demand also depends on substitutability between the subject import products and the domestic products. The record contains some evidence of a shift in consumer preferences towards Mexican tomatoes. On balance, however, subject imports and domestic products appear to be substitutable and therefore a significant amount of the shift in demand would go towards domestic products.

As demand for the domestic products would have increased, the domestic industry would have been able to increase its prices, unless price discipline exists in the market. The market conditions which normally impose price discipline on domestic prices are the domestic industry's having 1) sufficient available capacity; 2) fairly large inventories; 3) significant U.S. exports which can be diverted to the domestic market to supply the demand satisfied by subject imports; and 4) sufficient numbers of competitors in the market. In the longer run, crops are planted in accordance with expected future prices. If prices are expected to remain low or fall domestic producers plant less acreage. If prices are expected to rise more acreage is planted. In this connection, I note that domestic acreage planted has declined by 1.8 percent since 1993. This acreage would presumably be available for replanting. However, the more relevant consideration is the U.S. industry's ability to increase production within a given season. Several factors suggest that domestic growers would have had some ability to increase U.S. shipments in the short-run. First, USDA data show that 3.1 percent of U.S. producer acreage planted was not harvested. See Table C-1, CR at C-3. To the extent that they are undamaged, the tomato production in these fields presumably would have been available to supply the market. Second, U.S. exports represented about nine percent of production and thus could have replaced up to 22 percent of total subject imports in 1995. Third, domestic producers can increase yields somewhat in the short-run by increasing the frequency of pickings. U.S. inventories are not a factor since tomatoes are a perishable agricultural product. I note that supply can be reduced in the short-run by leaving tomatoes unpicked.

As discussed supra, competition in this industry is based primarily on price. Despite the lack of significant non-subject imports, which normally provide competition, the U.S. market is very competitive due to the large number of suppliers. Nonetheless, U.S. producers could not have sufficiently increased their supply to fully replace subject imports. Thus, if subject imports had been fairly traded, the domestic industry could have increased its prices.

The extent of any increase in price also depends on demand elasticity in the U.S. market. In this investigation, the evidence suggests that overall demand for fresh tomatoes would not have changed significantly in response to higher prices, primarily due to the lack of commercially viable substitute products. Therefore, U.S. producers would have increased their prices significantly, had subject imports been fairly traded. Consequently, Commissioner Crawford finds that subject imports are having significant effects on domestic prices for tomatoes.

[137] Commissioner Newquist does not join the remainder of the discussion in this paragraph. For purposes of this preliminary investigation, he has found that the like product consists of all fresh tomatoes. Thus, in his view, examination of price comparisons between domestic and Mexican vine ripe tomatoes, and domestic and Mexican mature green tomatoes, is not necessary.

[138] CR at V-6, PR at V-4.

majority of domestic production.[139] Overall, these price comparisons provide a reasonable indication that there has been significant price underselling by the subject imports.

Despite the lack of definitive price trend data, the record in this case nonetheless supports a conclusion that the subject imports have had the effect of depressing or suppressing prices for the domestic like product to a significant degree. First, the decline in the unit values of Mexican imports over the period of investigation as imports surged suggests that prices of the subject imports have declined.[140] Second, the market's rapid reaction to price changes suggests that import price declines have necessitated significant price cuts and rebilling by domestic producers, thus depressing domestic prices. Indeed, the unit values received by domestic growers declined significantly over the period of investigation,[141] and a number of domestic producers reported that the frequency of rebilling is greatest at times of the year when the volume of the subject imports is highest, such as in January through March.[142] Moreover, the ready availability of low-priced Mexican tomatoes at times when weather-related shortages might otherwise have resulted in rising domestic tomato prices, such as immediately after the Florida freeze in early February of 1996, provides a reasonable indication that such imports are suppressing domestic price increases that would otherwise have occurred to a significant degree.[143] [144]

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[139] CR at I-4-I-5, PR at I-3; Conf. Tr. at 101-102, 107, 147.

[140] Table IV-1, CR at IV-2, PR at IV-2. While unit values may be affected by product mix, there is no evidence of any significant shifts in overall Mexican product mix over the period of investigation that could account for the consistent decline in unit values.

[141] Table VI-1, CR at VI-2, PR at VI-2, and Solicited Growers Table.

[142] CR at V-3-V-4, PR at V-2-V-3.

[143] CR at V-1 (prices tend to rise when local supply is short, absent outside supplies), PR at V-1. Cf. Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1102 (Ct. Int'l Trade 1988) (domestic prices tend to rise after a freeze).

[144] As part of its consideration of the impact of imports, the statute as amended by the URAA now also specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 180. The statute defines the "magnitude of the margin of dumping" to be used by the Commission in a preliminary determination as "the dumping margin or margins published by the administering authority [Commerce] in its notice of initiation of the investigation." 19 U.S.C. § 1677(35)(C). The estimated dumping margins identified by the Commerce Department in its notice initiating this investigation ranged from 12.86 to 273.42 percent. 61 Fed. Reg. 18378 (Apr. 25, 1996).

C. Impact of the Subject Imports on the Domestic Industry

The subject imports have had an adverse impact on the domestic industry through both volume and revenue effects.[145] Between 1993 and 1995, the domestic industry's U.S. market share fell from 77.7 percent to 68.6 percent, a loss of 9.1 percentage points. At the same time, the market share of subject imports rose by 8.7 percentage points. Thus, the expansion in the subject imports' market share has been at the expense of the domestic industry.[146] The domestic industry, in turn, has reacted to this loss in market share by reducing its production. Reduced production is evident both in a reduction in total acreage planted in fresh tomatoes, and in the decision by some growers to abandon crops in the field when market prices drop below their pick and pack costs.[147]

Moreover, although total production costs have not risen during the period of investigation, domestic fresh tomato growers have suffered dramatic declines in sales and unit sales values as imports rose, and consequently have suffered significant declines in profitability. Growers' net income fell from a profitable

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[145] Commissioner Crawford finds that subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were allegedly dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of the subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and other relevant factors as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices, sales and revenues is critical, because the impact on the other industry indicators (e.g. employment, wages, etc.) is derived from this impact. As noted earlier, had subject imports been priced fairly, most of the demand for subject imports would have shifted to the domestic product. The increase in demand for the domestic product would have permitted the domestic industry to increase its prices and to some extent increase its output and sales. The combination of price increases and smaller sales increases would have resulted in a significant increase in domestic revenues had the subject imports been fairly traded. Consequently, the domestic industry would have been materially better off if the subject imports had been priced fairly. Therefore, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

[146] Commissioner Newquist notes that while he agrees there is a reasonable indication that the subject imports displaced domestic market share, such a phenomenon is not necessarily required for purposes of causation. In other words, subject imports may be a cause of injury to the domestic industry without appreciable, or any, displacement of domestic market share. See Companhia Paulista de Ferro-Ligas v. United States, 20 CIT __, Slip Op. 96-63 at 7 (Apr. 15, 1996) (rejecting argument that imports must displace domestic market share in order for volume to be significant).

[147] Table III-1, CR at III-2, PR at III-2; Conf. Tr. at 28-29, 29-33, 36-37, 173-175.

position in 1993 to a loss in 1994, and large losses in 1995 and interim 1996.[148] While domestic packers have fared better than growers on average, they too have seen a significant erosion in their profitability over the period of investigation.[149]

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing fresh tomatoes is materially injured by reason of allegedly LTFV imports from Mexico.

[148] Table VI-1, CR at VI-2, PR at VI-2; Solicited Growers Table.

[149] Table VI-2, CR at VI-4, PR at VI-3; Solicited Packers Table.

STATEMENT OF VICE CHAIRMAN JANET A. NUZUM

Fresh Tomatoes from Mexico

Inv. No. 731-TA-747 (Preliminary)

After careful deliberation, I have decided not to vote on the question of injury now before the Commission involving imports of tomatoes from Mexico. My decision on non-participation is in response to domestic tomato producers' objections to my participation in light of an employment situation of 16 years ago.[1] Although I do not agree with their basis for objecting, I do not wish my participation to cause any distraction, and have therefore chosen to recuse myself from any decisions on the merits of this case.

More than 16 years ago, from August 1978 until August 1980, I was employed by the law firm of Arnold & Porter as a paralegal. In that capacity, I assisted attorneys who represented U.S. importers and distributors of Mexican tomatoes in an antidumping proceeding then before the U.S. Departments of Treasury and Commerce. I have sought advice from the USITC's ethics officials and been advised that neither federal law, ethics rules and regulations, nor applicable codes of professional conduct bar my participation in injury cases now before the Commission involving these industries. Nevertheless, the petitioner Florida Tomato Exchange appears to believe that my prior employment relationship, more than 16 years old, justifies my non-participation in decisions affecting the domestic tomato industry. [2]

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[1] Last year, domestic tomato producers brought a safeguard action against imports of fresh tomatoes. In the interests of full disclosure and complete transparency, I brought my prior employment history to the attention of the parties, and sought comments on whether any party objected to my participation. The petitioner, Florida Tomato Exchange, objected in writing to my participation. In light of the fact that one of the petitioners in this instant case is Florida Tomato Exchange, and they have not indicated any change in position from last year, I infer that they continue to object to my participation in the cases now before the Commission.

[2] See Letter from John M. Himmelberg, dated April 6, 1995, in the public record of Inv. No. TA-201-64, Fresh Winter Tomatoes. In response to a request via the Commission's designated ethics official for additional and more specific comments concerning the reasons for their objection, the petitioner filed a second submission on April 11, 1995. See Letter from John M. Himmelberg, dated April 11, 1995, in the public record of Inv. No. TA-201-64, Fresh Winter

(continued...)

One of the preeminent qualities of the International Trade Commission is the impartiality we bring to our decisions. Although I am personally confident that I harbor no bias due to my work more than 16 years ago for a prior employer, and would approach this case with the same degree of impartiality as I approach every case, I recognize that my own self-confidence in my impartiality is not enough. Here, a petitioning party has indicated an unwillingness to accept me as an impartial decisionmaker. Faced with this fact, notwithstanding the clearance I have received from the agency's ethics officials, I am reluctant to expose this agency to any accusations -- not matter how unfounded -- of even the appearance of bias or impropriety. I have complete confidence in the integrity of the Commission's decisionmaking process and the abilities of my colleagues. I am certain that the Commission will arrive at a just result in this case, with or without my participation. In order to avoid any potential distraction that might come out of my participation, I am therefore recusing myself.

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[2] (...continued)
Tomatoes.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed by the Florida Tomato Growers Exchange, Orlando, FL; Florida Fruit and Vegetable Association, Orlando, FL; Florida Farm Bureau Federation, Gainesville, FL; South Carolina Tomato Association, Inc., Charleston, SC; Gadsden County Tomato Growers Association, Inc., Quincy, FL; Accomack County Farm Bureau, Accomack, VA; Florida Tomato Exchange, Orlando, FL; Bob Crawford, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, Tallahassee, FL; and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers, with the Commission and Commerce on April 1, 1996, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of LTFV imports of fresh tomatoes[1] from Mexico. Information relating to the background of the investigation is provided below.[2]

Date	*Action*
April 1, 1996	Petition filed with Commerce and the Commission;[3] institution of Commission investigation (61 FR 15968, April 10, 1996)
April 18, 1996	Commerce's notice of initiation (61 FR 18377, April 25, 1996)
April 22, 1996	Commission's conference[4]
May 16, 1996	Date of the Commission's vote and transmittal of its determination to Commerce

The Commission also has instituted two investigations regarding imports of fresh tomatoes under the provisions of 202 of the Trade Act of 1974. Investigation No. TA-201-64, Fresh Winter Tomatoes, was instituted on March 29, 1995; the Commission made a negative determination on the question of granting provisional relief on April 19, 1995 and the petition was withdrawn on May 4, 1995.[5] On March 11, 1996 the Commission instituted Investigation No. TA-201-66 on fresh tomatoes and bell peppers; the petitioners in the dumping investigation are the same as those in the tomato portion of the 201 investigation. Responses to the Commission's questionnaires in the 201 investigation are being used in this investigation. Since some of the companies had difficulty supplying data for the whole 5-year period requested in the 201

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[1] For purposes of this investigation, fresh or chilled tomatoes are all fresh or chilled tomatoes (fresh tomatoes) except those which are grown for processing. Processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Further, such excluded imports of fresh tomatoes for processing are accompanied by an "Importers' Exempt Commodity Form" (FV-6) pursuant to 5 CFR §§ 980.501(a)(2) and 980.212(1). Fresh tomatoes that are imported for cutting up, not further processed (e.g., tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV-6 form are covered by the scope of the investigation. Fresh tomatoes are provided for in subheadings 0702.00.20, 0702.00.40, and 0702.00.60 of the HTS, which are detailed in app. A, and may be eligible for special duty treatment as shown in the cited provisions from HTS chapter 99.

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

[3] The petition alleged LTFV margins to be between 12.86 percent and 273.42 percent.

[4] A list of witnesses appearing at the conference is presented in app. B.

[5] *Fresh Winter Tomatoes*, USITC Pub. No. 2881, Apr. 1995.

questionnaires, questionnaire data in this report are shown only for the 3-year period traditionally examined by the Commission in dumping investigations. Data from published sources are shown for a 5-year period so that the same tables can be used in the report for the 201 investigation.

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C, tables C-1-C-3. Except as noted, data are based on official Agriculture and Commerce data supplemented with questionnaire responses of 108 growers that accounted for 44 percent of U.S. production of fresh tomatoes during 1995; 29 packers handling 33 percent of U.S. production of fresh tomatoes during 1995; and 32 importers accounting for over half of total imports of fresh tomatoes from Mexico in 1995.

THE PRODUCT

Imported Product

The imported products subject to this investigation are fresh tomatoes,[6] including common round tomatoes (*Lycopersicon esculentum*), roma (plum or pear type) tomatoes (*L. esculentum* Var. *pyriforme*), and cherry tomatoes (*L. esculentum* Var. *cerasiforme*).[7] All tomatoes, whether imported from Mexico or domestically produced, are members of the Nightshade family. In recent years, imports of fresh tomatoes from Mexico have entered throughout every month of the year, with the bulk of imports from Sinaloa entered during January-May and significant amounts from Baja California entered during June through November.[8] Fresh tomatoes from Mexico enter in different grades or sizes from season to season and usually from week to week within each season.[9] Historically, the majority of imported fresh tomatoes from Mexico were vine ripe common round tomatoes, although increasing shipments of vine ripe cherry tomatoes and roma tomatoes from Mexico have occurred in recent years.[10]

Mexican production of fresh winter tomatoes during January-May is concentrated in the states of Sinaloa, Sonora, and, to a lesser extent, Jalisco, which are situated along Mexico's west coast and which are usually frost-free year around. Sinaloa has accounted for 35 percent of total Mexican tomato area planted in recent years. Significant amounts of fresh tomatoes are produced in the two states in Baja California during the July-November period. Vegetable producers in this area tend to raise several crops, including cucumbers, bell peppers, tomatoes, and eggplants.[11]

An increasing number of growers in Mexico have shifted to the use of transplants rather than using seeds for starting plants. Production practices include staking plants on plastic mulch and the use of computer-controlled underground drip irrigation systems.[12] Tomato growers in Mexico raise most of the

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[6] Commerce's notice of initiation, Apr. 18, 1996.

