Certain Processed Hazelnuts From Turkey

Investigation No. 731-TA-1057 (Preliminary)

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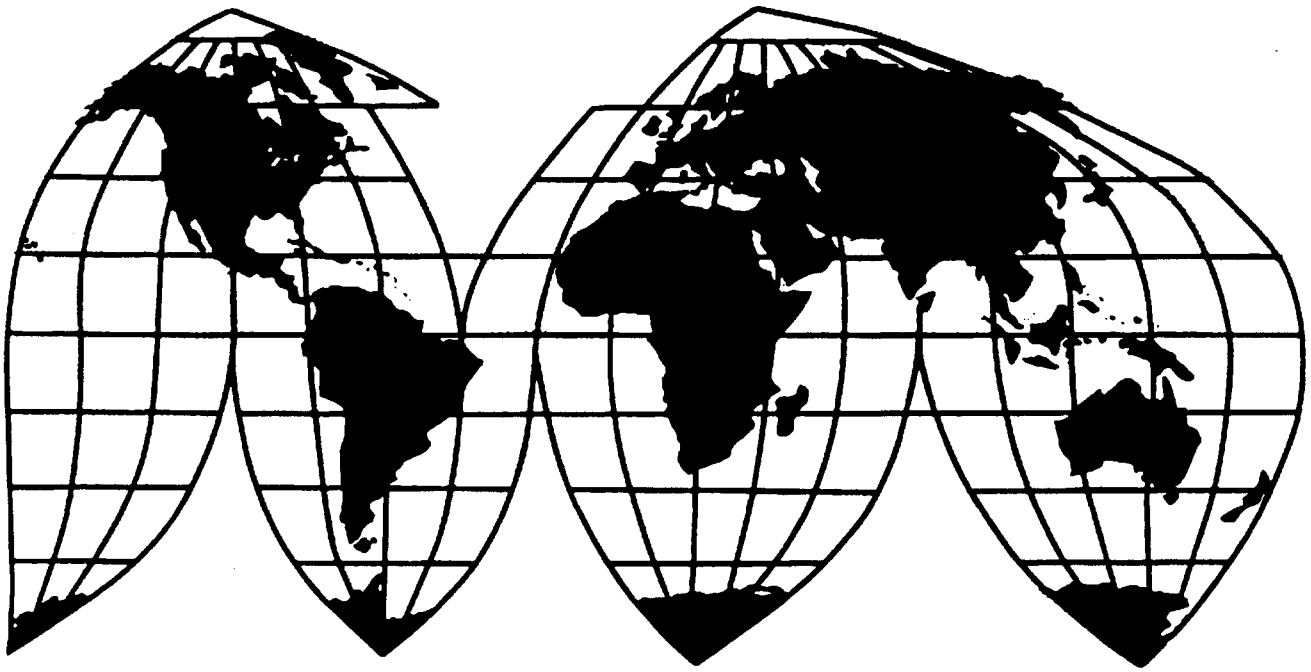
U.S. International Trade Commission



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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1057 (Preliminary)

CERTAIN PROCESSED HAZELNUTS FROM TURKEY

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Turkey of certain processed hazelnuts, provided for in subheadings 0802.22.00 and 2008.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

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

BACKGROUND

On October 21, 2003, a petition was filed with the Commission and Commerce on behalf of Westnut LLC, Dundee, OR; Northwest Hazelnut Co., Hubbard, OR; Hazelnut Growers of Oregon, Cornelius, OR; Willamette Filbert Growers, Newberg, OR; Evergreen Orchards, McMinnville, OR; and Evonuk Orchards, Eugene, OR, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain processed hazelnuts from Turkey. Accordingly, effective October 21, 2003, the Commission instituted antidumping duty investigation No. 731-TA-1057 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of October 28, 2003 (68 FR 61465). The conference was held in Washington, DC, on November 12, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain processed hazelnuts from Turkey 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 determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[1] 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."[2] [3]

II. BACKGROUND

The product within the scope of investigation is processed hazelnuts, and does not include in-shell nuts. The petition was filed on behalf of Westnut LLC; Northwest Hazelnut Company; Hazelnut Growers of Oregon; Willamette Filbert Growers; Evergreen Orchards; and Evonuk Orchards. These six processors are believed to account for approximately 85 percent of hazelnut processing in the United States and all provided questionnaire responses to the Commission.[4] All responding processors are located in Oregon.[5] A total of 19 hazelnut processors have been identified in this preliminary phase of the investigation.[6] In addition, nine U.S. importers account for a large share, 72 percent, of imports of the subject hazelnuts from Turkey. These firms are located primarily in New York and New Jersey, though many sell hazelnuts nationally.[7]

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[1] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

[2] American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[3] In this investigation, petitioners are the following producers of processed hazelnuts: Westnut LLC; Northwest Hazelnut Company; Hazelnut Growers of Oregon; Willamette Filbert Growers; Evergreen Orchards; and Evonuk Orchards. Respondents are the Association of Food Industries, Inc. Hazelnut Group ("AFI Hazelnut Group"); the Istanbul Hazel Nut and Hazel Nut Products Exporters Union; and the Black Sea Hazel Nut and Hazel Nut Products Exporters Union.

[4] CR/PR at VI-1.

[5] CR/PR at Table III-1.

[6] CR/PR at II-1 & n.1, VI-1.

[7] CR/PR at IV-1, V-1.

III. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[8] 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."[9] 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 ... ."[10]

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.[11] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[12] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[13] Although the Commission must accept the determination of 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.[14] The Commission must base its domestic like product determination on the record in this investigation. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous

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[8] 19 U.S.C. § 1677(4)(A).

[9] Id.

[10] 19 U.S.C. § 1677(10).

[11] 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) 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).

[12] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess., at 90-91 (1979).

[13] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 249 at 90-91 (Congress has indicated that the domestic 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.").

[14] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission's determination of six domestic like products in investigations where Commerce found five classes or kinds).

determinations in addressing pertinent like product issues.[15]

B. Product Description

Commerce defined the imported merchandise within the scope of this investigation as:

> certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and butter.[16]

Raw kernels are whole hazelnuts that have been removed from their hard external shell, but have not been processed further. They generally are classified by size, typically ranging from 9 mm to 15 mm in diameter. Blanched (or bleached) kernels are raw kernels without their natural dark skins (pellicle), which have been removed by heat treatment; roasted kernels have undergone further heat treatment. Hazelnut meal and flour are kernels in dry granular or powdered form. Hazelnut butter is a powdered kernel mixed with the nuts' natural oils, and paste is the butter mixed with sugar.[17] Croquant is a toffee- or brittle-like product made of ground hazelnut kernels and sugar. All of these products are made for consumption in other food products – chiefly nut mixes, baked goods, confections, and dairy products.[18]

C. Domestic Like Product

Petitioners maintain that the Commission should find one domestic like product, coextensive with the scope of the investigation. For the purposes of this preliminary phase investigation, respondents do not disagree. Petitioners also assert that the Commission should not include in-shell hazelnuts as part of the domestic like product. Respondents present no opinion on this latter assertion. For the reasons discussed below and for purposes of this preliminary determination, we find a single domestic like product consisting of all domestically processed hazelnuts.

