

UNITED STATES INTERNATIONAL TRADE COMMISSION

HONEY FROM ARGENTINA AND CHINA

Investigations Nos. 701-TA-402 and 731-TA-892-893 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3369, November 2000)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina and China of honey, provided for in subheadings 0409.00.00, 1702.90.90, and 2106.90.99 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). The Commission also determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina of honey that are alleged to be subsidized by the Government of Argentina.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. 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 affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 investigations.

BACKGROUND

On September 29, 2000, a petition was filed with the Commission and Commerce by the American Honey Producers Association (AHPA), Bruce, South Dakota, and the Sioux Honey Association (SHA), Sioux City, Iowa, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of honey from Argentina and China and by reason of subsidized imports of honey from Argentina. Accordingly, effective September 29, 2000, the Commission instituted countervailing duty investigation No. 701-TA-402 (Preliminary) and antidumping duty investigations No. 731-TA-892-893 (Preliminary).

Notice of the institution of the Commission's investigations 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*

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

of October 6, 2000 (65 F.R. 59871, October 6, 2000). The conference was held in Washington, DC, on October 20, 2000, 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 these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of honey from Argentina that are allegedly subsidized and by reason of imports from Argentina and China that are allegedly sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty 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 whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² 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.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining 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.”⁴ 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.”⁵ 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”⁶

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.⁷ No single factor is dispositive, and the Commission

² 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 353, 354 (1996).

³ 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).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 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)

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Domestic Like Product

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

natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or bulk form.¹¹

Honey is a sweet, viscous fluid derived from the nectar of flowers and produced in the honey sac of bees. It is used principally as a sweetener and appears in a variety of foodstuffs.¹²

There are over 300 unique varieties of honey produced in the United States, which differ in flavor and color depending upon the floral source from which the nectar is extracted by the honeybee. Honey may be marketed in a variety of forms (including liquid, whipped, cut comb, and dry). Honey within Commerce’s scope definition may also be mixed with sweeteners such as sucrose, glucose, or invert sugar (as long as the natural honey content constitutes more than 50 percent of the mixture by weight), or may be flavored.¹³

Notwithstanding its numerous varieties and forms, all honey shares several pertinent characteristics. All honey is produced in a similar manner (by extraction from bees), has comparable

⁷ (...continued)

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).

⁸ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁹ 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.”).

¹⁰ 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).

¹¹ 65 Fed. Reg. 65831 (Nov. 2, 2000) (antidumping duty investigations); 65 Fed. Reg. 65835, 65835-36 (Nov. 2, 2000) (countervailing duty investigation).

¹² Confidential Report (“CR”) at I-7-8, Public Report (“PR”) at I-5-6.

¹³ CR at I-7-11, PR at I-5-8.

physical characteristics due to its distinctive taste and viscosity, and is sold to retail, food service, and industrial users as a sweetener.¹⁴

Honey's taste characteristics, physical qualities, and unique production processes distinguish it from other sweeteners.¹⁵ Other sweeteners such as refined sugar and high fructose corn syrup ("HFCS") sell for considerably lower prices than does honey.¹⁶

Based on the foregoing, there appears to be a distinct dividing line between honey and other sweeteners, but there does not appear to be one between the various varieties and forms of honey. We consequently define the domestic like product to be all honey, consistent with the description in Commerce's scope definition.¹⁷

C. 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

There are two domestic industry issues in these investigations. The first concerns whether honey packers should be included in the domestic industry. The second concerns whether certain domestic honey producers that also import or purchase subject merchandise should be excluded from the domestic industry pursuant to the related parties provision.

1. Inclusion of Packers in the Domestic Industry

In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production.²⁰

¹⁴ See CR at I-8-17, PR at I-5-12; Tr. at 22 (Powell).

¹⁵ See Tr. at 22 (Powell), 66-67 (Probst), 71 (Adee). Several domestic industry witnesses testified that other sweeteners have only limited interchangeability with honey and that customers perceive honey to be a distinct product. See Tr. at 22 (Powell), 66-67 (Probst), 67 (Powell). The perception of honey as a distinct product appears to be shared by beekeepers generally: 65 out of 73 beekeepers indicated in their questionnaire responses that there were no substitutes for honey. By contrast, a majority of packers and importers did indicate that there are substitutes for honey, naming a wide variety of sweeteners. CR at II-4, PR at II-3. Approximately 46 percent of the consumers in a recent survey conducted for the National Honey Board claimed that there was no substitute for honey. CR at I-21, PR at I-15.

¹⁶ CR at I-26, PR at I-19.

¹⁷ The parties have not disputed this definition, which is essentially the same as that found by the Commission in its 1994 preliminary determination concerning honey from China. Honey from the People's Republic of China, Inv. No. 731-TA-722 (Preliminary), USITC Pub. 2832 at I-8-9 (Nov. 1994).

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

²⁰ The Commission generally considers six factors:

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;

(continued...)

Petitioners argue that packers do not engage in sufficient production-related activities to be considered as domestic producers. Respondents argue that packers do engage in sufficient activities.