[7] *Petition*, pp. 11-12.

[8] Transcript, p. 100.

[9] Shipments of fresh tomatoes in U.S. markets are covered by a Federal Marketing Order.

[10] Transcript, pp. 102 and 105.

[11] FAS, Agriculture, Annual Report, *Tomatoes and Tomato Products 1995*, Dec. 12, 1995, p. 2.

[12] Transcript, p. 102.

same tomato varieties as those grown in Florida.[13] More so than in the United States, however, growers in Mexico have increased their production of roma and cherry tomatoes, with roma tomatoes now accounting for an estimated 30 percent of Mexican fresh tomato exports.[14]

U.S. Product

As with imported tomatoes, domestically-produced fresh tomatoes include common round tomatoes, roma tomatoes, and cherry tomatoes.[15] In 1995, Florida and California accounted for 42 and 31 percent, respectively, of total U.S. production. Fresh tomatoes are available from Florida principally from November through the following May, with production in California principally available from June through November. Fresh tomatoes are produced in most other states, with Georgia and Virginia accounting for 6 and 4 percent, respectively, and Tennessee, New Jersey, and South Carolina accounting for 2 percent each in 1995. Fresh tomatoes commercially produced in most other states are available primarily during June through October.

Domestically produced fresh tomatoes also vary in grades or sizes from season to season and from week to week within each season. The majority of Florida-grown fresh tomatoes are mature green common round tomatoes.[16] There also is sizeable acreage devoted to the production of roma tomatoes in Florida, although U.S. growers, in general, have not shifted as heavily into the production of roma tomatoes and cherry tomatoes as have growers in Mexico.[17] Production in most other states is of vine ripe common round, roma, cherry, and greenhouse tomatoes.

Tomato production in the United States is similar to that in Mexico. Growers in the principal U.S. production areas have shifted to the use of transplants and production practices that include the use of staking plants on plastic mulch and the use of underground drip irrigation systems. In the major producing states, growers also use land leveler planes to grade their fields and dig wells adjacent to their fields for water to be used in freeze damage control.

The major difference in U.S. tomato production as compared with that in Mexico is the use of degreening rooms to hasten the maturity of the tomato prior to shipment. Both Florida and California use this process to ripen their tomatoes.[18] Mexico used it in past years but rarely does so anymore.[19] Tomato packers place tomatoes in controlled atmospheric storage rooms where they add regulated amounts of ethylene, a naturally occurring gas given off by tomatoes and some other fruits and vegetables during ripening.

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[13] Ibid, pp. 25-26.

[14] Ibid, p. 105.

[15] *Petition*, pp. 11-12.

[16] See data reported in various issues of *Annual Report*, Florida Tomato Committee, Orlando, FL.

[17] Transcript, p. 51.

[18] Ibid, pp. 26, 43, and 101.

[19] Ibid, p. 147.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

Historically, domestic production of fresh tomatoes has accounted for the bulk of U.S. consumption throughout the entire year. During 1991-95, U.S. fresh tomato growers supplied about 80 percent of U.S. consumption annually with imports, principally from Mexico, accounting for about 20 percent.

U.S. MARKET

Overall U.S. consumption of fresh tomatoes has trended upward since 1991. In recent years, about 91 percent of domestically produced fresh tomatoes were consumed domestically, with the remainder exported. Most U.S. growers in the major producing states ship their tomatoes to packers, which in turn sell through repackers, brokers, or distributors to institutional or retail end users. In the major producing states in the East and, to a lesser extent, California, a small number of packers handle the bulk of tomatoes produced. Many of the larger volume packers pack production from their own acreage as well as that of other growers. Of those growers reporting financial data, 87.9 percent of 1995 total sales went to related packers.

Since fresh tomatoes are very perishable, they are marketed as soon after packing as possible. Some packers market tomatoes on a regional basis and others market them nationwide. For some of the larger producers, this means acquiring tomatoes from other areas of the same state or from other states during different times of the year so as to have tomatoes available virtually all year long.[1] This is also facilitated by growers varying their planting dates and the number of harvests they have in each field. During those times when production is only available from a few sources, such as in West Coast markets in the fall and late spring, some packers will market their tomatoes nationwide. During other times when supplies are heavy, packers may restrict their markets more to the heavily populated areas.[2]

When the supply of tomatoes rises, whether from an oversupply of domestic production or when imports arrive on the market, purchasers who have already received or been billed for their tomatoes at a certain price now demand that the supplier rebill them at a lower price.[3] If prices are declining or are expected to decline, purchasers will request that their billing be further delayed so that prices may fall even lower. Thus, shippers may be making sales on any given day that cover their costs plus a profit but end up having to rebill for the delivered tomatoes a number of days later at prices now below profitable levels. If prices fall enough, growers may decide to leave their tomatoes in their fields.

Yields of fresh tomatoes in both the United States and Mexico have risen dramatically in recent years as a result of the introduction of better production and management practices along with the use of new tomato hybrid plants.[4] Most states have enough variations in their growing area microclimates that tomato varieties have been produced for growing in their respective areas. Some of the characteristics growers are looking for in the different varieties available include more uniform coloring, firmer flesh, fewer seeds, and longer shelf life.

Cherry tomatoes and roma tomatoes are different from common round tomatoes and neither would develop into a common round tomato if left on the vine longer or grown in some other way. However, although there are different varieties or strains of tomatoes grown in both the United States and Mexico, much of the difference between these products is merely a difference in color or firmness, which is more a result of the state of maturity when the tomatoes are harvested. Mature green tomatoes are basically the same

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[1] Transcript, p. 24.

[2] Ibid, p. 25.

[3] Ibid, p. 27.

[4] *Competition in the U.S. Winter Fresh Vegetable Industry*, p. 30.

as vine ripe tomatoes, except that they have been picked at an earlier stage of development.[5] If left on the plant longer, mature green tomatoes would become vine ripe. However, respondents argue that this difference is significant in the market[6] (see discussion in "Substitutability Issues") and that there are other differences as well. For example, there has been a shift in Mexico recently to the use of common round tomato varieties developed in conjunction with scientists in Israel. These tomatoes are reported to have an increased shelf life, which enables growers to pick them in a further stage of color.

Channels of Distribution

Mature green and vine ripe fresh round tomatoes, both domestically produced and imported, are generally sold through the same channels of distribution. Roma and cherry tomatoes also travel through the same channels of distribution and are offered for sale to some of the same customers as round tomatoes.[7] During the winter months, fresh tomatoes grown and harvested in Florida are graded, packed, and sold through intermediaries to distributors, retailers, or food brokers.[8] Mexican fresh tomatoes grown during the same months are packed in Mexico and shipped principally to Nogales, AZ for sale through importers and brokers to the same purchasers.[9] Petitioners state that Florida- and Mexican-grown fresh round tomatoes compete head-to-head in all of the same channels of distribution.[10]

During June through October, fresh round tomatoes grown in California and Baja California are sold in many of the same markets and distributed through the same channels as mature green and vine ripe tomatoes grown during the winter.[11] Imports from Baja California are entered exclusively in the Western United States.[12] In addition, a large volume of fresh tomatoes grown in numerous other states in the non-winter months are sold through regional distributors, farmer's markets, and roadside stands.[13]

Consumer Perceptions of Interchangeability

In general, brokers, wholesalers, and retailers of fresh tomatoes demand tomatoes with desirable overall appearance (i.e., good color, size, and firmness) and a dependable consistent supply.[14] Individual consumers look for the same characteristics.[15]

Petitioners state that, in the most recently completed growing season, domestically grown and imported round tomatoes were alike both in appearance and firmness,[16] noting that "consumers generally have no indication whether tomatoes are domestic or imported. Nor do other factors, such as freshness, quality, availability, or delivery distinguish domestic and imported tomatoes. Nor is there any significant difference in quality, color, or size, such that consumers would (or could) distinguish domestic and imported

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[5] *Petition*, p. 42 and *Fresh Winter Tomatoes*, USITC Pub. No. 2881, Apr. 1995, p. I-9, n. 18.

[6] Transcript, p. 101.

[7] Ibid, pp. 81-83.

[8] *Fresh Winter Tomatoes*, USITC Pub. No. 2881, Apr. 1995, p. II-6.

[9] Ibid.

[10] *Petition*, p. 42.

[11] *Fresh Winter Tomatoes*, USITC Pub. No. 2881, Apr. 1995, p. II-7.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid, p. II-8.

[16] Transcript, p. 35.

tomatoes."[17] They testified that, in the marketplace, both domestically produced and imported fresh tomatoes are interchangeable for the vast majority, if not for virtually all, of the end users.[18]

However, respondents allege that taste is a problem with U.S.-grown mature green tomatoes[19] and that consumers want a higher quality tomato and feel that imported vine ripe round and roma tomatoes are better tasting.[20] Imports from Mexico have been taking a greater share of consumption and have included principally vine ripe common rounds, but also increasing amounts of vine ripe roma tomatoes.[21] Mature green tomatoes are alleged to be in greater demand by the food service industry, where slicing of tomatoes is said to be easier with a mature green tomato,[22] with vine ripe tomatoes going more to retail sales outlets.[23] They argue that imported roma tomatoes are a more solid tomato with fewer seeds and juice, better shelf life, and better taste than mature greens.[24]

GROWING SEASONS

U.S. production of fresh tomatoes is located principally only in Florida during the January through May period. Between May and July, production moves into states further up the East Coast and also starts in California. During August to October, most other states report some commercial fresh tomato production. By November, most other states are out of production and Florida is starting back in production again. Production in Mexico is centered in Sinaloa during January through May, when it shifts to Sonora and then to Baja California during July through October.

Respondents allege that fresh tomato production in Florida and Mexico are more complementary than competitive, in that a shortfall in production from one area can be compensated for by increased shipments from the other.[25] However, U.S. growers argue that there is a strong level of competition between growers in Florida and Mexico throughout January to May[26] and that summer season fresh tomato production in Baja California is depressing production and sales of tomatoes grown in California and other states.[27]

WEATHER AND OTHER RELATED FACTORS AFFECTING SUPPLY

All fresh tomatoes (except those grown in greenhouses) are subject to weather conditions prevalent throughout the growing and harvesting season. Once transplants are set in the fields, growers have very little control over any unfavorable environmental conditions. Growers in both Florida and Sinaloa have experienced severe cold and heavy rains in recent seasons that have destroyed or seriously delayed harvesting of sizeable parts of their plantings. In these instances, the production area not experiencing the severe weather has been able to increase its shipments, principally by adding additional harvests. In a few situations where unseasonably warm weather has occurred just prior to normal harvest time, such as in Mexico in recent

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[17] *Petition*, pp. 42-43.

[18] Transcript, pp. 169-170.

[19] Ibid, p. 125.

[20] Transcript, pp. 104-105.

[21] Ibid.

[22] Ibid, p. 158.

[23] Ibid, p. 156.

[24] Ibid, pp. 104-105.

[25] Ibid, p. 100.

[26] *Competition in the U.S. Winter Fresh Vegetable Industry*, p. 17.

[27] *Petition*, pp. 36-37.

years, growers were able to start harvesting tomatoes a few weeks earlier than expected. This has resulted in greater supplies available in the early part of the season but sometimes also a glut in supply occurring earlier in mid-to late-season.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, staff believes that U.S. fresh tomato growers are likely to respond to changes in demand with very small changes in the quantity of shipments of U.S.-produced fresh tomatoes to the U.S. market. Factors contributing to the responsiveness of supply are discussed below.[28]

Growing cycle/crop yields

The ability of U.S. fresh tomato growers to increase and/or decrease production of fresh tomatoes in response to changes in the price of these tomatoes depends on the planting cycle and the length of time from planting to harvest. Like many other agricultural products, once the decision to grow tomatoes has been made and the seeds/transplants planted, the supply for that crop is determined.[29] According to petitioners, the growing cycle for tomatoes is about 5 months; this includes 6-8 weeks to prepare the land and 90 days for the plants to grow. Therefore, once a crop is planted, U.S. growers would not be able to increase the number of plants on the same acreage or the number of tomatoes until the time of harvest. However, there is some degree of flexibility for tomato growers, at harvest time, to adjust the supply of tomatoes if prices were to decrease. Petitioners have reported that, if prices are undesirable, some tomatoes that would normally be harvested are left on the vine and not picked. While this action does provide growers with an option to reduce the supply of tomatoes, the result is the immediate loss of their sunk costs up to that point.

Production alternatives

The ability of domestic tomato growers to respond to price changes with changes in supply is enhanced by their flexibility to grow crops other than tomatoes on the land previously used to grow tomatoes. Generally, growers try to shift production from one type of crop to another after a certain time period in order to maintain the integrity of the soil. While the flexibility of shifting production from one type of crop to another tends to increase the supply responsiveness of growers, the degree to which supply can be altered is constrained by the fact that there would be a time lag before growers could respond to price changes.

Export markets

The ability of U.S. tomato growers to alter supply in response to changes in the price of tomatoes is enhanced somewhat by the existence of export markets. During the period 1993-95, exports of fresh tomatoes accounted for between 8.8 and 9.7 percent of total U.S. production. These data indicate that U.S.

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[28] One factor that can affect the responsiveness of domestic supply is the level of inventories on hand with which U.S. producers could quickly respond to changes in market demands. However, because fresh tomatoes are a perishable product and must be consumed within about 3 weeks after harvesting, inventories are not a relevant factor in this case.

[29] During the provisional relief phase of inv. No. TA-201-64 (Fresh Winter Tomatoes), petitioner stated that they could not produce more tomatoes if the price were to rise (transcript of the conference, inv. No. TA-201-64, p. 128).

producers have some flexibility in diverting shipments to or from the U.S. market in response to changes in the price of tomatoes.[30]

Import Supply

The responsiveness of import supply depends upon similar factors considered relevant in the U.S. fresh tomato industry. Based on available information, staff believes that Mexican producers are likely to respond to changes in price with small changes in the quantity of fresh tomatoes supplied to the U.S. market.

Growing cycle/crop yield

The tomato industry in Mexico is similar to that in the United States in that it is difficult to significantly increase production of fresh tomatoes in the short term (i.e., during one growing season). Again, once the decision of how many fresh market tomatoes to plant is made, the upper limit supply for tomatoes is determined. While many vegetable producers in Mexico also tend to raise several crops, the length of planting cycles would constrain Mexican growers from being able to respond to changes in prices of fresh tomatoes.

Alternate markets

The ability of Mexican producers to alter the supply of tomatoes to the U.S. market is enhanced because of the existence of markets other than the United States. Available data indicate that shipments to the Mexican home market accounted for between 47 and 50 percent of total shipments during 1993-95. This existence of a strong home market indicates that Mexican suppliers may be able to divert shipments to, or from, the U.S. market in the event of changes in the price of tomatoes. Transportation factors (e.g., distance from production areas to Mexican markets (such as Mexico City) compared to the United States) may, however, limit the ease with which suppliers would divert shipments.

