

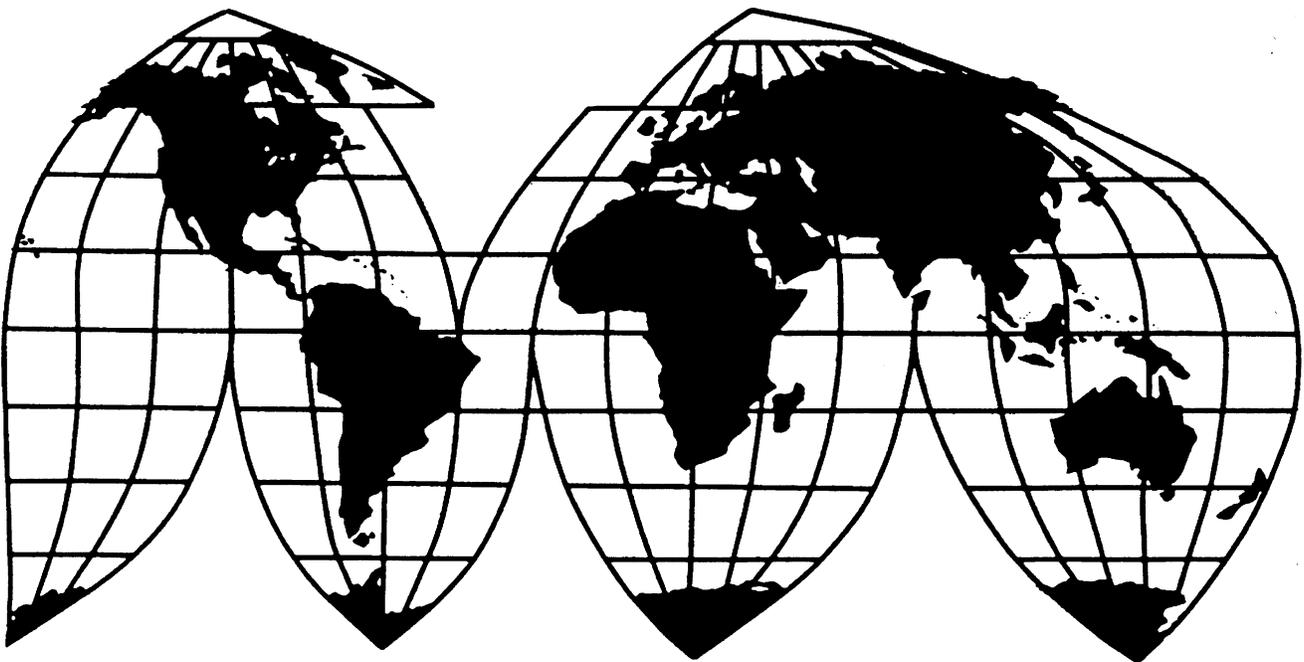
# Certain Non-Frozen Concentrated Apple Juice From China

Investigation No. 731-TA-841 (Preliminary)

Publication 3216

July 1999

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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## **Certain Non-Frozen Concentrated Apple Juice From China**



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

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**GLOSSARY OF ABBREVIATIONS**  
*(In alphabetical order)*

Abbreviation

Name/agency/phrase

BLS .....	Bureau of Labor Statistics
Cherry Growers. ....	Cherry Growers, Inc.
COGS .....	Cost of goods sold
Coloma .....	Coloma Frozen Foods, Inc.
Commerce .....	U.S. Department of Commerce
Commission .....	U.S. International Trade Commission
CTR .....	Transcript of the conference
F.o.b. ....	Free on board
F.R. ....	<i>Federal Register</i>
Glico .....	Glico Apple Corporation
Green Valley .....	Green Valley Packers
HTS .....	Harmonized Tariff Schedule
IMF .....	International Monetary Fund
Knouse .....	Knouse Foods Cooperative, Inc.
LTFV .....	Less than fair value
Mason County .....	Mason County Fruit Packers
Morrison .....	Morrison Orchards
Mott's .....	Mott's North American
Naumes. ....	Naumes, Inc.
NFCAJ .....	Non-frozen concentrated apple juice
1XAJ .....	Single strength apple juice
PRWs .....	Production and related workers
R&D .....	Research and development
SG&A .....	Selling, general, and administrative
Seneca .....	Seneca Foods Corporation
The Act .....	The Trade Act of 1930
3XCAJ .....	Frozen concentrated apple juice
Tree Top. ....	Tree Top, Inc.
USDA .....	U.S. Department of Agriculture
USTR .....	U.S. Trade Representative



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-841 (Preliminary)

## CERTAIN NON-FROZEN CONCENTRATED APPLE JUICE FROM CHINA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines,<sup>2</sup> 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<sup>3</sup> by reason of imports from China of concentrated apple juice, other than frozen,<sup>4</sup> provided for in subheading 2009.70.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

### BACKGROUND

On June 7, 1999, a petition was filed with the Commission and Commerce by counsel on behalf of Coloma Frozen Foods, Inc., Coloma, MI; Green Valley Packers, Arvin, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers, Ludington, MI; and Tree Top, Inc., Selah, WA., alleging that an industry in the United States is materially injured by reason of LTFV

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

<sup>2</sup> Chairman Bragg not participating.

<sup>3</sup> Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from China that are allegedly sold at LTFV.

<sup>4</sup> For purposes of this investigation, non-frozen concentrated apple juice is defined as having a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter, not fortified with vitamins or minerals, unfermented and not containing added spirits.

imports of non-frozen concentrated apple juice from China. Accordingly, effective June 7, 1999, the Commission instituted antidumping investigation No. 731-TA-841 (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 June 16, 1999 (64 F.R. 32256). The conference was held in Washington, DC, on June 28, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of non-frozen concentrated apple juice (“NFC AJ”) from China that are allegedly sold in the United States at less than fair value (“LTFV”).<sup>1 2</sup>

### **I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS**

The legal standard for preliminary antidumping determinations 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, threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly LTFV imports.<sup>3</sup> 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.”<sup>4</sup>

### **II. DOMESTIC LIKE PRODUCT AND INDUSTRY**

#### **A. In General**

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 imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>5</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>6</sup> 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 . . . .”<sup>7</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>8</sup> No single factor is dispositive, and the Commission

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<sup>1</sup> Chairman Bragg did not participate in this investigation.

<sup>2</sup> Commissioner Crawford finds a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of NFC AJ from China. She joins sections I, II, and III.A. of these views. *See* Separate Views of Commissioner Carol T. Crawford.

<sup>3</sup> 19 U.S.C. § 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT \_\_, Slip Op. 96-51 at 4-6 (March 11, 1996).

<sup>4</sup> American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); *see also* Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>5</sup> 19 U.S.C. § 1677(4)(A).

<sup>6</sup> 19 U.S.C. § 1677(4)(A).

<sup>7</sup> 19 U.S.C. § 1677(10).

<sup>8</sup> *See, e.g.*, NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744,

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.<sup>9</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>10</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>11</sup>

## **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

non-frozen concentrated apple juice having a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter. Excluded from the scope of this investigation are frozen concentrated apple juice, non-frozen concentrated apple juice fortified with vitamins or minerals, non-frozen concentrated apple juice that has been fermented, and non-frozen concentrated apple juice to which spirits have been added.<sup>12</sup>

NFCAJ is a highly concentrated form of apple juice from which the apple “essence” and most of the water have been removed. NFCAJ production begins with juice apples,<sup>13</sup> which are milled and mash-finished to remove the stems, seeds, peels, and other extraneous matter. The pulpy apple residue is then separated from the juice and removed. The juice then is heated in a “stripper” until the apple essence<sup>14</sup> separates and can be removed, and is then further heated to the point of pasteurization. The juice is then

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<sup>8</sup> (...continued)

749, n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). 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 Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>9</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>10</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>11</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>12</sup> 64 Fed. Reg. 36,330, 36,331 (July 6, 1999).

<sup>13</sup> After harvesting, apples are generally sorted into three categories: fresh market, peelers, and juice apples. Fresh market apples are sold for fresh consumption. Peelers are used to produce apple slices, apple sauce, and other processed products. Juice apples are used to produce apple juice. Juice apples are the inevitable by-product of production of apples for the fresh market and generally consist of apples that, due to size or condition, are not suitable for either fresh consumption or processing. Confidential Report (“CR”) at I-3, Public Report (“PR”) at I-2-I-3.

<sup>14</sup> The “essence” of a fruit is what provides its characteristic taste and aroma. CR at I-4 n.22, PR at I-3 n.22.

filtered or “clarified,” resulting in a non-cloudy juice. Finally, the clarified juice is passed through evaporators, which use heat to remove water from the juice until it takes a highly concentrated form. After processing, NFCAJ is poured into bulk tanks or 55-gallon drums, where it can be stored for an extended period of time.<sup>15</sup> NFCAJ can be used to produce apple juice, blended fruit juice beverages, as a flavoring ingredient in carbonated and other beverages, and as a sweetener in bakery products, cereal, and health foods.<sup>16</sup>

### **C. Domestic Like Product Issues**

The only like product issue in the preliminary phase of this investigation is whether the domestic like product should be expanded beyond the scope to include single strength apple juice (“1XAJ”) and frozen concentrated (triple strength) apple juice (“3XCAJ”). Petitioners advocate a single domestic like product coextensive with the scope, *i.e.*, NFCAJ.<sup>17</sup> Respondents take no position on whether the like product should be limited to NFCAJ or should be defined more broadly to include other forms of apple juice.<sup>18</sup>

Single strength apple juice is apple juice in drinkable form and is generally sold to grocery stores and food service establishments for ultimate sale to consumers in bottles, cans, or paper cartons. It can be made directly from apples, or by reconstituting (*i.e.*, adding water to) apple juice concentrate.<sup>19</sup> Frozen concentrated apple juice is apple juice from which some of the water has been evaporated and that is maintained in frozen form to lengthen shelf life. Frozen concentrated apple juice is a consumer product that is sold in the freezer section of supermarkets. The consumer must add three parts water to the concentrate in order to reconstitute it into drinkable juice.<sup>20</sup>

For purposes of these views, we refer to single strength apple juice and frozen concentrated apple juice collectively as “retail apple juice.”<sup>21</sup> Also for purposes of these views, we do not include in our definition of “retail apple juice” juice that has been excluded from the scope definition because it contains added vitamins or alcohol.

#### **a. Physical Characteristics and Uses**

All forms of apple juice are made from apples and therefore bear significant similarities in terms of physical characteristics. Petitioners argue, however, that two physical characteristics distinguish NFCAJ from retail apple juice: degree of concentration and taste.<sup>22</sup>

Single strength apple juice, frozen concentrated apple juice, and NFCAJ represent differing degrees of concentration that are reflected in the amount of sugar they contain by weight. Sugar content is measured on the Brix scale, which indicates a solution’s percentage by weight of sugar at a particular

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<sup>15</sup> Petition at 4-5.

<sup>16</sup> Petition at 6-7.

<sup>17</sup> Petitioners’ Postconference Brief at 2.

<sup>18</sup> Respondents’ Postconference Brief at 3.

<sup>19</sup> CR at I-2-I-3, PR at I-2-I-3; Petition at 3.

<sup>20</sup> CR at I-4-I-5 and nn. 22 and 24, PR at I-3-I-4 and nn. 22 and 24; Petition at 3.

<sup>21</sup> For purposes of this preliminary determination, we also include shelf stable non-frozen concentrate sold at retail as a form of “retail apple juice.” In any final phase of the investigation, we will seek additional information concerning the characteristics (such as the Brix value) and uses of this product.

<sup>22</sup> Petitioners’ Postconference Brief at 5.

temperature. The scope of this investigation covers NFCAJ with a Brix value of 40 or greater. NFCAJ typically has a Brix value of about 70, meaning that at a temperature of 20°C it contains seventy percent sugar by weight. By contrast, frozen concentrate generally has a Brix value of about 44 to 46,<sup>23</sup> and single strength apple juice has a Brix value of between 9 and 14.<sup>24</sup>

Apple essence is what gives apple juice its distinctive flavor. As discussed further below, apple essence is separated from NFCAJ during the production process. Once the apple essence is removed, NFCAJ tastes like very sweet water. By contrast, single strength apple juice and frozen concentrated apple juice both contain apple essence.<sup>25</sup>

NFCAJ has several end uses. The majority of domestically-produced NFCAJ, about 65 percent, is reconstituted into retail apple juice.<sup>26</sup> For this end use, both water and apple essence must be combined with the NFCAJ to produce a drinkable product that tastes like apple juice.<sup>27</sup> About 25 percent of domestic NFCAJ production is used to produce juice blend products.<sup>28</sup> In many cases, NFCAJ is used as a juice “filler” so that the product can be labeled “100 percent fruit juice” but will not have a distinctive apple taste. For this end use, no apple essence is required, unless the blended juice beverage is intended to have an apple flavor.<sup>29</sup> A small amount of domestic production of NFCAJ is used as a flavoring in other beverages. No information is available on whether apple essence must be added in such applications.<sup>30</sup> A small portion of domestic NFCAJ production is also used as a sweetener in cereal, bakery products, and other prepared foods, where presumably a strong apple flavor is not desired.<sup>31</sup>

#### **b. Interchangeability**

Petitioners concede that, technically, retail apple juice could be used as a substitute for NFCAJ in the production of juice blends and bakery products. There are several reasons, however, why such substitution is not commercially feasible. First, retail apple juice is a more perishable form of apple juice than NFCAJ and may not meet purchasers’ shelf life needs. Second, single strength apple juice may not be sweet enough for use in the purchaser’s end product. For example, a baker might water down 70 Brix NFCAJ to 20 Brix for use as a sweetener, but would not have the means to concentrate single strength apple juice that is only 11 ½ to 12 Brix or to remove the essence from the juice.<sup>32</sup>

#### **c. Channels of Distribution**

NFCAJ is an industrial product that is sold for further manufacturing into retail apple juice, juice blends, or other products, while single strength apple juice and frozen apple juice concentrate are sold to grocery stores or food service establishments for human consumption. Despite these initially separate

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<sup>23</sup> *Apple Juice*, Inv. No. TA-201-59, USITC Pub. 1861 at A-5 (June 1986).

<sup>24</sup> Transcript of Commission Staff Conference (“Conf. Tr.”) (June 28, 1999) at 34; CR at I-2 n.8, PR at I-2 n.8.

<sup>25</sup> Conf. Tr. at 21, 41-43.

<sup>26</sup> CR at I-3, PR at I-2. This is lower than petitioners’ initial estimate of 70-75 percent. Conf. Tr. at 30.

<sup>27</sup> Conf. Tr. at 21, 41-43. Petitioner Tree Top indicated that it has at least one customer that requests that it blend the essence back into the NFCAJ before delivery, but that Tree Top never stores NFCAJ with the essence in it. Conf. Tr. at 40-41.

<sup>28</sup> CR at I-3, PR at I-2.

<sup>29</sup> Petitioners’ Postconference Brief at 7; Conf. Tr. at 21-22, 41-43.

<sup>30</sup> Petitioners’ Postconference Brief at 8; CR at I-3, PR at I-2.

<sup>31</sup> Petitioners’ Postconference Brief at 8; CR at I-3, PR at I-2.

<sup>32</sup> Conf. Tr. at 32-33.

channels of distribution, however, the majority of NFCAJ is ultimately reconstituted into retail apple juice and sold through the same channels of distribution as retail apple juice made directly from apples.<sup>33</sup>

**d. Common Manufacturing Facilities, Employees and Methods**

There are two production technologies that can be used to extract juice from apples. The traditional method is to use a press. Using this method, the juice is pressed out of the juice apples, then filtered and pasteurized. At this point the product can either be sold directly as single strength apple juice or it can be sent through a “concentrator” that uses heat to remove most of the water. Because apple essence separates from apple juice at a lower temperature than does water, the separation of the apple essence from the juice is an unavoidable step in the production of concentrate. The separated essence can be recaptured by an additional device or allowed to drain out of the concentrator as waste. Heating continues until the NFCAJ reaches a concentration of 70 Brix. Thus, using the traditional process, NFCAJ shares the first several production steps in common with retail apple juice. At the conference, several petitioning companies testified that they use the same production line to produce single strength apple juice intended for immediate retail sale and single strength apple juice intended for further processing into NFCAJ.<sup>34</sup>

An alternate and newer technology is the liquification process. This process removes the liquid from the apple without the use of a press. Liquification results in a higher juice yield than the traditional press method, and is therefore preferred by some large producers of NFCAJ. The traditional method is preferred for the production of single strength apple juice, however, because it is believed to produce a better flavored juice. At present, both technologies are in general use, with some facilities that use only one or the other and some that use both technologies.<sup>35</sup> Petitioner Tree Top, which accounted for \*\*\* of domestic production of NFCAJ in 1998, \*\*\*.<sup>36</sup>

**e. Producer and Customer Perceptions**

Petitioners argue that consumers and producers perceive NFCAJ and retail apple juice to be different products because one is an intermediate industrial product with several end uses while the other is a downstream retail product.<sup>37</sup> With respect to retail apple juice production, however, (which accounts for about 65 percent of domestic production of NFCAJ) NFCAJ could be considered as more of a convenient storage format than it is a separate product.<sup>38</sup>

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<sup>33</sup> CR at I-3, PR at I-2 (65 percent of domestically produced NFCAJ is used in the production of retail apple juice). In any final phase of the investigation, we will seek information on whether there are arms length sales of single strength apple juice in bulk to bottlers. If bottlers purchase both single strength juice in bulk and NFCAJ for use separately or together in the production of retail juice, then the channels of distribution for at least some IXAJ would be the same as for the approximately 65 percent of domestic NFCAJ that is used to produce retail apple juice.

<sup>34</sup> Conf. Tr. at 36 (Coloma), 37 (Knouse).

<sup>35</sup> Conf. Tr. at 35-36.

<sup>36</sup> CR at I-3 n.17, PR at I-3; CR at III-1, PR at III-1.

<sup>37</sup> Conf. Tr. at 22.

<sup>38</sup> Cf. Conf. Tr. at 18 (development of NFCAJ allowed year round apple juice production for the first time).

