

UNITED STATES INTERNATIONAL TRADE COMMISSION
CERTAIN NON-FROZEN CONCENTRATED APPLE JUICE FROM CHINA
Investigation No. 731-TA-841 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3303, May 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain non-frozen concentrated apple juice,³ provided for in subheadings 2009.70.00 and 2106.90.52 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective June 7, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Coloma Frozen Foods, Inc.; Coloma, MI; Green Valley Apples of California, Los Angeles, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers Cooperative, Ludington, MI; and Tree Top, Inc., Selah, WA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain non-frozen concentrated apple juice from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 20, 2000 (65 FR 3247). The hearing was held in Washington, DC, on April 10, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 30, 2000. The views of the Commission are contained in USITC Publication 3303 (May 2000), entitled *Certain Non-Frozen Concentrated Apple Juice from China: Investigation No. 731-TA-841 (Final)*.

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

² Chairman Lynn M. Bragg not participating.

³ "Certain non-frozen concentrated apple juice" consists of all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of the investigation are frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of imports of non-frozen concentrated apple juice (“NFCAJ”) from China that are sold in the United States at less than fair value (“LTFV”).¹

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether 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.”² 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.”³ 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”⁴

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.⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁶ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁷ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁸

¹ Chairman Lynn M. Bragg did not participate in this investigation.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(10).

⁵ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (CIT 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 (CIT 1996).

⁶ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁷ 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”).

⁸ 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-

(continued...)

B. Product Description

In its notice of final determination, Commerce defined the imported merchandise within the scope of this investigation as follows:

non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this investigation are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.⁹

NFCAJ is a highly concentrated form of apple juice from which the “apple essence”¹⁰ and most of the water have been removed. Production of NFCAJ begins with juice apples.¹¹ Producers mill and mash juice apples to remove the stems, seeds, peels, and other extraneous matter. Next, they separate and remove the pulpy apple residue from the juice. The juice proceeds through a “stripper,” which heats the juice until the apple essence separates and can be removed, then continues heating to the point of pasteurization. The juice is then 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.¹² NFCAJ can be used to produce apple juice, blended fruit juice beverages, carbonated beverages, and as a sweetener in bakery products such as cereal, cookies, and health foods.¹³

C. Domestic Like Product Issues

The only like product issue raised during the preliminary phase of this investigation was whether the domestic like product should be expanded beyond the scope, as defined by Commerce, to include single strength apple juice and frozen concentrated apple juice, which we, together, refer to as “retail apple juice.” In the preliminary determination the Commission found a single like product limited to NFCAJ. The Commission based its finding on the physical differences between NFCAJ and retail apple juice; the fact that 35 percent of domestic NFCAJ is not used to produce retail apple juice; the limited commercial interchangeability between NFCAJ and retail apple juice; the additional processing steps

⁸ (...continued)

752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁹ 65 Fed. Reg. 19873 (April 13, 2000).

¹⁰ Apple essence is what gives apple juice its distinctive flavor. Lacking apple essence, NFCAJ tastes like very sweet water. Confidential Report (“CR”) at I-5 - I-6; Public Report (“PR”) at I-4 - I-5.

¹¹ In the United States, growers harvest each year’s apple crop between August and November. 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 apples slices, apple sauce, and other processed products. Juice apples are used to produce apple juice. Juice apples are the inevitable byproduct of production of apples for the fresh market and generally consist of apples which, due to size or condition, are not suitable for either fresh consumption or processing. CR at I-5 - I-7; PR at I-4 - I-6.

¹² CR at I-5 - I-6; PR at I-4 - I-5.

¹³ CR at I-5 - I-6; PR at I-5 - I-6.

needed to produce NFCAJ from single strength apple juice; the use of different manufacturing technology by certain domestic producers for removing juice from apples for NFCAJ versus retail apple juice; and the different channels of distribution through which NFCAJ and retail apple juice are sold.¹⁴

None of the parties have advocated the inclusion of retail apple juice in the like product in this final phase of the investigation. Moreover, the record contains no new evidence suggesting that the domestic like product should be expanded to include retail apple juice. We therefore find that single strength and frozen concentrated apple juice are not within the domestic like product for the same reasons we did in our preliminary determination.¹⁵

In its final determination, Commerce broadened the scope of the investigation to include NFCAJ that has been fortified with vitamins or minerals. Petitioners report that there is no domestic production of NFCAJ fortified with vitamins or minerals.¹⁶ Because there is no U.S. production of fortified NFCAJ, such a product could not be considered a separate domestic like product.¹⁷ Therefore, we find a single domestic like product, NFCAJ.