The packing process in the United States encompasses processing honey received from beekeepers in 55-gallon drums. The packers then blend the honey, in some instances, and heat the product, in most instances. They subsequently filter the honey, place it in settling tanks, and pour it into containers for retail sale or industrial use.²¹ The president of petitioner Sioux Honey Association (“Sioux”), the largest packer in the United States, characterized the processing that packers undertake as “minimal” and stated that some small beekeepers are able to perform packaging operations out of their kitchen or garage.²²

Questionnaire data provided by five commercial packers accounting for *** percent of all U.S. packing in 1999 indicate that in fiscal year 1999-2000 these firms incurred capital expenditures of \$2.1 million and had fixed assets with original cost of \$12.4 million.²³ In fiscal year 1999-2000, Sioux, a non-profit cooperative accounting for *** percent of U.S. packing in 1999, incurred capital expenses of *** and had fixed assets with original costs of ***.²⁴ The questionnaire data indicate that, from 1997 to 1999, between 21.0 and 25.6 percent of the value of packed honey was attributable to the packing process.²⁵

In 1999, reporting independent packers (including Sioux) employed 201 production and related workers. Reporting beekeeper/packers employed 14 workers.²⁶

During the period of investigation, the proportion of imported honey used as an input by U.S. commercial packers ranged from 53.4 percent in 1998-99 to 59.3 percent in 1999-2000.²⁷ ²⁸ Five packers that responded to the Commission questionnaires indicated that they produced a small amount of other

²⁰ (...continued)

- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. See Citric Acid and Sodium Citrate from China, Inv. No. 731-TA-863 (Preliminary), USITC Pub. 3277 at 8 (Feb. 2000); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387-391, 731-TA-816-821 (Final), USITC Pub. 3273 at 9 (Jan. 2000). See also Large Newspaper Printing Presses from Germany and Japan, Inv. Nos. 731-TA-736-737 (Final) USITC Pub. 2988 at 8-9 (Aug. 1996).

²¹ CR at I-16-18, PR at I-12-13.

²² Tr. at 53 (Probst). Respondents’ packer witness did not offer contrary testimony.

²³ Table VI-6, CR at VI-10, PR at VI-8; CR at VI-6, PR at VI-5.

²⁴ Table VI-6, CR at VI-10, PR at VI-8; CR at III-3, PR at III-2.

²⁵ CR at VI-6, PR at VI-5.

²⁶ Table III-10, CR at III-12, PR at III-9. This opinion uses the term “beekeeper/packer” to refer the entities described in the Commission report as “producer/packers.” See CR at III-3, PR at III-2.

²⁷ See Table VI-4, CR at VI-7, PR at VI-6.

²⁸ Commissioner Bragg notes that a relatively small number of domestic producers, some of which, as discussed below, have been excluded from the domestic industry as related parties, account for a large share of subject imports. Table III-6, CR at III-10, PR at III-7; Table IV-2, CR at IV-3, PR at IV-2.

products – ranging from canola oil to barbecue sauce – using the same equipment and employees as for honey packing.^{29 30}

The record indicates that honey packers’ capital expenditures and employment levels are significant. The honey packing process, although not sophisticated, adds moderate value to the product. Moreover, honey packing facilities are devoted principally to packing honey. Based on these considerations, we conclude for purposes of our preliminary determinations that packers engage in sufficient production-related activities to be included as domestic producers. We intend to revisit this matter in any final phase investigations.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. 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.³¹ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.³²

We first consider whether any of the domestic producers meet the definition of a related party. W. Stoller’s Honey (“Stoller”), a beekeeper/packer of honey, and ***, a U.S. packer of honey, import

²⁹ CR at I-19, PR at I-13.

³⁰ Commissioner Askey does not join the discussion in the following paragraph. Based on the record in these preliminary investigations, she does not include packers within the domestic industry. Although packers process honey into the forms subject to these investigations, appear to add a reasonable level of value to the final product, and have more than a minimal level of assets and workers in the United States, she notes that the record also shows that less than half of the honey packed by U.S. packers is produced by domestic sources. Moreover, the record suggests (although it is not conclusive on the issue) that packers are the primary purchasers of subject imports in the United States market. Given that this suggests that most of the competition between the subject imports and the domestic like product in this market is occurring at the packer level of trade, Commissioner Askey believes that packers have significantly different interests in this proceeding than beekeepers and that they should not be included within the same industry as the beekeeping industry. She will, of course, reexamine this issue in any final phase investigations. She joins in the majority’s material injury analysis to the extent that it discusses the impact of the subject imports on the operations of the domestic beekeeping industry.

³¹ 19 U.S.C. § 1677(4)(B).

³² 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 (Feb. 1997) at 14, n.81.

honey from Argentina.³³ ***, a U.S. packer of honey, imports subject merchandise from both Argentina and China.³⁴ Consequently, these firms are related parties.³⁵

We also consider whether four firms are subject to exclusion as related parties by virtue of their purchases of subject imports from Argentina and/or China. 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 a domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial.³⁶ The record does not indicate that any of the four firms that purchased subject merchandise controls large volumes of subject imports.³⁷

We next consider whether appropriate circumstances exist to exclude any of the related party producers from the domestic industry.