U.S. Demand

Based on the available information, staff believes that the overall demand for fresh tomatoes will not change significantly in response to changes in the price of fresh tomatoes.[31] The main factor contributing to the low degree of price sensitivity is the lack of commercially viable substitute products.[32]

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[30] However, this flexibility is lessened by the fact that, in many cases, growers plant tomatoes with the intention of exporting; therefore, it is less likely that a grower will export tomatoes that were not previously destined for the export market.

[31] Two studies have estimated the demand elasticity for tomatoes to be -0.5584 and -0.8 (*U.S. Demand for Food: A Complete System of Price and Income Effects,* Kuo S. Huang, Agriculture; and *Imports and the Supply of Winter Tomatoes: An Application of Rational Expectations*, J. Scott Shonkwiler and Robert D. Emerson, American Journal of Agricultural Economics, vol. 64, No. 4, Nov. 1982).

[32] The degree of price sensitivity of overall demand is also influenced by the cost share accounted for by the product in the finished products in which they are used. In the case of fresh tomatoes, the issue of component cost share is not relevant as tomatoes are almost always end products and not intermediate products.

Available data indicate that there are no practical substitute products for fresh tomatoes.[33] One possible substitute product for the fresh tomato is the tomato used for processing. There are, however, distinctions between fresh tomatoes and tomatoes for processing that serve to limit the degree of substitution between these products. Petitioners report that the distinction between fresh and processing tomatoes begins at the outset with processing tomatoes being planted specifically for that end use and being subject to contracts with large canneries.[34] In the case of roma tomatoes, however, there is a possibility of using the tomato for processing or for fresh market use.[35] As a result, it may be possible for romas grown for processing to be sold in the fresh market; while this would tend to increase the degree of price sensitivity of overall demand, the effect is minimized by the fact that romas do not account for a large percentage of the total market for fresh tomatoes.[36]

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported tomatoes depends upon such factors as quality (e.g., grade standard, reliability of supply, defect rates, etc.) and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product service, etc.). Based on available information, staff believes that there is a moderate degree of substitution between the domestic and imported tomatoes.

Overlap of Competition

In general, tomatoes produced in the United States are similar to those produced in Mexico in that round, roma, and cherry tomatoes are produced in both countries. The degree of substitution between domestic and imported tomatoes is lessened somewhat due to the fact that the majority of tomatoes grown in the United States are mature green tomatoes, while most grown in Mexico are vine ripe tomatoes. Petitioners and respondents disagree on the extent to which mature greens differ and/or compete with vine ripe tomatoes. Petitioners have stated that the two types of tomatoes are interchangeable and that the two compete head to head.[37] Petitioners further stated that differences that may have occurred in the past between these two types of tomatoes are no longer an issue. For example, earlier years Mexican vine ripe tomatoes were softer and had a shorter shelf life; however, in the past year, Mexican farmers have been growing an Israeli hybrid tomato that has a firmer surface and a longer shelf life.[38]

Respondents, on the other hand, argue that vine ripe and mature green tomatoes have different tastes and they tend to serve different markets. According to respondents, mature green tomatoes are used more frequently by the food service industry as it prefers the consistent firmness and the ease with which they can

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[33] Industry responses as part of the Commission's monitoring of the tomato industry indicate that 105 of the 107 responding firms reported that there are no other products that may be a substitute for tomatoes (*Monitoring of U.S. Tomatoes*, Inv. No. 332-350, USITC Pub. No. 2771, June 1994, p. 35).

[34] Transcript, p. 61.

[35] Ibid, p. 62.

[36] Several growers, importers, and packers reported in their questionnaires responses that the demand for roma tomatoes has increased in the last three years and some commented that the increase has come at the expense of other types of tomatoes (e.g., mature greens).

[37] Petitioner's witness Mr. Esformes reported that "the tomatoes are essentially interchangeable" and that "the market makes no distinction, either from a price or quality point of view between Mexico, California, and Florida tomatoes." (Petitioner's postconference brief, p. 2.)

[38] Petitioners' postconference brief , p. 2, and transcript, pp. 34-35.

be machine sliced.[39] Vine-ripe tomatoes, on the other hand, tend to be sold in the retail segment where taste is more important. Respondents further assert that "customers have developed a considerable preference for the superior taste of the vine-ripe product" and "they are paying a significant premium for it." In addition, respondents state that there are other differences, such as different seeds, different fertilization programs, and different handling and packing requirements.

Purchase Factors

U.S. growers, packers, and importers were asked to discuss whether any non-price differences (e.g., product variety, etc.) exist between the U.S.-grown fresh tomatoes and the imported products. Responses from these firms were mixed; however, a majority of growers, packers, and importers all reported that there were differences between the U.S.-grown and Mexican fresh tomatoes.[40] Differences cited by these firms include different sizes and grades available, packing, taste, quality, and lower labor and chemical/ environmental costs. In addition, several firms reported that these differences do not always constitute advantages/disadvantages in the marketplace, nor do they necessarily result in price premiums/discounts.

[39] Respondents' postconference brief, p. 10.

[40] Twenty-seven of the 39 growers that responded to the question reported that there were differences between the domestic and imported products; similarly 15 of 21 packers and 19 of 24 importers reported quality differences in the two products. Packers and importers were also asked whether there were non-price differences between the two products; 12 of 21 responding packers and 14 of 22 responding importers reported that there were non-price differences that were a significant factor in their sales of fresh tomatoes.

PART III: CONDITION OF THE U.S. INDUSTRY

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V. Information on the other factors specified is presented in this section and/or part VI and is based on official Agriculture statistics and the questionnaire responses of 108 growers and 29 packers of fresh tomatoes[1] that accounted for more than one-third of U.S. production of fresh tomatoes during the period examined.

U.S. GROWERS[2]

There were an estimated 15,500 U.S. growers of fresh tomatoes located throughout the United States with an estimated 400,000 acres in production in 1992.[3] Census estimates that California had over 1,400 growers with 254,000 acres in production followed by Pennsylvania with 1,000 growers on 4,900 acres. Florida had 311 growers on 63,000 acres. These growers range in size from 0.1 acres to thousands of acres in production. Of the thousands of growers, many also produce other vegetable products (e.g., fresh peppers).

U.S. PACKERS[4]

U.S. packers of fresh tomatoes are also located throughout the United States, with the heaviest concentrations located in the principal producing areas of California and Florida. Some are co-operatives, some are strictly packing houses, and some are both grower and packer (their own and/or others). These packers may also pack numerous other vegetables (e.g., cucumbers, eggplant, and peppers).

U.S. PRODUCTION

Table III-1 present data on U.S. growers' acreage planted and harvested, production, and yield per acre for 1991-95. Production peaked[5] in 1992 (3.9 billion pounds) before declining irregularly to 3.3 billion pounds in 1995. Acreage planted has remained between 135,000 and 138,400 acres and, with the exception of 1992, the amount of harvested acreage has remained at about 97 percent throughout the 1991-95 period. Yield per acre followed the trend in production.

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[1] The Commission mailed 642 growers' questionnaires and 78 packers' questionnaires and received responses from 62 growers and 28 packers, primarily from Florida. In addition to these responses, counsel for the petitioner submitted questionnaires for 69 growers, of which 46 had useable data, and 1 packer, virtually all from California, that were not on the Commission's mailing list. Although these unsolicited questionnaires have been included in the financial data set, they have not been included in the employment data presented in this section because of various inconsistencies. The data presented in appendix tables C-2 and C-3 include responses from all grower and packer questionnaires, whether solicited or not.

[2] No grower reported foreign affiliations.

[3] Numbers include those farms producing tomatoes for fresh market and processing, *1992 Census of Agriculture*, vol. 1, p. 41.

[4] No packer reported foreign affiliations.

[5] In this year, Mexico suffered extensive weather damage.

TABLE III-1
FRESH TOMATOES: U.S. ACREAGE PLANTED AND HARVESTED, PRODUCTION, AND YIELD, 1991-95

Item	1991	1992	1993	1994	1995
Area planted (*acres*)	135,440	136,790	138,390	136,380	135,910
Area harvested (*acres*)	131,680	131,910	134,650	132,620	131,720
Percent harvested	97.2	96.4	97.3	97.2	96.9
Production (*1,000 pounds*)	3,388,700	3,903,300	3,559,900	3,663,600	3,284,000
Yield (*pounds per acre*)	25,734	29,591	26,438	27,625	24,932

Source: Compiled from official statistics of Agriculture.

SHIPMENTS

Growers' reported acreage in production and shipments, from questionnaires, are presented in table C-2. Those growers that reported where their shipments of fresh tomatoes went indicated that 90.9 percent went to packers, 9.0 percent went to retail, and 0.2 percent went to processors.

Packers' reported shipments from questionnaires are presented in table C-3. Those packers that reported where their shipments of fresh tomatoes went indicated that 91.8 percent went to other packers, 8.2 percent to retail, and 0.1 percent to processors. Additionally, those that answered stated that the types of tomatoes shipped were as follows: 97.7 percent round, 1.6 percent roma, and 0.7 percent cherry. Of the 21 packers that answered, 16 stated that they handled 100 percent round. The following tabulation, based on packers' questionnaire responses, shows the percent of fresh tomatoes shipped to fresh market or processors in 1995.

Tomato type	Percent shipped to fresh market	Percent shipped to processors
Round	99.8%	0.2%
Roma	97.0%	3.0%
Cherry	100.0%	0.0%

U.S. EMPLOYMENT, COMPENSATION, AND PRODUCTIVITY[6]

Table III-2 shows growers' reported employment and productivity; data on packers' reported employment and productivity are shown in table III-3.

TABLE III-2
AVERAGE NUMBER OF PRODUCTION AND RELATED WORKERS GROWING FRESH TOMATOES, HOURS WORKED, WAGES PAID TO SUCH EMPLOYEES, AND HOURLY WAGES, PRODUCTIVITY, AND UNIT LABOR COSTS, CROP YEARS 1993-95

Item	1993	1994	1995
Number of **contract** PRWs	9,879	9,791	9,983
Number of **salaried** PRWs	8,907	10,678	10,990
Hours worked by **salaried** PRWs (*1,000 hours*)	4,442	5,186	4,774
Wages paid to **contract** PRWs (*1,000 dollars*)	182,718	184,025	241,789
Wages paid to **salaried** PRWs (*1,000 dollars*)	31,053	41,505	34,857
Hourly wages paid to **salaried** PRWs	$3.49	$3.89	$3.17
Unit labor costs (*per pound*)	$0.05	$0.07	$0.05

Source: Compiled from data submitted in response to Commission questionnaires.

TABLE III-3
AVERAGE NUMBER OF PRODUCTION AND RELATED WORKERS PACKING FRESH TOMATOES, HOURS WORKED, WAGES PAID TO SUCH EMPLOYEES, PRODUCTIVITY, AND UNIT LABOR COSTS, CROP YEARS 1993-95

Item	1993	1994	1995
Number of PRWs	4,608	4,788	4,902
Hours worked by PRWs (*1,000 hours*)	2,734	2,687	2,529
Wages paid to PRWs (*1,000 dollars*)	18,459	18,827	18,349
Productivity of PRWs (*pounds per hour*)	432	424	427
Unit labor costs (*per pound*)	$0.02	$0.02	$0.02

Source: Compiled from data submitted in response to Commission questionnaires.

[6] Data from the unsolicited questionnaires submitted by counsel for the petitioner are not included in these tables. Questionnaire responses from these growers indicate the same number of contract employees (***) in each year (in a few cases contract workers were indicated but no production), and lower productivity than that reported in solicited questionnaires.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS[1]

Importer questionnaires were sent to 150 firms that the Commission believed are importing fresh tomatoes from Mexico. Thirty-two firms reported imports from Mexico during the period of investigation, accounting for over half of all such imports in 1995. No U.S. grower or packer reported direct imports of fresh tomatoes.

U.S. IMPORTS

U.S. imports of fresh tomatoes are presented in table IV-1. Mexico is the largest supplier of fresh tomatoes to the United States, accounting for over 95 percent of total imports in 1995. Canada and the Netherlands, combined, accounted for slightly less than 4 percent of total imports in 1995. Those importers that answered the question stated that the types of tomatoes shipped were as follows: 52.1 percent round, 42.6 percent roma, and 5.3 percent cherry. The following tabulation, based on importers' questionnaire responses, shows the percent of fresh tomatoes shipped to fresh market or processors in 1995.

Tomato type	Percent shipped to fresh market	Percent shipped to processors
Round	100.0%	0.0%
Roma	96.2%	3.8%
Cherry	100.0%	0.0%

APPARENT U.S. CONSUMPTION

Data on apparent consumption of fresh tomatoes are presented in table IV-2. Apparent consumption is calculated from official statistics of Commerce and Agriculture. U.S. consumption has risen steadily from 3.9 billion pounds in 1991 to 4.4 billion pounds in 1995, or by 12 percent. The value of such consumption rose 13 percent between 1991 and 1992 before dropping steadily, by about 11 percent overall, to 1995.

[1] Three importers reported ventures in foreign operations.