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”¹⁸ 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.¹⁹ 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.

1. Whether the Industry Includes Apple Growers

In investigations 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:

¹⁴ Certain Non-Frozen Concentrated Apple Juice from China, Inv. No. 731-TA-841 (Preliminary) USITC Pub. 3216, (July 1999) (“Preliminary Determination”) at 8.

¹⁵ See Preliminary Determination at 5-8.

¹⁶ CR at I-8, n. 28; PR at I-6 n.28; Petitioners’ Posthearing Brief, Exhibit F at 1.

¹⁷ See, e.g., Synthetic Indigo from China, Inv. No. 731-TA-851 (Preliminary), USITC Pub. 3222 at 7 (Aug. 1999) (“since indigo slurry is within the scope of the investigation, and there is no domestic production of indigo slurry for domestic sales, the ‘domestic like product’ is the product ‘most similar in characteristics and uses with’ the subject imports”), citing Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34 (Final), USITC Pub. 3112 at 5 (June 1998) (because, *inter alia*, “there has been no production of food-grade ERT for commercial sale,” domestic production of food-grade ERT product “does not exist in any practical sense” and could not be considered a domestic like product); Nepheline Syenite From Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 at 7-11 (Apr. 1992) (since nepheline syenite was not produced in the United States, the Commission defined the domestic like product to include two similar products, feldspar and aplite), aff’d, Feldspar Corp. v. United States, 825 F. Supp. 1095 (Ct. Int’l. Trade 1993).

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ 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).

- (a) the processed agricultural product is produced from the raw product²⁰ through a single continuous line of production,²¹ and
- (b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors.²²

Based on the record in this investigation, we find that the domestic industry producing NFCAJ does not include apple growers. 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.²³ In this investigation, the record indicates that only about 20 percent of domestic apple production (by weight) is processed into apple juice,²⁴ and only a very small share of domestic apples are grown specifically for use as juice apples.²⁵ The remaining 80 percent of domestic apples are either sold in the fresh market or processed into apple sauce, baby food, or other non-juice products.²⁶ 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.²⁷

2. Related Parties

We also must 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

²⁰ “Raw agricultural product” is defined as any farm or fishery product. 19 U.S.C. § 1677(4)(E)(iv).

²¹ 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).

²² 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).

²³ See, e.g., Certain Preserved Mushrooms from Chile, Inv. No. 731-TA-776 (Final), USITC Pub. 3144 (November 1998); Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Final), USITC Pub. 3057 (August 1997); and Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Final), USITC Pub. 2907 (July 1995).

²⁴ Conference transcript at 87.

²⁵ Conference transcript at 45-46.

²⁶ Conference transcript at 21-22.

²⁷ Conference transcript at 45.

related to an exporter or importer of subject merchandise, or which are themselves importers.²⁸ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²⁹

Respondents argued that *** is a related party and that appropriate circumstances exist to exclude it from the domestic industry because its purchases of ***.³⁰

*** is a cooperative producer that accounted for less than *** percent of domestic production of NFCAJ in 1999.³¹ In 1999, *** purchased subject imports equivalent to *** and *** of nonsubject imports.³² However, there is no evidence to suggest that *** was the importer of the subject merchandise it purchased, nor is there any evidence that it is related to any importer or foreign producer of the subject merchandise.

In previous investigations, 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 where the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial.³³

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 1999 (about *** short tons).³⁴ *** 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 *** short tons. *** also purchased *** short

²⁸ 19 U.S.C. § 1677(4)(B).

²⁹ 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, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (February 1997).

³⁰ CR at III-9; PR at III-5.

³¹ CR at III-4 and III-9; PR at III-2 - III-5.

³² *** Producer's Questionnaire at 11-12. In 1999 *** produced *** short tons of NFCAJ but purchased *** short tons of subject NFCAJ. In 1998, *** produced *** short tons and purchased *** short tons of subject NFCAJ (***).

³³ See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (April 1997).

³⁴ *** reported that *** made up *** percent of its sales of imports and that *** percent of its sales were exported to Canada. Therefore, sales to *** made up *** percent of *** domestic shipments of NFCAJ.

tons of nonsubject merchandise and made no purchases of domestic product.³⁵ In our view, these data indicate that *** was not responsible for a predominant portion of a significant importer's imports of the subject merchandise and therefore should not be considered a related party.³⁶

Accordingly, we find that no domestic producer should be considered a related party, and define the domestic industry as all domestic producers of NFCAJ.

II. MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.³⁷ 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.³⁸ The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."³⁹ 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 state of the industry in the United States.⁴⁰ 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."⁴¹

For the reasons discussed below, we determine that the domestic industry producing NFCAJ is materially injured by reason of subject imports from China that are sold in the United States at less than fair value.

A. Conditions of Competition

1. Captive Production

Because the domestic industry captively consumes a large portion of its production of the domestic like product in the manufacture of downstream articles, we must 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.^{42 43}

³⁵ Questionnaire Responses of *** and ***; CR and PR Table IV-1.

³⁶ Respondents argued that *** may be a related party by virtue of its ***. We find there is no evidence to support respondents' allegation that *** is a related party. *** did not report any purchases of subject imports during the period examined, and therefore it is not a related party. Similarly, there is no evidence to suggest that any other domestic producer of NFCAJ might be a related party. While the record shows that *** and *** purchased subject merchandise between 1997 and 1999, no importer reported either of these firms as a major customer. CR at III-10; PR at III-5; see also, Importer Questionnaire Responses of *** and ***.

³⁷ 19 U.S.C. § 1671b(a) and 1673b(a).

³⁸ 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 . . . [a]nd 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).

³⁹ 19 U.S.C. § 1677(7)(A).

⁴⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁴¹ 19 U.S.C. § 1677(7)(C)(iii).

⁴² The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

(continued...)

We find that domestic producers both internally transfer significant production of NFCAJ and sell significant production in the merchant market,⁴⁴ and, accordingly, that the statutory threshold is satisfied. However, as we did in the Preliminary Determination, we find that the third criterion of the captive production provision is not satisfied in this investigation for the following reasons.

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.⁴⁵ 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.⁴⁶ 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.⁴⁷ 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

⁴² (...continued)

(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.

⁴³ 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).

⁴⁴ In 1997, internal shipments accounted for approximately 72.7 percent of domestic producers’ total shipments of NFCAJ (by volume). In 1998, internal shipments accounted for approximately 64.6 percent of total shipments. By 1999, internal shipments declined to just 48.1 percent of total shipments. CR and PR Table III-2. In turn, 1997 merchant market shipments accounted for 27.3 percent (by volume), of domestic producers’ total shipments of NFCAJ. In 1998, merchant market shipments accounted for 35.2 percent of total shipments, and in 1999, merchant market shipments accounted for 51.8 percent of total shipments. CR and PR Table III-2.

⁴⁵ 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”).

⁴⁶ Id.

⁴⁷ Petitioners’ Postconference Brief at 7.

the third criterion is not satisfied, and, therefore, that the captive production provision does not apply in this investigation.⁴⁸ Nevertheless, even when the captive production provision is not applied, we may take into consideration the existence of a significant volume of captive production as a relevant condition of competition.⁴⁹ We do so for purposes of this final determination but note that captive production declined between 1997 and 1999 as the industry increasingly produced NFCAJ for sale in the merchant market.⁵⁰

2. Other Conditions of Competition

Demand for NFCAJ is driven by the demand for apple juice, which accounts for two-thirds of NFCAJ's downstream use (in single-strength apple juice and frozen concentrated apple juice). Much of the remainder is used primarily in blended juices.⁵¹ Producers and importers generally concluded that demand for NFCAJ had grown since 1997. This is consistent with growth in apparent U.S. consumption of more than 23,000 short tons (7.3 percent) between 1997 and 1999.⁵² In the context of this growing market, U.S. producers and subject imports from China both gained market share, while the share of the market held by nonsubject imports fell.

Domestic consumption of NFCAJ exceeds the ability of the domestic industry to supply NFCAJ. As a consequence, the United States historically has been a net importer of NFCAJ, primarily from European and South American suppliers. Imports are needed most in the second quarter of each calendar year (32-34 percent of all imports enter during April-June), the quarter immediately preceding the U.S. apple harvest.⁵³

Imported NFCAJ currently constitutes more than three quarters of the U.S. market.⁵⁴ Subject imports represented ***, ***, and *** percent of total imports in 1997, 1998, and 1999, respectively.⁵⁵ The record evidence is somewhat mixed on the extent to which domestic product, subject imports, and nonsubject imports compete directly with each other in the U.S. market for NFCAJ. The record shows that nonsubject imports from southern hemisphere countries such as Argentina and Chile complement domestic production to some extent, largely because of their different apple growing seasons. In contrast, imports from China tend to be a more direct substitute for the domestic product, since they share the same apple growing season.⁵⁶

The acidity level of NFCAJ from China has also been raised as a factor reducing substitutability

⁴⁸ 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.