1. Whether the Commission Should Find One Domestic Like Product

Petitioners state that the ultimate use of each form of the kernel or processed hazelnut is the same: consumption in various baking, confectionary, or candy applications.[19] They contend that there are no clear dividing lines between the various forms of kernel and processed hazelnuts, as each has its own gradations as one moves from one type to the next.[20] For the purposes of the preliminary phase

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[15] See Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

[16] 68 Fed. Reg. 64589, 64589-90 (Nov. 14, 2003). Specifically excluded from the scope are in-shell hazelnuts. 68 Fed. Reg. at 64590.

[17] In some countries, butter is known as "paste" and paste is known as "praline. Confidential Staff Report ("CR") at I-3 n.5; Public Staff Report ("PR") at I-2 n.5.

[18] CR at I-2 - I-3, PR at I-2.

[19] Petition at 6.

[20] Petition at 6-7.

investigation, respondents do not challenge petitioners' assertions.[21] They do note that subject imports consist almost exclusively of hazelnuts in raw kernel form, however.[22]

Subject hazelnuts are processed into a variety of different forms as a convenience to the end user, which petitioners assert in some cases could perform the processing itself. For example, many restaurant chefs prefer to buy kernels and then roast, slice, dice, make meal or flour, paste or butter themselves. Others, however, prefer the convenience of purchasing the types they need in the processed form.[23] The use of butter, paste, flour or meal is a function of how each hazelnut form co-mingles with the other ingredients. For the item to be deemed a "hazelnut item" in the trade, petitioners assert, the form of the nut does not matter.[24]

Domestic processors perform certain preliminary processing on the in-shell hazelnuts, i.e. cleaning, drying, and sorting before processing the nuts further into types that are within the scope of the investigation.[25] Not all processors perform all of the various processing operations. For instance, some produce diced, sliced, and chopped kernels, while others produce butter and paste.[26] Heat-treating equipment is used to produce roasted and blanched kernels, while machines with interchangeable cutting heads are used to produce diced, sliced, and chopped kernels. Grinding machines are used to produce meal and flour, while milling machines are used to produce butter and paste, with sugar added to the latter. Hazelnut meal and butter also may be byproducts of the dicing process. These operations can occur in the same facilities and the workers generally are interchangeable, but it is unclear to what degree processors in fact perform different processing operations in the same facilities or with the same workers.[27] We intend to collect additional information on this issue in any final phase of this investigation.

Most buyers reportedly are able to switch among the several types of processed hazelnuts, depending on the application involved. For instance, diced hazelnuts may be substituted for sliced in toppings for baked goods or salads, or for inclusion in some types of baked products.[28] Sliced and diced kernels are simply a smaller version of the original raw kernel.[29] Petitioners estimate that interchangeability in terms of uses is limited; e.g., sliced and diced hazelnuts generally are not substituted for one another, nor are paste and meal.[30]

In terms of the channels of distribution, processors sell the product among themselves, may further process the product they purchase from other processors, and may purchase imported product for

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[21] Turkish Exporters' Postconference Brief at 3; AFI Hazelnut Group's Postconference Brief at 8.

[22] Turkish Exporters' Postconference Brief at 3. Most subject imports actually consist of the whole kernels – either raw or blanched. CR/PR at IV-1.

[23] Petition at 6-7.

[24] Petitioners' Postconference Brief at 2; Conference Transcript ("Tr.") at 16-17 (Mr. Kenagy).

[25] Tr. at 21-22 (Mr. Kenagy).

[26] CR at I-4- I-5, PR at I-3. Not all hazelnut facilities have the ability to shell nuts. See CR at I-4, III-3, PR at I-3, III-2.

[27] CR at I-4 - I-5, PR at I-3.

[28] Petition at 7; Tr. at 17 (Mr. Kenagy).

[29] Petitioners' Postconference Brief at 2.

[30] Petitioners' Postconference Brief at 3.

further processing. The end user market includes nut mix producers; grocery stores that sell both whole hazelnut kernels as a bulk product or as packaged whole, sliced or diced hazelnut kernels; and food processors who use processed hazelnuts in candies, baked goods, dairy products, and other food products.[31]

Customers and producers recognize that they are obtaining a hazelnut, notwithstanding the different processed forms. Both customers and producers expect a product that adds the hazelnut flavor and taste irrespective of the form.[32] However, a customer seeking hazelnuts in a mixed nut container will perceive hazelnut butter to be different, as will a baker requiring hazelnut flavor in a cake mix who is presented with a blanched hazelnut kernel as opposed to hazelnut flour.[33]

There is a range of prices among the different hazelnut forms, reflecting the value added by processing.[34] Petitioners estimate the average prices of the various forms as follows: natural kernels, $1.70/lb.; roasted kernels, $1.99/lb.; blanched kernels, $2.00/lb.; diced kernels, $1.91/lb.; sliced kernels, $2.06/lb.; meal/flour, $1.86/lb.; butter, $2.97/lb.; and paste, $1.97/lb.[35]

Based on the record of the preliminary phase of this investigation, it appears that the various forms of processed hazelnuts generally share the same basic physical characteristics and uses: being a form of hazelnut used in food products to impart a certain flavor. While there are different processing operations, these processes may occur in the same facilities using the same employees. There is some interchangeability in that some forms of processed hazelnuts may be substituted for others. The channels of distribution are the same for the various forms. In general terms, customers and producers perceive that they are obtaining hazelnuts. There is a range of prices among the various forms of processed hazelnuts.

For purposes of the preliminary phase of this investigation, based on the common physical characteristics and uses, similar channels of distribution, and customer and producer perceptions, and some interchangeability, we find that there is one domestic like product coextensive with the scope of the investigation.[36]

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[31] CR/PR at II-1; Tr. at 17-18 (Mr. Kenagy).

[32] Petitioners' Postconference Brief at 3; Tr. at 18 (Mr. Kenagy).

[33] AFI Hazelnut Group's Postconference Brief at 8.

[34] Price differences may also result from whether nuts are broken during shelling or from other factors. See Tr. at 122 (Ms. Preece).

[35] Petitioners' Postconference Brief at 4; Tr. at 20 (Mr. Kenagy).

[36] Croquant is not produced in the United States. Tr. at 40 (Ms. Owen). Where there is no domestic production of an article described in the scope, the Commission must include "the most similar" article that is domestically produced in the like product. See, e.g., Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, Inv. Nos. 701-TA-422-425 (Preliminary) and 731-TA-964-983 (Preliminary), USITC Pub. 3471 (November 2001) at 5-6, n. 21. In this instance, the product most similar to the subject merchandise would be certain forms of processed hazelnuts such as paste, meal, flour, and butter.