***. In 1999, *** packed *** pounds of honey. Of this amount, *** pounds were direct imports from subject sources and *** pounds were purchased from subject sources.³⁸ Consequently, *** percent

³³ CR at III-2-3, PR at III-2; Table III-6, CR at III-10, PR at III-7. *See also* Tr. at 94 (Stoller).

³⁴ Table III-6, CR at III-10, PR at III-7.

³⁵ Because Commissioner Askey has found that packers are not members of the domestic industry, she does not need to reach the issue of whether those firms that are only packers are related parties. Stoller is, however, a producer/packer. Accordingly, she finds that Stoller is part of the domestic industry and a related party. She joins the Commission's discussion and findings with respect to whether Stoller should be included in the industry.

³⁶ 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).

³⁷ One firm, ***, made its purchases from China and Argentina from several different importers. *** purchases did not account for more than *** percent of any single importer's total 1999 purchases from China, and did not account for more than *** of any single importer's total 1999 purchases from Argentina. Compare Table III-6, CR at III-10, PR at III-7 with Table IV-1, CR at IV-2, PR at IV-1. These data indicate that *** does not control any single importer.

The record does not contain information as to the importers from which the remaining three firms – petitioner Sioux, ***, and *** – made their purchases. Because *** total import purchases were not substantial, compare Table III-6, CR at III-10, PR at III-7 with Table IV-2, CR at IV-3, PR at IV-2, we determine that it should not be treated as a related party.

The available data are insufficient to support a conclusion that either *** or Sioux controlled large volumes of subject imports. Nevertheless, even if we had found either of these firms to be a related party, we would conclude that appropriate circumstances do not exist to exclude it from the domestic industry. *** did not submit a complete response to the Commission questionnaire and hence its data are not included in the Commission report. Table III-6, CR at III-10, PR at III-7. Thus, there are no data pertaining to *** for us to exclude. Sioux's 1999 purchases of subject imports from Argentina amounted to *** percent of the *** pounds of honey Sioux packed that year. Table III-6, CR at III-10, PR at III-7. Because *** of Sioux's total output is purchased from subject sources, we conclude that it does not acquire subject merchandise to benefit from the effect of allegedly unfairly traded imports. Consequently, were we to reach the issue we would conclude that appropriate circumstances do not exist to exclude Sioux from the domestic industry.

Commissioner Askey concurs with the analysis in this footnote pertaining to ***. Because she has concluded that packers are not domestic producers, she does not need to reach the issue of whether ***, ***, and Sioux are related parties.

³⁸ Table III-6, CR at III-10, PR at III-7.

of the honey *** packed in 1999 was sourced from Argentina or China. *** stated that it imported honey from subject sources ***.³⁹

Because *** sources such a large percentage of its unpacked honey from subject sources, and does so at least in part for price reasons, the firm benefits from the effects of allegedly unfairly traded imports. We consequently find that appropriate circumstances exist to exclude *** from the domestic industry.

***. In 1999, *** packed *** pounds of honey. Of this amount, *** pounds were direct imports from subject sources and *** pounds were purchased from subject sources.⁴⁰ Consequently, *** percent of the honey *** packed in 1999 was sourced from Argentina or China. *** stated that the reason for its imports from subject sources was ***.⁴¹

As with ***, we believe that *** benefits from the effects of allegedly unfairly traded imports by sourcing the majority of the honey it packs from Argentina or China. We consequently conclude that appropriate circumstances exist to exclude *** from the domestic industry as a related party.

Stoller. In 1999, Stoller packed *** pounds of honey; it also produced *** pounds of honey. Of the amount packed, *** pounds were direct imports from Argentina and *** pounds were purchased from subject sources.⁴² Consequently, *** percent of the honey Stoller packed in 1999 was sourced from Argentina or China. Stoller stated that the reasons for its imports from subject sources were “to lock in . . . price commitment on supply,” and because ***.⁴³

Because Stoller sources *** of the honey it packs from subject sources and appears to acquire this honey ***, we believe that Stoller benefits from the effects of allegedly unfairly traded imports. We consequently conclude that appropriate circumstances exist to exclude Stoller from the domestic industry as a related party.

Based on our like product definition, we find a single domestic industry consisting of the U.S. producers of honey. We find that packers as well as beekeepers should be treated as U.S. producers.⁴⁴ However, we have excluded packers *** and *** and beekeeper/packer Stoller from the domestic industry pursuant to the related parties provision.

III. CUMULATION⁴⁵

A. In General

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same

³⁹ CR at III-7, PR at III-5.

⁴⁰ Table III-6, CR at III-10, PR at III-5.

⁴¹ CR at III-9, PR at III-5.

⁴² Table III-6, CR at III-10, PR at III-7.

⁴³ Tr. at 125 (Stoller); CR at III-9, PR at III-5.

⁴⁴ Commissioner Askey does not define the domestic industry to include packers.

