

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 109th Congress¹**

[Date approved: September 12, 2005]²

Bill No. and sponsor: H.R. 1914 (Rep. Honda).

Proponent name, location: Diana Fruit Company
Santa Clara, CA 95050

Other bills on product (109th Congress only): None.

Nature of bill: Permanent HTS amendment, providing that the duty for provisionally preserved cherries would be calculated on a “drained weight” basis.

Retroactive effect: None.

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

The amendments to particular duty rates in subheading 0812.10.00 are correctly drafted.

- Check one:** Same as that in bill as introduced (see technical comments concerning effective date)
 Different from that in bill as introduced (explain differences in technical comments section)

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

The bill would amend the duty rates in subheading 0812.10.00 of the HTS to provide that the calculation of the duty imposed on imported cherries that are provisionally preserved would be imposed only on the fruit itself and would not include the container or the weight of the preservative materials in which the cherries are packed.³ Currently, the other edible fruits and nuts of HTS chapter 8 are not dutiable on a drained weight basis, although certain olives and mushrooms of chapter 7 are given such treatment.⁴

Provisionally preserved cherries are cherries packed in a sulphur brine solution, often referred to as “brined cherries,” and fall in HTS subheading 0812.10.00 as cherries that are “provisionally preserved (for example, by sulfur dioxide gas, in brine, sulfur water or in other preservative solutions), but unsuitable in that state for immediate consumption.”

¹ Industry analyst preparing report: Renee Johnson (202-205-3313); Tariff Affairs contact: Jan Summers (202-205- 2605).

² An electronic copy of this memorandum is available at http://usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm.

³ A 1998 Custom’s ruling on a similar matter is at <http://rulings.customs.gov> (under search: 0812.10.00). See “Protest 2809-97-100965; Cherries in brine,” HQ 960814, Sept. 17, 1998.

⁴ Pitted and non-pitted olives (HTS 0711.20) and certain mushrooms (HTS 0711.51.00 and HTS 0711.59.10).

Brined cherries include maraschino, fruit cocktail, and ingredient cherries and pieces.⁵ Maraschino cherries are de-colored with sulfur dioxide (SO₂) and macerated in a flavored sugar syrup (the maraschino syrup⁶), and then dyed. Maraschino cherries are made mostly from sweet cherries, although a small proportion of sour cherries are brined for this purpose.⁷ Fruit cocktail cherries consist mostly of smaller (16-18 mm) fruit; they are generally not suitable for the fresh market and are below the size requirement for many maraschino products.⁸ Other types of ingredient cherries are used in food processing, such as ice cream or confectionary products. These products are typically shipped in plastic drums each containing 144 kilograms, net weight (net of the container).

The U.S. brined cherry market is valued at roughly \$25 million annually (farm level).⁹ Brined cherry production in the United States averaged about 100 million pounds between 1999 and 2003.¹⁰ Oregon, Washington, California, and Michigan account together for more than 90 percent of all U.S.-produced brined sweet cherries;¹¹ other producing states include Montana, Idaho, Colorado and Utah. Brined cherries account for about one-fourth of total sweet cherry utilization (varies widely by producing state)¹² and about 5 percent of U.S. tart cherry utilization.¹³

U.S. imports of brined cherries tend to be variable year-to-year, depending on domestic supply conditions, carryover stocks, and general market conditions. During 2000-2004, U.S. brined cherry imports averaged about \$5 million per year, ranging from \$2.6 million to \$9.2 million over the period.¹⁴ Major foreign suppliers include Italy, Romania, Chile, Bulgaria, Turkey, and Greece. The four largest exporting countries of brined cherries are Italy (34 percent of world exports), Spain and Turkey (10 percent each), and the United States (14 percent).¹⁵

Estimated effect on customs revenue:

The proposed legislative changes would effectively result in a volume reduction in dutiable imports. For this analysis, drained weight was assumed to account for roughly 64 percent of imported net weight.¹⁶

⁵ Other prepared or preserved canned cherries not in brine solution are classified under HTS 2008.60.00, "Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or sweetening matter or spirit, not elsewhere specified or included".

⁶ Previously Maraschino cherries were seeped in Marasca, a liqueur distilled from the fermented juice of wild cherries.

⁷ University of Georgia, "Cherries," found at <http://www.uga.edu/fruit/cherry.htm>, retrieved on June 30, 2004.

⁸ Information submitted to the Commission by Tom Klevay, Diana Fruit Company. The diameter of cherries sold in the fresh market is 26 to 28 mm, while that of maraschino cherries ranges from 18 to 20 mm.