TABLE IV-1

FRESH TOMATOES: U.S. IMPORTS, BY SOURCES, 1991-95, JAN.-FEB. 1995, AND JAN.-FEB. 1996

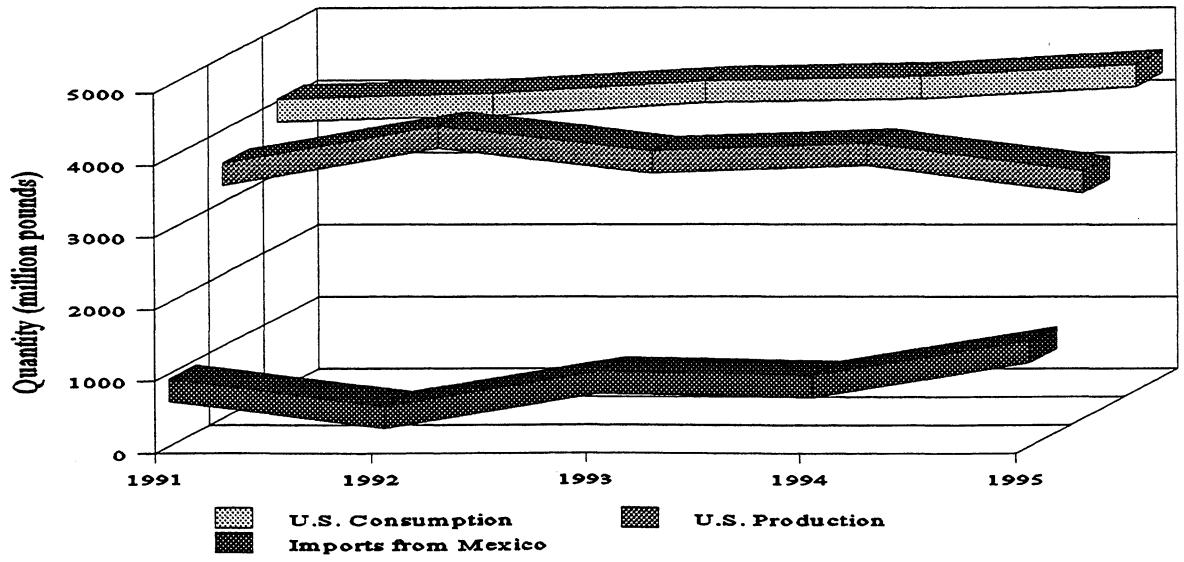
Item	1991	1992	1993	1994	1995	January-February	
						1995	1996
				Quantity (*1,000 pounds*)			
Mexico	779,503	403,701	882,937	829,008	1,307,479	345,539	416,648
Netherlands	5,313	5,580	15,529	16,638	27,342	439	653
Canada	5,891	11,495	10,434	16,916	25,695	232	513
All others	4,784	11,391	13,499	10,410	8,393	2,373	5,341
Total	795,491	432,167	922,400	872,972	1,368,908	348,582	423,155
				Value (*1,000 dollars*)			
Mexico	283,815	148,705	341,518	347,227	451,555	153,660	134,516
Netherlands	6,690	7,568	18,030	22,338	37,390	947	1,565
Canada	4,638	5,798	6,541	10,610	18,138	300	672
All others	8,527	12,547	16,897	17,176	12,565	2,838	9,433
Total	303,671	174,618	383,036	397,351	519,649	157,744	146,187
				Unit value (*dollars per pound*)			
Mexico	$0.36	$0.37	$0.39	$0.42	$0.35	$0.44	$0.32
Netherlands	1.26	1.36	1.16	1.34	1.37	2.16	2.40
Canada	0.79	0.50	0.63	0.63	0.71	1.29	1.31
All others	1.78	1.10	1.25	1.65	1.50	1.20	1.77
Average	0.38	0.40	0.42	0.46	0.38	0.45	0.35
				Share of the quantity of total imports (*percent*)			
Mexico	98.0	93.4	95.7	95.0	95.5	99.1	98.5
Netherlands	0.7	1.3	1.7	1.9	2.0	0.1	0.2
Canada	0.7	2.7	1.1	1.9	1.9	0.1	0.1
All others	0.6	2.6	1.5	1.2	0.6	0.7	1.3
				Share of the value of total imports (*percent*)			
Mexico	93.5	85.2	89.2	87.4	86.9	97.4	92.0
Netherlands	2.2	4.3	4.7	5.6	7.2	0.6	1.1
Canada	1.5	3.3	1.7	2.7	3.5	0.2	0.5
All others	2.8	7.2	4.4	4.3	2.4	1.8	6.5

Note.--Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from statistics of Commerce.

TABLE IV-2
FRESH TOMATOES: U.S. SHIPMENTS, U.S. EXPORTS, U.S. IMPORTS, BY SOURCES, AND APPARENT U.S. CONSUMPTION, 1991-95

Item	1991	1992	1993	1994	1995
	Quantity (*1,000 pounds*)				
U.S. production	3,388,700	3,903,300	3,559,900	3,663,600	3,284,000
Exports	300,282	367,479	345,830	340,748	289,226
U.S. Imports from:					
Mexico	779,504	403,702	882,939	829,008	1,307,479
All others	15,989	28,465	39,461	43,965	61,430
Total	795,493	432,167	922,400	872,972	1,368,908
Apparent consumption	3,883,911	3,967,986	4,136,469	4,195,824	4,363,680
	Value (*1,000 dollars*)				
U.S. production	1,077,832	1,396,950	1,130,092	1,005,926	852,508
Exports	110,435	140,179	122,255	119,772	101,984
U.S. Imports from:					
Mexico	283,815	148,705	341,518	347,227	451,555
All others	19,856	25,913	41,518	50,124	68,094
Total	303,671	174,618	383,036	397,351	519,649
Apparent consumption	1,271,068	1,431,389	1,390,873	1,283,505	1,270,173



Source: Compiled from official statistics of Commerce and Agriculture.

U.S. MARKET SHARES

The market shares of the U.S. producers and imports from Mexico and all other sources, based on apparent U.S. consumption of fresh tomatoes, are presented in table IV-3. Imports from Mexico as a share of the quantity of consumption ranged from a low of 10 percent in 1992 to 30 percent in 1995.

TABLE IV-3
FRESH TOMATOES: APPARENT U.S. CONSUMPTION AND MARKET SHARES, 1991-95

Item	1991	1992	1993	1994	1995
	Quantity (*1,000 pounds*)				
Apparent consumption	3,883,908	3,967,988	4,136,470	4,195,824	4,363,682
	Value (*1,000 dollars*)				
Apparent consumption	1,271,068	1,431,389	1,390,873	1,283,505	1,270,173
	Share of the quantity of apparent consumption (*percent*)				
U.S. shipments	79.5	89.1	77.7	79.2	68.6
U.S. imports from:					
Mexico	20.1	10.2	21.3	19.8	30.0
All others	0.4	0.7	1.0	1.0	1.4
Total	20.5	10.9	22.3	20.8	31.4
	Share of the value of apparent consumption (*percent*)				
U.S. shipments	76.1	87.8	72.5	69.0	59.1
U.S. imports from:					
Mexico	22.3	10.4	24.6	27.1	35.6
All others	1.6	1.8	3.0	3.9	5.4
Total	23.9	12.2	27.5	31.0	40.9

Note.--Because of rounding, figures may not add to the totals shown. Shares are calculated from the unrounded figures.

Source: Compiled from official statistics of Commerce and Agriculture.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Weather and Other Supply Related Factors

Prices for tomatoes are heavily influenced by supply and demand conditions in the industry, with prices rising in times of tight supply and falling in times of excess supply.[1] One packer reported that "FOB prices are usually thought to be determined by supply and demand. If the local supply is not sufficient, it is then expected that the FOB market price would increase locally. However, if another area of supply is available to fill local demand, our FOB price would remain the same even though the demand exceeds the supply. As such, we are rarely in a position to set our own prices or even negotiate a price that is higher than current market price." Factors such as weather and disease can have a large impact on the amount of tomatoes available in the marketplace. For example, in the most recent growing season, poor weather (e.g., heavy rains and cold temperatures) in Florida caused shipments of Florida-grown tomatoes to be low.[2]

Packing Costs

Prices for fresh tomatoes vary depending on the type of packaging used. Domestic tomatoes are usually packed in 25-pound bulk boxes containing a single size of tomato (e.g., extra large, large, etc.) while Mexican tomatoes are usually "place packed" in flats. Place packing, a more labor intensive and costly method of packing, involves placing the tomatoes in boxes in rows generally configured 4-by-4 or 5-by-5. The method of packing is often determined by the type of tomato that is being packed, with vine ripe tomatoes generally being place packed to avoid bruising and mature greens being packed in bulk.

Transportation Costs

Transportation costs for fresh tomatoes from Mexico to the United States are estimated to be 7.0 percent. This estimate is derived from official U.S. import data (under HTS numbers 0702.00.60, 0702.00.20, and 0702.00.40) and represents the transportation and other charges on imports valued on a c.i.f. basis, as compared with the customs value.

Exchange Rates

Quarterly data reported by the IMF indicate that the nominal value of the Mexican peso depreciated 13.6 percent in relation to the U.S. dollar during the period January-March 1993-October-December 1994 (figure V-1).[3] Following the currency devaluation in December 1994, the peso further depreciated more steadily during 1995; overall, the nominal value of the peso depreciated 49.6 percent during the period examined. During the period January-March 1993 to the same period of 1994, the real value of the peso appreciated 3.7 percent, but it then depreciated irregularly through the remainder of the period for an overall depreciation of 28.8 percent.

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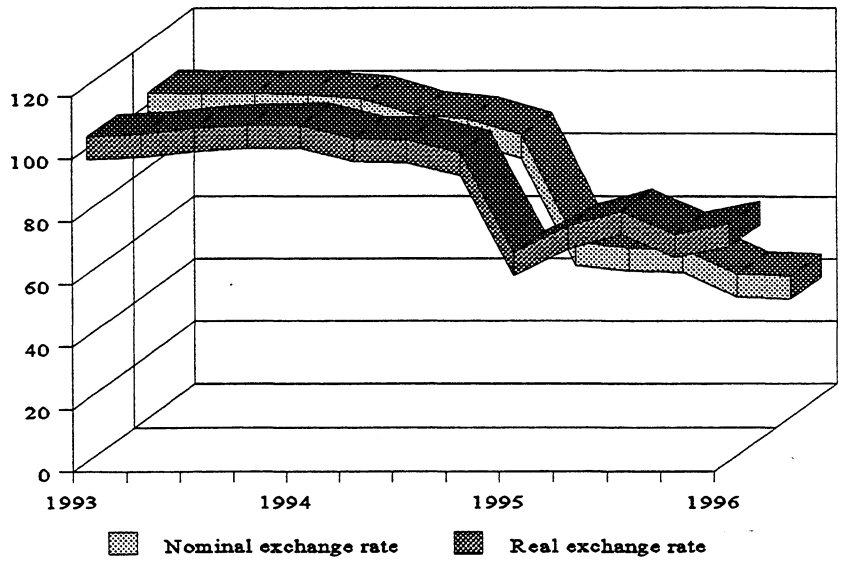
[1] Questionnaire response of ***.

[2] Transcript, p. 118.

[3] IMF, *International Financial Statistics*, Apr. 1996.

FIGURE V-1
EXCHANGE RATES: INDICES OF THE NOMINAL AND REAL EXCHANGE RATES BETWEEN THE U.S. DOLLAR AND MEXICAN PESO, BY QUARTERS, JAN. 1993-MAR. 1996



Source: IMF, *International Financial Statistics*, Apr. 1996.

PRICING PRACTICES

Most of the sales in the fresh tomato market are made through telephone contacts on a verbal agreement basis; written contracts are not generally used. Prices for fresh tomatoes change very frequently, as often as every day or even several times within a given day. Fresh tomatoes are first sent from the grower to the packer; at that time the grower does not usually receive any money for his tomatoes. It is the packer that will actually sell the tomatoes after he has packed the product. The grower receives payment from the packer after the packer has sold the tomatoes; the packer remits back to the grower the price for which the tomatoes were sold less a flat rate packing fee.

In the fresh tomato market there are two price points that are relevant. The first is the initial negotiated price that is quoted over the telephone and billed to the buyer.[4] The second price is the actual price that is received by the grower after any changes have been made due to price protection policies (i.e., rebilling) used in the industry. Rebilling refers to the process of having to lower the previously agreed upon price of the tomatoes after they have been sold.[5] If the packer is unable to sell the tomatoes for the initial negotiated price, it goes back to the grower with the new price at which the product can be sold. Instead of having to rebill, packers will often delay the invoicing of the product until the market reaches bottom. Growers, packers, and importers were all asked to report whether or not they had to rebill (or offer other price protection policies) and if so, to estimate the percentage of their sales for which they had to rebill. Some firms were able to estimate the percentage of their sales for which they had to rebill; these firms reported that rebilling occurred on approximately 1-50 percent of their sales and accounted for between 0.5 and 50 percent

[4] Prices reported by Agriculture are these negotiated prices, which do not include any "rebilling" that may occur.

[5] This practice is also referred to as back-billing, price protection, or delayed billing.

of the total cost of the product.[6] Several firms reported that they did in fact have to rebill, but they had difficulty in quantifying the exact amount as records are often only maintained on the final price received for the product. Many firms reported that the frequency and amount of price reductions that occur tend to track the increases in shipments of Mexican product to the United States; these firms reported that rebilling increases in the months when Mexican imports are highest, for example, January-March.

Fresh tomatoes are also sometimes sold on a consignment basis in the U.S. marketplace. In general, consignment sales involve taking delivery of the shipment, selling it for the shipper's account at some price, then deducting the handling fee and returning the balance to the shipper.[7] While a few U.S. growers and packers reported that all of their sales were on a consignment basis, most of these firms reported that they did not sell a significant portion of their tomatoes via consignment sales. Although petitioners have argued that most of the Mexican fresh tomatoes sold in the U.S. market are sold on consignment, most of the responding importers reported that they did not consign any sales of tomatoes.[8]

PRICE DATA

The Commission requested U.S. growers, packers, and importers to provide monthly data for the total quantity and total value of fresh tomatoes that were shipped to unrelated U.S. customers during the period January 1993-February 1996.[9] The products for which pricing data were requested are as follows:

Product 1:	Mature green tomatoes, 85 percent U.S. #1 or better, large size
Product 2:	Vine ripe tomatoes, 85 percent U.S. #1 or better, large size
Product 3:	Vine ripe tomatoes, 25-pound cartons, large size (not including product reported as product 2)
Product 4:	Roma tomatoes, large size

Thirty growers, 18 packers, and 20 importers provided usable pricing data for sales of the requested products, although not all firms reported prices for all products or for all months. Pricing data reported by these firms accounted for 9.2 and 15.9 percent of production of U.S.-grown fresh tomatoes and imports of Mexican fresh tomatoes (respectively) in 1995 . As discussed above, U.S. growers ship fresh tomatoes to packers who are responsible for both packing the tomatoes and for selling the product. Therefore, it is the sales price of the packer, not the grower, that is comparable to the importers' sales price. Prices reported by packers and importers are presented in tables V-1 toV-4, while prices reported by growers are presented in appendix D.[10] Comparisons are made between prices reported by packers and importers, as that is the level at which competition exists. There are several points that are important to make when discussing the price data presented in this section. Data were collected for monthly sales and represent an average price for the

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[6] Only one firm reported that the rebilling accounted for 50 percent of the total cost of the tomatoes sold; most firms reported that the rebilling accounted for less than 10 percent of the cost.

[7] There appear to be similarities between sales done with price protection/rebilling and consignment sales. Both involve shipping product to another firm that is responsible for selling the product and remitting payment back to the grower after the sale has been completed. Petitioners reported that rebilling is not a form of consignment sale. With rebilling, there is a specific sales price at which the merchandise goes out. Packers have some leverage to demand an adjustment based on changing market conditions; however, the product is not shipped with the knowledge that it can be sold at any price, as is the case with consignment sales (transcript, p. 79).

[8] The questionnaire specifically asked firms to estimate the percentage of their firm's sales that were made on a consignment basis in the month of Jan. 1996.

[9] Firms were requested to provide the final net value, excluding any deductions for discounts or rebilling.

[10] App. D contains price data reported by U.S. growers in response to the Commission's questionnaires.

particular product in each month. Because prices of fresh tomatoes can vary considerably within a month, a monthly average price may not accurately capture all price movements. Secondly, as discussed previously in this section, prices for fresh tomatoes are often subject to change due to the practices of rebilling or delayed billing. Because billing can be delayed or changed several weeks after the product has been sent from the grower, there can be a considerable lag time between the date of shipment and the date the payment/price is known.[11] Therefore, the value of the shipments reported in a given month may not correspond to the quantity reported in that same month; as a result, average prices for a given month may be somewhat distorted.[12] Accordingly, because of these problems with price data collection, margins of under/(over) selling may vary significantly from month to month. Moreover, price comparisons are made using calculated average per-pound prices (calculated from total value and total quantity data) and do not consider the manner in which the tomatoes are packed. Actual sales prices are quoted for specific packing sizes, e.g., 25-pound cartons, 4-by-4 flats, etc.; therefore, reported average prices may include additional packing costs for some sales but not include them in others.