⁴⁵ The record indicates that import quantities for each subject country exceeded the 3 percent statutory negligibility threshold during the pertinent period. Table IV-2, CR at IV-3, PR at IV-2. Accordingly, we find that the subject imports are not negligible.

day, if such imports compete with each other and with domestic like products in the U.S. market.⁴⁶ In assessing whether subject imports compete with each other and with the domestic like product,⁴⁷ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁴⁸

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁴⁹ Only a “reasonable overlap” of competition is required.⁵⁰

B. Analysis

We cumulate the volume and effect of subject imports from Argentina and China for purposes of our analysis of reasonable indication of present material injury. A single petition was filed concerning both countries. Based on the record in these preliminary investigations, we find that there is a reasonable overlap of competition among imports from each of the subject countries and between subject imports and the domestic like product.

First, we find that there is a reasonable degree of fungibility between the subject imports and the domestic like product. Market participants generally found subject imports from Argentina and China to

⁴⁶ 19 U.S.C. § 1677(7)(G)(i).

⁴⁷ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 316, 103d Cong., 2d Sess. at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁴⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁴⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁵⁰ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

be at least somewhat interchangeable with each other and with the domestic like product.⁵¹ We observe that one respondent has stated that “honey is a commodity product produced in many countries around the world.”⁵²

However, the record does indicate that subject imports from Argentina and China differ in color profile. During the period for which data were collected, the majority of subject imports from Argentina have been white honey.⁵³ By contrast, in 1998, 1999, and interim 2000, the majority of subject imports from China have been light amber.⁵⁴ Nevertheless, some honey of all colors is imported from both of the subject countries and more than minimal percentages of the imports from both subject countries are light amber in color.⁵⁵

Furthermore, it is unclear to what extent the differences in color indicate actual distinctions in end use or lack of competition.⁵⁶ Although the parties agree that lighter honey such as white is typically sold for home use while darker honey such as light amber is typically sold for industrial uses (*i.e.*, as an ingredient in manufactured food products), there was also testimony that the lighter honey is used in industrial applications.⁵⁷

Second, the parties do not dispute that domestically-produced honey, honey from Argentina, and honey from China are all sold nationwide. Third, the record indicates that domestically-produced honey, subject imports from Argentina, and subject imports from China have been present in the U.S. market throughout the period of investigation.⁵⁸

Finally, the record indicates that there is an overlap in the channels of distribution in which the subject imports from Argentina and China and domestically-produced honey are sold. As discussed above in connection with the related parties analysis, several packers acquire both domestically-produced

⁵¹ U.S. beekeepers overwhelmingly stated that the subject imports are always interchangeable with each other and with the domestic like product. CR at II-7-10, PR at II-6-7. Three of five responding packers responded that imports from Argentina and China are at least “frequently” interchangeable with each other and all responding importers responded that imports from Argentina and China are at least “sometimes” interchangeable with each other. CR at II-10, PR at II-7. Four out of five responding packers stated that domestically-produced honey and imports from Argentina were at least “frequently” interchangeable with each other and all responding importers reported that domestically-produced honey and imports from Argentina were at least “sometimes” interchangeable with each other. CR at II-8, PR at II-6. Four of five responding packers and five of seven responding importers reported that subject imports from China and domestically-produced honey were at least “sometimes” interchangeable with each other. CR at II-9, PR at II-6. A respondent witness testified at the conference that Chinese light amber honey can substitute for U.S. product, particularly in times of shortage. Tr. at 134 (Sargeantson).

⁵² NHPDA Postconference Brief at 20.

⁵³ White honey constituted 68.1 percent of total subject imports from Argentina in 1999. Table IV-3, CR at IV-4, PR at IV-3.

⁵⁴ Light amber honey constituted 92.3 percent of all subject imports from China in 1999. Table IV-3, CR at IV-4, PR at IV-3.

⁵⁵ In particular, in 1999, light amber imports from Argentina amounted to 12.3 million pounds, or 13.5 percent of total subject imports from that country. Table IV-3, CR at IV-4, PR at IV-3. The parties do not dispute that there is a significant amount of domestically-produced honey sold in all pertinent colors.

⁵⁶ We intend to explore this issue further in any final phase investigations. Specifically, we will examine the relationship between honey color profiles and end-use market segments (bulk, retail, and food service) as well as subject imports’ role in these markets based on their color profile.

⁵⁷ See Tr. at 22-23 (Powell), 98-99 (Stoller).

⁵⁸ See Table V-3, CR at V-7, PR at V-7.

honey and honey imported from one or both of the subject countries.⁵⁹ Both petitioner and respondent witnesses testified at the conference that packers regularly blend domestically-produced honey and honey from one or both of the subject countries for further distribution.⁶⁰ Although the record does not contain data identifying the proportion of imports from each subject country distributed in the retail, industrial, and food service channels of distribution, it is undisputed that domestically-produced honey, subject imports from Argentina, and at least some subject imports from China are sold at retail.⁶¹ A letter from the American Bakers Association introduced by respondents indicates that subject imports from both Argentina and China, as well as domestically-produced product, are used by the baking industry in the industrial sector.⁶²

Based on the information gathered in the preliminary phase of these investigations, we find that, on balance, there is a reasonable overlap of competition between the subject imports from Argentina and China, and between the subject imports and the domestic like product.⁶³ Consequently, we cumulate the volume and effect of subject imports from Argentina and China for purposes of these preliminary determinations.