⁹ Commission estimates based on farm-level price and supply information for brined sweet cherries, reported in "2003 Sweet Cherry Statistical Report" (National Cherry Growers & Industries Foundation), averaged over a 3-year period (2001-2003).

¹⁰ Information compiled by the Northwest Cherry Briners Association, reported in the "2003 Sweet Cherry Statistical Report" (National Cherry Growers & Industries Foundation).

¹¹ Ibid. Oregon accounts for about 30 percent of U.S. brined cherry production; Washington, California, and Michigan account for about 20 percent each.

¹² National Cherry Growers & Industries Foundation, "2003 Sweet Cherry Statistical Report." Brined cherries as a share of total sweet cherry utilization vary by major producing state from about 70 percent (MI), about 40 percent (OR, UT), and between 10 percent and 20 percent (CA, WA, ID). Between 50 percent and 90 percent of sweet cherries are sold fresh in most states.

¹³ University of Georgia, "Cherries," found at <http://www.uga.edu/fruit/cherry.htm>, retrieved on June 30, 2004. This information shows that more than 90 percent of all tart cherry supplies is for use in food processing (frozen, canned, juice, jam, etc.).

¹⁴ Commission estimates of dutiable import data using official U.S. Government statistics (average, 2000-2004). U.S. brined cherry exports ranged from \$5.3 million to \$3.5 million (2000-2004).

¹⁵ Commission estimates based on the 3-year average (2000-2002) of reported data from United Nations Statistics Division.

¹⁶ Information submitted to the Commission by Diana Fruit Company indicate that the combined net weight of cherries and brine for a standard drum container used for imported product is 493.83 lbs. (224 kg.) compared to 317 lbs. (143.79 kg.) for the drained weight of cherries. Information from National Cherry Growers & Industries Foundation indicates an average retail-size container has about 55 percent cherries, drained weight (available at <http://www.nationalcherries.com/canned.html>).

U.S. volume imports for 2005-2009 were projected assuming a simple linear trend of reported import data for 1996 to 2004.¹⁷ The value of dutiable imports was calculated using the 2-year average (2002-2003) of the estimated customs value per unit quantity for major nation groupings, including major European countries and Chile. Estimated changes in tariff revenue take into account the application of the general or special rates on product imports, depending on their country of origin. The current general duty rate is not scheduled for further staged reductions.

HTS subheading: 0812.10.00					
	2005	2006	2007	2008	2009
Col. 1-General rate of duty (AVE) <u>1/</u>	10.4%	10.4%	10.4%	10.4%	10.4%
Estimated value <i>dutiable</i> imports <u>2/</u>	\$3,100,000	\$3,300,000	\$3,500,000	\$3,700,000	\$3,800,000
Customs revenue loss <u>3/</u>	\$180,000	\$190,000	\$200,000	\$210,000	\$220,000

1/ The stated general duty rate for this subheading is 13.4 cents/kg. 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 eligible goods of countries entitled to special tariff treatment, including duty-free access for originating goods of Canada and of Mexico (North American Free Trade Agreement) or products of El Salvador (Caribbean Basin Economic Recovery Act) and certain countries under the Generalized System of Preferences.

2/ Source of estimated dutiable import data: Official U.S. Government statistics. Estimated value of dutiable imports shown assumes imports entering on a drained weight basis.

3/ Customs revenue loss is the difference between the estimated tariff revenue assuming a net weight and a drained weight basis. The container and liquid are estimated to account for 36 percent of the total weight.

Contacts with domestic firms/organizations (including the proponent):

The table below lists the industry representatives contacted and the submissions received since 2004, including those relating to similar Congressional bills of the 108th Congress. (See reports on H.R. 4398 and S. 2446.).¹⁸ The Commission has contacted persons who provided submissions last year to confirm that their position regarding this legislation has not changed. See the appendices to this report for copies of submissions received by the Commission.

¹⁷ U.S. imports from Turkey in 2003 are excluded from the analysis based on comments from a telephone interview with Jim Reynolds, Gray and Company, July 1, 2004. Gray and Company was the principal importer of brined cherries from Turkey in 2003 and does not expect similar shipments in 2004. Total U.S. dutiable imports under this subheading were reported at about \$9.2 million in 2003 and \$5.2 million in 2004, a 43.3 percent decline.

¹⁸ See footnote 2 concerning electronic copies of such memorandum.