**f. Price**

Petitioners contend that the additional value added through the processing and packaging of single strength apple juice for retail sale results in a much higher price than for a comparable amount of NFCAJ.<sup>39</sup> It is not clear, however, that comparing the retail price of single strength apple juice to the price of NFCAJ sold in bulk to industrial users is the appropriate comparison since, as petitioners admit, the process of reconstituting and bottling NFCAJ for retail sale adds considerable value to the product.<sup>40</sup>

**g. Conclusion**

For purposes of our preliminary determination, we find a single domestic like product limited to NFCAJ. We base this finding on the physical differences between NFCAJ and retail apple juice (in particular, the removal of the apple essence from NFCAJ); the fact that about 35 percent of domestic NFCAJ is not used to produce retail apple juice; the limited commercial interchangeability between NFCAJ and retail apple juice in producing downstream products such as non-apple flavored juice blends and baked goods; the additional processing steps needed to produce NFCAJ from single strength apple juice; the use of a different manufacturing technology for removing juice from apples for NFCAJ versus 1XAJ by \*\*\* domestic producer \*\*\*; and the different channels of distribution in which NFCAJ and retail apple juice are sold. Nevertheless, we intend to reconsider this issue in any final phase of the investigation. In particular, we will seek further information concerning the relative significance of common and separate production processes for NFCAJ and retail apple juice, and, to the extent possible, comparisons concerning channels of distribution, consumer perceptions, and price at the same level of trade.<sup>41</sup>

**D. Domestic Industry**

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . . .”<sup>42</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>43</sup> For the reasons discussed below, we define the domestic industry in this investigation as all domestic producers of NFCAJ, and do not include apple growers in the domestic industry.

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<sup>39</sup> Petition at 9.

<sup>40</sup> Petitioners’ Postconference Brief at 8 n.20. In any final phase of the investigation, we will seek information permitting a price comparison between 1XAJ and NFCAJ at the same level of trade, such as a comparison between the price to a bottler of 1XAJ in bulk and NFCAJ (converted to single strength equivalent).

<sup>41</sup> We will also consider whether a semifinished product analysis would be more appropriate to this issue than the traditional six factor like product analysis.

<sup>42</sup> 19 U.S.C. § 1677(4)(A).

<sup>43</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int’l Trade 1994), *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996).

## 1. Whether the Industry Includes Apple Growers

In cases involving processed agricultural products, section 771(4)(E) of the Act authorizes the Commission to include growers of a raw agricultural input within the domestic industry producing the processed agricultural product if:

- (a) the processed agricultural product [here, NFCAJ] is produced from the raw product [apples]<sup>44</sup> through a single continuous line of production,<sup>45</sup> and
- (b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors.<sup>46</sup>

Based on the record in the preliminary phase of this investigation, we find that the domestic industry producing NFCAJ does not include apple growers, because although the processed agricultural product (NFCAJ) is produced substantially from the raw agricultural product (apples), the raw agricultural product is not substantially or completely devoted to the production of the processed agricultural product. In previous investigations, the Commission has found that a raw agricultural product is not substantially or completely devoted to the production of the processed agricultural product when the majority of domestic production of the raw agricultural product is either not processed at all, processed into products other than the one subject to investigation, or a combination of both.<sup>47</sup> In this investigation, the record indicates that only about 20 percent of domestic apple production (by weight) is

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<sup>44</sup> "Raw agricultural product" is defined as any farm or fishery product. 19 U.S.C. §1677(4)(E)(iv).

<sup>45</sup> The statute provides that the processed product shall be considered to be processed from the raw product in a single continuous line of production if:

- (a) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and
- (b) the processed agricultural product is produced substantially or completely from the raw product.

19 U.S.C. § 1677(4)(E)(ii).

<sup>46</sup> In addressing coincidence of economic interest under the second prong of the test, the Commission may, in its discretion, consider price, added market value, or other economic interrelationships. Further:

- (a) if price is taken into account, the Commission shall consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and
- (b) if added market value is taken into account, the Commission shall consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

19 U.S.C. § 1677(4)(E)(iii).

<sup>47</sup> See, e.g., Certain Preserved Mushrooms from Chile, Inv. No. 731-TA-776 (Final), USITC Pub. 3144 (Nov. 1998); Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Final), USITC Pub. 3057 (Aug. 1997); Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Final), USITC Pub. 2907 (July 1995).

processed into apple juice,<sup>48</sup> and virtually no domestic apples are grown specifically for use as juice apples.<sup>49</sup> The remaining 80 percent of domestic apples are either sold in the fresh market or processed into slices, apple sauce, baby food, or other non-juice products.<sup>50</sup> Moreover, of the 20 percent of domestic apples that are used as juice apples, only a little more than half are used to produce NFCAJ.<sup>51</sup>

## 2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.<sup>52</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>53</sup>

Respondents argue that \*\*\* is a related party and that appropriate circumstances exist to exclude it from the domestic industry because its \*\*\*. They also argue that \*\*\* may be a related party by virtue of its \*\*\*.<sup>54</sup> Petitioners did not address this issue.

\*\*\* is a \*\*\* producer that accounted for only \*\*\* percent of domestic production of NFCAJ in 1998.<sup>55</sup> In 1998, \*\*\* purchased subject imports amounting to \*\*\* and \*\*\*.<sup>56</sup> There is no evidence to suggest that \*\*\* was the importer of the subject imports it purchased, nor is there any evidence that it is related to any importer or foreign producer of the subject merchandise. In previous investigations, however, the Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist

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<sup>48</sup> Conf. Tr. at 87.

<sup>49</sup> Conf. Tr. at 45-46.

<sup>50</sup> Conf. Tr. at 21-22.

<sup>51</sup> Conf. Tr. at 45.

<sup>52</sup> 19 U.S.C. § 1677(4)(B).

<sup>53</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

<sup>54</sup> Respondents' Postconference Brief at 24-25.

<sup>55</sup> CR at III-3, PR at III-2.

<sup>56</sup> CR at III-4, PR at III-2.

where the domestic producer was responsible for a predominant portion of an importer's purchases and the importer's purchases were substantial.<sup>57</sup>

In this case, the only importer of the subject merchandise that reported \*\*\* among its ten largest customers was \*\*\*, which reported that \*\*\* accounted for \*\*\* percent of its sales of subject merchandise in 1998 (about \*\*\* short tons). In 1998, \*\*\* accounted for about \*\*\* percent of subject imports, meaning that \*\*\* purchases from \*\*\* accounted for about \*\*\* percent of subject imports in that year. Total purchases of subject imports reported by \*\*\* were about \*\*\* short tons, indicating that it must also purchase subject merchandise from other domestic sources.<sup>58</sup> In our view, these data indicate that \*\*\* was not responsible for a predominant portion of any importer's purchases of the subject merchandise and therefore should not be considered a related party.

Similarly, there is no evidence to suggest that \*\*\* or any other domestic producer of NFAJ might be a related party as that term is defined in the statute.<sup>59 60</sup> Accordingly, we find that no domestic producer should be considered a related party for purposes of our preliminary determination in this investigation, and define the domestic industry as all domestic producers of NFAJ.

### III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS<sup>61</sup>

In the preliminary phase of antidumping or countervailing duty 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.<sup>62</sup> 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.<sup>63</sup> The statute defines "material injury" as "harm which is not inconsequential, immaterial or unimportant."<sup>64</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the

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<sup>57</sup> See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (Apr. 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997).

<sup>58</sup> Questionnaire Responses of \*\*\* and \*\*\*; Table IV-1, CR at IV-2, PR at IV-2.

<sup>59</sup> CR at III-2 n.7, PR at III-1 n.7 (\*\*\*) reported no purchases of subject merchandise).

<sup>60</sup> Commissioner Crawford determines that there is no evidence that any of the \*\*\* domestic producers that reported purchases of subject imports is a related party. She further determines that neither of the \*\*\* importers that are related to Chinese producers is selling a significant volume of subject merchandise to any domestic producer of NFAJ.

<sup>61</sup> Commissioner Crawford finds a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports. See *Separate Views of Commissioner Carol T. Crawford*. She therefore joins only subsection A of section III of the majority views.

<sup>62</sup> 19 U.S.C. § 1673b(a).

<sup>63</sup> 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). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>64</sup> 19 U.S.C. § 1677(7)(A).

state of the industry in the United States.<sup>65</sup> 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.”<sup>66</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing NFCAJ is materially injured by reason of allegedly LTFV imports of NFCAJ from China.

**A. Conditions of Competition**

**1. Captive Production**

Because the domestic industry captively consumes the majority of its production of the domestic like product in the manufacture of downstream articles, we first consider whether the statutory captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.<sup>67 68</sup>

We find that domestic producers both internally transfer significant production of NFCAJ and sell significant production in the merchant market,<sup>69</sup> and, accordingly, that the statutory threshold is

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<sup>65</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>66</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>67</sup> The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

(iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that -

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

<sup>68</sup> Commissioner Askey notes that the statute requires the Commission to analyze the impact of the subject imports on all domestic production operations, including both captive and merchant market shipments. *See* 19 U.S.C. §§ 1677(4)(A) and 1677(7)(B). Moreover, she notes that, even if the statutory provisions are met and the captive production provision applies, it merely permits the Commission to “focus primarily” on the merchant market operations of the industry; the provision does not allow the Commission to disregard the industry’s captive consumption completely. 19 U.S.C. § 1677(7)(C)(iv).

<sup>69</sup> In 1998, internal shipments accounted for approximately 57.7 percent of domestic producers’ total shipments of NFCAJ (by volume) and merchant market shipments accounted for 42.1 percent, with the remainder being

(continued...)

satisfied. For the following reasons, however, we find that the third criterion of the captive production provision is not satisfied in this investigation.

The third statutory criterion requires us to determine whether the merchant market purchaser is generally using the domestic like product in the production of the same downstream article or articles as the integrated domestic producer.<sup>70</sup> The Commission has previously determined that, in investigations involving captive production of multiple downstream products, the Commission should make its determination of whether the third criterion (and hence the captive production provision) is satisfied with respect to production of all such products, rather than making a separate determination with respect to each captively produced downstream product.<sup>71</sup> In this investigation, therefore, we consider whether merchant market purchasers are generally using NFCAJ in the production of the same two principal downstream products that are captively produced, *i.e.*, retail apple juice and juice blends. The record indicates that approximately 45 percent of NFCAJ sold on the merchant market is used in the production of retail apple juice; 35 percent of NFCAJ sold on the merchant market is used in the production of juice blends; and the remaining 20 percent sold on the merchant market is sold to bakers and others for the manufacture of other products. The record further indicates that 80 and 18 percent of captively consumed NFCAJ is used in the production of retail apple juice and juice blends, respectively.<sup>72</sup> Because we find that a substantial share of NFCAJ sold on the merchant market is used to produce the same two downstream products as is the NFCAJ that is internally consumed by integrated producers, we find that the third criterion is not satisfied, and, therefore, that the captive production provision does not apply in this investigation.<sup>73 74</sup>

## 2. Other Conditions of Competition

An important condition of competition in the market for NFCAJ is that domestic consumption of apple juice generally exceeds domestic supply. As a consequence, the United States has historically been a net importer of NFCAJ and imports of NFCAJ currently hold more than 75 percent of the U.S. market.<sup>75</sup> In this preliminary phase of the investigation, the record evidence is somewhat mixed on the extent to which domestic product, subject imports, and non-subject imports complement each other and

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<sup>69</sup> (...continued)  
export shipments. Table III-2, CR at III-6, PR at III-3.

<sup>70</sup> See Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 27-29, 33-35 (June 1999) ("Hot-Rolled Steel").

<sup>71</sup> *Id.*

<sup>72</sup> CR at I-3 n.14, PR at I-2.

<sup>73</sup> Under the third criterion of the captive production provision Vice Chairman Miller and Commissioners Hillman and Koplan assess the overall degree of overlap between the downstream products produced captively and those produced from the domestic like product in the merchant market. See Hot-Rolled Steel, USITC Pub. 3202 at 33.

<sup>74</sup> Commissioner Crawford notes that, even in circumstances in which the captive production provision does not apply, the Commission has the discretion to consider the significant volume of captive production as a condition of competition. See, e.g., Hot-Rolled Steel, USITC Pub. 3202 at 29; Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Inv. Nos. 731-TA-794-796 (Final), USITC Pub. 3190 at 13-14 (May 1999). In any final phase of the investigation, she will seek further information on the extent to which captive production of NFCAJ is insulated from competition with subject imports and whether certain domestic capacity for the production of downstream products is dedicated to consumption of domestically-produced NFCAJ.

<sup>75</sup> Conf. Tr. at 9-10; CR at IV-4, PR at IV-4; Table IV-2, CR at IV-6, PR at IV-5.

the extent to which they compete with each other in the U.S. market for NFCAJ. Petitioners contend that non-subject imports from southern hemisphere countries such as Argentina and Chile may complement domestic production to some extent, because of their different growing seasons. Similarly, they assert that non-subject imports from European countries, such as Germany, may complement domestic production because they tend to be higher in acidity and can be blended with domestic NFCAJ as part of the reconstituting process to reduce its sweetness. By contrast, they claim that Chinese imports are a very good substitute for the domestic product, since they share the same growing season and are generally low in acidity.<sup>76</sup> On the other hand, as discussed further below, the extent to which subject imports have displaced nonsubject imports in the U.S. market during the period examined suggests that subject and nonsubject imports are substitutable to a significant extent.<sup>77</sup> Moreover, questionnaire responses support this inference: the majority of responding producers and importers indicated that the domestic like product, subject imports, and nonsubject imports are interchangeable.<sup>78</sup> Accordingly, for purposes of this preliminary determination, we conclude that both subject and nonsubject imports are relatively good substitutes for the domestic like product and for each other.<sup>79</sup>

Because NFCAJ is an agricultural product, weather conditions and other factors affecting the apple harvest can result in swings in the domestic supply and prices of juice apples. The parties disagree, however, about the existence or significance of bumper apple crops in 1998 and 1999. Respondents argue that current U.S. apple harvests are at near-record levels, resulting in very low prices for juice apples.<sup>80</sup> Petitioners, by contrast, claim that they have seen no difference recently in the amount of fruit available for processing into NFCAJ.<sup>81</sup> In any final phase of the investigation, we will seek further information on the manner in which the fresh apple harvest affects prices in the market for NFCAJ.

Finally, because juice apples are a perishable commodity, they must be processed into NFCAJ relatively soon after harvest. This means that NFCAJ production is a somewhat seasonal activity. As a consequence, NFCAJ producers have somewhat limited ability to affect their volume of production in response to current demand conditions.<sup>82</sup>

## **B. Volume of the Subject Imports**

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>83</sup>

Imports of NFCAJ from China (by quantity) rose throughout the period examined, from 6,297 short tons in 1996 to 25,978 short tons in 1997 and 46,032 short tons in 1998, for an overall increase of

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<sup>76</sup> Conf. Tr. at 11-12, 19, 27-29, 52-53.

<sup>77</sup> Table IV-2, CR at IV-6, PR at IV-5.

<sup>78</sup> CR at II-3-II-5, PR at II-3.

<sup>79</sup> Commissioner Crawford finds that U.S.-produced and Chinese NFCAJ are moderate substitutes. She bases this on differing product characteristics, terms of sales, and the substantial volume of captive production. *See her Separate Views.*

<sup>80</sup> Conf. Tr. at 64, 69.

<sup>81</sup> Conf. Tr. at 61.

<sup>82</sup> CR at II-1, PR at II-1; Conf. Tr. at 9-10, 64, 69. While NFCAJ can be made with apples that have been held in climate controlled storage for up to 8 to 10 months following harvest, most NFCAJ is made from recently harvested apples. CR at I-3, PR at I-2.

<sup>83</sup> 19 U.S.C. § 1677(7)(C)(i).

over 600 percent. Imports by quantity were 19,020 short tons in interim (January-March) 1999, compared with 6,308 short tons in interim 1998, a 200 percent increase. By value, imports followed the same pattern, rising from \$8.7 million in 1996 to \$27.0 million in 1997 and \$33.4 million in 1998, for an overall increase of 284 percent. Subject imports by value were \$14.5 million in interim 1999 compared to \$5.2 million in interim 1998, a difference of 179 percent.<sup>84</sup>

Subject imports' share of the U.S. market (by quantity) also rose over the period examined, climbing from 2.2 percent in 1996 to 8.2 percent in 1997 and 14.8 percent in 1998. Subject imports' market share by quantity was 26.1 percent in interim 1999, compared with 10.6 percent in interim 1998. By value, the market share of subject imports followed the same pattern, rising from 1.9 percent in 1996 to 6.9 percent in 1997 and to 12.5 percent in 1998. Subject imports' market share by value was 24.5 percent in interim 1999, compared with 8.9 percent in interim 1998.<sup>85</sup>

Although subject imports rose dramatically over the period examined by every measure, they did not take market share from the domestic like product. Domestic producers' share of the U.S. market for NFCAJ (by quantity) fell from 20.5 percent in 1996 to 18.6 percent in 1997, then rose to 23.9 percent in 1998. Domestic producers' market share by quantity was 24.5 percent in interim 1999, compared with 17.5 percent in interim 1998.<sup>86</sup>

Despite the fact that subject imports did not displace domestic product over the period examined, we find both the volume and the increase in the volume of subject imports to be significant in absolute terms. We base this conclusion principally on subject imports' extremely rapid rise by all measures to hold a prominent share of the domestic market for NFCAJ.

### **C. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>87</sup>

Prices for domestic NFCAJ trended sharply and steadily downward between early 1996 and late 1998, increasing very slightly in the first quarter of 1999. Thus the price of a gallon of domestic NFCAJ, which began the period at over \*\*\*, declined to just over \*\*\* in late 1998 and the first quarter of 1999.<sup>88</sup> Prices for the Chinese product also declined steadily over the period examined. The price of a gallon of subject NFCAJ began the period well below that for domestic NFCAJ, at about \*\*\*, and ended the period \*\*\* at about \*\*\*.<sup>89</sup> Although margins of underselling decreased as domestic prices descended rapidly to meet subject import prices, subject imports undersold the domestic like product in all 11 quarters in which comparisons were possible.<sup>90</sup>

The observed price declines correlate with the surge in Chinese imports. At the beginning of 1996, Chinese imports were selling for just over \*\*\* the price of the domestic like product, and their

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<sup>84</sup> Table IV-1, CR at IV-2, PR at IV-2; Table C-1, CR at C-3, PR at C-3.

<sup>85</sup> Table IV-2, CR at IV-6, PR at IV-5.

<sup>86</sup> Table IV-2, CR at IV-6, PR at IV-5. Market share by value followed the same general pattern.

<sup>87</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>88</sup> Table V-1, CR at V-4, PR at V-4.

<sup>89</sup> Table V-1, CR at V-4, PR at V-4.