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

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.⁶⁴ In making this determination, the Commission must consider the volume of subject 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.⁶⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶⁶ 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

⁵⁹ See Table III-6, CR at III-10, PR at III-7.

⁶⁰ Tr. at 22-23 (Powell), 134 (Sargeantson).

⁶¹ Tr. at 22-23 (Powell), 126 (Stoller); Petitioners’ Postconference Brief, ex. 14.

⁶² NHPDA Postconference Brief, ex. 4.

⁶³ The fact that subject imports from China were subject to a suspension agreement during the Commission’s period of investigation – a matter discussed in more detail in section IV.A. below – does not detract from this conclusion. Chinese Respondents argue that since the suspension agreement imposed price and quantity restrictions on subject imports from China that were not imposed on subject imports from Argentina, the subject imports from China were not able to compete directly with subject imports from Argentina in the U.S. market. Chinese Respondents’ Postconference Brief at 6. The suspension agreement, however, did not entirely preclude subject imports from China from entering the U.S. market in competition with domestically-produced honey and honey from other imported sources. As explained above, the criteria that the Commission traditionally examines in that regard indicate that there is a reasonable overlap of competition between the subject imports from China, on the one hand, and subject imports from Argentina and domestically-produced honey, on the other.

⁶⁴ 19 U.S.C. § 1671b(a) and 1673b(a).

⁶⁵ 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).

⁶⁶ 19 U.S.C. § 1677(7)(A).

bear on the state of the industry in the United States.⁶⁷ 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.”⁶⁸

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from Argentina and China.

A. Conditions of Competition

We find several conditions of competition pertinent to the U.S. market for honey.

First, demand for honey in the United States grew between 1997 and 1999. Apparent U.S. consumption of honey increased from 331.3 million pounds in 1997 to 332.1 million pounds in 1998 and then to 378.1 million pounds in 1999.⁶⁹ At the conference, an industry witness described the increase in consumption to be principally a function of population growth.⁷⁰ U.S. consumption of honey on a per capita basis was 1.0 pound in 1997 and 1998 and 1.1 pounds in 1999.⁷¹

Second, current domestic demand for honey outstrips U.S. beekeepers’ ability to produce the product. Honey production by U.S. beekeepers increased from 196.5 million pounds in 1997 to 220.3 million pounds in 1998, and then declined to 205.2 million pounds in 1999.⁷² (Beekeepers’ production is equivalent to their capacity because beekeepers attempt to extract the maximum possible quantity of honey from their hives and must ship or inventory all honey that they extract.)⁷³

Third, as previously stated, both beekeepers and packers market domestically-produced honey. There are over 100,000 beekeepers in the United States, although commercial beekeepers, which account for about 60 percent of the honey extracted in the United States, account for only about 1 percent of the total beekeeper population.⁷⁴ Nevertheless, there is a very large number of beekeepers with significant production; the largest 500 beekeepers enter more than *** pounds of honey on the market annually.⁷⁵ By contrast, packers are more concentrated. During 1999, there were about 350 beekeeper/packers and 110 independent packers in the United States, with the largest ten packers accounting for about *** of all domestically-produced honey.⁷⁶

Fourth, there are three principal market segments for honey in the United States. The first, the bulk segment, accounted for 47 percent of U.S. packers’ sales in 1999. The second, the retail segment, accounted for 39 percent of U.S. packers’ sales in 1999. The third, the food service segment, accounted for 14 percent of U.S. packers’ sales in 1999.⁷⁷

Fifth, the U.S. Department of Agriculture has issued voluntary U.S. grade standards for extracted honey. Four grade standards exist, from Grade A (or “U.S. Fancy”) to Substandard. Grades are based on a minimum soluble solids requirement and on three quality factors: absence of defects, flavor and aroma,

⁶⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁸ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁹ Table IV-5, CR at IV-6, PR at IV-5.

⁷⁰ Tr. at 77-78 (Adee).

⁷¹ Table I-3, CR at I-20, PR at I-14.

⁷² Table III-1, CR at III-5, PR at III-3.

⁷³ See Tr. at 81 (Adee), 81-82 (Cannon).

⁷⁴ CR at III-1, PR at III-1.

⁷⁵ CR at III-2, PR at III-2.

⁷⁶ CR at III-3, PR at III-2.

⁷⁷ CR at I-23, PR at I-17; Figure I-5, CR at I-24, PR at I-17.

and clarity.⁷⁸

Sixth, there are a variety of sweeteners in addition to honey available in the U.S. market, such as sugar, glucose, and HFCS. As stated above in the discussion on the domestic like product, these sweeteners tend to cost significantly less than honey. Beekeepers, on the one hand, and packers and importers, on the other, do not agree on the extent to which these other sweeteners serve as substitutes for honey.