Name of firm/organization	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
			(Yes/No)	
Thomas J. Klevay, Diana Fruit Company 651 Mathew Street, Santa Clara, CA 95050, 408-727-9631 (ext. 114)	6/29/2004 6/21/2005	No	Yes	No
Chris Mitchell, Representative Honda's office 202-225-2699	6/25/2004	No	No	No
Kevin Laussen, Senator Feinstein's office 202-224-3841	6/25/2004	No	No	No
James G. Reynolds, Gray & Company (HQ Office), 1634 SW Alder, Portland, OR 97205 503-552-3900	6/30/2004	No	Yes	No
Craig Bell, EOLA Cherry Company, 3213 Waconda Road, Gervais, OR 97026 503-390-1425	6/30/2004	Yes	No	No
Ed Johnson, Oregon Cherry Growers, P.O. Box 7357, Salem, OR 97303, 503-364-8421	6/30/2004	Yes	No	No
Douglas M. Burroughs, Del Monte Foods, Modesto, CA, 209-527-3850	6/30/2004	No	No	No
Stewart Johnson, Signature Fruit Company LLC, 2260 Tenaya Drive, Modesto, CA 95354, 209-572-5644	6/30/2004	No	No	No
George McMillion, Pacific Coast Producers (HQ), 631 N. Cluff Avenue Lodi, CA 95240 209-367-6213	6/30/2004	No	No	No
Mark Powers, Northwest Horticultural Council, 6 S. Second Street, Ste 600, Yakima, WA 98901 509-453-3193	6/25/2004 6/29/2005	No	Yes	Yes
Philip J. Korson II, Cherry Marketing Institute, P.O. Box 30285, Lansing, MI 48909, 517-669-4264	6/29/2004 6/16 2005	Yes	Yes	Yes
BJ Thurlby, Washington State Fruit Commission, 105 S. 18th Street, Ste 205, Yakima, WA 98901 509-453-4837	6/29/2004	Yes	No	Yes

Stanley Hopard, U.S. Customs and Border Protection, Office of Regulations & Rulings, National Commodity Specialist Division, New York, NY 10119 646-733-3110	7/12/2004	No	No	No
Dana Branson, National Cherry Growers & Industries Foundation, 105 S. 18th Street, Ste 205, Yakima, WA 98901 541-386-5761	6/25/2004 6/21/2005	Yes	Yes	Yes
Pamela Walther, McDermott Will & Emery, 600 13th St., N.W., Washington, DC 20005 202-756-8220	6/29/2004	No	No	No
Keira Franz, United Fresh Fruit & Vegetable Assoc., 1901 Pennsylvania Ave. NW, Washington, DC 20006 202-303-3400	6/25/2004	No	No	No
Bryce Molesworth, Chair, Oregon Sweet Cherry Commission, 2667 Reed Rd., Hood River, OR 97031 541-386-5761; nickerson9@earthlink.net	7/19/2004	Yes	Yes	Yes

Technical comments:¹⁹

The bill itself does not display technical problems, but we would suggest that it be made effective as of the 15th day after its date of enactment at a minimum, to permit Customs to begin to administer the change in treatment. This formulation would likely apply the change to unliquidated entries in Customs' system at the time, and importers interested in this product may be able to time the filing of certain entry documents. It does not seem necessary to include the text about a possible "expiration" of the addition of this criterion to the existing duty rates, given that any legal instrument that might later reduce the duty rate to free would in any event be deleting the existing duty rate.

The Commission's discussions with U.S. Customs and Border Protection officials indicate that administering the proposed tariff change should not pose a problem, provided that all the necessary paperwork is included with the shipped product.

¹⁹ 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.

109TH CONGRESS
1ST SESSION

H. R. 1914

To amend the Harmonized Tariff Schedule of the United States to provide that the calculation of the duty imposed on imported cherries that are provisionally preserved does not include the weight of the preservative materials of the cherries.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2005

Mr. HONDA introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Harmonized Tariff Schedule of the United States to provide that the calculation of the duty imposed on imported cherries that are provisionally preserved does not include the weight of the preservative materials of the cherries.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. MODIFICATION OF CALCULATION OF DUTY IM-**
2 **POSED ON IMPORTED CHERRIES THAT ARE**
3 **PROVISIONALLY PRESERVED.**

4 (a) **AMENDMENTS.**—Subheading 0812.10.00 of the
5 Harmonized Tariff Schedule of the United States is
6 amended—

7 (1) in the general subcolumn of the column 1
8 rate of duty, by inserting “on drained weight” after
9 “13.4¢/kg”; and

10 (2) in the special subcolumn of the column 1
11 rate of duty, by inserting “on drained weight” after
12 “10¢/kg” and “12¢/kg”.

13 (b) **EFFECTIVE DATE.**—The amendments made by
14 subsection (a) shall be effective for the period beginning
15 on the date of the enactment of this Act and ending on
16 the date on which the specific rate of duty involved is re-
17 duced to free.

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