2. Whether the Commission Should Include In-Shell Hazelnuts in the Definition of the Domestic Like Product[37]

Only petitioners address the issue of whether there is a clear dividing line between in-shell hazelnuts and processed hazelnuts; they contend that there is. The record in the preliminary phase of this investigation does not lead us to a contrary conclusion.

In-shell hazelnuts are not dedicated to the production of processed hazelnuts; indeed, as discussed below, only 35 percent of the in-shell crop is sold for processing.[38] Instead, as a result of their most distinctive physical characteristic, their shell, in-shell hazelnuts have an independent use, namely, retail sale for consumer consumption. The record in this preliminary phase of this investigation suggests that this market is largely distinct from the primary markets for processed hazelnuts used in prepared baking, confectionary, and dairy goods. In-shell nuts cannot be used in these applications without additional processing to transform the in-shell hazelnut into whole kernels or further processed food items. Therefore, based on the limited available information in the record, the semifinished product analysis[39] does not support expanding the domestic like product to include in-shell hazelnuts.

The production process for growing and harvesting hazelnuts may be quite distinct from the mechanical processing of the hazelnuts. In-shell hazelnuts, after cleaning, drying and sorting, are consumed. However, as mentioned previously, they can also be further processed into products devoted to baking, confectionary and dairy applications. In-shell hazelnuts move through a different channel of distribution: most are sold exclusively to grocery stores,[40] whereas processed hazelnuts are sold to firms producing baking, confectionary, and candy, and other food products.[41]

With respect to price differences, the price that processors pay for in-shell hazelnuts is set by

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[37] The Commission may define the domestic like product to be broader than the subject merchandise identified by Commerce, if the facts so warrant. See, e.g., Certain Pasta from Italy and Turkey, Inv. Nos. 701-TA-365-366 & 731-TA-734-735 (Final), USITC Pub. 2977 at 8-12 (July 1996); Certain Electric Fans from the People's Republic of China, Inv. No. 731-TA-473 (Final), USITC Pub. 2461 at 8 (Dec. 1991) ("Even if there is a domestic like product identical to the imports subject to investigation, the Commission may find the like product to be broader than that identical product"), aff'd, Holmes Products Corp. v. United States, 16 CIT 1101 (Dec. 30, 1992). Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion 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." S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[38] CR at I-4, PR at I-3.

[39] Under this analysis, the Commission examines (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) the significance and extent of the processes used to transform the upstream into the downstream articles. See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539(A) (Final), USITC Pub. 3213 at 6 n.23 (July 1999).

[40] Petitioners' Postconference Brief at 3; Tr. at 18 (Mr. Kenagy). We invite the parties to address, in any final phase of this investigation, how the costs of cleaning, drying, and sorting hazelnuts are allocated between in-shell and shelled product.

[41] CR/PR at II-1.

agreement between growers and processors. This agreement derives from a marketing group consisting of a number of growers that band together and bargain with the processors for the field price before the harvest begins. The price is set based on the predicted average of the wholesale price for hazelnuts sold by the processors in the in-shell U.S. market, in the in-shell export market, and in the shelled market (whether sold in the United States or exported). It was predicted to be *** per pound for this marketing year,[42] with the growers receiving *** per pound and the processors receiving *** per pound after paying the growers.[43] This price is significantly lower than the prices of the processed forms of hazelnuts, as described above.[44]

Accordingly, in view of what apparent differences in manufacturing processes, facilities, limited interchangeability, different channels of distribution as well as customer and producer perceptions, and significantly different prices, we do not include in-shell hazelnuts in the domestic like product. For the purposes of this preliminary determination we find one domestic like product, coextensive with the scope of the investigation.

IV. DOMESTIC INDUSTRY

The domestic industry is defined 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."[45] In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[46]

A. Whether the Domestic Industry Should Include Growers

Petitioners argue that growers should not be included in the domestic industry, as neither of the two statutory prerequisites has been met in this case.[47] Based on certain assumptions they make by comparing data provided by petitioners, AFI Hazelnut Group argues that the Commission could either include or exclude the growers, but because there are no industry data available regarding the growers' operations, the Commission must exclude them.[48]

In investigations involving processed agricultural products, section 771(4)(C) of the 1988 Omnibus Trade and Competitiveness Act authorizes the Commission to include farmers/growers of a raw

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[42] The marketing year begins July 1 and ends June 30. CR at I-5, PR at I-4. In the United States, harvesting (at the end of the crop year) generally occurs from late September through early November. CR at I-4, PR at I-3.

[43] CR at II-3 & n.11, PR at II-2 & n.11. This is the in-shell equivalent wholesale price. Kernels are assumed to comprise 40 percent of the weight of in-shell nuts. Thus, *** per pound in-shell would be equivalent to *** per pound for kernels. CR at II-3 n.10, PR at II-2 n.10.

[44] The limited information in the record of the preliminary phase of this investigation does not permit us to compare the price paid by consumers of in-shell nuts with the price paid by consumers of processed products, which would provide us with a more meaningful analysis.

[45] 19 U.S.C. § 1677(4)(A).

[46] 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).

[47] Petition at 9.

[48] AFI Hazelnut Group's Postconference Brief at 8-12.

agricultural product as producers within the domestic industry producing the processed agricultural product if –

(a) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production, and
(b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interests is based upon any legal relationship).[49]

Under the first prong of the statute, a continuous line of production exists if:

(i) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and
(ii) the processed agricultural product is produced substantially or completely from the raw product.[50]

When determining whether the raw agricultural product is "substantially or completely devoted" to the production of the processed agricultural product, the Commission generally looks to the percentage of the raw product used in the processed product.[51] In this investigation, 35 percent of the weight of in-shell hazelnuts was transformed into the subject product between 2000 and 2002, with the exception of a very small quantity that was processed into non-subject products for retail sale, such as candied nuts.[52] While neither the statute nor the legislative history establishes a specific numeric benchmark, we conclude that devotion of a percentage that is significantly less than half is insufficient to satisfy the first prong of the statute.[53] Consequently, we do not include hazelnut growers within the definition of the domestic industry. Accordingly, we define the domestic industry to include only processing operations producing certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and butter. Nevertheless, because the record demonstrates the importance of growers to processors and vice versa, we take into account the role of growers in the production of processed hazelnuts as a condition of competition in this industry.

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[49] 19 U.S.C. §1677(4)(E)(i).

[50] 19 U.S.C. § 1677(4)(E)(ii).

[51] See, e.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 (Aug. 2003) at 8. In that investigation, the Commission did not include catfish farmers in the domestic industry producing frozen fish fillets because only one-half (by weight) of the live food-sized catfish acquired by domestic processors was processed into catfish fillets. In Red Raspberries from Chile, Inv. No. 731-TA-948 (Final), USITC Pub. 3524 (2002) at 8, the Commission included growers, finding that 79 percent of IQF-quality raspberries were used to make the processed product.

[52] CR at I-4, PR at I-3.