Seventh, subject imports from China were subject to a suspension agreement from August 2, 1995, until August 1, 2000. Commerce entered into the agreement with the Government of China pursuant to section 734(l) of the Act, which permits Commerce to suspend antidumping investigations pertaining to nonmarket economy countries pursuant to agreements that, *inter alia*, “will prevent the suppression and undercutting of price levels of domestic products by imports of the merchandise under investigation.”⁷⁹ The suspension agreement placed annual quotas on the permissible amount of honey imports from China. It also provided that these imports had to be sold at a reference price, which was 92 percent of the average of the honey unit import values for all other countries during a specified six-month period.⁸⁰ The parties dispute the significance of the suspension agreement. Respondents contend that the provisions of section 734(l) of the Act, considered in the context of the statutory requirement that Commerce find the agreement to be in the public interest, lead to the conclusion that the imports entered pursuant to the suspension agreement cannot have been injurious. Petitioners disagree. We conclude that the suspension agreement does not preclude us from making either a finding of adverse price effects or an affirmative determination of a reasonable indication of material injury by reason of subject imports.⁸¹ Nevertheless, we do perceive the suspension agreement to be a pertinent condition of competition during the time it was in effect.

Eighth, Pub. L. 106-387, the 2000 Agriculture Appropriations legislation signed by the President on October 28, 2000, established a nonrecourse marketing assistance loan program for U.S.-produced honey for the 2000 crop year.⁸² Although framed as a “loan” program, the legislation contains a provision allowing U.S. beekeepers to receive payments equal to the difference between the price they

⁷⁸ CR at I-27-28, PR at I-19-20.

⁷⁹ 19 U.S.C. § 1673c(l)(1)(B).

⁸⁰ 60 Fed. Reg. 42521, 42523-24 (Aug. 16, 1995). Beginning on July 1, 1998, the reference price was set three months prior to trading. CR at I-4 n.15, PR at I-3 n.15.

⁸¹ The Commission has previously rejected arguments that the existence of restraint agreements, voluntary quotas, or section 734(l) suspension agreements mandate a conclusion that subject imports are not causing injury. *See, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-12 n.70 (June 1994) (cross-licensing agreement that restricted import volumes); *Certain Carbon Flat-Rolled Steel Products*, Inv. Nos. 701-TA-319 *et seq.*, 731-TA-573 *et seq.* (Final), USITC Pub. 2664, vol. I at 19 (Aug. 1993) (voluntary restraint agreements); *Shop Towels from Bangladesh*, Inv. No. 731-TA-514 (Final), USITC Pub. 2487 at 20 (Mar. 1992) (quota pursuant to Multifiber Arrangement). Most recently, in *Uranium from Kazakhstan*, Inv. No. 731-TA-539A (Final), USITC Pub. 3213 at 12-13 (July 1999), the Commission expressly rejected the proposition that a suspension agreement entered pursuant to section 734(l) of the Act provided any basis for a finding that subject imports were or were not injurious. It is true that the honey suspension agreement with China, in contrast to the Kazakh agreement at issue in *Uranium*, provided a pricing floor for the imports. This does not, in our view, warrant a different analysis of the agreement, particularly since the price established by the suspension agreement was determined by reference to prices of other imports – and the suspension agreement could not, and did not, provide that honey imports from other countries (such as Argentina) were fairly traded or non-injurious.

⁸² The crop year lasts from approximately July through October in the Midwest, and is earlier in the South and California. Tr. at 83 (Probst).

receive (or have received for completed transactions, inasmuch as the legislation is retroactive) for their honey and the legislation “loan rate” price of 65 cents per pound.⁸³

Finally, nonsubject imports had a relatively stable presence in the U.S. market during the period of investigation, with market penetration considerably lower than that of either domestic production or cumulated subject imports.⁸⁴ The quantity of nonsubject imports increased from 1997 to 1999.⁸⁵

B. Volume of 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.”⁸⁶

Subject import volume increased over the period for which data were collected, notwithstanding a decline from 1997 to 1998. Measured by quantity, cumulated subject imports declined from 132.4 million pounds in 1997 to 100.0 million pounds in 1998, and then increased to 142.6 million pounds in 1999. Cumulated subject import quantity in interim (January-June) 2000 of 74.3 million pounds was higher than the 66.4 million pounds imported in interim 1999.⁸⁷

Importantly, while the market penetration of the subject imports declined from 40.0 percent in 1997 to 30.1 percent in 1998, subject imports’ market share subsequently increased to 37.7 percent in 1999. The share of domestic consumption accounted for by U.S.-produced honey increased from 49.5 percent in 1997 to 60.1 percent in 1998, but then declined to 51.7 percent in 1999.⁸⁸

In any final phase investigations, we will examine further the reasons for the annual fluctuations in subject import quantity and market share. Particularly in view of the 1999 data, for purposes of these preliminary determinations we find the volume of subject imports, both in absolute terms and relative to consumption in the United States, to be significant.

C. Price Effects of the Subject Imports

Section 771(7)(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

⁸³ Pub. L. 106-387, § 812 (a)-(b). Payments are limited to 15 cents per pound of honey, with a limit of \$150,000 per beekeeper. CR at I-33, PR at I-24.

⁸⁴ Nonsubject imports’ market share, based on quantity of U.S. shipments, declined from 10.6 percent in 1997 to 9.7 percent in 1998, and then increased back to 10.6 percent in 1999. Table IV-5, CR at IV-6, PR at IV-5.

⁸⁵ Nonsubject imports declined from 35.0 million pounds in 1997 to 32.4 million pounds in 1998, and then increased to 39.9 million pounds in 1999. Table IV-2, CR at IV-3, PR at IV-2.