⁴⁹ *See, e.g.,* Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Invs. Nos. 731-TA-794-796 (Final), USITC Pub. 3190 (May 1999) at 14.

⁵⁰ CR and PR Table III-2.

⁵¹ Several producers and importers report 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. CR at II-6; PR at II-4 - II-5.

⁵² CR and PR Table C-1. Between 1996 and 1999, apparent U.S. consumption increased by 17.3 percent. *Id.*

⁵³ In contrast, Chinese imports tend to be most prevalent during November-January. *See* Memorandum INV-X-100 (May 5, 2000).

⁵⁴ Conference transcript at 9-10; CR and PR Table C-1; Preliminary Determination at 13.

⁵⁵ CR and PR Table IV-1.

⁵⁶ *See* USDA's Gain Report, Peoples Republic of China Annual Fresh Deciduous Fruit Report 1999, at 3, attached as exhibit I to Petitioners' Prehearing Brief; *See also*, Memorandum INV-X-100 (May 5, 2000).

with nonsubject NFCAJ. While the Chinese product's acidity levels tended to be lower than some nonsubject import levels, purchasers usually reported that Chinese and nonsubject imports of NFCAJ are comparable in acidity.⁵⁷ Both are blended with domestic concentrate to adjust the sweetness of the final product.

We also note that the size of the apple crop varies yearly. In particular, the 1998 crop, the second largest in recent history, was substantially larger than the 1997 crop. However, our record indicates that yearly changes in the size of the apple crop do not translate directly into proportionate changes in either the juice apple crop or the domestic production of NFCAJ.⁵⁸

As is our practice, we have concentrated our analysis in this investigation on the three most recent years for which we have data: 1997, 1998, and 1999. However, a number of issues in this investigation oblige us to consider periods of time outside the core 1997-99 period. First, parties have argued extensively over the meaning and relevance of historical data that include the year 1996, as well as prior years. Second, not all of the data on the record are compiled in a similar fashion (e.g., some USDA data are in crop years or marketing years that include two different calendar years). Third, we are presented with a case in which changes in the volume, price effects, and impact of the subject imports clearly are related to the pendency of the investigation, leading us to reduce the weight accorded to data for the second half of 1999.⁵⁹ Accordingly, we have expanded our discussion of factors that had a bearing on the state of the U.S. NFCAJ market to include events in 1996.

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."⁶⁰

The quantity of subject imports of NFCAJ from China rose sharply from *** short tons in 1997 to *** short tons in 1998, then retreated to *** short tons in 1999.^{61 62} Subject imports accounted for an increasingly-large share of the U.S. market, climbing from *** percent in 1997 to *** percent in 1998, before returning in 1999 to *** percent.⁶³ We note that the volume of subject imports in each of these years was noticeably higher than the volume in 1996 (*** short tons, which accounted for *** percent of the U.S. market at the time).⁶⁴

⁵⁷ CR and PR Table II-4.

⁵⁸ Compare Tables B-4 and B-7 of USDA's Fruit and Nuts Situation and Outlook (Oct. 1999) in memorandum INV-X-073 (April 7, 2000) with CR and PR Table C-1.

⁵⁹ 19 U.S.C. § 1677(7)(I).

⁶⁰ 19 U.S.C. § 1677(7)(C)(I).

⁶¹ CR and PR Table IV-1. By value, subject imports followed the same pattern, rising from \$*** million in 1997 to \$*** million in 1998, then declining to \$*** million in 1999. Id.

⁶² The quantity of NFCAJ imports from China was 69.8 percent higher in January-May 1999 than in January-May 1998, then decreased noticeably in the second half of 1999 following the filing of the petition. Derived from data presented in Memorandum INV-X-100 (May 5, 2000). See also, testimony of Respondents' Counsel, Hearing Transcript at 200-201, stating that counsel advised respondents to raise their prices and reduce exports to the U.S. to better their chances against an imminent antidumping case.

⁶³ CR and PR Table IV-3. Subject imports' market share, by value, rose from *** percent in 1997 to *** percent in 1998, then declined to *** percent in 1999. Id.

⁶⁴ CR and PR Table C-1. In terms of quantity, the volume of subject imports increased by *** percent between
(continued...)