<sup>90</sup> Table V-1, CR at V-4, PR at V-4.

prices continued to fall throughout 1997 and 1998. Between 1996 and 1997, the volume of subject imports increased by over 200 percent, while domestic prices fell by more than \*\*\* percent. As the rate of increase in the volume of subject imports slowed between 1997 and 1998 (although the increase continued in absolute terms), both domestic and subject import prices fell more slowly and margins of underselling by the subject imports declined somewhat.<sup>91</sup> We note that domestic and subject import prices rose slightly in the first quarter of 1999, although the volume of imports continued to rise relative to the first quarter of 1998.<sup>92</sup> Nevertheless, we do not view this very slight increase in prices from their very low current levels as indicating an ongoing recovery or as negating our general observations concerning the correlation between volume and price trends in this market.

Based on the observed correlations between rising subject import volumes, declining prices, and underselling, and in light of the relatively high degree of substitutability between the subject imports and the domestic like product, we find both that underselling by the subject imports is significant and that the subject imports have depressed the prices for the domestic like product to a significant degree.

#### **D. Impact of the Subject Imports on the Domestic Industry**

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.” 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.”<sup>93</sup> <sup>94</sup> For the reasons discussed below, we conclude that the rising volume and low and declining prices of the subject imports have adversely affected the domestic industry producing NFCAJ in several respects.

Between 1996 and 1997, U.S. apparent consumption of NFCAJ increased by more than nine percent.<sup>95</sup> Faced with growing demand, domestic producers increased their production, capacity utilization, and employment between those two years, despite the growing volume of lower-priced

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<sup>91</sup> Table IV-1, CR at IV-2, PR at IV-2; Table V-1, CR at V-4, PR at V-4. By contrast, there does not appear to be any correlation between domestic price declines and the volumes or prices of nonsubject imports. Nonsubject import volumes rose modestly between 1996 and 1997, then fell in 1998 and interim 1999, resulting in a net loss both in absolute terms and in market share. The average unit values for nonsubject imports also fell over the period, reflecting general price declines in the market, but were at all times higher than the average unit values for subject imports. Although nonsubject import average unit values were below those for the domestic like product in 1996 and 1997, they were higher than those for the domestic like product in 1998 and interim 1999, when prices for both the domestic product and the subject imports reached their lowest levels of the period. Table C-1, CR at C-3, PR at C-3.

<sup>92</sup> *Id.*

<sup>93</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>94</sup> As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins for China ranging from 51.69 to 65.64 percent. 64 Fed. Reg. 36,330, 36,332 (July 6, 1999).

<sup>95</sup> Apparent consumption rose from 290,556 short tons in 1996 to 318,006 short tons in 1997 and 310,496 short tons in 1998. Apparent consumption was 72,359 short tons in interim 1999, compared with 59,359 short tons in interim 1998. Table IV-2, CR at IV-5, PR at IV-5; Table C-1, CR at C-3, PR at C-3.

subject imports.<sup>96</sup> Domestic producers' U.S. shipments by quantity remained constant, however, resulting in rising inventories as a percentage of shipments, and U.S. shipments by value declined.<sup>97</sup> Between 1997 and 1998, as demand fell somewhat, subject import volumes continued to rise, and domestic prices continued to fall in the face of underselling by the subject imports, domestic producers cut back on production (albeit not below 1996 levels) and capacity utilization declined. Although shipments rose in terms of quantity, the value of shipments continued to decline.<sup>98</sup>

Reported domestic capacity to produce NFCAJ rose by nearly five percent between 1996 and 1998, from 106,114 short tons to 111,341 short tons.<sup>99</sup> Coloma, one of the \*\*\* firms that accounted for virtually all of the increase,<sup>100</sup> made its investment decision prior to or early in the period examined, before the recent surge in Chinese imports, and reported that the concentrator that it purchased in 1996 is now largely idle.<sup>101</sup> \*\*\*.<sup>102</sup> Such capacity expansion as occurred, therefore, cannot be viewed as a sign of industry health, as respondents contend. Moreover, although one capacity expansion planned before the surge in Chinese imports came on line in 1996, new capital expenditures declined over the period.<sup>103</sup>

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<sup>96</sup> Domestic production of NFCAJ rose from 56,116 short tons in 1996 to 70,268 short tons in 1997, then fell to 63,715 short tons in 1998. Domestic production was 20,612 short tons in interim 1999, compared with 12,684 short tons in interim 1998. The domestic industry's capacity utilization rose from 52.9 percent in 1996 to 64.4 percent in 1997, fell to 57.2 percent in 1998, and was 67.5 percent in interim 1999 compared with 54.2 percent in interim 1998. Table III-1, CR at III-5, PR at III-2. The average number of production and related workers employed by the domestic industry rose from 241 in 1996 to 256 in 1997 and 266 in 1998, and was 149 in interim 1999 compared with 131 in interim 1998. Domestic employment related trends were generally favorable throughout the period examined. Table III-4, CR at III-7, PR at III-4.

<sup>97</sup> U.S. producers' end-of-period inventories as a ratio of U.S. shipments rose from 26.9 percent in 1996 to 47.4 percent in 1997, fell to 27.6 percent in 1998, and were 25.2 percent in interim 1999 compared with 45.7 percent in interim 1998. Table III-3, CR at III-7, PR at III-4. Domestic producers' U.S. shipments by quantity were 59,488 short tons in 1996, 59,093 short tons in 1997, and 74,078 short tons in 1998. U.S. shipments by quantity were 17,882 short tons in interim 1999, compared with 10,406 short tons in interim 1998. By value, domestic producers' U.S. shipments fell from \$96,201 in 1996 to \$77,643 in 1997 and \$63,144 in 1998, and were \$13,626 in interim 1999, compared with \$9,732 in interim 1998. Table III-2, CR at III-6, PR at III-3.

<sup>98</sup> Tables III-1-III-4, CR at III-5-III-7, PR at III-2-III-4. We note that most indicators examined showed improvement when comparing interim 1999 to interim 1998. We give little weight to these apparent improvements, however, for several reasons. First, because \*\*\* did not report data for \*\*\*, while \*\*\* did report \*\*\*, the data for the two interim periods may not be comparable. Moreover, as we have observed in the past, a single quarter of interim data, particularly for a seasonal product such as NFCAJ, is not as informative as a longer interim period. Finally, even if the data were comparable and reliable, we do not find that a single quarter of improving trends negates the generally negative effects that the subject imports have had on the domestic industry throughout the period examined or the existence of a reasonable indication of present material injury by reason of such imports at the time of our vote.

<sup>99</sup> Table III-1, CR at III-5, PR at III-2.

<sup>100</sup> CR at III-5, PR at III-2. Although Tree Top acquired an NFCAJ facility from Seneca in 1999, there was no net increase in industry capacity due to this transaction. The interim data in Table III-1, CR at III-5, PR at III-2, indicate an increase because \*\*\*.

<sup>101</sup> Conf. Tr. at 14-16.

<sup>102</sup> Questionnaire Response of \*\*\*.

<sup>103</sup> Reported capital expenditures fell from \*\*\* in 1996 to \*\*\* in 1997 and \*\*\* in 1998 and were \*\*\* in interim 1999 compared with \*\*\* in interim 1998. Table VI-9, CR at VI-12, PR at VI-3. The \*\*\* in capital expenditures in interim 1999 relative to interim 1998 reflects \*\*\*. Tree Top claims that it purchased the Seneca facility

(continued...)

Thus, rising volumes of low-priced subject imports prevented domestic producers from fully utilizing new and existing capacity despite healthy and growing demand that significantly exceeded domestic supply.<sup>104</sup>

The most telling indicator of the effects of surging, low-priced Chinese imports in this investigation is the financial experience of the domestic industry, which was generally unfavorable throughout the period examined. Because the financial results of cooperative and noncooperative producers cannot be combined, we discuss them separately.

Although their net sales by quantity increased between 1996 and 1998, declining prices caused noncooperative producers' net sales values to decline over the same period. Both the quantity and value of noncooperative domestic producers' net sales was lower in interim 1999 than in interim 1998.<sup>105</sup> Noncooperative producers' operating income margin fell from \*\*\* percent in 1996 to \*\*\* percent in 1997. A significant reduction in cost of goods sold in 1998 could not overcome the effect of falling prices, resulting in an operating income margin of \*\*\* percent for that year. Noncooperative producers' operating income margin was \*\*\* percent in interim 1999, compared with \*\*\* percent in interim 1998.<sup>106</sup>

Also driven by declining domestic prices for NFCAJ, cooperative producers' results followed a similar trend, with net sales by quantity rising over the entire period, and net sales value rising between 1996 and 1997 before falling to below their 1996 level in 1998.<sup>107</sup> For cooperative producers, the ratio of

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<sup>103</sup> (...continued)

principally to obtain additional apple sauce production capacity. Conf. Tr. at 39. In any final phase of the investigation, we will seek further information concerning the relative magnitude and value of the apple sauce, retail apple juice, and NFCAJ capacity Tree Top acquired from Seneca.

<sup>104</sup> Petitioner Knouse argued that it closed its Newfane, New York, NFCAJ facility in 1998 due to low-priced competition from subject imports. Conf. Tr. at 23-24. The record evidence on this point is mixed. Knouse reports that it moved the concentrator from the closed facility to another of its NFCAJ facilities, but that the relocated concentrator is largely idle at present. *Id.* Press reports indicate, however, that the decision to close the facility was made no later than early 1997, and that management cited reasons other than import competition for the closure. Respondents' Postconference Brief at Exhibit 6.

<sup>105</sup> Noncooperative producers' net sales quantity fell from \*\*\* short tons in 1996 to \*\*\* short tons in 1997, then rose to \*\*\* short tons in 1998. Net sales by quantity were \*\*\* short tons in interim 1999 compared with \*\*\* short tons in interim 1998. Noncooperative producers' net sales value fell from \*\*\* in 1996 to \*\*\* in 1997 and remained at \*\*\* million in 1998. Net sales value was \*\*\* in interim 1999, compared with \*\*\* in interim 1998. Table VI-1, CR at VI-2, PR at VI-1.

<sup>106</sup> Table VI-1, CR at VI-2, PR at VI-1. Respondents dispute the accuracy of the juice apple costs reported by some noncooperative producers and urge the Commission to recalculate the financial data using a "market" price for juice apples of \$10-\$20 per ton. Respondents' Postconference Brief at 12-14. Our report includes the financial data as reported by these producers and without the requested adjustment. We note that domestic producers are required to certify the accuracy of their questionnaire responses and that such responses may be subject to verification in any final phase of the investigation.

<sup>107</sup> Cooperative producers' net sales quantity rose from \*\*\* short tons in 1996 to \*\*\* short tons in 1997 and \*\*\* short tons in 1998 and was \*\*\* short tons in interim 1999 compared with \*\*\* short tons in interim 1998. Cooperative producers' net sales value rose from \*\*\* in 1996 to \*\*\* in 1997, then fell to \*\*\* in 1998, and was \*\*\* in interim 1999 compared with \*\*\* in interim 1998. Table VI-5, CR at VI-8, PR at VI-2. Because \*\*\*, we find that the data for interim 1998 and interim 1999 for cooperative producers are not comparable and give them little weight.

net proceeds paid to grower members to net sales fell from \*\*\* percent in 1996 to \*\*\* percent in 1997 and \*\*\* percent in 1998.<sup>108</sup>

Because the rising volumes and low and declining prices of the subject imports have prevented the domestic industry from expanding its production and sales in a growing market characterized by a shortage of domestic supply and have in fact caused the domestic industry to reduce production, idle capacity, and suffer financial declines, we find that the subject imports are having an adverse impact on the domestic industry.

### CONCLUSION

For the reasons stated above, we find a reasonable indication that the domestic industry producing non-frozen concentrated apple juice is materially injured by reason of subject imports from China.

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<sup>108</sup> Table IV-5, CR at VI-8, PR at VI-2. Respondents argue that cooperative domestic producers of NFCAJ reported juice apple costs far above the current market value of juice apples, thereby shifting profits from their NFCAJ operations to their grower-owners. Respondents' Postconference Brief at 10-12. The data presented in our report reflect the total net proceeds paid by cooperative producers to their grower members and reflect no assumptions concerning juice apple costs to the cooperatives.



## SEPARATE VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of the information obtained in this investigation, I determine that there is no reasonable indication that the industry in the United States producing non-frozen concentrated apple juice (“NFC AJ”) is materially injured by reason of imports of NFC AJ from China that are allegedly sold in the United States at less-than-fair-value (“LTFV”), but that there is a reasonable indication that it is threatened with material injury by reason of the subject imports. I join my colleagues in the findings with respect to the domestic like product and the domestic industry, as well as in the discussion of the conditions of competition in the U.S. market (other than the characterization of the substitutability between the domestic like product and the subject imports). Because my analysis and determination differ from those of the majority, my separate views follow.

### I. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .<sup>1</sup>

In making its determination, the Commission may consider “such other economic factors as are relevant to the determination.”<sup>2</sup> In addition, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>3</sup>

The statute directs that we determine whether there is “material injury by reason of the dumped imports.” Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other “factors” that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether there is any injury “by reason of” the dumped imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effects 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.”<sup>4</sup> It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory

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<sup>1</sup> 19 U.S.C. § 1677(7)(B)(i).

<sup>2</sup> 19 U.S.C. § 1677(7)(B)(ii).

<sup>3</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>4</sup> S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added). Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

language fits very well” with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports.<sup>5</sup>

In my analysis of material injury, I evaluate the effects of the dumping<sup>6</sup> on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,<sup>7</sup> I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry’s prices, sales, and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (*e.g.*, employment, wages, etc.) is derived from the impact on the domestic industry’s prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry producing NFCAJ is materially injured by reason of allegedly LTFV imports of NFCAJ from China.

## II. LIKE PRODUCT AND DOMESTIC INDUSTRY

As discussed previously, I concur in the finding that, for purposes of the preliminary phase of this investigation, single-strength apple juice and frozen concentrated apple juice should not be included in the same like product with NFCAJ. I also concur with the intention to reconsider this issue in any final phase of the investigation. Finally, I concur in the conclusion that the domestic industry consists of all domestic producers of NFCAJ.

## III. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. I concur with the discussion of certain important conditions of competition presented in the views of the Commission majority, other than the characterization of the substitutability between the domestic like product and the subject imports. However, my analysis requires additional evaluation of the commercial environment in which competition takes place. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

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<sup>5</sup> United States Steel Group v. United States, 96 F.3rd 1352, at 1361 (Fed.Cir. 1996), *aff’g* 873 F.Supp. 673, 694-695 (Ct. Int’l Trade 1994).

<sup>6</sup> As part of its consideration of the impact of imports, the statute as amended by the URAA now 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). In this investigation, the alleged dumping margins for subject imports are 51.69 and 65.64 percent. (64 F.R. 36332, July 6, 1999).

<sup>7</sup> In examining the quantity sold, I take into account sales from both existing inventory and new production.

## A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, such as an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (*e.g.*, how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall demand for NFCAJ is moderately inelastic.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (*e.g.*, an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the downstream product, and, by extension, demand for the input.

Demand for NFCAJ is driven by the demand for apple juice, which accounts for up to 65 percent of NFCAJ's downstream use. The remainder is primarily used in blended juices. Although producers have mixed views on demand, importers generally conclude that demand has grown steadily since 1996.<sup>8</sup> This is consistent with the 6.9-percent increase in U.S. consumption from 1996 to 1998.<sup>9</sup> Record evidence indicates that NFCAJ is most often used to produce single-strength apple juice, frozen concentrated apple juice, and juice blends. The cost share of NFCAJ in single-strength apple juice ranges from 33 to 60 percent; in frozen concentrated apple juice from 10 to 55 percent; and in blended juices from 1 to 55 percent, depending on the formula used for the blend.<sup>10</sup> These moderate cost shares indicate that demand would likely be moderately inelastic.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Information on the record indicates that other juice concentrates (such as white grape, pear, and grapefruit) can be substituted for NFCAJ in juice blends, thereby affecting demand for NFCAJ; however, such substitution is limited by taste considerations, labeling requirements, and the lower cost of NFCAJ.<sup>11</sup> Purchasers can substitute single-strength apple juice or frozen concentrate for NFCAJ in various downstream products (*e.g.*, juice blends or bakery products), but such substitution is limited by the (often undesired) presence of apple aroma/flavor.<sup>12</sup> Likewise, purchasers can use frozen concentrate or single-strength apple juice directly, without the intermediate step of concentration. However, single-

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<sup>8</sup> Confidential Report ("CR") at II-2, Public Report ("PR") at II-2.

<sup>9</sup> Table C-1, CR at C-3, PR at C-3.

<sup>10</sup> CR at II-3, PR at II-2.

<sup>11</sup> CR at II-3, PR at II-3.

<sup>12</sup> Frozen concentrated apple juice and single-strength apple juice have no use other than for consumption as apple juice, and both contain the essence of the apple, which imparts a characteristic apple aroma and flavor. NFCAJ, by comparison, contains no apple essence in virtually all instances and, therefore, does not become single-strength apple juice simply by adding back water. CR at I-4 n.22, PR at I-3 n.22.

strength apple juice or frozen concentrate would require substantial additional storage facilities (including freezer capacity if the purchaser were using frozen concentrate) and would incur greater shipping costs.<sup>13</sup> Thus, limits on the availability and/or substitutability of alternative products indicate moderately inelastic demand for NFCAJ. However, I intend to explore further in any final phase investigation the degree of substitutability between NFCAJ and frozen concentrate or single-strength apple juice.

The moderate cost share of NFCAJ in downstream products, combined with the limits on the availability and substitutability of alternative products, reduces the elasticity of demand. For this reason, I find that the demand for NFCAJ is moderately inelastic. That is, purchasers will not reduce significantly the amount of NFCAJ they buy in response to a general increase in the price of NFCAJ.

## B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand for NFCAJ is moderately inelastic, overall purchases will not decline significantly if the overall prices of NFCAJ increase. However, purchasers can avoid price increases from one source by seeking other sources of NFCAJ. In addition to any changes in overall demand for NFCAJ, the demand for NFCAJ from different sources will decrease or increase depending on their relative prices and their substitutability. If NFCAJ from different sources is substitutable, purchasers are more likely to shift their demand from one source when the products from that source (*i.e.*, subject imports) experience a price increase. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have a number of available sources of NFCAJ: NFCAJ produced by domestic producers, nonsubject imports, and subject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among NFCAJ from different sources as follows.