⁸⁶ 19 U.S.C. § 1677(7)(C)(i).

⁸⁷ Table IV-2, CR at IV-3, PR at IV-2.

⁸⁸ Table IV-5, CR at IV-6, PR at IV-5. Because the most recent public data on domestic production of honey are for 1999, market penetration cannot be calculated for the interim periods.

(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.⁸⁹

Price appears to be a fairly important factor in purchasing decisions. Four of eight packers surveyed indicated that they “usually” purchase honey that has the lowest price.⁹⁰ Packers also tended to rank price, along with quality, as the most important factors in their purchasing decisions.⁹¹ One respondent packer witness stated that, while customer requirements varied, “there are customers [for] who[m] quality means little. It’s strictly price.”⁹² Similarly, the American Bakers Association, in discussing its members’ honey purchasing practices, emphasized that “[o]ur member companies are under continuous pressure to reduce costs. . . .”⁹³ Purchasers’ comparisons of the subject imports and the domestic like product, discussed above in the section on cumulation, indicate that the domestic like product and the subject imports are moderate to good substitutes.

Prices for both the domestic like product and the subject imports declined sharply over the period of investigation. Although prices for some products did increase slightly after the second quarter of 1999, all products surveyed from both domestic and subject sources declined by at least 34 percent between the first quarter of 1997 and the second quarter of 2000.⁹⁴ In addition, there was a significant degree of underselling of the domestic like product by the subject imports. Cumulated subject imports undersold the domestic like product in 55 of 93 quarterly pricing comparisons. Underselling was increasingly common in 1999 and interim 2000.⁹⁵

In light of the importance of price in purchasing decisions, and our prior finding concerning the degree of substitutability between the subject imports and the domestic like product, we conclude for purposes of these preliminary determinations that this underselling has been significant. We further find for purposes of these preliminary determinations that there is a reasonable indication of a linkage between the underselling, the significant volumes of subject imports, and the declining prices for domestically-produced honey observed over the period of investigation. We consequently conclude that the subject imports have depressed prices of the domestic like product to a significant degree.

In any final phase investigations, we intend to explore further several issues concerning the price effects of the subject imports. Several of these issues relate to arguments the respondents advanced to explain the observed decline in prices for the domestic like product. First, we intend to explore the effect of the suspension agreement with China on prices. In this regard, one issue we will examine is whether the provisions of the suspension agreement served to make the prices observed during the first six months of 1997 anomalous. Second, we intend to examine the extent to which prices and price changes for substitute sweeteners, such as sugar and HFCS, influence the price of honey. Third, we intend to examine the extent to which such factors as color and the USDA grading process affect the price of honey, and the extent to which lighter colors and higher grades receive pricing premiums. We will also

⁸⁹ 19 U.S.C. § 1677(7)(C)(ii).

⁹⁰ CR at II-7, PR at II-5.

⁹¹ Table II-1, CR at II-7, PR at II-5.

⁹² Tr. at 127 (Stoller).

⁹³ NHPDA Postconference Brief, ex. 4.

⁹⁴ CR at V-4, PR at V-3.

⁹⁵ Table V-5, CR at V-11, PR at V-9. Underselling was also especially widespread for the two products where cumulated subject import volume was the highest. Subject imports undersold the domestic like product in 20 out of 25 quarterly comparisons for product 1 (white honey), Table V-1, CR at V-5, PR at V-4, and in 22 out of 25 quarterly comparisons for product 2 (extra light amber honey), Table V-2, CR at V-6, PR at V-5.

explore the extent to which product requirements and product prices are affected by blending. Fourth, we intend to examine whether Sioux, the largest U.S. packer, exerts price leadership in this market and whether its pricing decisions affect U.S. honey prices overall.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁶ 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.”^{97 98 99}

The output of the domestic industry generally increased during the period for which data were collected. Beekeepers’ production increased from 196.5 million pounds in 1997 to 220.3 million pounds in 1998, and then declined to 205.2 million pounds in 1999.¹⁰⁰ Beekeepers’ U.S. shipments also increased from 163.9 million pounds in 1997 to 199.8 million pounds in 1998, and then declined to 195.6 million pounds in 1999.¹⁰¹ The quantity of honey packed by those packers we have included in the domestic industry increased from *** pounds in 1997 to *** pounds in 1998, and then to *** pounds in 1999.¹⁰² These packers’ U.S. shipments increased from *** pounds in 1997 to *** pounds in 1998, and then to *** pounds in 1999.¹⁰³

⁹⁶ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885.).

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

⁹⁸ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated dumping margins of between 28.84 percent and 30.17 percent for Argentina and of between 169.40 and 183.80 percent for China. 65 Fed. Reg. 65831, 65833-34 (Nov. 2, 2000).

⁹⁹ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

¹⁰⁰ Table III-1, CR at III-5, PR at III-3. The record does not contain output-related data for beekeepers for interim 2000.

¹⁰¹ Table III-4, CR at III-7, PR at III-5. Notwithstanding the increase in shipments, beekeepers’ U.S. honey stocks increased from 70.7 million pounds in 1997 to 79.3 million pounds in 1999. Table III-7, CR at III-11, PR at III-7.