[53] The legislative history indicates that "substantially or completely" should be interpreted to mean "all or almost all." See H.R. Rep. 40, Part I, 100th Cong., 1st Sess. (1987) at 121. The Senate Finance Committee also states that "[t]he Committee does not expect this test (i.e. the 'single continuous line test') to be met if the raw product is devoted to production of several different processed products." S. Rep. 71, 100th Cong., 1st Sess. (1987) at 109-10.

B. Other Issues

The record indicates that there are 13 known small processors, in addition to the six petitioners, and that these non-petitioners are believed to account for 15 percent of U.S. production.[54] We invite the parties to identify other processors from which the Commission should seek data in any final phase of this investigation. We also intend to collect data on the extent to which, if at all, subject Turkish hazelnut imports are further processed by hazelnut processors in the United States.

C. Related Parties

We also must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. 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 subject imports. The Commission has found such control to exist when the domestic producer was responsible for a predominant proportion of an importer's purchases and these purchases were substantial.[55] [56]

We consider whether circumstances are appropriate to exclude two domestic producers from the domestic industry because they purchased subject imports during the period examined. HGO/Westnut[57] purchased *** pounds of subject processed hazelnuts in ***; it did not purchase subject imports at any other time during the period examined.[58] These purchases were made to meet the needs of existing customers.[59] HGO/Westnut are petitioners and accounted for *** percent of domestic production in 2000-2002.[60] Their purchases of subject imports were equivalent to only *** percent of their production and of their U.S. shipments in ***.[61] Their purchases accounted for only *** percent of total U.S. imports of subject merchandise in ***.[62]

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[54] CR/PR at III-1.

[55] See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (Sept. 2001) at 8-9; Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 & 731-TA-815-822 (Preliminary), USITC Pub. 3181 (Apr. 1999) at 12; Certain Brake Drums and Rotors from China, Inv. No. 731–TA-744 (Final), USITC Pub. 3035 (Apr. 1997) at 10 n.50. See also Statement of Administrative Action for the Uruguay Round Agreements Act ("SAA"), H.R. Rep. 316, 103rd Cong., 2d Sess., vol. 1 at 858 (1994).

[56] In any final phase investigation, we will continue to evaluate whether the producers at issue are, in fact, related parties.

[57] Westnut is a wholly-owned subsidiary of Hazelnut Growers of Oregon ("HGO"). CR/PR at Table III-1 n.3.

[58] CR/PR at Table III-1.

[59] CR at III-2, PR at III-1.

[60] CR/PR at Table III-1.

[61] CR at III-5, PR at III-4.

[62] Compare CR at III-5, PR at III-4, with CR/PR at Table IV-1.

We do not find that circumstances are appropriate to exclude HGO/Westnut from the domestic industry. Even if we deem them to be "related" by virtue of their purchases, the ratio of purchases of subject merchandise to their total production and domestic shipments was *** and these purchases only occurred during one year of the period examined. ***.[63] Accordingly, it does not appear that HGO/Westnut derived a significant benefit from their *** purchases of subject imports. Further, they are petitioners and no party has argued for their exclusion from the domestic industry.

Willamette Filbert Growers ("Willamette") purchased *** pounds of subject hazelnuts in ***, *** pounds in ***, *** pounds in ***, and *** pounds in ***.[64] These purchases were made to meet the volume needs of existing customers.[65] Willamette is a petitioner and accounted for *** percent of domestic production in 2000-2002.[66] Its purchases of subject imports were equivalent to *** percent of its production and *** percent of its U.S. shipments in ***. These purchases were equivalent to *** percent of its production and *** percent of its U.S. shipments in ***.[67] Its purchases accounted for *** percent of total U.S. imports of subject merchandise in *** and for *** percent in ***.[68]

We do not find that circumstances are appropriate to exclude Willamette from the domestic industry based on purchases of subject imports. Although the ratio of its purchases of subject merchandise to its total production and domestic shipments was ***,[69] Willamette does not appear to have derived significant benefits from its purchases of subject imports. No purchases were made in *** or *** and ***.[70] Although its purchases are larger relative to its production as compared to those of HGO/Westnut, it also does not appear that Willamette derived significant benefits from its purchases of subject imports. Lastly, it is a small domestic producer and its inclusion in the domestic industry will not skew the data for the remainder of the industry,[71] it is a petitioner, and no party has argued for its exclusion from the domestic industry.

We therefore define the domestic industry as all producers of certain processed hazelnuts.

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[63] HGO/Westnut's net sales ***. The value of their net sales ***. Their operating ***. CR/PR at Table VI-2.

[64] CR at III-5, PR at III-4.

[65] CR at III-2, PR at III-1.

[66] CR/PR at Table III-1.

[67] CR at III-5, PR at III-4.

[68] Compare CR at III-5, PR at III-4, with CR/PR at Table IV-1.

[69] Because the sale of in-shell hazelnuts is significantly more profitable than the sale of processed nuts, Willamette ***. See CR at III-2, PR at III-1.

[70] Willamette's net sales ***. The value of their net sales ***. Their operating ***. CR/PR at Table VI-2.

[71] See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993).

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS[72]

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.[73] 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.[74] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[75] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[76] 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."[77]

Based on an evaluation of the relevant statutory factors, we find that there is a reasonable indication that the domestic industry producing certain processed hazelnuts is materially injured by reason of subject imports from Turkey.

A. Conditions of Competition

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of the subject imports.

Processed hazelnuts, in all their forms, are produced for consumption in other food products – chiefly nut mixes, baked goods, confections, and dairy products.[78] Domestic producers and importers disagree as to whether demand has risen, stayed the same, or fallen since January 2000, although most reported that it has risen or stayed the same.[79] Apparent U.S. consumption increased irregularly between 2000 and 2002.[80]

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[72] 19 U.S.C. § 1677(24)(A)(I)(I). In this investigation, subject imports from Turkey accounted for more than three percent of the volume of all hazelnuts imported into the United States in the most recent 12-month period for which data are available preceding the filing of the petition. See CR/PR at Table IV-1. As such, we find that subject imports from Turkey are not negligible under 19 U.S. C. § 1677(24).

[73] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[74] 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).

[75] 19 U.S.C. § 1677(7)(A).

[76] 19 U.S.C. § 1677(7)(C)(iii).

[77] 19 U.S.C. § 1677(7)(C)(iii).

[78] CR at I-2 - I-3, PR at I-2.

[79] CR at II-7, PR at II-5.

[80] Apparent U.S. consumption increased from 18.5 million pounds in 2000 to 20.2 million pounds in 2001, and was 20.1 million pounds in 2002. It was 9.2 million pounds in interim 2002 and 10.0 million pounds in interim 2003. CR/PR at Table IV-1.