Based on the evidence in the record, I find that subject imports and domestic NFCAJ are moderate substitutes for each other. The great majority of producers and importers consider NFCAJ from China and the domestic like product to be interchangeable. Most producers and importers also stated that nonsubject imports and the domestic like product, as well as nonsubject and subject imports, were interchangeable.<sup>14</sup>

Nonetheless, there appear to be differences in product characteristics and sales conditions. Producers and importers indicate that Chinese NFCAJ (1) is lower in acid content than the domestically produced product, thereby requiring blending with higher acid NFCAJ; (2) takes 15 days longer on

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<sup>13</sup> One gallon of NFCAJ is equivalent to 7.5 gallons of single-strength apple juice. CR at I-2, PR at I-2.

<sup>14</sup> CR at II-4, PR at II-3.

average for delivery; and (3) cannot be used in USDA or other government purchase programs.<sup>15</sup> On the other hand, one producer noted that Chinese NFCAJ is preferable to the domestic product because shipments to the east coast eliminate the higher U.S. inland transportation costs.<sup>16</sup>

Furthermore, a substantial portion of all NFCAJ produced in the United States is consumed internally by U.S. producers and, thus, is less substitutable for NFCAJ imported from China or from other sources.<sup>17</sup> In 1998, internal consumption accounted for 57.7 percent of the domestic industry's total shipments of its U.S.-produced NFCAJ.<sup>18</sup>

While subject imports and the domestic like product appear to be only moderate substitutes, subject imports and nonsubject imports appear to be very good substitutes. While the record does not contain extensive details regarding the marketing of nonsubject NFCAJ, the evidence suggests that imports of Chinese NFCAJ have tended to displace nonsubject imports, rather than U.S.-produced product, over the period examined. Between 1996 and 1998, imports of NFCAJ from China increased by 39,736 short tons, while nonsubject imports decreased by 34,396. The domestic industry's U.S. shipments increased by 14,591 short tons over the same period.<sup>19</sup>

For these reasons, I find that subject imports and domestic NFCAJ are only moderate substitutes for each other, while subject imports and nonsubject imports are good substitutes for each other. Therefore, I find that purchasers would have switched from purchases of subject imports to purchases of nonsubject imports had subject imports been fairly priced.

### C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives, and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of NFCAJ is high.

Capacity Utilization and Capacity. Unused capacity can exert price discipline in a competitive market, because no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1998, the domestic industry's capacity utilization stood

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<sup>15</sup> CR at II-4, PR at II-3.

<sup>16</sup> CR at II-4, PR at II-3.

<sup>17</sup> Captive production and consumption do not render products completely non-substitutable with merchandise available in the merchant market in all cases. I note in this investigation that \*\*\*'s internal consumption is of \*\*\* (CR at III-3 and n.13, PR at III-2 and n.13), while \*\*\*'s internal consumption is of \*\*\* (CR at III-4 and n.16, PR at III-2 and n.16). \*\*\* indicated that \*\*\*.

<sup>18</sup> Table III-2, CR at III-6, PR at III-3. However, I note that recently the domestic industry has substantially increased its exposure to competition in the merchant market for NFCAJ. Although the 57.7-percent share of total shipments represented by captive-produced and -consumed NFCAJ represents a large share, that share is down noticeably from the levels in 1996 (69.4 percent) and 1997 (72.2 percent), suggesting that direct competition between domestically produced and imported NFCAJ is increasing. I note that the share of total shipments represented by captive-produced and -consumed NFCAJ in the first quarter of 1999 was 60.3 percent, down significantly from the level in the first quarter of 1998 (83.5 percent). *Id.*

<sup>19</sup> Table IV-1, CR at IV-2, PR at IV-2; Table III-2, CR at III-6, PR at III-3. A similar trend is evident when comparing interim period data. *Id.*

at 57.2 percent.<sup>20</sup> Therefore, a substantial share of capacity was unused and thus apparently available to increase production.<sup>21</sup> Based on these rates, it would appear that U.S. producers have considerable unused capacity that could have been used to supply the demand for subject imports. However, capacity can only be translated into production if the requisite raw material -- juice apples (those that cannot be sold as fresh market produce or for processing) -- are available. The longstanding and extensive need of U.S. producers to supplement their production with purchases or direct imports of NFCAJ suggests that the availability of raw materials can be a serious restraint, although the record suggests that, at present, the supply of juice apples is not a significant constraint.

Inventories and Exports. The domestic industry had 20,451 short tons of NFCAJ in inventory as of December 31, 1998. This volume appears to be substantial, with ending inventories equivalent to 27.5 percent of total shipments in 1998. However, December inventory data can be misleading, since apples are harvested from August through October, while NFCAJ is produced from August through June.<sup>22</sup> The domestic industry's export shipments were quite small, and thus do not represent a significant source of supply. Despite minor participation in export markets, the domestic industry's extensive inventories appear to indicate a high elasticity of supply.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, there are now at least eleven companies that produce NFCAJ,<sup>23</sup> and thus there is competition within the domestic industry. Nonsubject imports are a substantial source of competition in this market, as evidenced by their dominate position in the market during the period examined. Consequently, I find that there is a high level of competition in the U.S. market for NFCAJ.

I find that the elasticity of supply is high, based on the domestic industry's extensive ability to increase the supply of domestic NFCAJ from existing unused capacity and inventories.

#### IV. NO MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF NFCAJ FROM CHINA

The statute requires Commissioners to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

##### A. Volume of Subject Imports

The quantity of imports of NFCAJ from China increased from 6,297 short tons in 1996 to 25,978 short tons in 1997 and 46,032 short tons in 1998, for an overall increase of 631 percent. Imports by quantity were 19,020 short tons in interim (January-March) 1999, compared with 6,308 short tons in interim 1998, a difference of 202 percent. By value, imports followed the same pattern, rising from \$8.7 million in 1996 to \$27.0 million in 1997 and \$33.4 million in 1998, for an overall increase of 284

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<sup>20</sup> Table III-1, CR at III-5, PR at III-2.

<sup>21</sup> Under appropriate circumstances, producers can alter their product mix by changing the proportion of equipment time and labor devoted to producing NFCAJ. However, while the concentrators used to make NFCAJ can be used to make other juices (e.g., cherry or pear concentrate), such concentrates are niche products relative to NFCAJ, so the potential for product switching is restricted.

<sup>22</sup> CR at II-1-2, PR at II-1-2. In addition, the concentrate may be stored up to one year.

<sup>23</sup> CR at III-1, PR at III-1.

percent. Subject imports by value were \$14.5 million in interim 1999 compared to \$5.2 million in interim 1998, an increase of 179 percent.<sup>24</sup>

Subject imports' share of the U.S. market (by quantity) also rose over the period examined, increasing from 2.2 percent in 1996 to 8.2 percent in 1997 and 14.8 percent in 1998. Subject imports' market share by quantity was 26.1 percent in interim 1999, compared with 10.6 percent in interim 1998. By value, the market share of subject imports followed the same pattern, rising from 1.9 percent in 1996 to 6.9 percent in 1997 and 12.5 percent in 1998. Subject imports' market share by value was 24.5 percent in interim 1999, compared with 8.9 percent in interim 1998.<sup>25</sup>

As noted earlier, although subject imports increased noticeably over the period examined, they did not gain market share from the domestic like product. Domestic producers' share of the U.S. market for NFCAJ (by quantity) fell from 20.5 percent in 1996 to 18.6 percent in 1997, but then increased to 23.9 percent in 1998. Domestic producers' market share by quantity was 24.5 percent in interim 1999, compared with 17.5 percent in interim 1998.<sup>26</sup>

While it is clear that the larger the volume of subject imports, the larger the effect it will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of subject imports relative to that of nonsubject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is not significant in light of its price and volume effects.

#### B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the NFCAJ market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether unused capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

In this investigation, the dumping margins for subject imports are quite large, ranging from 51.69 to 65.64 percent.<sup>27</sup> Therefore, subject imports would have been priced significantly higher had they been fairly traded. Thus, demand would have shifted away from the subject imports. Regardless of the shift in demand away from the subject imports, however, the domestic industry would not have been able to increase its prices. The elasticity of supply, competition within the industry, and most particularly, competition from nonsubject imports, would have prevented any price increases.

Consequently, I find that subject imports are not having significant effects on the price of NFCAJ produced and sold by the industry in the United States.

#### C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow,

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<sup>24</sup> Table IV-1, CR at IV-2, PR at IV-2; Table C-1, CR at C-3, PR at C-3.

<sup>25</sup> Table IV-2, CR at IV-6, PR at IV-5.

<sup>26</sup> Table IV-2, CR at IV-6, PR at IV-5. Market share by value followed the same general pattern.

<sup>27</sup> 64 Fed. Reg. 36332 (July 6, 1999).

return on investment, ability to raise capital, research and development and other relevant factors.<sup>28</sup> These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

As I have discussed above, demand for NFCAJ likely would have shifted away from the subject imports had they not been sold LTFV. It is not likely, however, that this shift would have had a significant effect on domestic prices, in light of the domestic industry's substantial amount of unused capacity and available inventory, the large number of competitive U.S. producers, and intense competition from nonsubject imports. Also, it is likely that little, if any, of the shift in demand away from subject imports would have been gained by the domestic industry. Rather, as discussed above, the facts demonstrate that most, if not all, of the displacement that occurred over the period examined has resulted from subject imports supplanting nonsubject imports. Thus, if subject imports had been fairly traded, it is likely that nonsubject imports would have captured all or nearly all of the shift in demand away from the subject imports. Accordingly, the domestic industry likely would not have been able to increase significantly its output and sales, and therefore its revenues, had subject imports not been dumped. Consequently, the domestic industry would not have been materially better off if the subject imports had been fairly traded.

#### V. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

For the purposes of determining whether there is a reasonable indication that a U.S. industry is threatened with material injury by reason of the subject merchandise, Section 771(7)(F) of the Tariff Act of 1930, as amended, lists a number of factors for the Commission to consider.<sup>29</sup> While an analysis of the statutory threat factors necessarily involves projection of future events, “[s]uch a determination may not be made on the basis of mere conjecture or supposition.”<sup>30</sup>

Further direction is provided by the amendment to Section 771(7)(F)(ii), which adds that the Commission consider the threat factors “as a whole” in making its determination “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur” unless an order issues.<sup>31</sup> In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.<sup>32</sup> I have considered all of the statutory factors and determined that there is a reasonable indication that the domestic industry is threatened with material injury by reason of the allegedly LTFV imports of NFCAJ from China.

As I noted earlier in my discussion of the price effects of the subject imports in the context of present material injury, I find that there has not been significant price underselling by the imported merchandise as compared with the price of the domestic like product, and that the subject imports have not depressed or suppressed prices to a significant degree. Rather, there have been no price effects due to the high elasticity of supply, competition within the industry, and competition from nonsubject imports. There is no evidence that these conditions are likely to change. Therefore, I find that subject imports are not likely to have a significant effect on the domestic industry's prices in the imminent future.

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<sup>28</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>29</sup> 19 U.S.C. § 1677(7)(F)(ii); *see* 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>30</sup> 19 U.S.C. § 1677(7)(F)(ii); *see, e.g.*, S. Rep. No. 249 at 88-89; *see also* Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990).

<sup>31</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>32</sup> 19 U.S.C. § 1677(7)(F)(iii)(I). There are no such findings relevant to this investigation.

Overall concentrating capacity in China more than tripled between 1996 and 1998, according to the eight Chinese manufacturers/exporters that responded to the Commission's request for information.<sup>33</sup> Production, though increasing rapidly over the same period, did not keep pace with capacity growth.<sup>34</sup> Accordingly, in 1998, unused capacity in China was 9,529 short tons, out of 68,970 short tons of total capacity. Capacity utilization in 1998 was 86.2 percent, nearly 14.7 percentage points lower than in 1996.

Capacity is projected to expand in 1999, increasing by 12.9 percent over the levels reported in 1998, before stabilizing in 2000. The Chinese home market has not been, and is not projected to be, a significant outlet for shipments of Chinese NFCAJ. Other export markets are available to absorb additional exports, but the United States became China's largest export market in 1998 and is projected to remain a very significant market in 1999 and 2000.<sup>35</sup>

Even with only a partial response by the Chinese industry to the Commission's questionnaires, eight Chinese manufacturers/exporters reported 26,900 short tons of inventory in 1998, a volume equivalent to 8.7 percent of the U.S. market in 1998.<sup>36</sup> In addition, importer inventory levels in the United States were sizeable in 1998, reaching 1,230 short tons. Moreover, U.S. importers' inventories of Chinese NFCAJ increased by 81.4 percent from interim 1998 to interim 1999.<sup>37</sup>

As I noted earlier in my discussion of the volume of the subject imports in the context of present material injury, the quantity of subject imports increased from 6,297 short tons in 1996 to 46,032 short tons in 1998, a 631-percent increase. Over the same period, the market share increased by 12.7 percentage points. Imports by quantity were 19,020 short tons in interim 1999, compared with 6,308 short tons in interim 1998, a 202-percent increase.<sup>38</sup> Reported exports of NFCAJ to the United States exhibited similar rapid growth, although reporting manufacturers/exporters indicate that all such growth will essentially cease in 1999 and 2000.<sup>39</sup>

I find that the rate of increase in the volume and market share of the subject imports, together with the existence of unused foreign production capacity and the importance of the U.S. export market to Chinese manufacturers/exporters, indicate the likelihood of substantially increased imports. Over the period examined, the growth in imports of NFCAJ from China has come almost exclusively at the expense of nonsubject imports. However, in 1998 Chinese imports reached 19.5 percent of total imports.<sup>40</sup> By the first quarter of 1999, Chinese imports reached 34.5 percent of total imports. NFCAJ from China has already displaced a substantial share of nonsubject imports, and by 1998 held 14.8 percent of the U.S. market. It is therefore likely that any significant volume of imports shipped in 1999 will begin to capture sales from U.S. producers. As noted earlier, direct competition between Chinese and U.S.-produced NFCAJ is likely to increase as U.S. producers sell larger portions of their total production into the merchant market. Therefore, it is likely that substantially increased imports will have a material effect on the domestic industry's output and sales, and therefore its revenues, in the imminent future.

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<sup>33</sup> Table VII-1, CR at VII-2, PR at VII-2.

<sup>34</sup> Because nearly all of the reporting Chinese manufacturers/exporters generate the preponderance of their sales revenues through the production of NFCAJ, the potential for product shifting appears is restricted. *See* CR at VII-1 and VII-3, PR at VII-1.

<sup>35</sup> Table VII-1, CR at VII-2, PR at 2.

<sup>36</sup> Table VII-1, CR at VII-2, PR at VII-2.

<sup>37</sup> Table VII-2, CR at VII-3, PR at VII-3.

<sup>38</sup> Table C-1, CR at C-3, PR at C-3.

<sup>39</sup> Table VII-1, CR at VII-2, PR at VII-2.

<sup>40</sup> Table IV-1, CR at IV-2, PR at IV-3.

## **CONCLUSION**

For the foregoing reasons, I determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of NFCAJ from China that allegedly are sold in the United States at less than fair value.

## PART I: INTRODUCTION

### BACKGROUND

This investigation results from a petition filed by counsel on behalf of Coloma, Coloma, MI; Green Valley, Arvin, CA; Knouse, Peach Glen, PA; Mason County, Ludington, MI; and Tree Top, Selah, WA, on June 7, 1999, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of LTFV imports of NFCAJ<sup>1</sup> from China. Information relating to the background of the investigation is provided below.<sup>2</sup>

<i>Date</i>	<i>Action</i>
June 7, 1999 . . . . .	Petition filed with Commerce and the Commission; <sup>3 4</sup> institution of Commission investigation (64 F.R. 32256, June 16, 1999)
June 28, 1999 . . . . .	Commission's conference <sup>5</sup>
July 6, 1999 . . . . .	Commerce's notice of initiation (64 F.R. 36330)
July 22, 1999 . . . . .	Commission's vote and transmittal of Commission determination to Commerce

### SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C. Except as noted, U.S. industry data are based on questionnaire responses of 11 firms that accounted for nearly 90 percent of U.S. production of NFCAJ during 1998. U.S. imports are based on official statistics from Commerce.

### RELATED INVESTIGATIONS

In 1986, in investigation No. TA-201-59, the Commission determined that apple juice was not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing a like or directly competitive product. In that proceeding, the Commission concluded that the domestic industry producing the "like product" included producers and bottlers of NFCAJ, 3XCAJ, and 1XAJ (as well as apple growers).<sup>6</sup> The investigation resulted from a request received by the Commission from the USTR.

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<sup>1</sup> For purposes of this investigation, NFCAJ is non-frozen concentrated apple juice having a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter. Excluded from the scope of this investigation are frozen concentrated apple juice, NFCAJ fortified with vitamins or minerals, NFCAJ that has been fermented, and NFCAJ to which spirits have been added. NFCAJ is provided for in subheading 2009.70.00.20 of the HTS with a general tariff rate of free.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

<sup>3</sup> With respect to the alleged dumping margins, Commerce, in its notice of initiation, stated: "Based on a comparison of EP (export price) to NV (normal value), as adjusted by the Department, the information in the petition and other information reasonably available to the Department indicates dumping margins of 51.69 and 65.64 percent." (64 F.R. 36330, July 6, 1999).

<sup>4</sup> The petition alleged the existence of critical circumstances with respect to imports of NFCAJ from China.

<sup>5</sup> A list of witnesses appearing at the conference is presented in app. B.

<sup>6</sup> *Apple Juice*, Investigation No. TA-201-59, USITC Pub. 1861, June 1986.

In 1991, the Commission conducted investigation No. 332-305<sup>7</sup> concerning conditions of competition between the U.S. and Canadian apple industries. The investigation was done at the request of the Committee on Finance of the U.S. Senate.