Price Trends and Comparisons

As mentioned earlier, prices change frequently in the tomato market and as such it is difficult to discuss trends. Prices reported by U.S. packers for sales of the four specific fresh tomato products grown and packed in the United States all fluctuated throughout the period January 1993-February 1996. Similarly, prices for fresh tomatoes imported from Mexico showed significant fluctuations, with no discernible trend.

Price comparisons were made between prices of each of the four specified products in 120 months where prices of both domestic and imported tomatoes were reported. In general, the data indicate a mixture of both underselling and overselling; much of the underselling is present in the comparisons between domestic and imported mature green tomatoes and between roma tomatoes; the overselling tends to be in the comparisons of the domestic and imported vine ripe tomatoes.[13] Overall, prices for the Mexican product were below those for the domestic product in 59 of the months where comparisons were possible; margins ranged from 0.4 to 60.3 percent, with an average of 18.4 percent. In the remaining 61 months, the Mexican product was priced above the domestic product; margins ranged from 0.2 to 166.7 percent, with an average of 39.3 percent.

LOST SALES AND/OR REVENUES RELATED TO LTFV IMPORTS

The Commission requested U.S. growers and packers to report whether or not they had lost sales and/or lost revenues due to competition from low-priced imports of fresh tomatoes from Mexico. Forty growers and 22 packers reported they have lost sales of fresh tomatoes because of Mexican imports. Similarly, 40 growers and 25 packers also reported that they had to reduce or roll back prices and/or offer other customer incentives in order to avoid losing sales due to competition from lower-priced Mexican imports. Specific information (i.e., customer names, quantities, dates, etc.) were not available at this preliminary stage of the investigation.

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[11] Transcript, p. 84.

[12] Staff attempted to correct for this problem by requesting questionnaire recipients to report the value of their shipments net of **all** discounts and/or rebilling. Similarly, growers, packers, and importers were requested to report any consignment sales in the month in which the product was shipped.

[13] In the case of mature green and roma tomatoes (products 1 and 4), the Mexican product undersold the domestic product in 40 of the 59 months where comparisons were possible. On the other hand, in the case of vine ripe tomatoes (products 2 and 3), the Mexican product was priced higher than the domestic in 41 of the 60 months where comparisons were possible.

TABLE V-1

PRODUCT 1: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1993:					
January	$0.35	33,891	$0.36	4,749	(3.5)
February	.21	27,964	.22	9,330	(3.8)
March	.21	42,951	.20	14,268	3.7
April	.36	31,480	.36	11,203	1.2
May	.50	26,452	.35	1,665	31.3
June	.29	18,883	(2)	(2)	(3)
July	.17	15,871	(2)	(2)	(3)
August	.29	17,855	(2)	(2)	(3)
September	.28	14,108	(2)	(2)	(3)
October	.18	15,520	(2)	(2)	(3)
November	.31	36,285	(2)	(2)	(3)
December	.58	36,648	.40	2	30.1
1994:					
January	.47	33,554	.40	2,178	14.2
February	.20	32,623	.19	9,012	6.5
March	.26	26,916	.20	21,999	22.8
April	.18	42,063	.21	10,048	(18.8)
May	.20	31,052	.22	1,526	(11.2)
June	.16	8,832	.33	55	(109.7)
July	.24	18,669	(2)	(2)	(3)
August	.27	16,570	(2)	(2)	(3)
September	.21	13,438	(2)	(2)	(3)
October	.28	14,026	(2)	(2)	(3)
November	.34	41,351	(2)	(2)	(3)
December	.39	43,177	.33	1,873	15.8

See footnotes at end of table.

TABLE V-1--CONTINUED

PRODUCT 1: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY THE U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

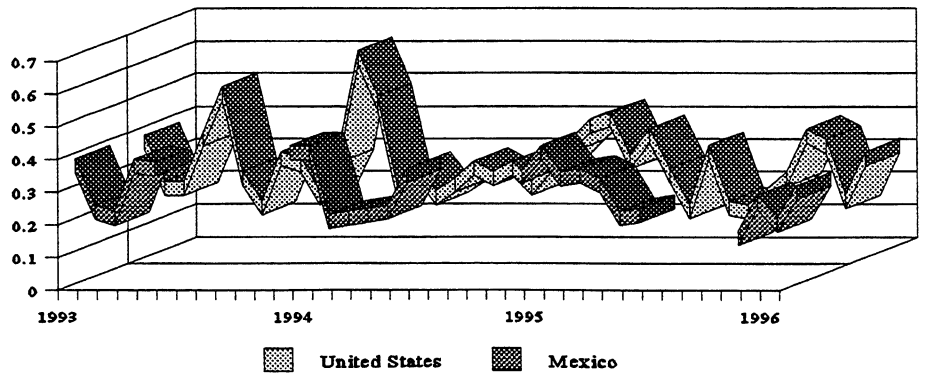
Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1995:					
January	$0.40	28,695	$0.40	8,505	1.8
February	.29	32,562	.32	7,027	(11.0)
March	.36	24,525	.33	10,548	9.1
April	.25	31,216	.30	6,394	(22.0)
May	.14	37,056	.20	1,444	(43.3)
June	.26	2,479	.21	152	16.2
July	.15	12,164	(2)	(2)	(3)
August	.14	19,370	(2)	(2)	(3)
September	.19	15,451	(2)	(2)	(3)
October	.24	12,032	(2)	(2)	(3)
November	.37	22,596	.14	26	60.3
December	.32	41,827	.25	2,732	19.8
1996:					
January	.19	41,579	.21	12,023	(10.5)
February	.30	25,935	.28	10,275	4.7

[1] Parentheses indicate that the price of the imported product was higher than the price of the domestic product.

[2] Data not reported.

[3] Margins not calculated.

Note.--Percentage margins calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded prices in the table.



Source: Compiled from data submitted in response to Commission questionnaires.

TABLE V-2

PRODUCT 2: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1993:					
January	$0.40	1,527	$0.38	1,477	4.5
February	.19	391	.30	2,474	(58.2)
March	.14	1,950	.24	4,862	(73.8)
April	.34	717	.31	1,688	6.3
May	.55	319	.24	173	56.6
June	.37	626	(2)	(2)	(3)
July	.23	399	(2)	(2)	(3)
August	.12	90	.11	1	8.5
September	.23	29	(2)	(2)	(3)
October	.14	47	.19	916	(35.2)
November	.33	1,088	.22	155	33.3
December	.34	1,150	.36	584	(5.0)
1994:					
January	.40	1,272	.46	2,070	(15.1)
February	.15	1,154	.23	4,343	(54.7)
March	.21	1,243	.25	6,396	(18.3)
April	.14	971	.27	1,741	(100.6)
May	.14	756	.27	309	(90.1)
June	.13	593	(2)	(2)	(3)
July	.17	192	(2)	(2)	(3)
August	.21	100	.24	785	(14.6)
September	.16	41	.15	36	9.8
October	.29	53	.28	7	6.1
November	.29	1,032	.35	108	(24.2)
December	.31	1,639	.41	413	(34.5)

See footnotes at end of table.

TABLE V-2--CONTINUED

PRODUCT 2: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

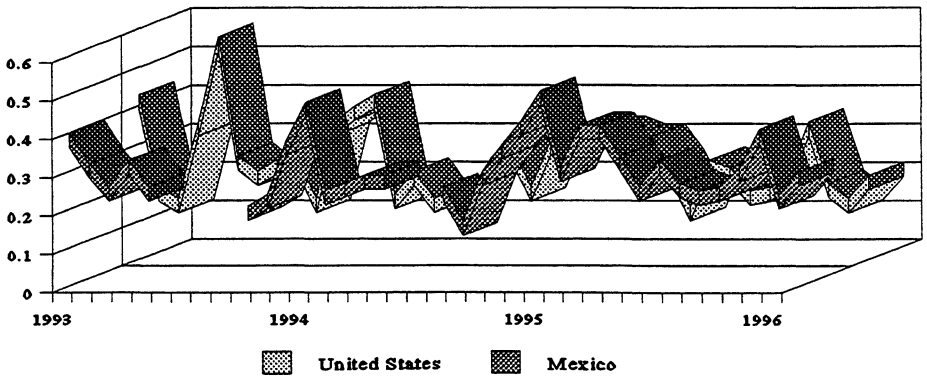
Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1995:					
January	.31	986	.49	1,834	(59.4)
February	.29	711	.29	7,792	(0.2)
March	.30	990	.40	5,009	(36.6)
April	.28	985	.40	5,448	(41.8)
May	.12	290	.32	3,502	(166.7)
June	.19	105	.24	1,118	(31.9)
July	.18	118	.31	2,638	(69.3)
August	.16	778	.25	1,812	(52.0)
September	.17	146	.23	3,228	(38.2)
October	.21	24	.24	6,827	(13.0)
November	.32	290	.29	15,010	8.1
December	.19	1,490	.39	10,080	(100.2)
1996:					
January	.17	1,565	.22	6,174	(25.8)
February	.20	1,977	.28	5,201	(42.5)

[1] Parentheses indicate that the price of the imported product was higher than the price of the U.S.-produced product.

[2] Data not reported.

[3] Margins not calculated.

Note.--Percentage margins calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded prices in the table.



Source: Compiled from data submitted in response to Commission questionnaires.

TABLE V-3

PRODUCT 3: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1993:					
January	$0.30	2,462	$0.28	602	5.8
February	.17	777	.28	1,536	(63.3)
March	.17	3,141	.17	2,336	(2.3)
April	.28	3,374	(2)	(2)	(3)
May	.43	1,528	.16	2	63.2
June	.26	717	(2)	(2)	(3)
July	.12	290	(2)	(2)	(3)
August	.28	1,922	(2)	(2)	(3)
September	.29	953	(2)	(2)	(3)
October	.15	968	(2)	(2)	(3)
November	.24	1,651	(2)	(2)	(3)
December	.40	1,766	(2)	(2)	(3)
1994:					
January	.31	2,001	.27	1,453	13.2
February	.13	1,924	.24	1,019	(80.4)
March	.19	2,342	.22	3,700	(15.3)
April	.12	2,855	.20	1,360	(70.8)
May	.26	1,357	.24	131	7.9
June	.24	107	(2)	(2)	(3)
July	.19	1,476	.28	5	(47.6)
August	.21	2,028	.27	228	(29.5)
September	.17	1,052	.22	296	(29.0)
October	.19	845	.27	182	(40.8)
November	.26	1,361	.35	35	(35.8)
December	.26	2,677	.39	38	(48.5)

See footnotes at end of table.

TABLE V-3--CONTINUED

PRODUCT 3: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

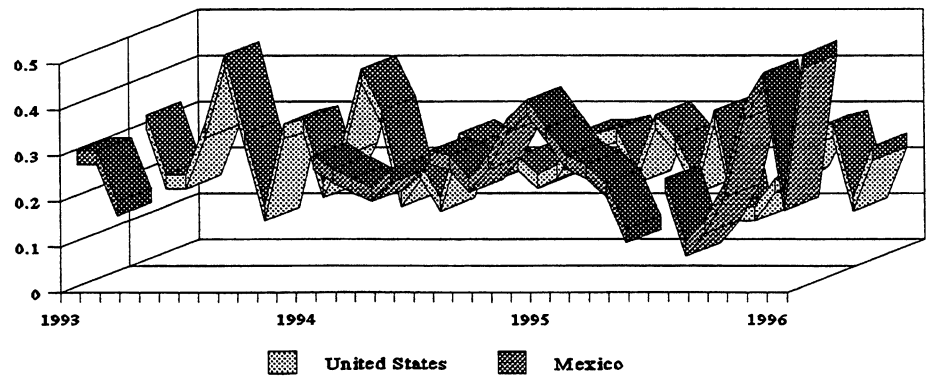
Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1995:					
January	$0.27	1,859	$0.33	2,135	(21.9)
February	.18	1,793	.27	2,362	(45.9)
March	.30	2,721	.25	3,458	16.1
April	.25	3,173	.21	2,776	16.2
May	.16	1,258	.11	1,330	28.5
June	.31	31	(2)	(2)	(3)
July	.10	567	.22	305	(127.2)
August	.10	1,423	.08	247	25.9
September	.16	1,214	.13	131	15.4
October	.19	479	.21	477	(6.0)
November	.27	820	.38	505	(37.6)
December	.28	1,766	.45	80	(63.1)
1996:					
January	.12	845	.12	1,678	0.4
February	.23	3,006	.19	3,421	18.4

[1] Parentheses indicate that the price of the imported product was higher than the price of the U.S.-produced product.

[2] Data not reported.

[3] Margins not calculated.

Note.--Percentage margins calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded prices in the table.



Source: Compiled from data submitted in response to Commission questionnaires.

TABLE V-4

PRODUCT 4: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1993:					
January	$0.22	711	$0.27	3,909	(25.7)
February	.26	577	.18	5,398	30.0
March	.21	712	.12	8,867	39.7
April	.25	1,159	.23	10,592	9.2
May	.44	2,140	.30	14,934	31.8
June	.28	2,276	.32	1,901	(17.1)
July	.31	560	(2)	(2)	(3)
August	.24	742	.38	16	(61.4)
September	.28	400	.30	930	(6.0)
October	.24	350	.17	1,001	29.9
November	.30	730	.28	1,299	9.1
December	.28	749	.34	4,806	(22.7)
1994:					
January	.31	987	.27	9,163	11.4
February	.20	764	.17	8,638	12.4
March	.20	668	.21	10,866	(4.5)
April	.23	934	.18	8,299	20.9
May	.19	2,019	.14	7,277	24.7
June	.37	538	.32	2,431	13.7
July	.39	763	(2)	(2)	(3)
August	.27	855	.30	308	(12.3)
September	.32	482	.34	1,727	(6.9)
October	.26	376	.22	2,272	14.4
November	.46	1,443	.41	2,004	11.2
December	.31	1,624	.26	2,390	15.9

See footnotes at end of table.