The largest single use for certain processed hazelnuts is in chocolate candies. Petitioners claim that certain processed hazelnuts are in demand throughout the year, while respondents assert that demand follows a cyclical annual pattern with more purchases of shelled nuts in nut mix containers and in baked goods during the year-end holiday season.[81]

Hazelnuts are grown mainly in the Willamette Valley of Oregon, with a few additional farms in Washington state.[82] The hazelnut trees in the United States are currently subject to "eastern filbert blight," which does not compromise the quality of the nut, but affects the yield of the tree (and slowly kills it). The industry is in the process of developing disease-resistant varieties of trees.[83] Because several years are required before the hazelnut tree bears enough nuts to harvest, significant production from such hazelnut trees is not imminent.[84]

There are three markets for hazelnuts: domestic in-shell, export in-shell, and kernels. According to the U.S. Department of Agriculture ("USDA"), handlers and growers receive the highest return on domestic in-shell, less for export in-shell, and the least for kernels.[85] The quantity of processed hazelnuts available depends on the volume of hazelnuts harvested and sales of the input in-shell nuts. While the in-shell market is more lucrative, the producers are limited by law as to the amount of in-shell nuts they may sell by Marketing Order 92: Oregon and Washington Hazelnuts, as administered by the USDA.[86] The Hazelnut Marketing Board is responsible for local administration of the marketing order and determines the annual volume of domestic in-shell nuts that may be sold in the U.S. market. Because the U.S. market is not large enough to consume all the nuts that are harvested as in-shell nuts without major reductions in price that would cause prices to fall below profitable levels, the board (with USDA oversight) establishes each year in September the share of the harvest that may be sold in-shell and applies a percentage of that share to each producer. This quantity is known as "free" product and the rest is known as "restricted," which must either be exported as in-shell or processed into the subject product. Thus, the quantity of processed hazelnuts that the U.S. processors have available to market largely depends on the size of the harvest, how much of the in-shell nut they are allowed to sell in the United States, and how much of the in-shell nut is exported.[87] The domestic processors were unable to supply the market for processed hazelnuts in its entirety during the period examined.[88]

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[81] CR at II-7, PR at II-5. We intend to seek more information on this issue during any final phase of this investigation.

[82] CR/PR at II-1.

[83] CR at I-3, PR at I-2; Tr. at 24 (Mr. Kenagy).

[84] The first commercially viable immune variety of hazelnuts has a release date targeted for December 2004. Tr. at 25 (Mr. Kenagy). There is no indication in the record that the blight has affected the production of hazelnuts.

[85] CR/PR at II-1.

[86] CR at I-6 & n.9, PR at I-5 & n.9.

[87] CR at I-6, PR at I-4. For the 2002-2003 marketing year, final free and restricted percentages were 18.4392 and 81.5608, respectively. CR at I-6, PR at I-4. We intend to gather data on the sales and processing of in-shell hazelnuts, as well as associated costs and profitability, in any final phase of this investigation.

[88] See Petition at 5; Tr. at 12 (Mr. Ince).

The in-shell hazelnut is a biennial product. That is, the trees that bear the nut alternate between heavy production one year and light production the next.[89] In the United States, this affects production as a whole. In Turkey, however, the greater quantity of trees and dispersion of growing areas translates into a less-pronounced cycle in overall production. However, the effect of biennial crop production on the year-to-year marketing of the subject products could be reduced as, once dried, in-shell stocks can be inventoried for a year without loss in quality, and even the processed nuts can be preserved for several months if vacuum-packed and kept in cold storage. In so doing, processors can carry over one year's production to another. In the United States, the years 2000 and 2002 (marketing years 2000-2001 and 2002-2003) yielded fewer in-shell hazelnuts than 2001 and 2003 (marketing years 2001-2002 and 2003-2004).[90]

There are 19 identified processors of hazelnuts in the United States, and the six petitioners are believed to account for 85 percent of all known domestic production.[91] Domestic processors may sell the product among themselves, further process the product purchased from other processors into product still within the scope of this investigation, and in some cases, purchase imported subject product for further processing.[92] Most hazelnut processors in the United States are alleged to be related in some way to the growers.[93] However, the details of cross-ownership are unclear.[94]

Domestic production accounted for less than one-half of the U.S. market throughout the period, declining from 40.1 percent in 2000 to 26.7 percent in 2002. Conversely, subject imports from Turkey accounted for over one-half the market throughout the period examined, increasing from 56.6 percent in 2000 to 71.0 percent in 2002. Nonsubject import market share was less than four percent during the period.[95]

Nearly all processors, and the majority of importers, indicated that U.S. and Turkish processed hazelnuts are frequently, if not always, interchangeable.[96] While the domestic and Turkish hazelnuts are generally considered to be substitutable, both domestic producers and importers agree that there are non-price differences between the products, but differ as to the impact of such differences in the marketplace.

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[89] The harvest occurs from late September through early November in the United States, and begins in August in Turkey. CR at I-4, PR at I-3.

[90] CR at I-5, PR at I-4. As stated above, the marketing year runs from July 1 through June 30. CR at I-5, PR at I-4. Because of the biennial nature of domestic hazelnut production, we intend to gather data for four full years in any final phase of this investigation. In addition, we intend to gather these data in a manner more meaningful than calendar years, *i.e.* by marketing and/or crop years.

[91] CR/PR at II-1 & n.1, VI-1.

[92] CR/PR at II-1. We invite the parties to identify the types of processed hazelnuts for which we should seek separate shipment data in order to evaluate the effects of the subject imports on the domestic industry.

[93] CR/PR at Table III-1 nn.1-5.

[94] CR/PR at III-1. We intend to seek more information on the nature of these relationships and the extent of cross-ownership in any final phase of this investigation.

[95] CR/PR at Table IV-1. Apparent U.S. consumption increased from 18.5 million pounds in 2000 to 20.2 million pounds in 2001, and was 20.1 million pounds in 2002. It was 9.2 million pounds in interim 2002 and 10.0 million pounds in interim 2003. CR/PR at Table IV-1.

[96] CR/PR at Table II-2. Six of seven processors and seven of eleven importers reported that the products are frequently or always interchangeable.

The hazelnut tree varieties grown in Turkey differ from those grown in the United States.[97] The traditional Oregon variety of hazelnuts does not blanch as well as the Turkish varieties.[98] The Turkish varieties have higher oil content, which affects the flavor of the hazelnut.[99] Domestic hazelnut kernels tend to be larger than the Turkish kernels.[100] In addition, most hazelnuts that are imported from Turkey are raw kernels and blanched kernels, while U.S. hazelnuts are available in all forms within the scope except for croquant.[101]

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."[102]

Subject import volume increased significantly over the period examined, both in absolute terms and relative to production and consumption in the United States. Subject import volume increased by 36.1 percent between 2000 and 2002, from 10.5 million pounds in 2000 to 12.5 million pounds in 2001, then to 14.3 million pounds in 2002.[103] Subject import market share rose steadily over the period: from 56.6 percent in 2000 to 61.8 percent in 2001, then to 71.0 percent in 2002.[104] Subject import shipments were equivalent to 125.5 percent of U.S. production (by volume) in 2000, 187.4 percent in 2001, and 211.8 percent in 2002.[105]

We find for purposes of the preliminary phase of this investigation that subject import volume was significant during the period examined, both in absolute terms and relative to production and consumption in the United States.[106]

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[97] CR at II-10, PR at II-7.