## THE PRODUCT

### Physical Characteristics and Uses

The domestically-produced and imported product subject to this investigation is NFCAJ<sup>8</sup> with a Brix<sup>9</sup> value of 40 or greater,<sup>10</sup> whether or not containing sugar or other sweetening matter.<sup>11</sup> NFCAJ is single-strength apple juice that has had most of the water removed. One gallon of NFCAJ generally makes about 7.5 gallons of reconstituted 1XAJ.<sup>12</sup> It is used principally to make apple juice, cider, and blended fruit juices.<sup>13</sup> NFCAJ is also used as an ingredient in other juice drinks, in carbonated and other beverages, and as a replacement for sucrose or corn syrup in such products as cookies, cereal, and health foods. Based on estimates from producers, approximately 65 percent of NFCAJ is used to make 1XAJ for retail sales, 25 percent is used in blends of apple and other fruit juices for retail sales, and 10 percent is used in other products for retail sales.<sup>14</sup>

### Manufacturing Process

NFCAJ can be made from recently harvested apples as well as from apples taken out of cold storage anytime during the 8 to 10 months following harvest and placement into controlled atmospheric storage.<sup>15</sup> NFCAJ is generally made from apples that have been removed (culled) from the main supply of raw apples after being passed through grading, sorting, and washing lines. This process allows for the separation of apples into groups intended for different end uses, including those suitable for sale for fresh-market use, those suitable for production of processed apple products such as canned apples, canned apple rings, apple butter, and applesauce, and those suitable for making apple juice.

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<sup>7</sup> *Apples: Certain Conditions of Competition Between the U.S. and Canadian Industries*, Investigation No. 332-305, USITC Pub. 2408, Aug. 1991.

<sup>8</sup> Apple juice is the liquid captured from the mechanical pressing (squeezing) of apples and apple parts. In its natural state (i.e., immediately after pressing), apple juice usually has a sugar level in the range of 9 to 14 degrees Brix. Such juice is referred to as 1XAJ.

<sup>9</sup> The Brix value of a solution is a measure of the percent by weight of sugar in the solution, taken at a standard temperature of 68 degrees.

<sup>10</sup> The majority of NFCAJ imports are about 70 Brix, but petitioner defined the product as 40 or greater Brix to guard against the possible altering of the Brix level to between 40 and 70 in order to circumvent any antidumping order that may result from this investigation. Petition, exhibit 2, p. 1.

<sup>11</sup> The respondents chose to take no position on whether the like product should be NFCAJ or should be defined more broadly to include other forms of apple juice. Respondents' postconference brief, p. 3.

<sup>12</sup> Tom Hurson, Tree Top, CTR, p. 18.

<sup>13</sup> Petition, exhibit 2, p. 3.

<sup>14</sup> Petitioners' postconference brief, p. 7 and interview with counsel for petitioner, July 15, 1999. With respect to U.S. producers' product that is internally consumed, an estimated 80 percent goes to 1XAJ, 18 percent to blends, and 2 percent to other uses. For their open market sales, an estimated 45 percent goes to 1XAJ, 35 percent to blends, and 20 percent to other uses.

<sup>15</sup> Interview with Bob Binkley, Knouse, June 24, 1999.

Those apples selected for making juice, commonly referred to as juice apples, are placed into a concentrator for further processing into juice.<sup>16</sup> These apples are first milled and mash-finished to remove stems, seeds, peels, and other extraneous materials from the apples. Next, the juice is extracted from the apples and apple parts, using either a press or a liquification process,<sup>17</sup> and the apple-pulp residue is removed and disposed of.<sup>18</sup> The extracted juice is then passed through a stripper wherein the juice is heated to remove (and recover if desired) the apple essence (the essential flavor of apple juice)<sup>19</sup> and the remaining juice is pasteurized to remove most potentially harmful organisms.<sup>20</sup> The juice is then clarified (filtered) to produce a non-cloudy juice and the clarified juice is passed through evaporators. The evaporators heat the liquid still further to remove any remaining water, resulting in a highly concentrated apple juice product. NFCAJ is generally stored in 55-gallon metal drums or bulk tanks for extended time periods of up to one year.<sup>21</sup>

### **Interchangeability<sup>22</sup>**

Questionnaire responses indicate that U.S.-produced and imported from China 70-degree-Brix-NFCAJ are interchangeable. Further, both products can be easily stored for long periods of time and both are generally available throughout the entire United States. While both products have similar acidity levels, the higher acidity levels characteristic of some imported NFCAJ from China and NFCAJ from other foreign producers enable U.S. suppliers to offer higher acidity level NFCAJ for sale and provide processors the ability to blend domestically-produced and imported NFCAJ together.<sup>23</sup>

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<sup>16</sup> Concentrators may range in cost from a low of between \$500,000 and \$1.5 million to as much as \$12 million to \$15 million for large concentrators. Interview with Bob Binkley, Knouse, June 24, 1999; Aldon Wendzel, Coloma, CTR, p. 14; and, petitioners' postconference brief, p. 10.

<sup>17</sup> \*\*\*

<sup>18</sup> This byproduct is reported to be used as animal feed. Interview with Bob Binkley, Knouse, June 24, 1999.

<sup>19</sup> At this stage of processing, the amount of essence produced is usually small, relative to the amount of NFCAJ produced. There are different qualities and levels of essence. The essence produced at Tree Top is graded into 5 categories, with Tree Top using only the top 2 levels internally, selling the third level, and disposing of the other 2 categories. Those producers of 1XAJ and 3XCAJ from NFCAJ that do not have their own internal source of apple essence may purchase essence from a concentrator. Recent purchases of essence have ranged from \$4.50 to \$7.00 a gallon. CTR, pp. 53-54, and petitioners' postconference brief, pp. 5-6.

<sup>20</sup> A number of firms in the U.S. industry are investing in ultra-high-temperature pasteurizing equipment to remove any remaining organisms later in the production process. Petitioners' postconference brief, pp. 5-6.

<sup>21</sup> Interview with Bob Binkley, Knouse, June 24, 1999.

<sup>22</sup> While it might be technically possible to substitute 1XAJ or 3XCAJ for NFCAJ in various downstream products including juice blends and bakery products, domestic producers state that it is not economical to do so since reconstituted 1XAJ is a product to which substantial value has been added. 1XAJ and 3XCAJ have no use other than for consumption as apple juice. Further, 1XAJ and 3XCAJ contain the essence of the apple, which imparts a characteristic apple aroma and flavor. NFCAJ, by comparison, contains no apple essence in virtually all instances and, therefore, does not become 1XAJ simply by adding back water. Danny Day, Sunfair Marketing, CTR, pp. 32-33, and petitioners' postconference brief, pp. 5-6. Most questionnaire respondents reported the production or importation of NFCAJ that did not contain essence. Instances where essence was contained in the product were usually at a customer's request.

<sup>23</sup> Tom Hurson, Tree Top, CTR, p. 19.

## **Channels of Distribution**

NFCAJ is sold to intermediate and industrial end users in a highly concentrated form unsuitable for immediate consumption, without any apple essence contained therein, and subject to further handling/processing prior to use.<sup>24</sup> In 1998, nearly 90 percent of producer and 75 percent of importer shipments went to end users, with the balance going to distributors.

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<sup>24</sup> Both 1XAJ and 3XCAJ are sold at retail, in a readily-consumable form with all of the apple essence present in the product and no further processing needed before the product can be consumed. Tom Hurson, Tree Top, I-4 CTR, p. 21.

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

### **BUSINESS CYCLE/GROWING SEASON**

NFCAJ is usually produced from August through June each year. Juice apples, which are the main input for NFCAJ, are harvested between August and October or early November. Some of the juice apples are made into NFCAJ immediately upon harvest and others are made into NFCAJ gradually over time through June.

Respondents claim that the price of NFCAJ fluctuates in a cycle that usually lasts about five years. Specifically, they contend that the price fluctuates according to how many apples are being harvested: a scarcity of apples drives up the price of NFCAJ and a glut of apples drives the price of NFCAJ down.<sup>1</sup>

### **SUPPLY AND DEMAND CONSIDERATIONS**

#### **U.S. Supply**

The sensitivity of the domestic supply of NFCAJ to changes in price depends upon such factors as the existence of excess capacity, the levels of inventories in relation to sales, the ease of shifting facilities to the production of other products, and the existence of export markets. These factors suggest that U.S. producers of NFCAJ have some ability to adjust output in response to changes in the price of NFCAJ.

#### **Industry Capacity**

U.S. producers' capacity to produce NFCAJ grew by 4.9 percent from 1996 to 1998. Capacity utilization in 1998 was 57.2 percent.

#### **Inventories**

The availability of inventories indicates some flexibility in adjusting output in response to price changes. The ratios of end-of-period inventories to U.S. shipments for 1996, 1997, and 1998 were 26.8, 47.4, and 27.5 percent, respectively.<sup>2</sup>

#### **Production Alternatives**

Concentrators used to make NFCAJ can be used to make other fruit juice concentrates, such as cherry or pear concentrates. However, U.S. producers point out that these are niche products for their firms, not produced in the high volume of NFCAJ, and that a firm producing NFCAJ would not purchase a concentrator for the sole production of concentrates other than NFCAJ.<sup>3</sup>

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<sup>1</sup> Donald Nadeau, Independent Consultant, CTR, p. 75.

<sup>2</sup> Much of the production of NFCAJ occurs from August through November during the apple harvest.

<sup>3</sup> Alton Wendzel, Coloma, CTR, p. 56, and Ken Guise, Knouse, CTR, p. 57. With respect to production of the concentrates other than NFCAJ, Mr. Guise noted, "We are talking maybe a shift of two of production a year, maybe tops three or four shifts, so not anything that would substantiate the investment in that."

## **Export Markets**

While some producers have exported NFCAJ in the past, domestic consumption is so much larger than domestic production that it is generally not a worthwhile venture.<sup>4</sup>

## **U.S. Demand**

### **Demand Characteristics**

Demand for NFCAJ depends heavily on demand for apple juice, which accounts for between 50 to 55 percent of NFCAJ usage. The remaining NFCAJ is used primarily for blended juices. Importers generally agree that demand has grown steadily since 1996, while producers are not conclusive on the matter. Petitioners claim that demand for NFCAJ is relatively inelastic because it is a wholesale input for a retail product.<sup>5</sup> Consumption of NFCAJ grew by 6.9 percent from 1996 to 1998.

### **Substitute Products**

Petitioners argue that 3XCAJ and 1XAJ are not substitutes for NFCAJ. Unlike NFCAJ, these are retail products which are less concentrated and from which the “essence” of apple juice has not been removed. 3XCAJ and 1XAJ can only be used to make apple juice, while NFCAJ can be used in blended fruit juices, but is not useful as a drink in and of itself.<sup>6</sup>

Several producers and importers reported that other juice concentrates such as white grape, pear, and grapefruit concentrates can be substituted for NFCAJ in juice blends. However, petitioners note that this substitution is limited since it alters the taste of the blend and forces a change in content labeling.<sup>7</sup> They also note that other concentrates are not good substitutes since NFCAJ is inexpensive relative to the other juices, even at historically high prices of NFCAJ.<sup>8</sup> Respondents disagree about the expense of substitute concentrates and note that, “the prices of apple juice concentrate and those of pear juice concentrates are quite close, even when considering that one needs a little bit more pear juice to make them of comparable value and use.”<sup>9</sup>

### **Cost Share**

NFCAJ is most often used to produce 1XAJ, 3XAJC, and juice blends. In 1XAJ, the reported cost share for producers ranged from 33 percent to 60 percent; in 3XAJC, it ranged from 10 percent to 55 percent; and, in juice blends, from 1 percent to 50 percent depending on the formula used for the blend.

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<sup>4</sup> Seth Kaplan, Charles River Associates, CTR, p. 10.

<sup>5</sup> Seth Kaplan, Charles River Associates, CTR, p. 12.

<sup>6</sup> Petition, pp. 3-8.

<sup>7</sup> Counsel for petitioner, CTR, pp. 58-59, and Tom Hurson, Tree Top, CTR, p. 59.

<sup>8</sup> Tom Hurson, Tree Top, CTR, p. 58.

<sup>9</sup> Mark Prizer, DayStar-Robinson, CTR, p. 81.

## **SUBSTITUTABILITY ISSUES**

### **Comparisons of the Domestic Product and Subject Imports**

Most producers (7 of 9) and importers (11 of 14) agree that U.S.-produced and imported NFCAJ from China are used interchangeably (one remaining producer responded both yes and no and the other no). The most frequently cited reason for responding no was that imported NFCAJ from China has lower acidity than U.S.-produced NFCAJ. Therefore imported NFCAJ from China must be blended with a high acid NFCAJ and, as one producer noted, NFCAJ from China is more suitable for use in blended drinks than in 100 percent apple juice.

Seven of 9 producers and 5 of 11 importers responded that there were differences in product characteristics or sales conditions between U.S.-produced NFCAJ and NFCAJ imported from China. Four U.S. producers indicated that NFCAJ imported from China was much cheaper than U.S.-produced NFCAJ. Two U.S. producers and three importers responded that imported NFCAJ from China has much lower acid content than U.S.-produced NFCAJ. One U.S. producer reported that advantages of U.S.-produced NFCAJ are bulk shipment, product consistency, “just in time” delivery, multiple product offerings, and flexibility. Another reported that imported NFCAJ from China suffers from the disadvantage that it cannot be used in USDA or other government purchase programs. One importer stated that imported NFCAJ from China is more advantageous than domestic since shipments are made to East Coast ports, eliminating higher U.S. inland transportation costs. Another responded that NFCAJ from China meets the stringent quality requirements of their customers.

The U.S. producer’s median lead time for delivery of 30 days was much shorter than the median for importers of 45 days.<sup>10</sup>

### **Comparisons of the Domestic Product and Subject Imports to Nonsubject Imports**

All but one U.S. producer and all importers stated that U.S.-produced NFCAJ is interchangeable with nonsubject imports. The dissenting producer reported that interchangeability depended on the country of origin and level of acidity. Seven of 8 producers and 11 of 14 importers that reported felt that nonsubject imported NFCAJ and imported NFCAJ from China were interchangeable. The firms that reported that they were not interchangeable generally stated that imported NFCAJ from China was much lower in acid than NFCAJ from nonsubject countries.

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<sup>10</sup> The average, which is distorted by outliers, is about 50 days for both U.S. producers and importers.



### 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 (except as noted) is based on the questionnaire responses of 11 firms that accounted for nearly 90 percent of U.S. production of NFCAJ during 1998.

#### U.S. PRODUCERS

Sixteen firms were identified in the petition as currently producing NFCAJ. Eleven<sup>1</sup> firms provided usable information and one, \*\*\*, advised that it had not produced NFCAJ during the period of investigation. Of the responding firms, four are cooperatives that range in size from large to quite small in terms of their NFCAJ production. With the exception of \*\*\*,<sup>2</sup> all of the responding firms expressed support for the petition. Four firms consumed all of their production internally, three consumed at least 50 percent internally, and four sold exclusively on the open market. Six of the firms supplemented their U.S. production with purchases of imported product, with three reporting purchases of both subject and nonsubject product and three purchasing nonsubject product only.

Tree Top,<sup>3</sup> a cooperative headquartered in Selah, WA, was \*\*\* during the period of investigation, accounting for just over \*\*\* of reported production in 1998. On February 1, 1999, Tree Top increased its overall share of U.S. production with its acquisition of certain assets of Seneca, including a production facility at Prosser, WA, that was responsible for \*\*\* of reported U.S. output in 1999. According to Tim Hurson of Tree Top, "apple sauce was the primary reason we (Tree Top) went after the facility."<sup>4</sup> Tree Top estimates that \*\*\* percent of the NFCAJ it produces is used to produce 1XAJ and 3XCAJ, with \*\*\* percent each going to juice blends and to other products.<sup>5</sup> Nearly \*\*\* percent of Tree Top's output is internally consumed, with the balance going to open market sales.<sup>6</sup> Tree Top reported purchases from \*\*\*.<sup>7</sup>

Naumes, with facilities in Marysville, CA, and Wapato, WA, \*\*\*.<sup>8</sup> \*\*\*.<sup>9</sup> Mott's Williamson, NY, facility \*\*\*.<sup>10</sup> \*\*\*.<sup>11</sup> Beyond the aforementioned firms, none of the other responding firms

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<sup>1</sup> \*\*\*.

<sup>2</sup> \*\*\*.

<sup>3</sup> Tree Top is a petitioner.

<sup>4</sup> In addition to apple sauce and concentrate, Hurson stated that the Prosser facility also makes apple juice. CTR, p. 34.

<sup>5</sup> Petitioners' postconference brief, p. 7 and interview with counsel for petitioner, July 15, 1999. \*\*\*.

<sup>6</sup> \*\*\*.

<sup>7</sup> \*\*\*.

<sup>8</sup> Petitioners' postconference brief, p. 7.

<sup>9</sup> \*\*\*.

<sup>10</sup> \*\*\*.

<sup>11</sup> \*\*\*.

produced in excess of \*\*\* short tons in 1998. Petitioning firms Mason County, Green Valley, Coloma, and Knouse accounted for \*\*\*, \*\*\*, \*\*\*, and \*\*\* percent, respectively. Two other firms, \*\*\*.<sup>12</sup>

Mason County, a petitioner cooperative located in Ludington, MI, \*\*\*. Mason County reported \*\*\*.<sup>13</sup> Green Valley, located in Arvin, CA, produces \*\*\*. Coloma of Coloma, MI, \*\*\*.<sup>14</sup> Coloma also produces \*\*\*. Coloma reported \*\*\*. Knouse is a cooperative with NFCAJ operations in Biglerville, PA.<sup>15</sup> \*\*\*.<sup>16</sup> \*\*\*.<sup>17</sup>

Glico of Wenatchee, WA, \*\*\*.<sup>18</sup> Cherry Growers, a cooperative located in Grawn, MI, \*\*\*. Morrison of Williamsburg, MI, \*\*\*.

## U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-1. Total U.S. production of NFCAJ increased by 25.2 percent from 1996 to 1997 and then declined 9.3 percent during 1998. During 1996-98, U.S. capacity to produce NFCAJ increased by 4.9 percent, with \*\*\* and \*\*\* accounting for virtually all of the increase. Capacity utilization increased between 1996 and 1997 and decreased during 1998, but to a level greater than 1996.

**Table III-1**  
**NFCAJ: U.S. producers' capacity, production, and capacity utilization, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
Capacity ( <i>short tons</i> )	106,114	109,143	111,341	23,417	30,528
Production ( <i>short tons</i> )	56,116	70,268	63,715	12,684	20,612
Capacity utilization ( <i>percent</i> )	52.9	64.4	57.2	54.2	67.5

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

<sup>12</sup> \*\*\*

<sup>13</sup> With regard to \*\*\*.

<sup>14</sup> At the conference, Alton Wendzel, President of Coloma, stated that in 1996 Coloma had invested \$1.5 million to install a concentrator. The decision was made as part of a business plan in which Coloma purchased and installed an apple press with the notion of using about 40 percent of the press' production to make 1XAJ, with the remainder of its output to be concentrated and sold commercially as NFCAJ. According to Mr. Wendzel, the concentrator is presently operating at one-tenth of its capacity due to increased imports from China. He now characterizes the investment as the "biggest mistake" of his 20 years with Coloma. Alton Wendzel, Coloma, CTR, pp. 14-16.