While subject imports rose dramatically, U.S. producers retained approximately one-fifth of the U.S. market for NFCAJ. U.S.-produced NFCAJ accounted for 18.5 percent of the U.S. market in 1997 and 21.9 percent in 1998, comparable to the 20.5-percent share of the U.S. market held by U.S. producers in 1996. In 1999, however, as the volume of subject imports diminished after the filing of the petition, the domestic industry expanded its share of the U.S. market to 24.6 percent.⁶⁵

Nonsubject imports decreased by almost *** percent between 1997 and 1998, declining from *** short tons in 1997 to *** short tons in 1998, before returning in 1999 to *** short tons.⁶⁶ Nonsubject imports' share of the U.S. market (by quantity) fell between 1997 and 1998 from *** percent in 1997 to *** percent in 1998, then increased in 1999 to *** percent.⁶⁷

We find the volume of the subject imports, in absolute terms and relative to consumption in the United States, to be significant.⁶⁸ We are mindful of the fact that, on a yearly basis, changes in market share of the Chinese NFCAJ came largely at the expense of higher-valued, nonsubject imports, rather than the domestic like product. Nonetheless, in light of the significant price effects and impact of the subject imports discussed below, we find the volume of the subject imports to be significant.

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.⁶⁹

Producers and importers tend to quote prices on an f.o.b. basis. Prices for NFCAJ are generally initially established on a contract basis. However, while contracts may last for three to twelve months, only quantities are fixed, and prices are renegotiated every few months.⁷⁰

At issue during this investigation was the relationship between fresh apple and juice apple prices

⁶⁴ (...continued)

1997 and 1999, and by *** percent between 1996 and 1999. In terms of market share, the volume of subject imports increased by *** percentage points between 1997 and 1999, and by *** percentage points between 1996 and 1999. Id.

⁶⁵ CR and PR Table IV-3. Market share by value followed the same general pattern. Id.

⁶⁶ CR and PR Table IV-1. Nonsubject imports include both imports of NFCAJ from countries other than China and imports of NFCAJ manufactured/exported by Yantai North Andrei Juice Co., Ltd.

⁶⁷ Calculated from CR and PR Table IV-3. By value, the market share of nonsubject imports fell from *** percent in 1997 to *** percent in 1998, then increased to *** percent in 1999. Id.

⁶⁸ Commissioner Askey does not find the volume of the subject imports to be significant. Although subject import absolute volumes and market shares increased substantially over the period examined, domestic shipments also increased throughout the period and while domestic producer market share fluctuated somewhat it increased overall. Accordingly, the changes in market share of the Chinese NFCAJ came at the expense of higher-valued, nonsubject imports, rather than the domestic like product. Therefore, she does not find the subject import volumes to be significant in light of their lack of volume effects on the domestic industry.

⁶⁹ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁰ CR at V-4; PR at V-3.

and prices for NFCAJ. Petitioners testified that most apples grown in the United States are destined for the fresh market, although some growers produce solely for the processed market.⁷¹ Further, the total volume of apples dedicated to juice production actually declined in 1997 and 1998, despite a near record apple crop in 1998.⁷² Respondents argued that the historically large apple crops in 1997 and 1998 caused prices for juice apples to fall sharply and led to a decline in NFCAJ prices in the U.S. market.⁷³

Petitioners argued an inverse price relationship, in that they see juice apple prices being driven by concentrate prices.⁷⁴ Particularly for grower cooperatives, the price paid to apple growers reflects the price commanded by NFCAJ. Thus, the domestic industry argued that while prices for concentrate may be tied in part to the apple supply, the record in this case demonstrates that the volume of Chinese concentrate had a direct price effect on domestic concentrate. They noted that for the period prior to the 1997 crop, prices were already falling as Chinese volumes grew, so that the availability of the Chinese concentrate, not the size of that previous crop, was driving price.⁷⁵

The record evidence leads us to conclude that there is not a substantial linkage between the size of the U.S. apple crop and the price of NFCAJ. Even though 1997 and 1998 were characterized by large domestic apple crops, any linkage between total apple volume and NFCAJ prices is weakened by a number of factors. These include the substantial share of the U.S. apple crop that is destined for the fresh market, rather than the processed market, and the fact that the volume of apples dedicated to NFCAJ production declined in 1997 and 1998.⁷⁶ Moreover, domestic NFCAJ prices began to fall prior to the 1997 and 1998 crop years, as subject imports from China began entering in increasing volumes and at declining prices.⁷⁷

Purchasers consistently ranked the price of NFCAJ as the second most important factor in the purchasing of the concentrate, the most important being quality.⁷⁸ Nearly all U.S. producers and imports stated that the domestic and Chinese NFCAJ were interchangeable and of comparable quality.⁷⁹

Purchasers are increasingly willing to accept Chinese NFCAJ. The vast majority of purchasers of concentrate indicated that the U.S. and Chinese products are comparable in virtually all important factors, except price and transportation costs, where the Chinese concentrate price was reported to be lower.⁸⁰ More than half of the 23 purchasers who responded to the Commission's questionnaires indicated that they had increased their purchases of Chinese NFCAJ, and many of these further tied their increased purchases to the lower price of the subject imports.⁸¹

⁷¹ Hearing transcript at 59.