¹⁰² The amount of honey packed by these producers was also greater in interim 2000 than in interim 1999. OINV-X-237, Table C-2. Commissioner Askey does not rely on data pertaining to packers in her assessment of the impact of the subject imports on the domestic industry.

¹⁰³ These producers’ U.S. shipments of packed honey were also greater in quantity in interim 2000 than in interim 1999. OINV-X-237, Table C-2. Packers’ inventories, however, increased from *** pounds in 1997 to *** pounds in 1999, and were higher in interim 2000 than in interim 1999. *Id.* Commissioner Askey does not rely on data

(continued...)

Although the industry's production and shipment levels have increased over the period for which data were collected, these increases have not resulted in improved or stable financial operating results for the industry.¹⁰⁴ Instead, the record of these investigations indicates that the industry's operating results have declined. The Commission received financial data from 74 beekeepers in response to its questionnaires. Although the beekeepers' sales quantities increased between 1997 and 1999, their revenues from honey fell because of falling prices while beekeeping and operating expenses increased from \$24.3 million in 1997 to \$25.5 million in 1999. As a result, beekeepers' net income before taxes declined from \$3.7 million in 1997 to \$2.7 million in 1998 and then to \$641,000 in 1999. The ratio of net income to sales declined from 13.1 percent in 1997 to 9.2 percent in 1998 and then to 2.4 percent in 1999. The number of firms reporting net losses increased from 12 in 1997 to 17 in 1998 and to 28 in 1999.¹⁰⁵ Operating income and ratios also declined for commercial independent packers.¹⁰⁶

The deteriorating operating performance of beekeepers has had several other negative effects. Industry witnesses testified that they or other beekeepers had difficulty obtaining credit and making capital investments.¹⁰⁷ In fact, beekeepers' capital expenditures declined from \$3.1 million in 1997-98 to \$2.5 million in 1999-2000.¹⁰⁸ There was also testimony that beekeepers have suffered significant declines in equity over the period of investigation.¹⁰⁹

Consequently, the price effects of the significant volume of subject imports have led to declining industry operating performance, an increasing number of firms with operating losses, and declines in capital expenditures. Therefore, for purposes of these preliminary determinations, and evaluating the industry as a whole, we conclude that the subject imports have had a significant adverse impact on the domestic honey industry. Accordingly, we determine that there is a reasonable indication of material injury by reason of subject imports.¹¹⁰

¹⁰³ (...continued)

pertaining to packers in her assessment of the impact of the subject imports on the domestic industry.

¹⁰⁴ We additionally observe that industry data show slight increases in the number of production and related workers and increases in productivity from 1997 to 1999. Table III-9, CR at III-11, PR at III-8; OINV-X-237, Table C-2. This is not surprising in light of the increasing industry output levels.

¹⁰⁵ Table VI-1, CR at VI-3, PR at VI-2. The decline in net income is made more significant by the fact that many or most beekeepers do not pay themselves a salary. Thus, the net income must frequently support the beekeepers' living and family expenses as well as business expenses. See Table VI-1, CR at VI-3, PR at VI-2; Petitioners' Postconference Brief at 35 n.27.

¹⁰⁶ Operating income for those commercial independent packers included in the domestic industry declined from *** in 1997 to *** in 1999. These packers' ratio of operating income to sales declined from *** percent in 1997 to *** percent in 1999. OINV-X-237, Table C-2. Commissioner Askey does not rely on data pertaining to packers in her assessment of the impact of the subject imports on the domestic industry.

¹⁰⁷ Tr. at 20 (Blake), 28 (Starks), 34-35 (Tubbs). This is corroborated by the questionnaire responses. Of the 74 responding beekeepers, 64 reported that during the period of investigation they reduced the size of their capital investments, 15 responded that investment proposals had been denied or rejected, and 14 responded that bank loans to them had been rejected. CR at D-3, PR at D-3.

¹⁰⁸ Table VI-6, CR at VI-10, PR at VI-8. By contrast, packers' capital expenses increased. See id. (Sioux data); OINV-X-236, Table C-2 (commercial independent packers data). Commissioner Askey does not rely on data pertaining to packers in her assessment of the impact of the subject imports on the domestic industry.

¹⁰⁹ See Tr. at 29 (Tubbs).

¹¹⁰ In our analysis, we have accounted for the fact that, for some transactions in 2000, beekeepers will receive greater revenues as a result of the nonrecourse marketing assistance loan program established in the 2000 Agricultural Appropriations legislation referenced above in the discussion of conditions of competition. Under

(continued...)

CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of honey from Argentina and China that are allegedly subsidized and sold in the United States at less than fair value.

¹¹⁰ (...continued)

section 771(7)(D)(ii) of the Act, however, in cases involving agricultural products “the Commission shall consider any increased burden on government income or price support programs.” 19 U.S.C. § 1677(7)(D)(ii). To the extent that the agricultural legislation permits beekeepers to receive greater revenues for their 2000 crops than the market prices reflected by the Commission’s questionnaire data, these revenues will be reflected in an increased burden on the government’s marketing assistance loan program.