[98] CR at II-10 & n.37, PR at II-7 & n.37. The domestic industry maintains that the Oregon product could be blanched if there were economic incentives to do so. CR at II-10 n.39, PR at II-7 n.39.

[99] CR at II-10, PR at II-7.

[100] CR at II-10, PR at II-7.

[101] CR/PR at IV-1. We note, however, that domestic production of blanched hazelnuts is extremely limited. See, e.g., Tr. at 48 (Mr. Kenagy). We intend to gather data on other forms of subject imports during any final phase of this investigation.

[102] 19 U.S.C. § 1677(7)(C)(i).

[103] CR/PR at Table IV-1. Subject import volume was 6.4 million pounds in interim 2002 and 8.2 million pounds in interim 2003. CR/PR at Table IV-1. We note that for the purposes of the preliminary phase of this investigation, we are utilizing calendar year data as the basis on which we make our injury determination. In light of the two-year crop cycle, we place only limited weight on the interim data in the preliminary phase of this investigation. See CR at I-5, PR at I-3. However, we will seek data on a full crop year basis in any final phase of the investigation.

[104] CR/PR at Table IV-1. Subject import market share was 69.8 percent in interim 2002 and 82.3 percent in interim 2003. CR/PR at Table IV-1.

[105] CR/PR at Table IV-1. Subject imports were equivalent to 152.4 percent of U.S. production (by volume) in interim 2002 and 526.2 percent in interim 2003. CR/PR at Table IV-1.

[106] In any final phase of this investigation we intend to collect additional data regarding the extent to which any U.S. supply shortfall exists.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act[107] provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

Subject imports and domestic processed hazelnuts are moderately interchangeable.[108] The price of the product is important in purchasing decisions.[109] The pricing data in this preliminary phase of the investigation are somewhat limited, in that there is coverage for only 9.1 percent of the quantity of domestically produced commercial shipments between 2000 and interim 2003, although the data encompass 42.7 percent of the shipments from Turkey.[110]

Price data collected for four separate forms of processed hazelnuts indicate substantial underselling by the Turkish product, which was priced lower than comparable domestic product in 29 of 31 observations. The weighted average margin of Turkish underselling was 7.8 - 8.9 percent in 2000-01 and 22.9 - 26.0 percent in 2002-03.[111]

Domestic prices for product 1 (large whole natural hazelnuts), representing the largest volume of domestic sales, decreased overall from a high point in the first half of 2000 to a low in the last calendar quarter of 2001 and the first calendar quarter of 2002, then partially recovered until the third calendar quarter of 2003. Turkish prices declined from 2000 through 2003, with sharp declines typically associated with large sales quantities.[112] Domestic prices for products 2 and 3 were stable or rising, based on irregular sales that generally did not compete directly with comparable Turkish product.[113] Domestic prices for product 4 (large whole roasted hazelnuts) actually rose over the period examined. Sales volumes, however, dropped sharply beginning in the fourth calendar quarter of 2001, as Turkish volume rose and Turkish prices dropped markedly.[114]

Based on the record in this preliminary phase of the investigation and in light of the significant underselling and mixed pricing trends, we find significant adverse price effects by the subject imports for purposes of this preliminary determination.[115] We intend to consider more closely any price suppressing or depressing effects of the subject imports in any final phase of this investigation.[116]

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[107] 19 U.S.C. § 1677(7)(C)(ii).

[108] CR at II-9, PR at II-6; see CR/PR at Table II-2.

[109] See CR at II-7, II-9, PR at II-5, II-6.

[110] CR at V-4, PR at V-3.

[111] CR/PR at Table V-6.

[112] CR/PR at Table V-1.

[113] CR/PR at Tables V-2 and V-3.

[114] CR/PR at Table V-4.

[115] While we were able to confirm three sales lost to subject imports, we note that the purchaser of the subject goods ***. CR/PR at Table V-7. Therefore, we do not find these sales to be probative to our analysis.

[116] We also will seek information as to the price relationship between in-shell and processed hazelnuts.

D. Impact of the Subject Imports[117]

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[118] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. 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."[119]

As explained above, the crop cycle for the in-shell hazelnut is biennial in nature. Various indicators of the industry's condition show an irregular declining pattern between 2000 and 2002. As the quantity and value of subject imports rose over the period examined, these same factors fell insofar as domestic shipments are concerned. The quantity of domestic shipments decreased from 7.4 million pounds in 2000 to 6.9 million pounds in 2001, then decreased to 5.4 million pounds in 2002.[120] The value of these shipments declined from $15.4 million in 2000 to $14.1 million in 2001, then to $11.6 million in 2002.[121] Inventories increased steadily from 2000 to 2002; rising from 1.2 million pounds in 2000 to 1.4 million pounds in 2001, then to 2.0 million pounds in 2002.[122]

As the quantity and value of domestic shipments decreased steadily over the period, U.S. producers' domestic market share followed a similar trend, falling from 40.1 percent in 2000 to 34.4 percent in 2001, then to 26.7 percent in 2002.[123] Domestic market share declined by more than 13 percentage points between 2000 and 2002, as subject import market share rose by 14.4 percentage points.[124] At the same time, apparent U.S. consumption was increasing irregularly, rising from 18.5

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[117] In its notice of initiation, Commerce estimated that the dumping margin for imports of subject hazelnuts is 31.80 percent. 68 Fed. Reg. 68032, 68034 (Dec. 5, 2003).

[118] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 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.") SAA at 885.

[119] 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).

[120] CR/PR at Table III-2. The quantity of domestic shipments was 2.6 million in interim 2002 and 1.6 million in interim 2003. CR/PR at Table III-2. We note that notwithstanding the biennial nature of the crop cycle, declines are evident in sequential years.

[121] CR/PR at Table III-2. The value of domestic shipments was $4.9 million in interim 2002 and $3.1 million in interim 2003. CR/PR at Table III-2.

[122] CR/PR at Table III-2. Inventories were 2.5 million pounds in interim 2002 and 1.7 million pounds in interim 2003. CR/PR at Table III-2.

[123] CR/PR at Table IV-1. Domestic market share was 28.0 percent in interim 2002 and 16.2 percent in interim 2003. CR/PR at Table IV-1.