<sup>15</sup> The concentrator at Biglerville was relocated from Knouse's Newfane, NY, facility when the latter was closed in January 1997. According to Ken Guise of Knouse, the equipment has remained relatively inactive in Biglerville due to the "massive increase in dumped concentrate from China" that he says has essentially forced Knouse out of the concentrate business. Ken Guise, Knouse, CTR, pp. 23 -24. In response to Mr. Guise's testimony, respondents argue that Knouse's actions with the Newfane facility took place at a time when Chinese imports held a small share of the NFCAJ market and were taken because that facility "is extremely tiny and the land is not conducive to expansion at all." Respondents' postconference brief, pp. 20-21 and exhibit 6.

<sup>16</sup> \*\*\*

<sup>17</sup> Respondents' postconference brief, pp. 24-25.

<sup>18</sup> \*\*\*

## U.S. PRODUCERS' DOMESTIC AND EXPORT SHIPMENTS

Data provided by U.S. producers on their domestic and export shipments of NFCAJ during the period of investigation are shown in table III-2. U.S. shipments, by quantity, increased from 1996 to 1998 by 24.5 percent, but, by value, showed a decrease of 34.4 percent. The average unit value of U.S. shipments declined from 1996 to 1998 by 47.3 percent. As noted earlier, the majority of U.S. shipments was accounted for by internal shipments in all reporting periods.

**Table III-2**

**NFCAJ: U.S. producers' shipments, by type, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
<b>Quantity (short tons)</b>					
Commercial shipments	18,105	16,432	31,274	1,678	7,053
Internal shipments	41,383	42,661	42,805	8,728	10,829
U.S. shipments	59,488	59,093	74,078	10,406	17,882
Export shipments	108	30	164	43	64
Total	59,596	59,123	74,242	10,449	17,946
<b>Value (1,000 dollars)</b>					
Commercial shipments	29,666	19,669	27,578	1,593	5,447
Internal shipments	66,535	57,974	35,566	8,139	8,179
U.S. shipments	96,201	77,643	63,144	9,732	13,626
Export shipments	193	58	141	42	49
Total	96,394	77,701	63,285	9,774	13,675
<b>Unit value (per ton)</b>					
Commercial shipments	\$1,638.52	\$1,197.02	\$881.84	\$949.18	\$772.26
Internal shipments	1,607.79	1,358.95	830.88	932.46	755.29
U.S. shipments	1,617.14	1,313.92	852.40	935.16	761.99
Export shipments	1,787.04	1,933.33	859.76	976.74	765.62
Total	1,617.45	1,314.23	852.41	935.33	762.00

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

## U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of NFCAJ for the period of investigation are presented in table III-3. Both inventories and the ratio of end-of-period inventories to U.S. shipments increased between 1996 and 1997 and decreased during 1998, but to levels greater than in 1996. \*\*\*.<sup>19</sup>

**Table III-3**

**NFCAJ: U.S. producers' end-of-period inventories, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
Inventories ( <i>short tons</i> )	15,974	27,997	20,451	19,009	17,989
Ratio to production ( <i>percent</i> )	28.5	39.8	32.1	37.5	21.8
Ratio to U.S. shipments ( <i>percent</i> )	26.9	47.4	27.6	45.7	25.2
Ratio to total shipments ( <i>percent</i> )	26.8	47.4	27.5	45.5	25.1

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

## U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of PRWs engaged in the production of NFCAJ, the total hours worked by such workers, and wages paid to such PRWs during the period of investigation are presented in table III-4. The average number of hours worked by and wages paid to PRWs increased during 1996-98. Hourly wages remained relatively level, while productivity increased (by 7.6 percent) and unit labor costs declined (by 7.4 percent).

**Table III-4**

**NFCAJ: Average number of PRWs, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
PRWs ( <i>number</i> )	241	256	266	131	149
Hours worked ( <i>1,000</i> )	364	422	432	49	57
Wages paid ( <i>1,000 dollars</i> )	3,954	4,395	4,674	634	719
Hourly wages	\$10.88	\$10.42	\$10.83	\$12.83	\$12.55
Productivity ( <i>short tons per 1,000 hours</i> )	129.4	143.3	139.2	250.3	353.6
Unit labor costs ( <i>per short ton</i> )	\$84.06	\$72.72	\$77.81	\$51.26	\$35.49

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

<sup>19</sup> \*\*\*

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

### **U.S. IMPORTERS**

The Commission sent questionnaires to 26 firms believed to be importers of NFCAJ from China; 14 of these firms supplied questionnaire data.<sup>1</sup> The responding firms accounted for 79.4 percent of subject imports in 1998. Two of the responding firms, \*\*\* and \*\*\*, are fully owned by Chinese NFCAJ producers. Both corporate parents provided foreign producer questionnaires to the Commission. Only two of the firms imported during 1996, with most of the rest beginning their imports in 1997. With the exception of two importers, questionnaire respondents were concentrated in the New York City and Los Angeles areas. Four firms reported imports of nonsubject NFCAJ, with product coming from Argentina, Chile, Germany, Hungary, Poland, and Turkey.

### **U.S. IMPORTS**

The U.S. import data presented in the body of this report are based on official Commerce statistics. Table IV-1 presents U.S. imports, by sources.

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<sup>1</sup> The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of the Customs Net Import File, may have imported NFCAJ from China during the period examined.

Table IV-1

NFCAJ: U.S. imports, by principal sources, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
<b>Quantity (short tons)</b>					
China	6,297	25,978	46,032	6,308	19,020
Argentina	65,901	74,412	58,870	5,058	6,406
Germany	50,390	39,152	31,423	12,498	6,375
Chile	25,727	28,370	27,435	3,746	4,109
Hungary	26,037	22,150	20,512	9,726	1,920
Turkey	12,608	6,060	3,738	333	2,548
Other sources	44,108	62,791	48,407	11,283	14,690
Total	231,068	258,913	236,417	48,953	55,067
<b>Value (1,000 dollars)</b>					
China	8,698	27,038	33,389	5,195	14,487
Argentina	106,683	88,512	49,969	5,235	5,342
Germany	83,155	54,038	32,432	14,365	5,680
Chile	40,881	34,530	24,185	3,745	3,620
Hungary	38,263	27,319	18,298	9,302	1,438
Turkey	18,721	7,215	2,848	312	1,807
Other sources	68,151	78,081	43,074	10,686	13,182
Total	364,553	316,733	204,195	48,838	45,557
<b>Unit value (per short ton)</b>					
China	\$1,381.25	\$1,040.82	\$725.34	\$823.64	\$761.70
Argentina	1,618.85	1,189.48	848.80	1,034.95	833.94
Germany	1,650.25	1,380.22	1,032.12	1,149.35	891.05
Chile	1,589.06	1,217.10	881.55	999.52	880.96
Hungary	1,469.55	1,233.39	892.03	956.35	748.70
Turkey	1,484.89	1,190.54	761.88	935.91	709.36
Other sources	1,545.08	1,243.50	889.83	947.04	897.39
Total	1,577.69	1,223.32	863.71	997.66	827.30

Table continued on next page.

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
<b>Share of quantity (percent)</b>					
China	2.7	10.0	19.5	12.9	34.5
Argentina	28.5	28.7	24.9	10.3	11.6
Germany	21.8	15.1	13.3	25.5	11.6
Chile	11.1	11.0	11.6	7.7	7.5
Hungary	11.3	8.6	8.7	19.9	3.5
Turkey	5.5	2.3	1.6	0.7	4.6
Other sources	19.1	24.3	20.5	23.0	26.7
Total	100.0	100.0	100.0	100.0	100.0
<b>Share of value (percent)</b>					
China	2.4	8.5	16.4	10.6	31.8
Argentina	29.3	27.9	24.5	10.7	11.7
Germany	22.8	17.1	15.9	29.4	12.5
Chile	11.2	10.9	11.8	7.7	7.9
Hungary	10.5	8.6	9.0	19.0	3.2
Turkey	5.1	2.3	1.4	0.6	4.0
Other sources	18.7	24.7	21.1	21.9	28.9
Total	100.0	100.0	100.0	100.0	100.0

Source: Compiled from official Commerce statistics.

## APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

Apparent U.S. consumption and respective market shares of U.S. producers' shipments and imports are shown in table IV-2. The level of the U.S. market held by imports from all countries reflects the fact that the United States has historically been a net importer of NFCAJ. Respondents argued that while the level of subject imports has increased over the period of investigation, "the growth of concentrate imports from China has displaced no domestic production, rather imports from China have substituted for imports from other sources."<sup>2</sup> With respect to imports from nonsubject sources, petitioners stated:

"Imports from other countries have not been, and are not likely to be, a significant problem for this industry. Indeed, as one of the U.S. industry's witnesses testified at the staff conference, imports from other countries have generally played a beneficial role in the U.S. NFCAJ market. This country does not produce enough juice apples to supply the domestic demand for canned and apple juice and the other products in which NFCAJ is used. Because the U.S. industry has long been interested in increasing domestic demand for apple juice, imported NFCAJ has been helpful in that it has enabled the industry to keep up with the rising consumption that its promotional efforts have helped to generate."<sup>3</sup>

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<sup>2</sup> John Reilly, Nathan Associates, CTR, p. 87

<sup>3</sup> Petitioners' postconference brief, p. 32.

Table IV-2

NFCAJ: U.S. shipments of domestic product, U.S. imports, by sources, apparent U.S. consumption, and market shares, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
<b>Quantity (short tons)</b>					
U.S. producers' shipments	59,488	59,093	74,078	10,406	17,882
U.S. imports from--					
China	6,297	25,978	46,032	6,308	19,020
Argentina	65,901	74,412	58,870	5,058	6,406
Germany	50,390	39,152	31,423	12,498	6,375
Chile	25,727	28,370	27,435	3,746	4,109
Hungary	26,037	22,150	20,512	9,726	1,920
Turkey	12,608	6,060	3,738	333	2,548
Other sources	44,108	62,791	48,407	11,283	14,690
Total imports	231,068	258,913	236,417	48,953	55,067
Apparent consumption	290,556	318,006	310,496	59,359	72,949
<b>Value (1,000 dollars)</b>					
U.S. producers' shipments	96,201	77,643	63,144	9,732	13,626
U.S. imports from--					
China	8,698	27,038	33,389	5,195	14,487
Argentina	106,683	88,512	49,969	5,235	5,342
Germany	83,155	54,038	32,432	14,365	5,680
Chile	40,881	34,530	24,185	3,745	3,620
Hungary	38,263	27,319	18,298	9,302	1,438
Turkey	18,721	7,215	2,848	312	1,807
Other sources	68,151	78,081	43,074	10,686	13,182
Total imports	364,553	316,733	204,195	48,838	45,557
Apparent consumption	460,754	394,376	267,339	58,570	59,183

Table continued on next page.

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
<b>Share of quantity (percent)</b>					
U.S. producers' shipments	20.5	18.6	23.9	17.5	24.5
U.S. imports from--					
China	2.2	8.2	14.8	10.6	26.1
Argentina	22.7	23.4	19.0	8.5	8.8
Germany	17.3	12.3	10.1	21.1	8.7
Chile	8.9	8.9	8.8	6.3	5.6
Hungary	9.0	7.0	6.6	16.4	2.6
Turkey	4.3	1.9	1.2	0.6	3.5
Other sources	15.2	19.7	15.6	19.0	20.1
Total imports	79.5	81.4	76.1	82.5	75.5
<b>Share of value (percent)</b>					
U.S. producers' shipments	20.9	19.7	23.6	16.6	23.0
U.S. imports from--					
China	1.9	6.9	12.5	8.9	24.5
Argentina	23.2	22.4	18.7	8.9	9.0
Germany	18.0	13.7	12.1	24.5	9.6
Chile	8.9	8.8	9.0	6.4	6.1
Hungary	8.3	6.9	6.8	15.9	2.4
Turkey	4.1	1.8	1.1	0.5	3.1
Other sources	14.8	19.8	16.1	18.2	22.3
Total imports	79.1	80.3	76.4	83.4	77.0

Source: Compiled from data submitted in response to Commission questionnaires and official Commerce statistics.

## **PART V: PRICING AND RELATED DATA**

### **FACTORS AFFECTING PRICES**

#### **Raw Material Costs**

Prices for four of the varieties of apples used to produce NFCAJ fell irregularly over the period of investigation. Prices of Rome, Golden Delicious, Red Delicious, and McIntosh apples peaked in September 1996 and then fell over time. By April 1999, their prices ranged from 20 percent below to slightly above their prices in January 1996.<sup>1</sup>

#### **U.S. Inland Transportation Costs**

Producers and importers were asked to estimate the percentage of their total shipments that were made specific distances. With the exception of one producer, U.S. producers reported that few of their shipments were less than 100 miles but most were less than 1,000 miles. \*\*\*. On average, importers reported that about half of their shipments were less than 100 miles and most were within 1,000 miles.

Inland transportation costs for delivery of NFCAJ within the United States vary widely. The five responding U.S. producers reported costs ranging from 0 to 10 percent of the delivered price, with two producers reporting 0 percent and two reporting a 10 percent cost. For importers, reported costs ranged from 1 to 20 percent, with five importers reporting costs of less than 2.4 percent.

#### **Exchange Rates**

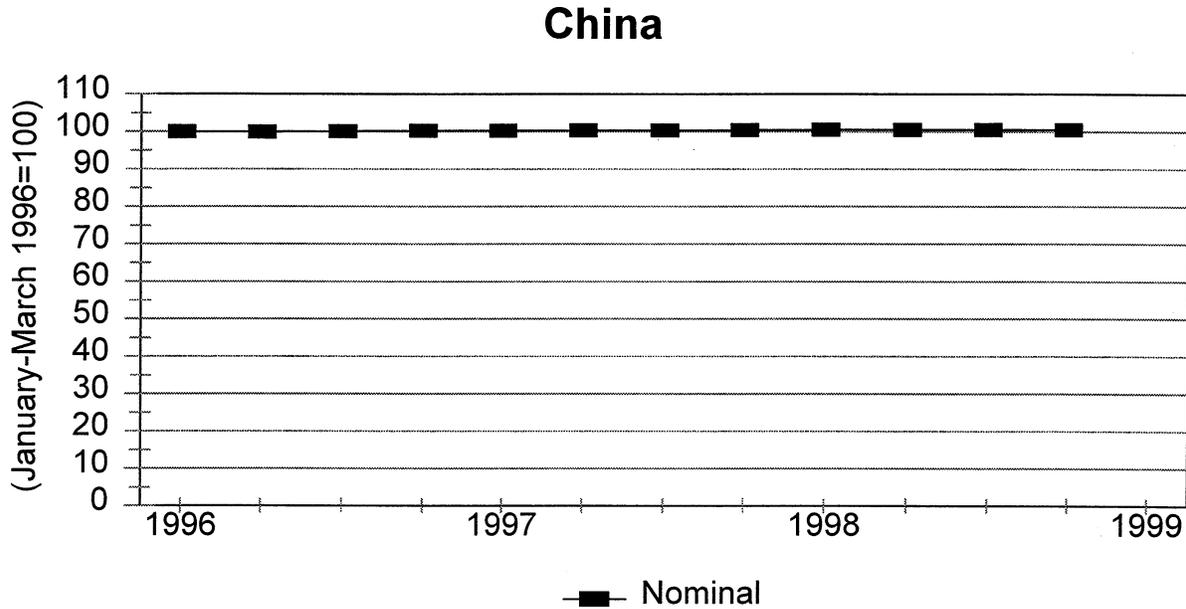
Quarterly nominal exchange rate data for China during 1996 through 1998 are presented in figure V-1. With the exception of the first quarter of 1996, the Chinese yuan slightly appreciated against the dollar in nominal terms. Real exchange rates could not be calculated for China since producer price data were not available for this country.

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<sup>1</sup> BLS, June 1999.

Figure V-1

Exchange rate: Index of the nominal exchange rate of the Chinese yuan in relation to the U.S. dollar, by quarters, Jan. 1996-Dec. 1998



Source: IMF, *International Financial Statistics*, Apr. 1999.

## PRICING PRACTICES

### Pricing Methods

Prices for NFCAJ are generally determined on a contract basis, with the contracts being of varying duration. None of the producers or importers reported the use of price lists. Producers reported that they normally quote f.o.b prices, with one also quoting delivered, while importers reported f.o.b., delivered, and ex-dock prices.

### Sales Terms and Discounts

No producers and only 2 importers reported having discount policies, with both being in the nature of quantity discounts. One producer reported charging a 10 percent premium for sub-minimum quantity shipments (i.e., shipments of less than 3,700 gallons). Two importers reported charging sub-minimum quantity shipment premiums of 8 percent and 30 percent.

As noted, most of the NFCAJ sold on the open market by U.S. producers is sold on a contract basis. Of the two firms accounting for most of the open market volume, one (\*\*\*) negotiates contracts lasting one crop year while the other (\*\*\*) negotiates contracts lasting an average of 90 days. On average, importers reported that almost three quarters of their sales are on a contract basis. Contract sales are for durations ranging from 2 months to 1 year, but typically last from 3 to 6 months. Some firms reported minimum quantity requirements in their contracts. Two importers and no producers reported meet-or-release clauses.

## PRICE DATA

Two U.S. producers and 11 importers provided quarterly quantity and value data on an f.o.b. basis for January 1996 to March 1999 on their shipments of each of two product categories. In the Commission's questionnaire product categories were defined as--

**Product 1.--NFCAJ, Brix 70, acid level up to and including 1.6 percent.**

**Product 2.--NFCAJ, Brix 70, acid level in excess of 1.6 percent but not exceeding 2.2 percent.**

Neither of the two domestic producers that provided price data distinguished between sales of product 1 and product 2, although the \*\*\* producer<sup>2</sup> of the two firms indicated that most (approximately \*\*\* percent) of its sales are of product 1. With respect to importers, most reported separate sales of product 1 and product 2 or reported total sales of both products and indicated an approximate breakdown between the products. Given that separate price data for either product 1 or product 2 cannot be calculated for domestic producers, table V-1 shows pricing for products 1 and 2 combined for both producers and importers.

### Price Trends

Both the domestic and imported prices fell steadily from early 1996 through the end of 1998, and increased slightly in the first quarter of 1999.