TABLE V-4--CONTINUED

PRODUCT 4: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES REPORTED BY U.S. PACKERS AND IMPORTERS, AND MARGINS OF UNDER/(OVER) SELLING,[1] BY MONTHS, JAN. 1993-FEB. 1996

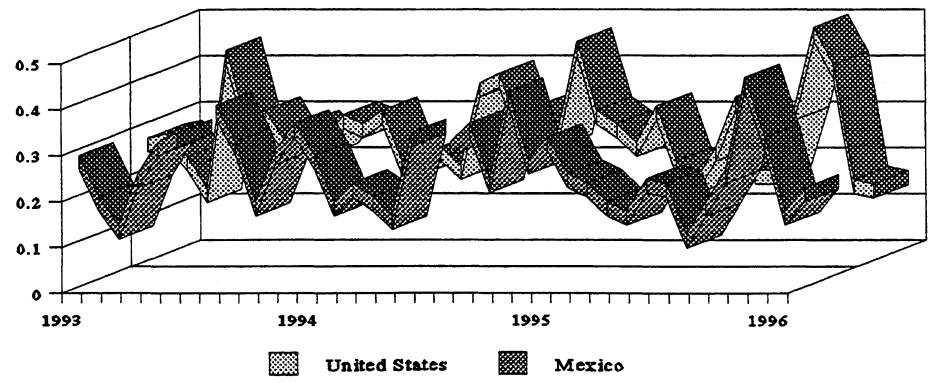
Period	United States		Mexico		Margin (percent)
	Price per pound	1,000 pounds	Price per pound	1,000 pounds	
1995:					
January	$0.28	310	$0.31	6,820	(10.3)
February	.24	430	.23	11,186	6.1
March	.32	842	.21	20,006	34.4
April	.20	1,476	.17	21,127	16.6
May	.16	4,099	.15	14,884	3.0
June	.23	940	.22	4,430	4.4
July	.34	1,207	.21	1,464	37.9
August	.18	1,377	.10	2,421	47.1
September	.18	644	.17	2,221	9.2
October	.32	101	.24	3,404	25.9
November	.50	1,039	.44	2,807	11.6
December	.41	1,523	.31	2,278	24.2
1996:					
January	.16	1,262	.15	9,139	7.1
February	.15	160	.20	7,046	(31.4)

[1] Parentheses indicate that the price of the imported product was higher than the price of the U.S.-produced product.

[2] Data not reported.

[3] Margins not calculated.

Note.--Percentage margins calculated from unrounded figures; thus, margins cannot always be directly calculated from the rounded prices in the table.



Source: Compiled from data submitted in response to Commission questionnaires.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

INTRODUCTION

Ninety-three growers representing approximately *** percent of 1995 U.S. production of fresh tomatoes provided usable financial information on their operations producing fresh tomatoes.[1] In addition, 19 packers representing approximately *** percent of 1995 U.S. production of fresh tomatoes provided usable financial information on their fresh tomato packing operations.[2]

OPERATIONS ON FRESH TOMATOES

Income-and-loss data for the U.S. growers on their fresh tomato operations are presented in table VI-1 and figure VI-1. The quantity of tomatoes sold increased from 1993 to 1995 but the net sales value per pound decreased each year, contributing to a decline in the net sales value from 1993 to 1995. Operating expenses remained relatively constant at approximately *** in each year. The July 1995 through February 1996 period showed decreases in quantities sold, net sales value, and net sales value per pound when compared to the corresponding period in 1994-95, resulting in an operating loss in interim 1995-6. Income-and-loss data for the packers are shown in table VI-2. Net revenue of the packers was consistently 11 cents per pound for each period except 1993, which was 10 cents. The packer's operating expenses were 9 cents in 1993, 1994, and 1995 and 10 cents in the other periods. The packers realized operating income margins, as a percent of sales, of 11 percent and above in all periods except interim 1996. The net sales values for the growers are after packers' fees, if any. The net sales values for the packers are after payments to growers, if any. The combined net sales values of the growers and the packers approximate the market values as sold by the packers. For instance, the grower net sales value in fiscal year 1995 of 17 cents per pound combined with the packer net sales value of 11 cents per pound totals 28, cents which approximates the U.S. production value of 26 cents for the 1995 crop year.

FIGURE VI-1
FRESH TOMATOES: NET SALES VALUE, OPERATING EXPENSES, AND NET INCOME (LOSS) FOR U.S. GROWERS, FISCAL YEARS 1993-95 AND INTERIM PERIODS JULY 1994-FEB. 1995, AND JULY 1995-FEB. 1996

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. growers and packers to describe any actual or potential negative effects of imports of fresh tomatoes from all sources and Mexico on their growth, investment, ability to raise capital, or production efforts. Their responses are shown in appendix E.

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[1] Forty-two growers have fiscal year ends of June 30; 25 have Dec. 31; 17 have Aug. 31; and 3 have May 31. The fiscal year ends of Mar., July, Sept., Oct., and Nov. each represent one grower. Twenty-eight of the growers are corporations, 58 are partnerships, and 6 are proprietors. One grower did not provide its year ending date or type of entity. Forty-five growers are located in California, 41 in Florida, 2 in Tennessee, and one each in Georgia, North Carolina, Pennsylvania, South Carolina, and Virginia.

[2] Eight packers have fiscal year ends of Dec. 31; eight have June 30; two have Aug. 31; and one has Mar. 31. Sixteen of the packers are corporations and three are partnerships. Sixteen packers are located in Florida and 3 are located in California.

TABLE VI-1
INCOME-AND-LOSS EXPERIENCE OF U.S. GROWERS ON THEIR OPERATIONS PRODUCING FRESH TOMATOES, FISCAL YEARS 1991-95, JULY 1994-FEB. 1995, AND JULY 1995-FEB. 1996

Item	1993	1994	1995	July.-Feb.-- 1995	1996
	Quantity *(1,000 pounds)*				
Net sales:					
Related packers	***	***	***	***	***
Unrelated packers	***	***	***	***	***
Other fresh tomato sales	***	***	***	***	***
Total fresh tomato sales	1,022,294	1,106,071	1,106,482	598,660	558,689
	Value *(1,000 dollars)*				
Net sales:[1]					
Gross sales to related packers	***	***	***	***	***
Less packer fees	***	***	***	***	***
Net value received from related packers[2]	***	***	***	***	***
Gross sales to unrelated packers	***	***	***	***	***
Less packer fees	***	***	***	***	***
Net value received from unrelated packers	***	***	***	***	***
Other fresh tomato sales	***	***	***	***	***
Total fresh tomato sales	246,382	215,478	199,340	119,185	72,406
Operating expenses:					
Growing costs	***	***	***	***	***
Harvesting, hauling, and packing	***	***	***	***	***
Fresh tomatoes purchased for resale	***	***	***	***	***
General and administrative	***	***	***	***	***
Interest expense	***	***	***	***	***
Other expenses	***	***	***	***	***
Total operating expenses	***	***	***	***	***
Other income	***	***	***	***	***
Net income or (loss) before income taxes	26,126	(6,985)	(20,831)	2,307	(30,789)
Capital expenditures	9,294	11,611	9,041	2,055	2,012
	Ratio to net sales *(percent)*				
Operating expenses:					
Growing costs	***	***	***	***	***
Harvesting, hauling, and packing	***	***	***	***	***
Fresh tomatoes purchased for resale	***	***	***	***	***
General and administrative	***	***	***	***	***
Interest expense	***	***	***	***	***
Other expenses	***	***	***	***	***
Total operating expenses	***	***	***	***	***
Other income	***	***	***	***	***
Net income or (loss) before income taxes	10.6	(3.2)	(10.4)	1.9	(42.5)
	Value *(per pound)*				
Net sales	$0.22	$0.18	$0.17	$0.20	$0.13
Operating expenses:					
Growing costs	***	***	***	***	***
Harvesting, hauling, and packing	***	***	***	***	***
Fresh tomatoes purchased for resale	***	***	***	***	***
General and administrative	***	***	***	***	***
Interest expense	***	***	***	***	***
Other expenses	***	***	***	***	***
Total operating expenses	***	***	***	***	***
Other income	***	***	***	***	***
Net income or (loss) before income taxes	0.02	(0.01)	(0.02)	0.01	(0.06)
	Number of firms reporting				
Net losses	22	36	38	30	59
Data	85	86	87	78	76

[1] Some of the growers reported only the net value received from packers. The net values are included in both gross sales and net revenue.

[2] ***.

[3] Less than 0.5 cents.

Source: Compiled from data submitted in response to Commission questionnaires.

TABLE VI-2
INCOME-AND-LOSS EXPERIENCE OF U.S. PACKERS ON THEIR OPERATIONS PACKING FRESH TOMATOES, FISCAL YEARS 1991-95, JULY 1994-FEB. 1995, AND JULY 1995-FEB. 1996

Item	1993	1994	1995	July-Feb.- 1995	July-Feb.- 1996
	Quantity *(1,000 pounds)*				
Net sales	944,498	915,976	849,238	437,805	408,211
	Value *(1,000 dollars)*				
Net sales:[1]					
Gross sales	283,890	251,181	230,205	119,389	94,485
Less payments to related growers	***	***	***	***	***
Less payments to unrelated growers	***	***	***	***	***
Less cost of fresh tomatoes purchased for resale	***	***	***	***	***
Net revenue	100,454	99,674	92,854	48,297	45,520
Operating expenses:					
Packing materials and containers	30,665	27,082	29,158	13,749	14,538
Labor	18,614	17,853	16,873	8,071	7,752
Overhead	11,028	11,221	11,030	6,439	5,916
Selling	6,357	6,879	5,534	3,916	3,671
General and administrative	21,507	19,694	20,055	10,242	10,443
Total operating expenses	88,170	82,729	82,649	42,418	42,320
Operating income	12,283	16,945	10,205	5,879	3,200
Other income or expense:					
Interest expense	***	***	***	***	***
All other expense	***	***	***	***	***
All other income	***	***	***	***	***
Total other income or (expense)	***	***	***	***	***
Net income or (loss) before income taxes	***	***	***	***	***
Capital expenditures	5,903	8,078	4,235	3,253	***
	Ratio to net sales *(percent)*				
Operating expenses:					
Packing materials and containers	30.5	27.2	31.4	28.5	31.9
Labor	18.5	17.9	18.2	16.7	17.0
Overhead	11.0	11.3	11.9	13.3	13.0
Selling	6.3	6.9	6.0	8.1	8.1
General and administrative	21.4	19.8	21.6	21.2	22.9
Total operating expenses	87.8	83.0	89.0	87.8	93.0
Operating income	12.2	17.0	11.0	12.2	7.0
Total other income or (expense)	***	***	***	***	***
Net income or (loss) before income taxes	***	***	***	***	***
	Value *(per pound)*				
Net sales	$0.10	$0.11	$0.11	$0.11	$0.11
Operating expenses:					
Packing material	0.03	0.03	0.03	0.03	0.04
Labor	0.02	0.02	0.02	0.02	0.02
Overhead	0.01	0.01	0.01	0.01	0.01
Selling	0.01	0.01	0.01	0.01	0.01
General and administrative	0.02	0.02	0.02	0.02	0.03
Total operating expenses	0.09	0.09	0.09	0.10	0.10
Operating income	0.01	0.02	0.01	0.01	0.01
Total other income or (expense)	***	***	***	***	***
Net income or (loss) before income taxes	***	***	***	***	***
	Number of firms reporting				
Operating losses	3	5	7	5	5
Net losses	1	3	2	3	3
Data	19	19	19	15	14

[1] Some of the packers reported only the net revenue after payment to growers. The net revenues are included in both gross sales value and net revenue.

Source: Compiled from data submitted in response to Commission questionnaires.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN MEXICO[1]

Production of fresh tomatoes in Mexico is concentrated principally in the states of Sinaloa, Sonora, and Baja California, with limited production also in Michoacan, San Luis Potosi, and Morelos. Sinaloa has accounted for an estimated 35 percent of total fresh tomato production in recent years. Although most of this production historically was intended for export, increasing amounts have been sold in domestic markets including Guadalajara, Mexico City, Monterrey, and Torreon.[2] Fresh tomato consumption in Mexico is considerably higher than that in the United States, although it is expected to grow slowly in the future.[3]

As with production in Florida, Sinaloa tomatoes are harvested and transported to packing sheds for cleaning, grading, sorting, and packing. Most of the production for export is transported to Nogales, AZ by truck. Most of the land in Sinaloa for raising tomatoes is privately owned and upwards of 150,000 seasonal laborers are reported to migrate to this area annually during the production season.[4] In recent years, imports from Sinaloa have entered less in April and May, when higher temperatures and humidity stress plants, but in greater amounts during January and February.

Most Sinaloa tomato growers are private landowners, with about 12 growers' groups accounting for the majority of production for export. There are 10 growers associations organized in CAADES.[5] Many of these large grower groups are vertically integrated with established distributorships in Nogales, AZ. Less than 80 distributors are reported to be handling the bulk of Sinaloa shipments through Nogales annually, with about 5 distributors handling an estimated three-fourths of mature green tomato imports. A handful of U.S. customs brokers handle the bulk of Mexican tomatoes entered through Nogales.

As shown in table VII-1, Agriculture reports that the total area in Mexico planted in tomatoes for fresh market use in crop year 1995 is estimated at 68,000 hectares (168,031 acres), or about 90 percent of the total area planted in tomatoes for all uses. The total area planted represents a slight decline from the previous season. Fresh tomato production in 1995/96 is forecast to be about the same as in 1994/95, with exports to the United States also expected to be around 1994/95 levels.[6] Tomato exports to the United States during late 1995 were still helped by the peso devaluation and the slight drop in the tariff on fresh tomatoes under the NAFTA. According to industry sources, however, there is no significant expansion in fresh tomato

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[1] Except where noted, information in this section is taken from FAS, Agriculture, Annual Report, *Tomatoes and Tomato Products 1995*, Dec. 12, 1995.

[2] *Competition in the U.S. Winter Fresh Vegetable Industry*, Economic Research Service, Agriculture, Agricultural Economic Report No. 691, July 1994, p. 34.

[3] *Tomatoes and Tomato Products 1995*, p. 1.

[4] *Competition in the U.S. Winter Fresh Vegetable Industry*, p. 35.

[5] *Tomatoes and Tomato Products 1995*, p. 38. CAADES represents virtually all fresh tomato growers in Sinaloa, as well as all growers of other fresh vegetables.

[6] Ibid, p. 1.

TABLE VII-1
FRESH TOMATOES: MEXICAN AREA PLANTED AND HARVESTED, PRODUCTION, AND YIELD, 1991-95

Item	1991	1992	1993	1994	1995
Area planted (*acres*)	150,734	177,916	165,560	173,715	168,031
Area harvested (*acres*)	143,321	170,502	159,383	169,267	163,089
Percent harvested	95.1	95.8	96.3	97.4	97.1
Production (*1,000 pounds*)	2,976,237	3,020,329	2,689,636	3,306,930	3,086,468
Yield (*pounds per acre*)	20,766	17,714	16,875	19,537	18,925

Source: Compiled from FAS, Agriculture, Annual Report, *Tomatoes and Tomato Products 1995*, Dec. 12, 1995.

production expected in Sinaloa over the next 3 to 5 years because of increasing production input costs, limited credit availability for financing production operations, the restriction of water availability in Sinaloa, and low domestic prices for fresh tomatoes sold in Mexico.[7] Table VII-2 shows CAADES' area planted, area harvested, production, and shipments.

Yields have increased in Sinaloa in recent years because of technological improvements, resulting in production increases on the same or declining amounts of planted area. Yields in other regions of the country are generally lower because of lower use of inputs (e.g., drip irrigation, plastic mulch, and fertilizers) and fewer pest-control efforts. Also, fresh tomato growers in other producing areas are said to be less cooperative with each other, resulting in greater production and quality problems in those areas.[8] Mexican banks are reported to be refusing loans to growers producing primarily for the Mexican market.