⁷² CR at II-2; PR at II-2.

⁷³ Respondents' Prehearing Brief at 12-30.

⁷⁴ Petitioners' Posthearing Brief at 7-9.

⁷⁵ Hearing transcript at 21-23 and 88-89.

⁷⁶ CR at II-1 - II-2; PR at II-2.

⁷⁷ CR and PR Table C-1; Memorandum INV.-X-073, (April 7, 2000), Table V-X.

⁷⁸ CR at II-8 - II-9 and V-8 - V-9; PR at II-6 - II-8 and V-5 - V-6.

⁷⁹ CR at II-9; PR at II-6 - II-7.

⁸⁰ CR and PR Table II-2.

⁸¹ CR at V-8 - V-10; PR at V-5 - V-6. Moreover, direct testimony and articles published in the trade press indicate that the low prices for Chinese NFCAJ rapidly led to price adjustments throughout the U.S. market, as informed purchasers used Chinese prices for leverage. See *Foodnews*, How Low Can Apple Fall?, Vol. 26, No. 13 (March 27, 1998), attached as exhibit D to Petitioners' Posthearing Brief; *Foodnews*, China Squeezes Apple Juice, Vol 26, No. 8 (February 6, 1998) attached as exhibit E to Petitioners' Posthearing Brief; *Foodnews*, Glut Weakens Apple Juice, Vol (continued...)

Prices for domestic NFCAJ trended sharply and steadily downward between early 1997 and late 1998, before increasing slightly in 1999.⁸² Thus, the price of a gallon of domestic NFCAJ, which began the first quarter of 1997 at ***, declined to *** by late 1998, and rose slightly in late 1999 to ***.⁸³ Prices for the subject merchandise declined steadily over the period examined. The price of a gallon of subject NFCAJ began the period well below that for domestic NFCAJ, at ***, reaching a low in 1998 of ***, and ending the period still *** at ***.⁸⁴ Overall, domestic prices fell by *** percent from January 1997 to December 1999, while already-low Chinese prices declined by *** percent.⁸⁵

Although margins of underselling decreased as domestic prices descended rapidly in response to subject import prices, subject imports undersold the domestic like product in 11 out of 12 quarters between 1997 and 1999.⁸⁶ The company most-identified as a price leader in the U.S. market was ***, an importer of subject Chinese NFCAJ, and overall at least 6 of 10 purchasers identifying price leaders identified Chinese suppliers. Persistent underselling of the subject merchandise from China, especially in light of a market share that reached *** percent in 1998, depressed U.S. prices for NFCAJ.

We find, therefore, that the observed domestic price declines reflect in large part the underselling and declines in subject import prices.⁸⁷ At the beginning of 1997, before the 1997 apple harvest, imports of subject merchandise from China were selling for just over *** the price of the domestic like product, and their prices continued to fall throughout 1997 and 1998.⁸⁸ In fact, this decline actually began in 1996, when the domestic NFCAJ began the year at \$*** per gallon and Chinese concentrate was \$*** per gallon.⁸⁹ Indeed, prices did not stabilize until 1999, in the months preceding the filing of the petition.⁹⁰

⁸¹ (...continued)

25, No. 48 (December 12, 1997), attached as exhibit E to Petitioners' Posthearing Brief; See also, hearing transcript at 29-35.

⁸² CR and PR Table C-1.

⁸³ CR and PR Table V-1.

⁸⁴ CR and PR Table V-1.

⁸⁵ CR and PR Table IV-3. The price of single-strength apple juice fell by only 13 percent over the same period. CR at II-5; PR at II-4.

⁸⁶ The record also reflects that the price of subject merchandise in 1998 and 1999 was *** than the price of NFCAJ exported to the U.S. by Yantai North Andre Juice Co. Ltd., the only Chinese company not found to be selling at less than fair value by Commerce. CR and PR Table V-1.

⁸⁷ We do not attribute declining U.S. prices to nonsubject imports. We note that average unit values per short ton of nonsubject NFCAJ also dropped between 1997 and 1998 but never reached the lower average unit value of subject imports. Indeed, between 1997 and 1999 average unit values for subject imports remained consistently far below average unit values for nonsubject imports. In 1997 the average unit value of nonsubject imports was a little below the domestic average unit value, but in 1998 and 1999 the nonsubject average unit values were above the domestic products.

