MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 109th Congress

[Date approved: July 26, 2005]

Bill No. and sponsor: H.R. 1464 (Rep. Garrett); 109th Congress.

Proponent name, location: Association of Food Industries, Inc.
Neptune, NJ 07753


Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)):

The article description in this bill should read “Pimientos (Capsicum annuum), prepared or preserved otherwise than by vinegar or acetic acid, not frozen, in containers each holding over 227 g (provided for in subheading 2005.90.50).”

Check one: Same as that in bill as introduced
X Different from that in bill as introduced (explain differences in Technical comments section)

Product information, including uses/applications and source(s) of imports:

The genus Capsicum and species annuum cover two broad categories: (1) sweet peppers, which are mild and non-pungent, and (2) chile peppers, which are hot and pungent. Sweet peppers include bell peppers (green, red, purple, and yellow), pimientos (or pimentos), rellenos, and sweet banana peppers, among

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1 Industry analyst preparing report: Renee Johnson (202-205-3313); Tariff Affairs contact: Jan Summers (202-205-2605).
2 A copy of this memorandum is available at http://usite.gov/tata/hts/other_rel_doc/bill_reports/index.htm.
3 We note that this bill and H.R. 1466 together cover all goods classifiable in HTS subheading 2005.90.50. Accordingly, it would be possible to create a single chapter 99 heading for the entire scope of subheading 2005.90.50, with the article description “Pimientos (Capsicum annuum), prepared or preserved otherwise than by vinegar or acetic acid, not frozen (provided for in subheading 2005.90.50).” As discussed below, however, enacting a single chapter 99 heading would likely result in a higher customs revenue loss than would be desired. Statistical reporting number 2005.90.5040 covers the vegetables covered by this bill as “pimientos (Capsicum annuum [sic]), other (than those in containers each holding not more than 227 g[rams]).”
4 Chile (chili) peppers are tapered, slender, thin walled hot peppers. Common chile pepper groups and varieties include cayenne, paprika, jalapeno, anaheim, serano, and poblano peppers. See “Chile Pepper Production in California,” University of California-Davis (Publication 7144), found at http://anrcatalog.ucdavis.edu/pdf/7144.pdf.
Aggregated pepper production data cover both hot and sweet peppers. A reported 23.2 million metric tons (mt) of peppers were produced worldwide in 2003.\(^8\) China was the largest producer of peppers, accounting for 50 percent of world production. Mexico and Turkey each accounted for another 8 percent of world production, followed by Spain and the United States each with 4 percent and Nigeria for 3 percent.\(^9\) Complete information on pimiento production in the United States is unavailable. USDA’s National Agricultural Statistics Service (NASS) and the California Agriculture Statistics Service (CASS) aggregate all data under one of two categories: bell peppers or chile peppers.\(^1\) Limited production data on pimiento are available for some key producing counties in California, where the majority of domestically-produced pimientos are grown. These data indicate that pimiento production (fresh and processed) in 2003 totaled about 10,900 mt.\(^2\) Other U.S.-producing states include Florida,\(^3\) Georgia, North Carolina, Texas, Arizona, and New Mexico.\(^4\) Estimates of U.S. production in this report are based on California figures only and likely reflect a lower bound for domestic production.

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\(^7\) Ibid.

\(^8\) “Sweet Peppers,” University of Georgia, found at [http://www.uga.edu/vegetable/pepper.html](http://www.uga.edu/vegetable/pepper.html).


\(^1\) Some processed pimiento product might also be imported under HTS heading 2004, “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006” (HTS statistical reporting number 2004.90.8580, “Other, including mixtures”). These data include a number of other products and mixtures and are difficult to separate out precisely.

\(^2\) Fresh sweet peppers are classified under HTS subheading 0709.60, “Fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., allspice).” Dried pepper is classified under HTS subheading HTS heading 0904, “Pepper of the genus *Piper*; dried or crushed or ground fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., allspice).”

\(^3\) FAOSTAT database maintained by the United Nations available at [http://www.fao.org](http://www.fao.org). Includes production under the category of “Chillies & Peppers, green” but does not include production under the category of “Peppers, White, long, black.”

\(^4\) Ibid.

\(^1\) Telephone discussion with Biz Wallingsford at USDA NASS (Aug. 30, 2004) indicate that USDA defines chile peppers as all peppers excluding bell peppers. Also see footnote to table on chile peppers for fresh market and processing in NASS’ *Vegetables 2003 Summary* at [http://usda.mannlib.cornell.edu/reports/nassr/fruit/pvg-bban/vgan0104.txt](http://usda.mannlib.cornell.edu/reports/nassr/fruit/pvg-bban/vgan0104.txt). Email communication with Gary Nelson, California Agriculture Statistics Service (Aug. 31, 2004) indicate that data for pimientos are reported with bell peppers in the annual County Agricultural Commissioners’ Report ([http://www.nass.usda.gov/ca/bul/agcom/index.cfm](http://www.nass.usda.gov/ca/bul/agcom/index.cfm)). Also see “A Pest Management Strategic Plan for Pepper Production in California Production” by the California Pepper Commission.

\(^2\) Information submitted to the Commission by the Agricultural Commissioners’ offices for Monterey and Ventura counties, August 31, 2004. Other information provided by Gary Nelson, California Agriculture Statistics, Aug. 31, 2004. Equivalent to about 24 million pounds. 1 metric ton = 2,205 pounds.

\(^3\) Telephone conversation with Dan Bosch, Florida Fruit & Vegetable Association on Aug. 18, 2004, suggests that there is limited pimiento production in Florida.