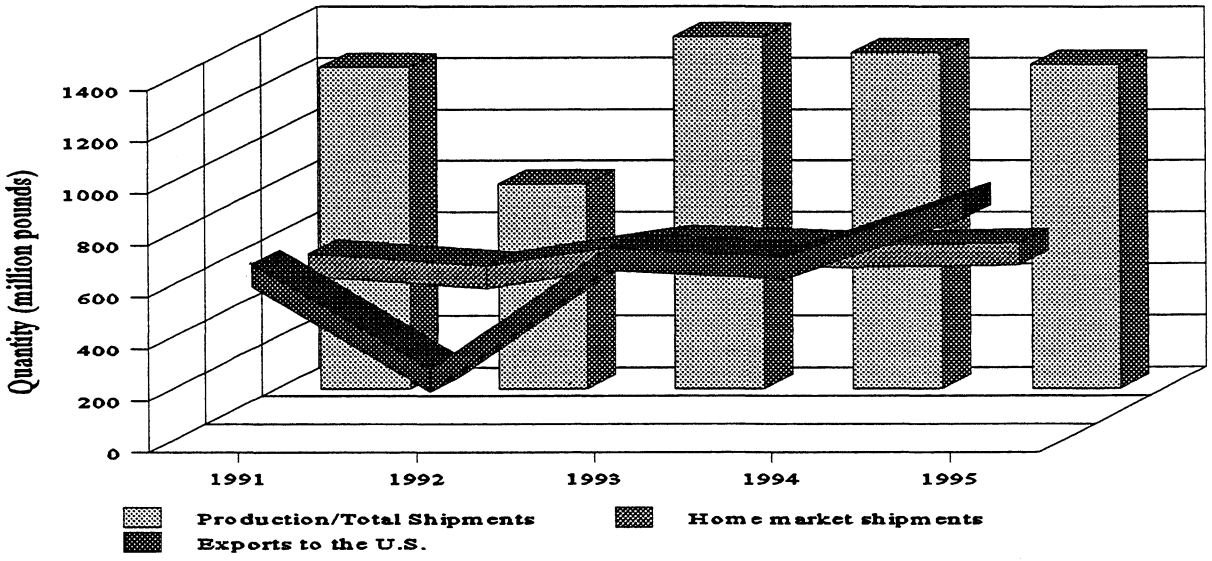
[7]Ibid, p. 1.

[8] Ibid, p. 5.

TABLE VII-2

FRESH TOMATOES: CAADES' AREA PLANTED AND HARVESTED, PRODUCTION, AND SHIPMENTS, 1991-95 AND PROJECTED 1996

Item	1991	1992	1993	1994	1995	1996
Area planted (*acres*)	55,027	53,927	50,030	43,398	46,816	***
Area harvested (*acres*)	55,027	53,927	50,030	43,398	46,816	***
Production (*million lbs*)	1,245	790	1,363	1,303	1,257	***
Shipments:						
Home market (*million lbs*)	588	541	643	618	629	***
Exports to - -						
United States (*million lbs*)	657	249	720	685	917	***
All other markets (*million lbs*)	0	0	0	0	0	***
Total exports (*million lbs*)	657	249	720	685	917	***
Total shipments (*million lbs*)	1,245	790	1,363	1,303	1,257	***



Note: Because of rounding, figures may not add to totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX A

FEDERAL REGISTER NOTICES AND SELECTED PAGES FROM THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (1996)

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-747 (Preliminary)]

Fresh Tomatoes From Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping Investigation No. 731-TA-747 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of fresh or chilled tomatoes, provided for in subheading 0702.00.20, 0702.00.40, and 0702.00.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 16. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 23, 1996.

For further information concerning the conduct of this investigation 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 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187), 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:

Background.—This investigation is being instituted in response to a petition filed on April 1, 1996, by the Florida Tomato Growers Exchange, Orlando, FL, Florida Fruit and Vegetable Association, Orlando, FL, Florida Farm Bureau Federation, Gainesville, FL, South Carolina Tomato Association, Inc., Charleston, SC, Gadsden County Tomato Growers Association, Inc., Quincy, FL, Accomack County Farm Bureau, Accomack, VA, Florida Tomato Exchange, Orlando, FL, Bob Crawford, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, Tallahassee, FL, and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers, with the Commission and Commerce.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. The Secretary will prepare a public 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 business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven 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 BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 22, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than April 18, 1996, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 25, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI 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 authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 4, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–8934 Filed 4–9–96; 8:45 am]

BILLING CODE 7020–02–P

[A-201-820]

Initiation of Antidumping Duty Investigation: Fresh Tomatoes From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann at (202) 482-5288 or Michelle Frederick at (202) 482-0186, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Initiation of Investigation

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petition

Pursuant to 19 CFR 353.12(c), an antidumping duty petition must be filed at the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) on the same day. In this instance, the ITC does not consider the petition covering fresh tomatoes from Mexico to have been filed until April 1, 1996. As such, the Department considers the petition as having been filed in proper form on April 1, 1996, not March 29, 1996.

The petitioners filed supplements to the petition, including an amended list of petitioners, on April 11 and 17, 1996. The petitioners in this investigation are: the Florida Tomato Growers Exchange; the Florida Tomato Exchange; the Tomato Committee of the Florida Fruit and Vegetable Association; the South Carolina Tomato Association; the Gadsden County Tomato Growers Association; and an Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, and Virginia Tomato Growers, as detailed in Exhibit 5 of the April 11, 1996, supplement.

In accordance with section 732(b) of the Act, the petitioners allege that imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The petitioners state that they have standing to file the petition because they are interested parties as defined under section 771(9)(C) of the Act.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

One producer has informed the Department that it takes no position regarding this antidumping petition and a second producer has stated that it opposes the petition. On April 16, 1996, we received a letter on behalf of the Confederacion de Asociaciones Agricolas de Estado de Sinaloa (CAADES), an association of producers of fresh tomatoes in Mexico. The CAADES objections focus on the level of individual supporters of the petition and did not address the support of the Florida and South Carolina trade associations.

Our review of the production data provided in the petition and other information readily available to the Department indicates that the petitioners and supporters of the petition account for more than 50 percent of the total production of the domestic like product, thus meeting the standard of 732(c)(4)(A) and requiring no further action by the Department pursuant to 732(c)(4)(D). Accordingly, the Department determines that the petition is supported by the domestic industry.

Several supporters of the petition did not agree to release their identities to the public. The production data of these supporters was not necessary to establish that the petitioners account for more than 50 percent of the total production of the domestic like product. For this reason, we are not determining whether to consider non-public supporters of a petition in establishing industry support.

Scope of the Investigation

The products covered by this investigation are all fresh or chilled tomatoes (fresh tomatoes) except for those tomatoes which are for processing. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces or purees. Further, imports of fresh tomatoes for processing are accompanied by an "Importer's Exempt Commodity Form" (FV-6) (within the meaning of 7 CFR section 980.501(a)(2) and 980.212(i)). Fresh tomatoes that are imported for cutting up, not further processed (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV-6 form are covered by the scope of this investigation.

All commercially-grown tomatoes sold in the United States, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, plum, and pear tomatoes.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTS), according to the season of importation: 0702.00.20, 0702.00.40, 0702.00.60, and 9906.07.01 through 9906.07.09. Although the HTS numbers are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Export Price and Normal Value

The petitioners based export prices on prices published by the U.S. Department of Agriculture (USDA) Marketing Service. These prices represented packed, F.O.B. shipping point prices,

duties, and border crossing charges paid for mature green, vine ripe, and plum tomatoes of various sizes imported from Mexico through Nogales, Arizona. The petitioners made deductions to export price for movement expenses and commissions. They provided additional export price calculations incorporating adjustments for "backbilling" (post-sale price protection adjustments), quality mix differentials, and price "overstatements" based on differences between USDA data and Bureau of Census import statistics.

The petitioners based normal value on wholesale prices for vine ripe and plum tomatoes from several wholesale markets in Mexico, as published by the USDA marketing service. The petitioners made adjustments to home market prices for wholesaler markups, commissions, and movement expenses.

To calculate monthly normal values for comparisons to monthly export prices, the petitioners based normal value on both home market prices and constructed value (CV) because, in accordance with Section 773(b)(2) of the Act, the petitioners alleged that some sales of fresh tomatoes in the home market were made at prices below the cost of production (COP), and therefore are not an appropriate basis for calculating normal value.

The petitioners calculated COP using data derived from cost studies of vine-ripe tomato production in Mexico prepared by the USDA, which relied on cost studies reported by an association of Mexican tomato producers. Where appropriate, the petitioners adjusted the cost data for inflation, changes in interest rates, and currency conversion. We adjusted the petitioners' COP by correcting the deduction for selling expenses.

The allegation that the Mexican producers are selling the foreign like product in the home market at prices below its COP is based upon a comparison of the adjusted home market prices with the calculated COP. Based on this comparison, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Therefore, for the purposes of this initiation, we are accepting CV as the appropriate basis for Mexican normal value for those petition margin examples where the petitioners claimed that there are no above-cost sales in the home market. The petitioners based CV on its COP methodology, described above, deducting commission and export transportation expenses included in these costs, and adding an amount for profit to derive a total CV. The petitioners calculated profit based on above-cost Mexican market prices. We revised CV by incorporating the correction to selling expenses deducted from COP. We also recalculated the profit amount used in CV based on a revised database of above cost sales in the home market.

Based on comparisons of export prices, with deductions for backbilling adjustments and "price overstatements," to normal value (with CV revised as discussed above), the petitioners allege margins of 12.86 percent to 273.42 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of fresh tomatoes from Mexico are being, or are likely to be, sold at less than fair value. If it becomes necessary at a later date to consider the petition as a source of facts available under section 776 of the Act, we may further review the margin calculations in the petition.

Initiation of Investigation

We have examined the petition on fresh tomatoes and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold at less than fair value. Unless extended, we will make our preliminary determination by September 5, 1996.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Mexico. Because of the large number of exporters, we will attempt to provide a copy of the public version of the petition to the relevant trade associations representing exporters of fresh tomatoes named in the petition.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by May 16, 1996, whether there is a reasonable indication that imports of fresh tomatoes from Mexico are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Dated: April 18, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96-10112 Filed 4-24-96; 8:45 am]

BILLING CODE 3510-DS-P

Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
0702.00		Tomatoes, fresh or chilled:				
0702.00.20		If entered during the period from March 1 to July 14, inclusive, or the period from September 1 to November 14, inclusive, in any year	.....	4.4¢/kg	Free (E,IL,J) 0.9¢/kg (CA) See 9906.07.01-9906.07.05 (MX)	6.6¢/kg
	30	Cherry	kg			
	60	Roma (plum type)	kg			
	90	Other	kg			
0702.00.40		If entered during the period from July 15 to August 31, inclusive, in any year	.....	3.1¢/kg	Free (E,IL,J) 0.6¢/kg (CA) 1.3¢/kg (MX)	6.6¢/kg
	30	Cherry	kg			
	60	Roma (plum type)	kg			
	90	Other	kg			
0702.00.60		If entered during the period from November 15, in any year, to the last day of the following February, inclusive	.....	3.1¢/kg	Free (A,E,IL,J) 0.6¢/kg (CA) See 9906.07.06-9906.07.09 (MX)	6.6¢/kg
	30	Cherry	kg			
	60	Roma (plum type)	kg			
	90	Other	kg			

Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
		Tomatoes, fresh or chilled:				
		Provided for in subheading 0702.00.20:				
		Cherry tomatoes:				
9906.07.01	1/	If entered during the period from March 1 to April 30, inclusive.....	1/		Free (MX)	
9906.07.02	1/	If entered during the period from May 1 to July 14, inclusive, or the period September 1 to November 14, inclusive, in any year.....	1/		1.3¢/kg (MX)	
		Other:				
		If entered during the period from March 1 to July 14, inclusive:				
9906.07.03	1/	Subject to the quantitative limits specified in U.S. note 9 to this subchapter.....	1/		3.2¢/kg (MX)	
9906.07.04	1/	Other.....	1/		4.4¢/kg (MX)	
9906.07.05	1/	If entered during the period from September 1 to November 14, inclusive, in any year.....	1/		1.8¢/kg (MX)	
		Provided for in subheading 0702.00.60:				
		Cherry tomatoes:				
9906.07.06	1/	If entered during the period from November 15 to November 30, inclusive, in any year.....	1/		1.3¢/kg (MX)	
9906.07.07	1/	If entered during the period from December 1, in any year, to the last day of the following February, inclusive..	1/		Free (MX)	
		Other:				
9906.07.08	1/	Subject to the quantitative limits specified in U.S. note 10 to this subchapter.....	1/		2.3¢/kg (MX)	
9906.07.09	1/	Other.....	1/		3.1¢/kg (MX)	

APPENDIX B

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference:

Subject:	FRESH TOMATOES FROM MEXICO
Inv. No.:	731-TA-747 (Preliminary)
Date and Time:	April 22, 1996 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room (Room 101) of the United States International Trade Commission, 500 E Street, SW, Washington, DC.

IN SUPPORT OF IMPOSITION OF ANTIDUMPING DUTIES:

Stewart and Stewart
Washington, D.C.
and
Greenberg, Traurig, Hoffman, Lippoff, Rosen, & Quentel
Miami, Florida
on behalf of

Dr. Martha Roberts, Assistant Commissioner
Florida Department of Agriculture and Consumer Services

Joseph Esformes, Co-Owner/Partner
Pacific Tomato Growers, Ltd. and Palmetto, Florida, and Triple E Produce Corporation

Larry Lipman, Owner/Manager
Six L's Packing Company, Inc.

Lewis J. Nobles, Jr., President/General Partner
Nobles Collier Packing Company and Immokalee Tomato Growers

Billy Don Grant, President/Co-Owner
Bonita Packing Company, Inc. and Bonita Tomato Growers, Inc., Gadsden Tomato Company, Quincy Tomato Corporation, and Byrd Food, Inc.

Teena Borek, Owner
Stephen Borek Farms

Terence P. Stewart
Amy Dwyer)--OF COUNSEL
Howard A. Vine

IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING DUTIES:

Sherman & Sterling
Washington, D.C.
on behalf of

Basilio Gatziones, Chairman of the Board
Confederation of Mexican Fruit and Vegetable Growers Association

Martin Ley, Chairman, Tomato Division
Fresh Produce Association of the Americas

Diego Ley, President
Agricola Industrial del Rio Culiacan S.A. de C.V.