### Price Comparisons

Table V-1 shows the margins of underselling of NFCAJ from 1996 through the first quarter of 1999 for the combined imported products compared to the domestic combined products, and shows that imported NFCAJ from China undersold the domestic product in all 11 quarters for which data were reported, but by generally decreasing margins.

## LOST SALES AND LOST REVENUES

Six U.S. producers indicated that they lost sales and/or reduced prices due to competition with NFCAJ imports from China; however, none provided specific instances of same. Additionally, no specific instances of lost sales and/or lost revenues were provided in the petition.

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<sup>2</sup> \*\*\*

**Table V-1**  
**NFCAJ: Weighted-average f.o.b. prices and quantities of domestic and imported products 1 and 2 combined and margins of underselling, by quarters, Jan. 1996-Mar. 1999**

Period	United States		China		
	Price (per gallon)	Quantity (per gallon)	Price (per gallon)	Quantity (per gallon)	Margin (percent)
1996:					
Jan.-Mar.	***	***	***	***	40.5
Apr.-June	***	***	-	-	-
July-Sept.	***	***	-	-	-
Oct.-Dec.	***	***	***	***	16.4
1997:					
Jan.-Mar.	***	***	***	***	28.4
Apr.-June	***	***	***	***	29.1
July-Sept.	***	***	***	***	28.5
Oct.-Dec.	***	***	***	***	17.2
1998:					
Jan.-Mar.	***	***	***	***	19.0
Apr.-June	***	***	***	***	20.0
July-Sept.	***	***	***	***	14.8
Oct.-Dec.	***	***	***	***	3.9
1999:					
Jan.-Mar.	***	***	***	***	0.7
Product 1-NFCAJ, Brix 70, acid level up to and including 1.6 percent. Product 2-NFCAJ, Brix 70, acid level in excess of 1.6 percent but not exceeding 2.2 percent.					
Source: Compiled from data submitted in response to Commission questionnaires.					

## PART VI: FINANCIAL CONDITION OF THE U.S. INDUSTRY

### BACKGROUND

Eight producers accounting for approximately 98 percent of U.S. production of NCF AJ (reported to the Commission) in 1998 provided usable financial data on their NCF AJ operations. Four of the producers are firms other than cooperatives<sup>1</sup> and four are cooperatives.<sup>2</sup> The data for the cooperatives are presented separately since cooperatives do not prepare conventional financial statements that include results of operations.

### OPERATIONS ON NCF AJ (FIRMS OTHER THAN COOPERATIVES)

The results of the U.S. producers' (other than cooperatives) NCF AJ operations are presented in table VI-1. The combined companies' net sales quantities and values decreased \*\*\* in 1997 compared to 1996. Net sales values decreased further (\*\*\*) in 1998 compared to 1997 while net sales quantities increased \*\*\*. The combined companies realized an operating income in 1996 but \*\*\* operating losses in 1997 and \*\*\* losses in 1998. The \*\*\* reporting companies experienced decreasing net sales quantities and values and an operating loss in interim 1999 compared to an operating income in interim 1998.

As shown in the results of operations summary data by firm in table VI-2, \*\*\*,<sup>3</sup> \*\*\*.

Table VI-1

Results of U.S. producers (firms other than cooperatives) on their NCF AJ operations, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

Table VI-2

Selected financial data of U.S. producers (firms other than cooperatives) on their NCF AJ operations, by firm, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

The average per-short-ton sales value, as shown in table VI-3, decreased in each fiscal year, as did COGS. The average per-short-ton sales value decreased to a level less than COGS in 1997 and 1998, contributing to operating losses. The average per-short-ton sales value decreased \*\*\* in interim 1999 compared to interim 1998, while COGS and SG&A expenses increased (due in part to a lower volume), resulting in \*\*\* operating losses.

Table VI-3

Results of operations (per short ton) of U.S. producers (firms other than cooperatives) in the production of NCF AJ, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

---

1 \*\*\*

2 \*\*\*

3 \*\*\*

A variance analysis showing the effects of prices and volume on the producers' (other than cooperatives) net sales of NFCAJ and of costs and volume on their total cost is shown in table VI-4. The analysis shows that the decreases in the operating income variance during the fiscal years 1996-98 and 1996-97 were mostly attributable to the price variance. A \*\*\* decrease in the per-short-ton COGS in 1997-98 contributed to the operating income variance increase. The variance analysis may be affected by the mix of the various grades of NFCAJ within a company and between companies.

Table VI-4

Variance analysis for NFCAJ operations (firms other than cooperatives), fiscal years 1996-98 and Jan.-Mar. 1998-99

\* \* \* \* \*

**OPERATIONS ON NFCAJ (COOPERATIVES)**

The cooperatives produce NFCAJ using juice apples provided by members. The processing cost for the cooperatives does not include the cost of apples, which remain the property of the member growers.<sup>4</sup> The net proceeds available for members include a return for the apples processed and any profit earned by the cooperative from member and/or non-member business.

The results of the U.S. cooperative producers' NFCAJ operations are presented in table VI-5. The combined cooperatives' net sales value increased in 1997 compared to 1996, then decreased \*\*\* in 1998 even though quantities sold increased in each comparative fiscal year. The combined cooperatives realized increasing net proceeds in 1997 compared to 1996 and \*\*\* decreasing net proceeds in 1998 compared to 1996 and 1997; however, the net proceeds expressed as a ratio to net sales decreased in both 1997 and 1998. The net sales, net proceeds, and net proceeds as a ratio to net sales increased in interim 1999 compared to interim 1998.<sup>5</sup> As shown in the results of operations summary data by firm in table VI-6, \*\*\*.

Table VI-5

Results of U.S. producers (cooperatives) on their NFCAJ operations, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

Table VI-6

Selected financial data of U.S. producers (cooperatives) on their NFCAJ operations, by firm, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

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<sup>4</sup> The cooperatives provided tabulations subtracting apple costs from net proceeds. \*\*\*. Because the net proceeds to cooperative members include a return for apples, and is the normal accounting method used by cooperatives, the various estimates of apple costs provided by the cooperatives were not used in this report.

<sup>5</sup> Tree Top purchased an NFCAJ processing facility from Seneca on Feb. 1, 1999, which accounted for a portion of the increase in net sales in interim 1999.

The average per-short-ton net sales value, as shown in table VI-7, decreased in each comparative period, contributing to the decreases in unit net proceeds in 1997 and 1998. Total costs and expenses per short ton decreased in each comparative fiscal year. Even though the net sales value per short ton decreased in interim 1999 compared to interim 1998, the per-short-ton total costs and expenses decreased further (due in part to increased volume), contributing to an increase in net proceeds.

Table VI-7

Results of operations (per short ton) of U.S. producers (cooperatives) in the production of NFCAJ, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

A variance analysis showing the effects of prices and volume on the cooperatives' net sales of NFCAJ and of costs and volume on their total cost is shown in table VI-8. The analysis shows that the decreases in net proceeds during the fiscal years were mostly attributable to the price variance. The increase in the net proceeds variance in interim 1999 was partially attributable to the volume increase. The variance analysis may be affected by the mix of the various grades of NFCAJ within a cooperative and between cooperatives.

Table VI-8

Variance analysis for NFCAJ operations (cooperatives), fiscal years 1996-98 and Jan.-Mar. 1998-99

\* \* \* \* \*

**CAPITAL EXPENDITURES, R&D EXPENSES,  
AND INVESTMENT IN PRODUCTIVE FACILITIES**

The U.S. producers' capital expenditures, R&D expenses, and the value of their fixed assets are presented in table VI-9. Capital expenditures decreased in each comparative fiscal year for all firms. Capital expenditures and fixed assets increased in interim 1999 because of Tree Top's purchase of a NFCAJ facility from Seneca. None of the firms reported incurring R&D expenses. The book value of fixed assets decreased in each comparative fiscal year because depreciation exceeded new investment in fixed assets.

Table VI-9

Capital expenditures, R&D expenses, and fixed assets utilized by U.S. NCF AJ producers, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

**CAPITAL AND INVESTMENT**

The producers' comments regarding any actual or potential negative effects of imports of NFCAJ from China on their firms' growth, investment, ability to raise capital, and/or development and production efforts (including efforts to develop a derivative or more advanced version of the product) are presented in appendix D.



## **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 nature of the alleged margins was presented earlier in this report; 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 CHINA**

Eight Chinese producers, Yantai North Andre Juice Co., Ltd., Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Sanmenxia Lakeside Fruit Juice Co., Ltd., Zhonglu Juice Group Co., Yantai Oriental Juice Co., Ltd., Qingdao Nannan Foods Co., Ltd., Xianyang Fuan Juice Co., Ltd., and Xi'an Yaquin Fruit Co., Ltd., submitted foreign producer questionnaires to the Commission. Data provided by these firms are shown in table VII-1. These firms accounted for just over 60 percent of Chinese exports to the U.S. market in 1998.

According to information supplied by the American Embassy in Beijing, the Chinese industry is concentrated in Shaanxi and Shandong Provinces and has "developed rapidly" since 1994.<sup>1 2</sup> Of the eight firms providing foreign producer questionnaires, five reported no production prior to 1997. For all but one of the responding firms, NFCAJ accounts for in excess of 90 percent of total sales. The major export markets for Chinese product are the United States, Japan, Australia, and South Africa.<sup>3</sup>

### **U.S. IMPORTERS' INVENTORIES OF NFCAJ FROM CHINA**

Of the 14 firms reporting imports of NFCAJ, 9 reported having end-of-period inventories of product from China during all or part of the period examined save 1996 (table VII-2).

### **EXPECTED IMPORTS**

Six importers reported that they had either imported or arranged for the importation of NFCAJ from China for delivery after March 31, 1999, in the amount of 5,854 short tons.

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<sup>1</sup> Cablegram, American Embassy, Beijing, July 6, 1999. Of the firms providing questionnaire responses, five are located in Shandong Province and three in Shaanxi Province.

<sup>2</sup> In testimony at the conference, Donald Nadeau, an independent consultant to the respondent and former Director of Procurement for Cadbury Schwepps, noted:

"About this same time (1995) we began to see the beginning of the apple juice concentrate industry in China. Most of the major European processing and equipment manufacturers were encouraging the Chinese to take advantage of the abundant apple crop and make apple juice concentrate." CTR, p. 73.

<sup>3</sup> Cablegram, American Embassy, Beijing, July 6, 1999.

Table VII-1

NFCAJ: China's production capability, production, shipments, and inventories, 1996-98, Jan.-Mar. 1998, Jan.-Mar. 1999, and projected 1999-2000

Item	Actual experience					Projections	
	1996	1997	1998	January-March		1999	2000
				1998	1999		
<b>Quantity (short tons)</b>							
Production capability	20,091	40,038	68,970	13,010	19,160	77,873	76,975
Production	20,282	39,002	59,441	9,181	3,962	75,265	78,475
End of period inventories	11,226	21,921	26,900	24,502	15,464	23,258	19,253
Shipments:							
Internal consumption	0	0	0	0	0	0	0
Home market	3,052	4,062	12,246	1,042	2,093	13,758	16,237
Exports to--							
The United States	2,256	10,873	27,821	3,636	7,192	25,443	27,904
All other markets	8,125	13,366	14,394	1,922	6,113	29,494	33,089
Total exports	10,381	24,240	42,215	5,558	13,305	54,937	60,993
Total shipments	13,433	28,301	54,461	6,600	15,398	68,695	77,230
<b>Ratios and shares (percent)</b>							
Capacity utilization	100.9	97.4	86.2	70.6	20.7	96.7	101.9
Inventories to production	55.4	56.2	45.3	66.7	97.6	30.9	24.5
Inventories to total shipments	83.6	77.5	49.4	92.8	25.1	33.9	24.9
Share of total quantity of shipments:							
Internal consumption	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Home market	22.7	14.4	22.5	15.8	13.6	20.0	21.0
Exports to--							
The United States	16.8	38.4	51.1	55.1	46.7	37.0	36.1
All other markets	60.5	47.2	26.4	29.1	39.7	42.9	42.8

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

Table VII-2

NFCAJ: U.S. importers' end-of-period inventories of imports, by source, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

Source	Calendar year			Jan.-Mar.	
	1996	1997	1998	1998	1999
Imports from China:					
Inventories ( <i>short tons</i> )	0	1,451	1,230	2,041	3,703
Ratio to imports ( <i>percent</i> )	0.0	20.4	3.4	4.7	5.9
Ratio of U.S. shipments to imports ( <i>percent</i> )	0.0	26.9	3.6	6.9	7.4
Imports from all other countries:					
Inventories ( <i>short tons</i> )	1,275	1,092	374	527	398
Ratio to imports ( <i>percent</i> )	5.9	5.6	2.4	2.9	2.2
Ratio of U.S. shipments to imports ( <i>percent</i> )	5.6	5.4	2.3	2.6	2.2
Imports from all sources:					
Inventories ( <i>short tons</i> )	1,275	2,543	1,604	2,568	4,101
Ratio to imports ( <i>percent</i> )	5.8	9.5	3.1	4.2	5.1
Ratio of U.S. shipments to imports ( <i>percent</i> )	5.4	9.9	3.2	5.2	6.1

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



**APPENDIX A**  
***FEDERAL REGISTER NOTICES***



**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 731-TA-841  
(Preliminary)]

**Certain Non-Frozen Concentrated  
Apple Juice From China**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Institution of antidumping  
investigation and scheduling of a  
preliminary phase investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-841 (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 China of concentrated apple juice, other than frozen,<sup>1</sup> provided for in subheading 2009.70.00 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.

<sup>1</sup> For purposes of this investigation, defined as with a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter, not fortified with vitamins or minerals, unfermented and not containing added spirits.

1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 22, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 29, 1999.

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:** June 7, 1999.

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

**SUPPLEMENTARY INFORMATION**

**Background**

This investigation is being instituted in response to a petition filed on June 7, 1999, by counsel on behalf of Coloma Frozen Foods, Inc., Coloma, MI; Green Valley Packers, Arvin, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers, Ludington, MI; and Tree Top, Inc., Selah, WA.

**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 §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. 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 § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation 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 June 28, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than June 23, 1999, 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 §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 1, 1999, 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 §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) 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 § 207.12 of the Commission's rules.

Issued: June 10, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-15216 Filed 6-15-99; 8:45 am]

**BILLING CODE 7020-02-P**

**EFFECTIVE DATE:** July 6, 1999.

**FOR FURTHER INFORMATION CONTACT:** Suresh Maniam or Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0176 or 482-2815, respectively.

**INITIATION OF INVESTIGATION**

*The Applicable Statute and Regulations*

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 as amended ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the provisions codified at 19 CFR Part 351 (1998).

*The Petition*

On June 7, 1999, the Department received a petition filed in proper form by Tree Top, Inc.; Knouse Foods Cooperative, Inc.; Green Valley Packers; Mason County Fruit Packers; and Coloma Frozen Foods, Inc., hereinafter collectively referred to as "the petitioners. On June 17 and 25, 1999, at the request of the Department, petitioners provided public summaries for certain business proprietary information contained in the petition. On June 23, 1999, petitioners supplied information relating to their standing as petitioners and on June 25, 1999, petitioners clarified their calculation concerning industry support of the petition.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain non-frozen apple juice concentrate ("NFAJC") from the People's Republic of China ("PRC") 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 both materially injuring and threatening material injury to an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated that they account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-855]

**Initiation of Antidumping Duty Investigation: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China**

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

expressing support for, or opposition to, the petition (see "Determination of Industry Support for the Petition" section, below).

#### *Scope of the Investigation*

For purposes of this investigation, the product covered by the scope is non-frozen concentrated apple juice having a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter. Excluded from the scope of this investigation are: frozen concentrated apple juice, non-frozen concentrated apple juice fortified with vitamins or minerals, non-frozen concentrated apple juice that has been fermented, and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2009.70.20. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (62 FR 27323 February 26, 1997), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

#### *Determination of Industry Support for the Petition*

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement 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.

Section 771(4)(A) of the Act defines the "industry" as: "the producers as a whole of a domestic like product."

Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.<sup>1</sup> Section 771(10) of the Act defines the 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 under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

In this case, the Department has determined that the petition and supplemental information contained adequate evidence of sufficient industry support; therefore, polling was not necessary. See Initiation Checklist dated June 28, 1999 (public versions on file in the Central Records Unit of the Department of Commerce, Room B-099). To the best of the Department's knowledge, the producers who support the petition account for more than 50 percent of the production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(b)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record

<sup>1</sup> See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

A potential respondent in this proceeding requested that the Department poll the U.S. industry to determine industry support and check the validity of petitioners' calculations of their percent of U.S. production. We addressed this respondent's concerns in the June 28, 1998 initiation checklist.

#### *Export Price and Normal Value*

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners have based U.S. price on export price ("EP") because information obtained by the petitioners indicates that PRC producers sold NFAJC outside the United States to unaffiliated importers in the United States prior to importation. As a basis for its EP calculation, the petitioners have used an invoice price for sale of the subject merchandise by an unaffiliated U.S. distributor to an unaffiliated purchaser in the United States in the last quarter of 1998. The petitioners calculated a net U.S. price by subtracting from the invoice price the U.S. distributor's markup, ocean freight, and insurance. The petitioners based the cost of ocean freight and insurance on the difference between the C.I.F. price and the F.A.S. price of NFAJC from the PRC as reflected in the IM-145 statistics published by the U.S. Bureau of the Census. The petitioners used the IM-145 statistics for the month in which the U.S. sale occurred for calculating ocean freight and insurance. Petitioners based the distributor's markup on an affidavit attesting to the standard distributor markup in the industry.

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioners based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. The petitioners selected India as the most appropriate surrogate market economy. For the factors of production, the petitioners relied upon the factor usage rates of what it claimed was the world's most efficient NFAJC producer.

The petitioners first derived a cost for apple juice and then, based on this cost,

they derived a cost of apple juice concentrate. The cost of apples was based on the current price of juice apples in India as reported in a market research study included in the petition. Labor was valued using the methodology described by the Department in 19 CFR 351.408(c)(3). For energy, the petitioners used data from *Energy Prices & Taxes*, Fourth Quarter 1998, which shows 1995 electricity rates in India to be Rs. 2.1836 per kwh. They then adjusted this 1995 electricity rate for inflation based on the increase in the wholesale price index in India from 1995 to 1998 as reported in the IMF's *International Financial Statistics*. For natural gas, the petitioners obtained a price of US \$1.96 per thousand cubic feet based on the first quarter 1999 report of Enron Corp., a large, publicly traded oil and gas company selling energy products in India. For processing agents, maintenance supplies, and miscellaneous costs, the petitioners used the costs of a U.S. producer because Indian values for these inputs were not reasonably available to them.