Average unit value data may be of limited usefulness where the subject merchandise is made up of several grades or mixes. Here, however, we find this is not the case, and that average unit value data are good general indicators of fluctuations in NFCAJ pricing.

⁸⁸ We also note that between 1996 and 1997, the volume of subject imports increased by over *** percent, while domestic prices fell by more than *** percent, refuting respondents' contention that price declines were due to 1997 and 1998 apple oversupply.

⁸⁹ Memorandum INV-X-073 (April 7, 2000).

⁹⁰ Domestic and subject import prices firmed in 1999 following indications of the impending dumping case and the actual filing of the petition. CR Table C-1; see also, Testimony of Respondents' Counsel, hearing transcript at 199-201 (stating that Respondents raised their prices in anticipation of an antidumping investigation).

Thus, we view the slight increase in prices after the filing of the petition from their very low current levels to be consistent with our general observations concerning price depression by reason of the subject imports.⁹¹ These prices, together with falling volumes of nonsubject imports, indicate that nonsubject imports did not play a significant role in the price decline experienced by the domestic industry.

Based on the consistent underselling by subject imports and declining domestic prices, and in light of the relatively high degree of substitutability between the subject imports and the domestic like product, we find 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.⁹²

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.”⁹³ ⁹⁴ For the reasons discussed below, we conclude that the declining prices of the subject imports and consistent underselling have adversely affected the domestic industry producing NFCAJ.

In 1997, U.S. apparent consumption of NFCAJ increased by more than nine percent over 1996.⁹⁵ In 1998 consumption dipped slightly but then increased significantly in 1999. Consistent with growing demand, volume-based indicia generally were higher in 1999 than in prior years. Domestic producers increased their production, capacity utilization, and employment over the period examined.⁹⁶ In addition, the quantity of domestic producers’ U.S. shipments increased from 58,660 short tons in 1997 to 83,765 short tons in 1999.⁹⁷

⁹¹ See 19 U.S.C. § 1677(7)(I). We note that the increase in price in 1999 occurred primarily in the second half of the year, after imports of the subject merchandise declined markedly.

⁹² The Commission is concerned by the lack of evidence regarding lost sales and alleged lost revenue as it complicates evaluation of the causal nexus between subject imports and injury to the domestic industry. However, in this investigation, we do not find this absence to outweigh the other evidence on the record concerning significant price effects.

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

⁹⁴ 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). Commerce’s final antidumping duty margins ranged from a low of 9.40 percent to a high of 28.54 percent. Commerce determined the China-wide rate to be 51.74 percent. 65 Fed. Reg. 19876 (April 13, 2000).

⁹⁵ Apparent consumption rose from 290,556 short tons in 1996 to 317,573 short tons in 1997 then dropped in 1998 to 302,572 short tons. Apparent consumption was 340,844 short tons in 1999. CR and PR Table IV-3.

⁹⁶ Domestic production of NFCAJ rose from 56,116 short tons in 1996 to 67,895 short tons in 1997, then fell to 60,783 short tons in 1998. Domestic production rose again in 1999 to 79,657 short tons. The domestic industry’s capacity utilization rose from 52.9 percent in 1996 to 55.6 percent in 1997, fell to 49.2 percent in 1998, and rose to 66.6 percent in 1999. CR and PR Table III-1. The average number of production and related workers employed by the domestic industry rose from 241 in 1996 to 263 in 1997, 272 in 1998, and 317 in 1999. Domestic employment related trends were generally favorable throughout the period examined. CR and PR Table III-4.

⁹⁷ By value, domestic producers’ U.S. shipments fell from \$81.9 million in 1997 to \$57.1 million 1998. In 1999 they
(continued...)

The domestic industry's share of the U.S. market was 20.5 percent in 1996, 18.5 percent in 1997, 21.8 percent in 1998, and 24.6 percent in 1999. As discussed earlier, subject imports increased in 1997, 1998, and in the months preceding the filing of the petition in 1999. As subject import volume continued to increase, domestic prices continued to fall as a result of repeated underselling.⁹⁸

The average unit value of U.S. shipments collapsed between 1997 and 1998, declining by 38.2 percent, and continued to decrease between 1998 and 1999 by 3.6 percent. As a result, the value of U.S. shipments decreased by 30.3 percent, from \$81.9 million to \$57.1 million, between 1997 and 1998, before partially recovering in 1999 to \$69.7 million.