Norman Oebker, Professor
The University of Arizona, Department of Plant Sciences

Robert E. Blomquist, Managing Director
Integrated Marketing Management

Alan O. Sykes, Professor
The University of Chicago

Thomas Wilner)--OF COUNSEL

APPENDIX C

SUMMARY TABLES

TABLE C-1
FRESH TOMATOES: SUMMARY DATA CONCERNING THE U.S. MARKET, 1991-95

(Quantity=*million pounds*, value=*million dollars*, unit values, unit labor costs, and unit COGS are *per pound*; period changes=*percent*, except where noted)

Item	Reported data					Period changes			
	1991	1992	1993	1994	1995	1991-95	1993-95	1993-94	1994-95
U.S. consumption quantity:									
Amount	3,884	3,968	4,136	4,196	4,364	12.4	5.5	1.4	4.0
Producers' share[1]	79.5	89.1	77.7	79.2	68.6	-10.9	-9.1	1.5	-10.6
Importers' share:[1]									
Mexico	20.1	10.2	21.3	19.8	30.0	9.9	8.6	-1.6	10.2
All other	0.4	0.7	1.0	1.0	1.4	1.0	0.5	0.1	0.4
Total	20.5	10.9	22.3	20.8	31.4	10.9	9.1	-1.5	10.6
U.S. consumption value:									
Amount	1,271	1,431	1,391	1,284	1,270	-0.1	-8.7	-7.7	-1.0
Producers' share[1]	76.1	87.8	72.5	69.0	59.1	-17.0	-13.4	-3.4	-10.0
Importers' share:[1]									
Mexico	22.3	10.4	24.6	27.1	35.6	13.2	11.0	2.5	8.5
All other	1.6	1.8	3.0	3.9	5.4	3.8	2.4	0.9	1.5
Total	23.9	12.2	27.5	31.0	40.9	17.0	13.4	3.4	10.0
U.S. imports from - -									
Mexico:									
Import quantity	780	404	883	829	1,307	67.7	48.1	-6.1	57.7
Import value	284	149	342	347	452	59.1	32.2	1.7	30.0
Unit value	$0.36	$0.37	$0.39	$0.42	$0.35	-5.1	-10.7	8.3	-17.5
Other sources:									
Import quantity	16	28	39	44	61	284.2	55.7	11.4	39.7
Import value	20	26	42	50	68	243.0	64.0	20.7	35.8
Unit value	$1.24	$0.91	$1.05	$1.14	$1.11	-10.7	5.4	8.4	-2.8
All sources:									
Import quantity	795	432	922	873	1,369	72.1	48.4	-5.4	56.8
Import value	304	175	383	397	520	71.1	35.7	3.7	30.8
Unit value	$0.38	$0.40	$0.42	$0.46	$0.38	-0.6	-8.6	9.6	-16.6
U.S. producers' - -									
Acres planted	135,440	136,790	138,390	136,380	135,910	0.4	-1.8	-1.5	-0.3
Acres harvested	131,680	131,910	134,650	132,620	131,720	0.0	-2.2	-1.5	-0.7
U.S. production:									
Quantity	3,389	3,903	3,560	3,664	3,284	-3.1	-7.8	2.9	-10.4
Value	1,078	1,397	1,130	1,006	853	-20.9	-24.6	-11.0	-15.3
Unit value	$0.32	$0.36	$0.32	$0.27	$0.26	-18.4	-18.2	-13.5	-5.5
Yield (lbs per acre)	25,734	25,591	26,438	27,625	24,932	-3.1	-5.7	4.5	-9.7
Export shipments:									
Quantity	300	367	346	341	289	-3.7	-16.4	-1.5	-15.1
Value	110	140	122	120	102	-7.7	-16.6	-2.0	-14.9
Unit value	$0.37	$0.38	$0.35	$0.35	$0.35	-4.1	-0.3	-0.6	0.3

[1] "Reported data" are in *percent* and "period changes" are in *percentage points*.

Note: Period changes are derived from the unrounded data. Because of rounding, figures may not add to totals shown.

Source: Compiled from official statistics of Commerce and Agriculture.

TABLE C-2

FRESH TOMATOES: COMBINED GROWERS' SUMMARY DATA CONCERNING THE U.S. MARKET, 1993-95

(Quantity=*million pounds*, value=*million dollars*, unit values, unit labor costs, unit operating expenses, and unit net income are *per pound*; period changes=*percent*, except where noted)

Item	Reported data			Period changes		
	1993	1994	1995	1993-95	1993-94	1994-95
Acres planted	35,833	40,389	40,859	14.0	12.7	1.2
Acres harvested	34,869	37,972	36,480	3.4	7.7	-3.9
Acres abandoned or partially picked	965	2,417	4,379	353.9	150.5	81.2
Production (quantity)	1,464	1,560	1,564	6.8	6.6	0.2
Yield (pounds per acre)	41,989	41,089	42,866	2.1	-2.1	4.3
Shipments:						
Quantity	1,235	1,315	1,325	7.3	6.5	0.8
Value	275	243	230	-16.3	-11.6	-5.4
Unit value	$0.22	$0.18	$0.17	-22.0	-17.0	-6.1
Unmarketable product	229	248	248	8.1	8.2	0.0
Ratio of unmarketable/production[2]	15.7%	15.9%	15.9%	0.2	0.2	0.0
U.S. Growers' - -						
PRW's-**contract**	***	***	***	***	***	***
PRW's-**salaried**	***	***	***	***	***	***
Hours worked-**salaried** (*1,000 hours*)	***	***	***	***	***	***
Total wages-**contract**	***	***	***	***	***	***
Total wages-**salaried**	31	42	35	12.3	33.5	-15.9
Unit labor costs	$0.05	$0.07	$0.05	2.3	28.0	-20.1
Net sales[2] - -						
Quantity	1,022	1,106	1,106	8.2	8.2	0.0
Value	246	215	199	-19.1	-12.5	-7.5
Unit sales value	$0.22	$0.18	$0.17	-25.8	-20.2	-7.1
Operating expenses	***	***	***	***	***	***
Net income or (loss)	26	(7)	(21)	-179.7	-126.7	-198.2
Capital expenditures	9	12	9	-2.7	24.9	-22.1
Unit operating expenses	***	***	***	***	***	***
Unit net income (loss)	$0.02	($0.01)	($0.02)	-196.2	-151.2	-88.0
Operating expenses/net sales[1]	***	***	***	***	***	***
Net income (loss)/net sales[1]	10.6	-3.2	-10.4	-21.1	-13.8	-7.2

[1] "Reported data" are in *percent* and "period changes" are in *percentage points*.

[2] The financial interim periods data are included in *Part VI*.

Note: Period changes are derived from the unrounded data. Because of rounding, figures may not add to totals shown. Grower trade data sre reported in crop years/growing season and the financial data are reported in fiscal years.

Source: Compiled from data submitted in response to Commission questionnaires.

TABLE C-3

FRESH TOMATOES: COMBINED PACKERS' SUMMARY DATA CONCERNING THE U.S. MARKET, 1993-95

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

Item	Reported data			Period changes		
	1993	1994	1995	1993-95	1993-94	1994-95
Production	1,213	1,175	1,116	-8.0	-3.1	-5.0
U.S. shipments:						
Quantity	1,026	991	967	-6.2	-3.8	-2.6
Value	320	275	252	-21.7	-14.4	-8.5
Unit value	$0.31	$0.28	$0.26	-16.4	-11.0	-6.1
U.S. exports:						
Quantity	75	61	51	-31.9	-18.7	-16.2
Value	27	23	17	-36.9	-15.7	-25.1
Unit value	$0.36	$0.37	$0.33	-7.4	3.6	-10.6
Unmarketable product	112	124	98	-12.6	10.2	-20.7
Ratio of unmarketable/production[1]	9.2	10.5	8.8	-0.5	1.3	-1.7
U.S. packers':						
PRW's	***	***	***	***	***	***
Hours worked (*1,000 hours*)	***	***	***	***	***	***
Total compensation	***	***	***	***	***	***
Productivity (pounds per hour)	***	***	***	***	***	***
Unit labor costs	$0.02	$0.02	$0.02	9.5	5.6	3.7
Net sales[2] - -						
Quantity	944	916	849	-10.1	-3.0	-7.3
Value	100	100	93	-7.6	-0.8	-6.8
Unit sales value	$0.10	$0.11	$0.11	2.2	2.4	-0.2
Operating expenses	88	83	83	-6.3	-6.2	-0.1
Operating income or (loss)	12	17	10	-16.9	37.9	-39.8
Capital expenditures	6	8	4	-28.3	36.9	-47.6
Unit operating expenses	$0.09	$0.09	$0.09	3.6	-3.3	7.1
Unit operating income	$0.01	$0.02	$0.01	-7.9	42.9	-35.5
Operating expenses/net sales[1]	87.8	83.0	89.0	1.2	-4.8	6.0
Operating income (loss)/net sales[1]	12.2	17.0	11.0	-1.2	4.8	-6.0

[1] "Reported data" are in *percent* and "period changes" are in *percentage points*.

[2] The financial interim period is included in *Part VI*.

Note: Period changes are derived from the unrounded data. Because of rounding, figures may not add to totals shown. Packer trade data are reported in crop years/growing season and the financial data are reported in fiscal years.

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX D

GROWERS' PRICES

TABLE D-1

FRESH TOMATOES: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES FOR PRODUCTS 1 AND 2 AS REPORTED BY U.S. GROWERS, BY MONTHS, JAN. 1993-FEB. 1996

Period	Product 1		Product 2	
	Price per pound	1,000 pounds	Price per pound	1,000 pounds
1993:				
January	$0.31	18,838	$0.29	1,897
February	.15	16,793	.20	685
March	.18	33,605	.13	2,376
April	.33	21,535	.16	1,452
May	.51	31,421	.73	532
June	.18	23,902	.16	1,036
July	.49	15,541	.70	4,678
August	.55	12,298	.70	594
September	.53	14,231	.25	10
October	.34	18,379	.14	56
November	.63	24,459	.30	1,066
December	.53	30,954	.36	1,648
1994:				
January	.44	31,287	.44	1,982
February	.17	33,747	.13	4,010
March	.22	27,183	.16	2,900
April	.16	37,023	.21	1,777
May	.19	43,010	.16	2,238
June	.54	5,628	.17	799
July	.58	16,324	.79	2,240
August	.56	11,660	.76	733
September	.47	17,447	.78	1,678
October	.59	21,119	.73	1,660
November	.57	31,265	.49	1,523
December	.39	31,681	.34	2,296

Continued.

TABLE D-1--CONTINUED

FRESH TOMATOES: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES FOR PRODUCTS 1 AND 2 AS REPORTED BY U.S. GROWERS, BY MONTHS, JAN. 1993-FEB. 1996

Period	Product 1		Product 2	
	Price per pound	1,000 pounds	Price per pound	1,000 pounds
1995:				
January	.40	19,932	.26	1,142
February	.26	19,332	.28	1,030
March	.30	16,207	.26	1,779
April	.24	33,110	.25	1,973
May	.12	50,911	.10	1,558
June	.26	5,251	.11	657
July	.40	20,140	.65	4,016
August	.34	15,562	.24	1,631
September	.39	17,071	.53	1,550
October	.46	15,191	.66	1,804
November	.63	18,512	.39	453
December	.31	27,735	.21	1,842
1996				
January	.15	26,237	.15	1,811
February	.29	22,771	.21	2,803

Source: Compiled from data submitted in response to Commission questionnaires.

TABLE D-2

FRESH TOMATOES: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES FOR PRODUCTS 3 AND 4 AS REPORTED BY U.S. GROWERS, BY MONTHS, JAN. 1993-FEB. 1996

Period	Product 3		Product 4	
	Price per pound	1,000 pounds	Price per pound	1,000 pounds
1993:				
January	$0.24	1,944	$0.18	364
February	.19	642	.11	2
March	.16	2,716	.10	86
April	.28	2,416	.23	722
May	.60	1,537	.37	7,905
June	.20	967	.26	2,657
July	.40	1,046	.39	7,778
August	.52	2,038	.48	2,633
September	.52	2,042	.50	4,145
October	.31	1,086	.35	3,890
November	.66	1,898	.51	4,711
December	.45	1,954	.33	2,862
1994:				
January	.39	1,487	.29	3,119
February	.12	2,505	.16	957
March	.19	2,133	.16	855
April	.13	2,741	.19	3,900
May	.18	3,000	.23	7,293
June	.22	127	.59	2,767
July	.22	1,461	.56	3,332
August	.22	979	.47	3,712
September	.23	1,113	.53	3,141
October	.44	1,203	.47	4,822
November	.47	2,212	.76	5,883
December	.30	4,039	.30	5,010

Continued.

TABLE D-2--CONTINUED

FRESH TOMATOES: WEIGHTED-AVERAGE NET U.S. F.O.B. SELLING PRICES FOR PRODUCTS 3 AND 4 AS REPORTED BY U.S. GROWERS, BY MONTHS, JAN. 1993-FEB. 1996

Period	Product 3		Product 4	
	Price per pound	1,000 pounds	Price per pound	1,000 pounds
1995:				
January	.34	2,359	.29	651
February	.18	1,981	.23	387
March	.29	3,156	.20	284
April	.21	3,348	.19	2,108
May	.11	2,665	.19	9,548
June	.15	247	.30	1,943
July	.15	1,010	.46	2,950
August	.23	1,024	.33	4,626
September	.17	1,266	.35	4,424
October	.40	555	.58	2,926
November	.48	973	.56	3,360
December	.27	2,117	.36	5,375
1996				
January	.15	3,624	.16	1,716
February	.23	4,034	.27	341

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX E

COMMENTS RECEIVED FROM U.S. GROWERS AND PACKERS ON THE IMPACT OF IMPORTS OF FRESH TOMATOES ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, OR PRODUCTION EFFORTS

Response of U.S. growers and packers to the following questions:

1. Since July 1, 1990, has your firm experienced any actual negative effects on growth, investment, ability to raise capital, or production efforts as a result of imports of fresh tomatoes from (1) all sources and (2) Mexico?

Growers

Of the 93 responding growers, 2 reported no actual negative effects. The number of growers that reported a negative impact for specific categories is shown below (some growers responded in more than one category).

	Number	*Percent*
Cancellation or rejection of expansion projects	64	20.1
Denial or rejection of investment proposal	31	9.7
Reduction in the size of capital investments	60	18.9
Rejection of bank loans	19	6.0
Lowering of credit rating	27	8.5
Selling of assets to pay debt obligations	17	5.3
Difficulty in repaying agricultural program loans	28	8.8
Increase in debt obligations	59	18.6
Obtaining other or additional employment	13	4.1

Other comments were that imports were causing the prices to drop and the grower had to rely on the parent company to cover expenses.

Packers

All 19 responding packers reported actual negative effects. The number of packers that reported a negative impact for specific categories is shown below (some packers responded in more than one category).

	Number	*Percent*
Cancellation or rejection of expansion projects	14	23.7
Denial or rejection of investment proposal	3	5.1
Reduction in the size of capital investments	13	22.0
Rejection of bank loans	7	11.9
Lowering of credit rating	7	11.9
Selling of assets to pay debt obligations	2	3.4
Difficulty in repaying agricultural program loans	1	1.7
Increase in debt obligations	12	20.3
Obtaining other or additional employment	0	(1)

(1) Not applicable.

Other comments were that oversupply was caused by Mexican imports.

2. Does your firm anticipate any negative impact of imports of fresh tomatoes from (1) all sources and (2) Mexico?

Growers

Of the 93 responding growers, 2 stated "No" and 83 said "Yes." Seventy-three mentioned that Mexican imports contributed to lower prices. Other comments were that prices were less than the cost to harvest.

***

Packers

All 19 responding packers stated "Yes." Twelve stated that Mexican imports were driving prices down, five mentioned market share decline, three stated that the dumping was below cost to produce, two stated that they could not modernize, and two said they may have to close.