Selling, general, and administrative (SG&A) expenses, depreciation, and financial expenses were based on the 1997 financial statements of an Indian NFAJC producer. For packing costs, including drums, liners, and pallets, the petitioners used the costs of a U.S. NFAJC producer because Indian values for these inputs were not reasonably available to them.

Based on a comparison of EP to NV, as adjusted by the Department, the information in the petition and other information reasonably available to the Department indicates dumping margins of 51.69 and 65.64 percent. A description of the adjustments which the Department made to petitioners' calculations of export price and normal value are contained in the June 28, 1999 initiation checklist, a public version of which is available in the Central Records Unit, Room B-099, Main Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

#### *Fair Value Comparisons*

Based on the data provided by the petitioners, there is reason to believe that imports of NFAJC from the PRC are being, or are likely to be, sold at less than fair value.

#### *Allegations and Evidence of Material Injury and Causation*

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The

petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits and income, net sales volumes and values, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist.

#### *Allegation of Critical Circumstances*

The petitioners allege that critical circumstances exist with respect to imports of NFAJC from the PRC and have supported their allegations with the following information.

First, the petitioners claim that the importers knew, or should have known, that NFAJC from the PRC was being sold at less than normal value. Specifically, the petitioners allege that the margins calculated in the petition exceed the 25 percent threshold used by the Department to impute importer knowledge of dumping.

The petitioners also have alleged that imports have been massive over a relatively short period. Alleging that there was sufficient pre-filing notice of this antidumping petition, the petitioners contend that the Department should compare imports during June 1998–October 1998 to imports during November 1998–March 1999 for purposes of this determination. Specifically, petitioners supported this allegation with copies of a news article and a transcript of a television program. The new article appeared in the September 1998 edition of "The Great Lakes Fruit Grower News," which reported that the U.S. Apple Association was considering filing an antidumping action against NFAJC from the PRC. The television program, "The World Today," aired on CNN on October 5, 1998. The program also reported that the U.S. Apple Association was considering filing an antidumping action on NFAJC from the PRC. On October 6, 1998, the Associated Press Newswire carried a story that the apple industry planned to file an antidumping action on NFAJC from the PRC. Accordingly, the petitioners provided import statistics for the periods November 1998–March 1999 and June 1998–October 1998. Based on this comparison, imports of NFAJC from the PRC increased by 111 percent.

Although the ITC has not yet made a preliminary decision with respect to

injury, the petitioners note that in the past the Department has also considered the extent of the increase in the volume of imports of the subject merchandise as one indicator of whether a reasonable basis exists to impute knowledge that material injury was likely. In this case, the petitioners allege that the increase in imports was more than double the amount considered "massive." Taking into consideration the foregoing, we find that the petitioners have alleged the elements of critical circumstances and supported them with information reasonably available for purposes of initiating a critical circumstances inquiry. For these reasons, we will investigate this matter further and will make a preliminary determination at the appropriate time, in accordance with section 735(e)(1) of the Act and Department practice (see Policy Bulletin 98/4 (63 FR 55364, October 15, 1998)).

#### *Initiation of Antidumping Investigation*

Based upon our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of NFAJC from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by November 15, 1999.

#### *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 the People's Republic of China. We will attempt to provide a copy of the public version of the petition to the exporters named in the petition.

#### *International Trade Commission Notification*

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

#### *Preliminary Determination by the ITC*

The ITC will determine by July 22, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of NFAJC from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

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Dated: June 28, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import  
Administration.*

[FR Doc. 99-17050 Filed 7-2-99; 8:45 am]

**BILLING CODE 3510-DS-P**

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**APPENDIX B**  
**LIST OF WITNESSES**



## CALENDAR OF THE COMMISSION'S CONFERENCE

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

Subject: Non-frozen Concentrated Apple Juice from China  
Inv. No.: 731-TA-841 (Preliminary)  
Date and Time: June 28, 1999 - 9:30 a.m.

Sessions were held in connection with the investigation in the Commission's Main Hearing Room, 500 E Street, S.W., Washington, DC.

### **In Support of the Imposition of Antidumping Duties:**

Skadden, Arps, Meagher & Flom  
Washington, DC  
on behalf of

Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc.

Kraig Naasz, President and CEO, U.S. Apple Association  
Alton Wendzel, President, Coloma Frozen Foods, Inc.  
Ken Guise, Chief Executive Officer, Knouse Foods Cooperative, Inc.  
Tom Hurson, Vice-President for Finance and Administration, Tree Top, Inc.  
Danny Day, President, Sunfair Marketing  
Seth Kaplan, Vice-President, Charles River Associates  
John D. Greenwald, Counsel to the Argentine Producers, Wilmer, Cutler, & Pickering

Thomas R. Graham )  
Stephen J. Narkin ) --OF COUNSEL

### **In Opposition to the Imposition of Antidumping Duties:**

Grunfeld, Desiderio, Lebowitz, & Silverman  
Washington, DC  
on behalf of

Yantai North Andre Juice, Co., Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Sanmenxia Lakeside Fruit Juice Co., Ltd., Zhonglu Juice Group Co., Yantai Oriental Juice Co., Ltd., Qingdao Nannan Foods Co., Ltd., Xianyang Fuan Juice Co., Ltd., and Xi'an Yaquin Fruit Co., Ltd.

Mark S. Prizer, General Manager, DayStar-Robinson  
Donald L. Nadeau, Independent Consultant  
John G. Reilly, Vice-President, Nathan Associates, Inc.

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**In Opposition to the Imposition of Antidumping Duties--Continued**

Grunfeld, Desiderio, Lebowitz, & Silverman--Continued  
Washington, DC

Bruce M. Mitchell )  
Jeffrey S. Grimson )--OF COUNSEL

**APPENDIX C**  
**SUMMARY DATA**



Table C-1

NFCIAJ: Summary data concerning the U.S. market, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

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

Item	Reported data					Period changes			
	1996	1997	1998	January-March		1996-98	1996-97	1997-98	Jan.-Mar. 1998-99
				1998	1999				
<b>U.S. consumption quantity:</b>									
Amount	290,556	318,006	310,496	59,359	72,949	6.9	9.4	-2.4	22.9
Producers' share (1)	20.5	18.6	23.9	17.5	24.5	3.4	-1.9	5.3	7.0
<b>Importers' share (1):</b>									
China	2.2	8.2	14.8	10.6	26.1	12.7	6.0	6.7	15.4
Other sources	77.4	73.2	61.3	71.8	49.4	-16.0	-4.1	-11.9	-22.4
Total imports	79.5	81.4	76.1	82.5	75.5	-3.4	1.9	-5.3	-7.0
<b>U.S. consumption value:</b>									
Amount	460,754	394,376	267,339	58,570	59,183	-42.0	-14.4	-32.2	1.0
Producers' share (1)	20.9	19.7	23.6	16.6	23.0	2.7	-1.2	3.9	6.4
<b>Importers' share (1):</b>									
China	1.9	6.9	12.5	8.9	24.5	10.6	5.0	5.6	15.6
Other sources	77.2	73.5	63.9	74.5	52.5	-13.3	-3.8	-9.6	-22.0
Total imports	79.1	80.3	76.4	83.4	77.0	-2.7	1.2	-3.9	-6.4
<b>U.S. imports from--</b>									
<b>China:</b>									
Quantity	6,297	25,978	46,032	6,308	19,020	631.0	312.5	77.2	201.5
Value	8,698	27,038	33,389	5,195	14,487	283.9	210.9	23.5	178.8
Unit value	\$1,381.25	\$1,040.82	\$725.34	\$823.64	\$761.70	-47.5	-24.6	-30.3	-7.5
Ending inventory quantity	0	1,451	1,230	2,041	3,703	(2)	(2)	-15.3	81.4
<b>Other sources:</b>									
Quantity	224,771	232,936	190,385	42,645	36,048	-15.3	3.6	-18.3	-15.5
Value	355,855	289,695	170,806	43,643	31,070	-52.0	-18.6	-41.0	-28.8
Unit value	\$1,583.19	\$1,243.67	\$897.16	\$1,023.41	\$861.91	-43.3	-21.4	-27.9	-15.8
Ending inventory quantity	1,275	1,092	374	527	398	-70.7	-14.4	-65.8	-24.5
<b>All sources:</b>									
Quantity	231,068	258,913	236,417	48,953	55,067	2.3	12.1	-8.7	12.5
Value	364,553	316,733	204,195	48,838	45,557	-44.0	-13.1	-35.5	-6.7
Unit value	\$1,577.69	\$1,223.32	\$863.71	\$997.66	\$827.30	-45.3	-22.5	-29.4	-17.1
Ending inventory quantity	1,275	2,543	1,604	2,568	4,101	25.8	99.5	-36.9	59.7
<b>U.S. producers':</b>									
Average capacity quantity	106,114	109,143	111,341	23,417	30,528	4.9	2.9	2.0	30.4
Production quantity	56,116	70,268	63,715	12,684	20,612	13.5	25.2	-9.3	62.5
Capacity utilization (1)	52.9	64.4	57.2	54.2	67.5	4.3	11.5	-7.2	13.4
<b>U.S. shipments:</b>									
Quantity	59,488	59,093	74,079	10,406	17,882	24.5	-0.7	25.4	71.8
Value	96,201	77,643	63,144	9,732	13,626	-34.4	-19.3	-18.7	40.0
Unit value	\$1,617.14	\$1,313.92	\$852.40	\$935.16	\$761.99	-47.3	-18.8	-35.1	-18.5
<b>Export shipments:</b>									
Quantity	108	30	164	43	64	51.9	-72.2	446.7	48.8
Value	193	58	141	42	49	-26.9	-69.9	143.1	16.7
Unit value	\$1,787.04	\$1,933.33	\$859.76	\$976.74	\$765.63	-51.9	8.2	-55.5	-21.6
Ending inventory quantity	15,975	27,997	20,451	19,009	17,989	28.0	75.3	-27.0	-5.4
Inventories/total shipments (1)	26.8	47.4	27.5	45.5	25.1	0.7	20.5	-19.8	-20.4
PRWs	241	256	266	131	149	10.4	6.2	3.9	13.7
Hours worked (1,000s)	364	422	432	49	57	18.7	16.0	2.4	15.8
Wages paid (\$1,000s)	3,954	4,395	4,674	634	719	18.2	11.1	6.4	13.3
Hourly wages	\$10.88	\$10.42	\$10.83	\$12.83	\$12.55	-0.4	-4.2	3.9	-2.2
Productivity (tons per 1,000 hours)	129.4	143.3	139.2	250.3	353.6	7.6	10.8	-2.9	41.3
Unit labor costs	\$84.06	\$72.72	\$77.81	\$51.26	\$35.49	-7.4	-13.5	7.0	-30.8
<b>Net sales:</b>									
Quantity	56,600	57,986	66,530	***	***	17.5	2.4	14.7	74.9
Value	91,927	81,682	61,524	***	***	-33.1	-11.1	-24.7	41.2
Unit value	\$1,624.15	\$1,408.65	\$924.76	***	***	-43.1	-13.3	-34.4	-19.3
Capital expenditures	***	***	***	***	***	-38.3	-12.5	-29.4	(3)

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable.

(3) Increase greater than 1,000 percent.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

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Table C-2

NFCAJ: Summary data concerning U.S. cooperatives, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

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

Item	Reported data					Period changes			
	1996	1997	1998	January-March		1996-98	1996-97	1997-98	Jan.-Mar. 1998-99
				1998	1999				
U.S. producers':									
Average capacity quantity . . . . .	***	***	***	***	***	0.0	0.0	0.0	47.1
Production quantity . . . . .	***	***	***	***	***	28.1	32.9	-3.6	79.2
Capacity utilization (1) . . . . .	***	***	***	***	***	16.0	18.8	-2.7	15.4
U.S. shipments:									
Quantity . . . . .	***	***	***	***	***	46.7	12.5	30.4	95.6
Value . . . . .	***	***	***	***	***	-34.2	-5.6	-30.3	55.1
Unit value . . . . .	***	***	***	***	***	-55.2	-16.1	-46.6	-20.7
Export shipments:									
Quantity . . . . .	***	***	***	***	***	51.9	-72.2	446.7	48.8
Value . . . . .	***	***	***	***	***	-26.9	-69.9	143.1	16.7
Unit value . . . . .	***	***	***	***	***	-51.9	8.2	-55.5	-21.6
Ending inventory quantity . . . . .	***	***	***	***	***	62.9	92.4	-15.3	-5.7
Inventories/total shipments (1) . . . . .	***	***	***	***	***	3.6	23.5	-19.9	-29.2
PRWs . . . . .	***	***	***	***	***	23.3	13.3	8.8	12.9
Hours worked (1,000s) . . . . .	***	***	***	***	***	27.4	27.9	-0.4	15.1
Wages paid (\$1,000s) . . . . .	***	***	***	***	***	20.5	13.3	6.4	12.9
Hourly wages . . . . .	***	***	***	***	***	-5.4	-11.4	6.8	-2.0
Productivity (tons per 1,000 hours) . . . . .	***	***	***	***	***	-0.2	4.8	-4.8	55.0
Unit labor costs . . . . .	***	***	***	***	***	-5.2	-15.5	12.1	-36.7
Net sales:									
Quantity . . . . .	***	***	***	***	***	29.8	19.9	8.3	92.4
Value . . . . .	***	***	***	***	***	-32.0	9.8	-38.0	52.2
Unit value . . . . .	***	***	***	***	***	-47.6	-8.4	-42.8	-20.9
Total costs and expenses . . . . .	***	***	***	***	***	5.4	18.6	-11.1	26.5
Net business proceeds . . . . .	***	***	***	***	***	-55.9	4.1	-57.7	99.2
Capital expenditures . . . . .	***	***	***	***	***	-43.8	-6.0	-40.2	(2)
Unit costs and expenses . . . . .	***	***	***	***	***	-18.8	-1.1	-17.9	-34.2
Unit net business proceeds . . . . .	***	***	***	***	***	-66.1	-13.1	-60.9	3.5
Total costs and expenses/sales (1) . . . . .	***	***	***	***	***	21.5	3.1	18.3	-10.9
Net business proceeds/sales (1) . . . . .	***	***	***	***	***	-21.5	-3.1	-18.3	10.9

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Increase greater than 1,000 percent.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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

Table C-3

NFAJ: Summary data concerning U.S. firms other than cooperatives, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

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

Item	Reported data					Period changes			
	1996	1997	1998	January-March		1996-98	1996-97	1997-98	Jan.-Mar. 1998-99
				1998	1999				
U.S. producers':									
Average capacity quantity . . . . .	***	***	***	***	***	9.7	5.6	3.8	1.3
Production quantity . . . . .	***	***	***	***	***	-2.8	16.6	-16.6	-17.9
Capacity utilization (1) . . . . .	***	***	***	***	***	-5.6	5.1	-10.7	-4.8
U.S. shipments:									
Quantity . . . . .	***	***	***	***	***	4.5	-12.5	19.5	-22.8
Value . . . . .	***	***	***	***	***	-34.5	-34.5	-0.1	-24.0
Unit value . . . . .	***	***	***	***	***	-37.4	-25.1	-16.4	-1.5
Export shipments:									
Quantity . . . . .	***	***	***	***	***	(2)	(2)	(2)	(2)
Value . . . . .	***	***	***	***	***	(2)	(2)	(2)	(2)
Unit value . . . . .	***	***	***	***	***	(2)	(2)	(2)	(2)
Ending inventory quantity . . . . .	***	***	***	***	***	-20.6	51.3	-47.5	48.5
Inventories/total shipments (1) . . . . .	***	***	***	***	***	-5.1	15.6	-20.7	1.4
PRWs . . . . .	***	***	***	***	***	2.6	2.0	0.6	20.0
Hours worked (1,000s) . . . . .	***	***	***	***	***	13.4	8.7	4.3	20.5
Wages paid (\$1,000s) . . . . .	***	***	***	***	***	16.1	9.2	6.3	16.3
Hourly wages . . . . .	***	***	***	***	***	2.4	0.5	1.9	-3.5
Productivity (tons per 1,000 hours) . . . . .	***	***	***	***	***	13.4	9.7	3.4	-27.1
Unit labor costs . . . . .	***	***	***	***	***	-9.6	-8.4	-1.4	32.5
Net sales:									
Quantity . . . . .	***	***	***	***	***	6.5	-13.1	22.6	-25.7
Value . . . . .	***	***	***	***	***	-34.3	-34.3	-0.0	-25.8
Unit value . . . . .	***	***	***	***	***	-38.3	-24.4	-18.5	-0.2
COGS . . . . .	***	***	***	***	***	-29.5	-16.1	-16.0	-11.5
Gross profit or (loss) . . . . .	***	***	***	***	***	(3)	(3)	94.4	(3)
SG&A expenses . . . . .	***	***	***	***	***	-14.3	-5.3	-9.5	0.0
Operating income or (loss) . . . . .	***	***	***	***	***	(3)	(3)	81.6	(3)
Capital expenditures . . . . .	***	***	***	***	***	-32.4	-19.6	-15.9	0.0
Unit COGS . . . . .	***	***	***	***	***	-33.8	-3.4	-31.5	19.1
Unit SG&A expenses . . . . .	***	***	***	***	***	-19.6	9.0	-26.2	34.6
Unit operating income or (loss) . . . . .	***	***	***	***	***	(3)	(3)	85.0	(3)
COGS/sales (1) . . . . .	***	***	***	***	***	6.9	26.1	-19.3	17.7
Operating income or (loss)/sales (1) . . . . .	***	***	***	***	***	-7.6	-27.3	19.6	-18.5

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable.

(3) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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



**APPENDIX D**

**EFFECTS OF IMPORTS ON PRODUCERS'  
EXISTING DEVELOPMENT AND PRODUCTION  
EFFORTS, GROWTH, INVESTMENT, AND  
ABILITY TO RAISE CAPITAL**



Responses of U.S. producers to the following questions:

1. Since January 1, 1996, has your firm experienced any actual negative effects on its return on investment or its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of NFCAJ from China?

\*\*\* did not respond. The responses of the other producers are:

\* \* \* \* \*

2. Does your firm anticipate any negative impact of imports of NFCAJ from China?

\*\*\* did not respond. The responses of the other producers are:

\* \* \* \* \*