The clearest indication of the effects of significant underselling by subject imports for this industry is reflected in the financial experience of the domestic industry, which was generally unfavorable throughout the period examined. Because the financial results of cooperatives and non-cooperatives cannot be combined, we discuss them separately.

Although their net sales by quantity increased between 1997 and 1999, 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 were lower in 1998 than in 1997. Noncooperative producers' operating income margin fell from *** percent in 1997 to *** percent in 1998, and remained at *** percent in 1999 despite declining cost of goods sold.⁹⁹

Also driven by declining domestic prices for NFCAJ, cooperative producers' financial results followed a similar trend, with net proceeds dropping from \$*** million in 1997, to \$*** million in 1998, and again to \$*** million in 1999.¹⁰⁰ Sales by quantity rose over the entire period, while net sales value fell in 1997 and 1998. In turn, the ratio of net proceeds paid to grower members to net sales fell from *** percent in 1997 to *** percent in 1998, then reached a low of *** percent in 1999.¹⁰¹ Net proceeds fell from *** per short ton in 1997 to *** per short ton in 1999.¹⁰²

While the increase in U.S. apple production that occurred over the period examined should have benefitted the U.S. industry in certain respects, any benefits were far outpaced by the above-noted price declines. For cooperatives (which process members' apples), increased production led to operating efficiencies that trimmed unit costs and expenses by *** percent. For non-cooperatives (which purchase apples as a raw material), unit COGS fell by *** percent. However, cooperatives' net proceeds fell by *** percent and non-cooperatives saw their operating losses balloon to over \$*** in 1998 and over \$*** in 1999, representing net operating losses equivalent to *** percent and *** percent of net sales, respectively.

Accordingly, we find that the subject imports are having an adverse impact on the domestic industry.

III. CRITICAL CIRCUMSTANCES

In its final antidumping determination, Commerce made affirmative findings of critical

⁹⁷ (...continued)
rose to \$69.7 million. CR and PR Table IV-3.

⁹⁸ In 1998, domestic producers also cut production and lowered capacity utilization below *** percent. CR and PR Table III-1.

⁹⁹ CR and PR Table VI-3.

¹⁰⁰ CR and PR Table VI-6.

¹⁰¹ CR and PR Tables C-1 - C-3. 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.

¹⁰² CR and PR Table VI-7.

circumstances with respect to imports from Sanmenxia Lakeside Fruit Juice Co., Ltd. (“Lakeside”), Qingdao Nannan Foods Co., Ltd. (“Qingdao”), and the “all others” category.¹⁰³ Therefore, because we have determined that the domestic NFCAJ industry is materially injured by reason of subject imports from China, we must further determine “whether the imports subject to the affirmative [critical circumstances] determinations . . . are likely to undermine seriously the remedial effect of the [antidumping or countervailing duty order] to be issued.”¹⁰⁴ The URAA Statement of Administrative Action indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”¹⁰⁵

We have reviewed export data for Sanmenxia Lakeside, Ltd. (“Lakeside”) and Qingdao Nannan, Ltd. (“Qingdao”) show that for the six months preceding and the six months following the filing of the petition commencing the investigation (June 7, 1999). Lakeside exported *** short tons and *** short tons of subject merchandise to the United States market in January and February of 1999 respectively.¹⁰⁶ However, between March and December Lakeside *** of NFCAJ. Similarly, Qingdao exported *** short tons, *** short tons and *** short tons in January, February, and March of 1999 respectively, but *** from March to November.¹⁰⁷ The “all others” category also shows a pattern of decline prior and immediately following to the filing of the petition. In 1999, Lakeside’s imports represented less than *** percent of subject imports, and Qingdao’s imports represented *** percent of subject imports in 1999.

Because imports assigned critical circumstances by Commerce all declined sharply prior to and immediately after the filing of the antidumping petition, we determine that the imports subject to Commerce’s affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued on NFCAJ from China.

CONCLUSION

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

¹⁰³ 65 Fed. Reg. 19876 (April 13, 2000).

¹⁰⁴ 19 U.S.C. § 1671d(b)(4)(i) and § 1673d(b)(4)(A)(i). The statute further provides that in making this determination:

the Commission shall consider, among other factors it considers relevant--

- (I) the timing and volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1671d(b)(4)(ii) and § 1673d(b)(4)(ii).

¹⁰⁵ SAA at 877.

¹⁰⁶ CR and PR Table IV-2.

¹⁰⁷ CR and PR Table IV-2. Qingdao had a *** shipment of *** short tons in December 1999.