[124] CR/PR at Table IV-1. Subject import market share was 56.6 percent in 2000, 61.8 percent in 2001, and 71.0 percent in 2002. It was 69.8 percent in interim 2002 and 82.3 percent in interim 2003. CR/PR at Table IV-1.

million pounds in 2000 to 20.2 million pounds in 2001, and was 20.1 million pounds in 2002.[125]

Domestic capacity is difficult to ascertain, because different processors perform different processing tasks.[126] However, as measured, it was steady throughout the period examined: 38.7 million pounds annually.[127] Similarly, capacity utilization is difficult to measure in this industry for the same reason, but we note that, as computed, it was 20.9 percent in 2000, falling to 16.9 percent in 2001 and to 16.1 percent in 2002.[128] The number of workers fell irregularly over the period, increasing from 126 in 2000 to 129 in 2001, then decreasing to 102 in 2002.[129]

Several of the domestic industry's financial indicators declined as well over the period examined. Net sales declined over the period, from 8.0 million pounds in 2000 to 6.8 million pounds in 2001, then to 4.7 million pounds in 2002.[130] The value of net sales followed the same trend, falling from $16.3 million in 2000 to $13.2 million in 2001, then to $9.0 million in 2002.[131] Profitability decreased irregularly between 2000 to 2002, as gross profit increased from $2.5 million in 2000 to $3.6 million in 2001, then decreased to $1.5 million in 2002.[132] Operating income followed the same trend, rising from $550,000 in 2000 to $2.2 million in 2001, then falling to $543,000 in 2002.[133] [134] Cost of goods sold declined over the period examined, from $13.9 million in 2000 to $9.6 million in 2001, then to $7.5 million in 2002.[135] [136] Capital expenditures fluctuated considerably between 2000 and 2002, rising from

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[125] CR/PR at Table IV-1. Apparent U.S. consumption was 9.2 million pounds in interim 2002 and 10.0 million pounds in interim 2003. CR/PR at Table IV-1.

[126] CR at II-4, PR at II-3. Of the petitioners, for example, only one blanches hazelnuts, only three slice hazelnuts, only three process hazelnuts into meal/flour, and only two process hazelnuts into paste/butter. AFI Hazelnut Group's Postconference Brief at 7.

[127] CR/PR at Table III-2. Domestic capacity was 19.3 million pounds in both interim periods. CR/PR at Table III-2.

[128] CR/PR at Table III-2. Capacity utilization was 19.1 percent in interim 2002 and 8.1 percent in interim 2003. CR/PR at Table III-2.

[129] CR/PR at Table III-2. The number of workers was 94 in interim 2002 and 62 in interim 2003. CR/PR at Table III-2.

[130] CR/PR at Table VI-1. Net sales totaled 2.9 million pounds in interim 2002 and 1.6 million pounds in interim 2003. CR/PR at Table VI-1.

[131] CR/PR at Table VI-1. The value of net sales was $5.5 million in interim 2002 and $3.1 million in interim 2003. CR/PR at Table VI-1.

[132] CR/PR at Table VI-1. Gross profit was $1.2 million in interim 2002 and $453,000 in interim 2003. CR/PR at Table VI-1.

[133] CR/PR at Table VI-1. Operating income was $555,000 in interim 2002 and became an operating loss of $51,000 in interim 2003. CR/PR at Table VI-1.

[134] We note that while many indicators declined over the period examined, operating margins remained positive, but followed the same pattern as operating income, with margins rising from 3.4 percent in 2000 to 16.6 percent in 2001, then declining to 6.1 percent in 2002. CR/PR at Table VI-1.

[135] CR/PR at Table VI-1. The cost of goods sold ("COGS") was $4.2 million in interim 2002 and $2.7 million in interim 2003. CR/PR at Table VI-1.

[136] Unit COGS fluctuated, however, reflecting the additional impact of diminished shipments. Unit COGS fell from $1.73 in 2000 to $1.40 in 2001, but then increased to $1.61 in 2002. CR/PR at Table VI-1.

$134,000 in 2000 to $767,000 in 2001, then falling to $129,000 in 2002.[137]

For purposes of this preliminary determination, we conclude that subject imports had a negative impact on the condition of the domestic industry during the period examined. As discussed above, we find both the volume of subject imports and the negative price effects of the subject imports to be significant. In light of the negative volume and price effects of subject imports and the worsening condition of the domestic industry, we find that subject imports adversely affected the performance of the domestic industry during the period examined.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of certain processed hazelnuts from Turkey allegedly sold in the United States at less than fair value.

[137] CR/PR at Table VI-3. Capital expenditures were $656,000 in interim 2002 and $81,000 in interim 2003. CR/PR at Table VI-3. We note that no domestic producer reported any research and development expenses. CR/PR at Table VI-3 n.1.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed with the Commission and the Department of Commerce (Commerce) on behalf of Westnut LLC (Westnut), Dundee, OR; Northwest Hazelnut Co. (Northwest), Hubbard, OR; Hazelnut Growers of Oregon (HGO), Cornelius, OR; Willamette Filbert Growers (Willamette), Newberg, OR; Evergreen Orchards (Evergreen), McMinnville, OR; and Evonuk Orchards (Evonuk), Eugene, OR on October 21, 2003, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of certain processed hazelnuts[1] from Turkey. In order to determine industry support for the petition and gather additional information regarding the petition's merits, Commerce postponed the original date for its initiation of this investigation until December 1, 2003, and issued a notice of initiation on December 5. The statutory deadline for transmitting the Commission's determination to Commerce is 25 days after the Commission receives notice of initiation. Information relating to the background of this investigation is provided below.[2]

Effective Date	*Action*
October 21, 2003 . . .	Petition filed with Commerce and the Commission; institution of Commission investigation (68 FR 61465, October 28, 2003)
November 12, 2003 .	Commission's conference[3]
November 14, 2003 .	Commerce's notice of postponement of initiation (68 FR 64589)
December 5, 2003 . .	Commerce's notice of initiation (68 FR 68032)
December 10, 2003 .	Commission's vote
December 12, 2003 .	Commission's determination transmitted to Commerce
December 18, 2003 .	Commission's views transmitted to Commerce

The product, as defined, has not been the subject of any other Commission investigations under sections 701 or 731 of the Act, under sections 201 or 301 of the Trade Act of 1974, or under section 232 of the Trade Expansion Act of 1962.

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[1] For purposes of this investigation, certain processed hazelnuts includes raw hazelnut kernels (shelled hazelnuts) and kernels that have been roasted, blanched, sliced, diced, chopped, or processed into paste, meal, flour, croquant, or butter. (Note.–hazelnuts are also known as "filberts." Strictly speaking, filberts are a type of hazelnut, but in general usage the terms "hazelnut" and "filbert" are used interchangeably). These products are currently provided for in subheadings 0802.22.00 and 2008.19.20 of the Harmonized Tariff Schedule of the United States (HTS). The respective general duty rates, applicable to Turkey, are 14.1 cents and 11.3 cents per kilogram. For a more detailed description of the merchandise subject to this investigation, including the like product produced in the United States, see the subsection of Part I entitled, "The Subject Product."

[2] The *Federal Register* notices cited in the tabulation are presented in app. A.

[3] A list of witnesses appearing at the conference is presented in app. B.

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C. The data relate to imports and U.S. production of the subject product. U.S. industry data are based on questionnaire responses of six firms that are believed to account for about 85 percent of U.S. production of this product in the period examined. U.S. imports are based on official statistics of Commerce.

PETITIONERS' ALLEGED DUMPING MARGINS

To ascertain dumping margins, petitioners focused on three shipments of raw hazelnut kernels from Turkey to the United States in March 2003. Deriving normal values for these kernels from production costs in Turkey and export prices from two invoices for these shipments, petitioners estimated a dumping margin of 31.80 percent, in accordance with Commerce's revisions.