\(^4\) Telephone conversation with Paul Basland, New Mexico State University (Chili Pepper Institute) on August 18, 2004, suggests that there is limited pimiento production in New Mexico.
In 2003, the combined volume of U.S. imports of all processed pimientos totaled 21,000 mt, net weight.\(^{18}\) On a drained weight basis, excluding the preserving solution and other packing media, the estimated volume of processed pimiento imports totaled about 14,700 mt.\(^{19}\) Based on estimates of U.S. production in California and U.S. imports of processed pimientos (expressed on a drained weight basis), and on the assumption that there are no U.S. exports, the Commission estimates that imported products account for approximately 40 percent of U.S. sales.

By value, processed pimiento imports totaled $29.7 million in 2004,\(^{20}\) and goods imported under HTS statistical reporting number 2005.90.5040 were valued at $18.1 million.\(^{21}\) Between 2000-2004, the volume of imports rose nearly 30 percent. Spain is the largest supplier of prepared or preserved pimientos with 70 percent of imports in 2003 and 60 percent in 2004. In 2004, other suppliers included Turkey (more than 10 percent of U.S. imports), Mexico and Greece (each with about 5 percent of import volumes),\(^{22}\) and Turkey, Greece, and South Africa.

**Estimated effect on customs revenue:**

To determine the possible customs revenue loss, U.S. imports for 2005-2008 are projected assuming a simple linear trend of reported import data for the 5-year period from 2000 to 2004 and taking duty-free special access into account.

<table>
<thead>
<tr>
<th>HTS subheading: 2005.90.5040</th>
</tr>
</thead>
<tbody>
<tr>
<td>Col. 1-General rate of duty (AVE) 1/</td>
</tr>
<tr>
<td>Estimated value dutiable imports 2/</td>
</tr>
<tr>
<td>Customs revenue loss 3/</td>
</tr>
</tbody>
</table>

1/ The AVE is the ad valorem equivalent of a specific or compound duty rate expressed as a percent, using the most recent import data available. The rate shown is the “general” or normal trade relations rate. Other preferential rates may apply to countries entitled to special tariff treatment, including duty-free access for eligible products from Canada and Mexico (North America Free Trade Agreement), some Central American nations (Caribbean Basin Economic Recovery Act), certain free-trade agreement partners (Israel, Jordan) and certain countries under the Generalized System of Preferences. A reduced rate of 4.0 percent ad valorem applies to eligible goods of Chile and of Singapore and 7.2 percent to goods of Australia under the U.S.-Australia Free Trade Agreement.


3/ Assumes that tariffs are suspended on imported products for the calendar years 2005 through 2008. Rounded to the nearest ten thousand.


\(^{19}\) Commission estimates based on information indicating that the drained weight of pimientos is roughly 70 percent compared to its net weight that contains both fruit and packing media (larger container sizes). Information is from “Pimientos and Peppers” found at [http://www.fufesa.com/Webingles/Pimientos.htm](http://www.fufesa.com/Webingles/Pimientos.htm) and retrieved on Sept. 2, 2004.

\(^{20}\) Ibid.

\(^{21}\) Based on import data from official U.S. Government statistics.

\(^{22}\) Based on import data from official U.S. Government statistics and reflects combined imports under HTS subheadings 2005.90.50 and 2001.90.35.
Contacts with domestic firms/organizations (including the proponent):

The list below indicates the industry representatives contacted and the submissions received in late 2004, in response to similar bills of the 108th Congress. See H.R. 4814, H.R. 4815 and H.R. 4816 (108th Congress, Rep. Garrett) available at the Commission’s website.23

<table>
<thead>
<tr>
<th>Name of firm/organization</th>
<th>Date contacted</th>
<th>US production of same or competitive product claimed?</th>
<th>Submission attached?</th>
<th>Opposition noted?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chris Russell, Representative Garrett’s office, Ph: 202-225-4465</td>
<td>8/18/2004</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Schreiber Foods International, Inc. 48 South Franklin Turnpike, P.O. Box 299 Ramsey, NJ 07446, Ph: 201-327-3535</td>
<td>8/17/2004</td>
<td>Yes /</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Jerry Hensley, Saticoy Foods Corp. P.O. Box 4547, Saticoy, CA 93007, Ph: 805-647-5266</td>
<td>8/18/2004</td>
<td>Yes (processor)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Glen Fisher, California Advisory Board, California Pepper Commission, 531 N. Alta Ave, Dinuba, CA 93618, Ph: 559-591-3925</td>
<td>8/17/2004</td>
<td>Yes (grower organization)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Ed Simerly, Moody Dunbar, Inc., P.O. Box 6048, Johnson City, TN 37602, Ph: 423-952-0100</td>
<td>8/18/2004</td>
<td>Yes (processor)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Richard Henshel, Pickle Packers, International, Inc. P.O. Box 606, One Pickle and Pepper Plaza, St. Charles, IL 60174, Ph: 630-584-8950.</td>
<td>8/20/2004</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

### Technical comments

The article description should read “Pimientos (Capsicum annuum), ..., in containers each holding over 227 g (provided...).” These changes would make the description consistent with other tariff provisions but would avoid using the non-specific word “other” from statistical reporting number 2005.90.5040.
To suspend temporarily the duty on certain pimientos (capsicum anuum), prepared or preserved otherwise than by vinegar or acetic acid.

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2005

Mr. GARRETT of New Jersey introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To suspend temporarily the duty on certain pimientos (capsicum anuum), prepared or preserved otherwise than by vinegar or acetic acid.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN PIMIENTOS, PREPARED OR PRESERVED BY VINEGAR OR ACETIC ACID.

(a) In General.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:
(b) **Effective Date.**—The amendment made by subsection (a) applies to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.