THE SUBJECT PRODUCT

Physical Characteristics and Uses

The product scope, as hitherto noted, consists of raw hazelnut kernels–that is, shelled hazelnuts–and several other hazelnut products processed therefrom, including kernels that are roasted, blanched, sliced, diced, or chopped, or transformed into paste, meal, flour, croquant, or butter. The raw kernels themselves are generally classified by size, the bulk ranging from 9 mm to 15 mm in diameter.[4] Blanched (or bleached) kernels are raw kernels without their natural dark skins (pellicle), which have been removed by heat treatment; roasted kernels have undergone further heat treatment. Hazelnut meal and flour are kernels in dry granular or powdered form. Hazelnut butter is a powdered kernel mixed with the nuts' natural oils, and paste is the butter mixed with sugar.[5] Croquant is a toffee- or brittle-like product made of ground hazelnut kernels and sugar. All of these products are made for consumption in other food products–chiefly nut mixes, baked goods, confections, and dairy products.

Like most other fruits and nuts, hazelnuts are the product of trees, and a number of different varieties of hazelnut trees exist worldwide. In the United States, the Barcelona and Ennis varieties are most common; in Turkey, the Giresen and Levant varieties predominate. Depending on the variety of hazelnut tree, there are slight variations in the physical characteristics of the nut, which may make one or the other preferable for a particular process or to a particular buyer. The range of acceptability for individual purchasers, however, is unknown. The hazelnut trees in the United States are currently subject to a disease known as "eastern hazelnut blight", although the domestic producers that responded to the Commission's questionnaires did not report any compromises to the quantity or quality of their production resulting therefrom. (The disease only affects the yield of the tree, not the nut itself). Nevertheless, the industry is in the process of developing disease-resistant varieties of trees.

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[4] In addition to size standards, kernels sold in the United States must adhere to federally-sanctioned quality standards, provided for under the Hazelnut Marketing Order (Marketing Order 982) and subject to the decisions of the Hazelnut Marketing Board (HMB), which administers the order under the U.S. Department of Agriculture (USDA). The quality standards are enforced by the USDA through the State Inspection Service and specify minimum tolerances and grades for cleanliness, form, blemishes, color, smell, taste, moisture content, rancidness, damage, and contamination by rot, mold, insects, and rodents. The HMB currently consists of four producers of the subject product and three growers of the in-shell product.

[5] In some countries butter is known as "paste" and paste is known as "praline."

U.S. and Turkish hazelnut products are generally similar, although importers have indicated that the Turkish nut generally has a higher oil content and thus a somewhat different taste profile, which is preferred, if not demanded, by some users.[6] The same importers also claim that the skins on Turkish nuts are more easily removable. Currently, blanched hazelnuts, which are imported from Turkey, are not produced in the United States. U.S. producers, however, cite the current competitive environment rather than technical inability as the reason for not producing them domestically. The bulk of the product sold to users in the United States, by both U.S. producers and importers from Turkey, is either the raw, blanched, or roasted kernel.

The Production Process

The raw hazelnut kernel is processed from the in-shell hazelnut, and all the other subject products are processed from the raw kernel. Virtually all of the in-shell hazelnuts from which the subject products are made are grown on commercial farms, which in many, if not most, cases are related to the processing plants that produce the subject product. In the United States all of the processing and nearly all of the farming is concentrated in the State of Oregon. The overwhelming bulk of the in-shell hazelnuts produced by farmers is sold to processors; however, from 2000 to 2002, 65 percent of these in-shell nuts (by weight) were sold as in-shell nuts (after cleaning, drying, sorting for size, and grading for quality).[7] The remaining 35 percent were transformed into the subject product, with the exception of a very small quantity that is processed into nonsubject products for retail sale, such as candied nuts. Most of the shells that are removed from the nuts are sold to paper mills for use as fuel, although producers report that the shells' sales value barely covers the cost of transport to the mill. For processing, producers prefer in-shell nuts with the highest crack-out rates–that is, the highest weight of the kernel relative to that of the nut. The weight of the kernel produced in the United States averages about 40 percent of the weight of the in-shell nut.[8] In the United States harvesting generally occurs from late September through early November; in Turkey it begins in August.

To produce the raw hazelnut kernel, the kernel is removed from its already-cleaned and dried shell and is then sized and graded for quality. At this point, like the original in-shell nut, it can be packaged and sold as such or further processed into other products. To produce the other products subject to this investigation, the kernels are subjected to further operations appropriate to the specific product. Heat-treating equipment is used to produce roasted and blanched kernels; machines with interchangeable cutting heads are used to produce diced, sliced, and chopped kernels; grinding machines are used to produce meal and flour; and milling machines are used to produce butter and paste, with sugar added to the latter. Hazelnut meal and butter can also be by-products of the dicing process. All of these operations take place in the same facilities, and the workers for the most part are interchangeable.

The in-shell hazelnut is a biennial product, i.e., the trees that bear the nut alternate between heavy production one year and light production the next. In the United States this affects production as a whole. In Turkey, however, the greater quantity of trees and dispersion of growing areas translates into a less-pronounced cycle in overall production. In any case the effect of biennial crop production on the year-to-year marketing of the subject products is minimal. Once dried, in-shell stocks can be inventoried for a year without loss to quality, and even the processed nuts can be preserved for several months if

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[6] See conference transcript, pp. 85-86 and 89.

[7] Based on data published by the U.S. Department of Agriculture's (USDA's) National Agricultural Statistical Service (NASS).

[8] Based on NASS data for 2000-2002.

vacuum packed and kept in cold storage. By so doing producers can carry over one year's production to another. In the United States the years 2000 and 2002 (marketing years 2000-2001 and 2002-2003) were "off" years for in-shell production; 2001 and 2003 (marketing years 2001-2002 and 2003-2004) were "on" years. The marketing year (MY) runs from July 1 through June 30. More consequential to the production of the subject product are the sales of the in-shell nut, as explained below.

Distribution and Market Overview

Nearly all of the subject products are ultimately consumed in the production of other food products, either by household or institutional users. The market for producers and importers includes packagers of nuts and mixed nuts for retail, grocery stores, and producers of baked goods, confections, and/or dairy products. In some instances producers of baked goods, confections, and dairy products may further process the subject products into products still within the product scope and perform operations similar to producers–such as blanching, slicing, and dicing; however, so far as it is known, all of this product is consumed in the production of the user's product and not sold in competition with U.S. producers or importers on the open market. Both U.S. importers, which are generally buyers and sellers of various fruit and nut products, and U.S. producers distribute throughout the United States.

The quantity of subject products available for U.S. producers to produce and market in the United States is a function not only of the quantity of hazelnuts harvested but also of the quantity of in-shell nuts allowed to enter the U.S. market under self-regulating controls. In general, in-shell nut sales are more profitable to producers than the subject products; however, the quantity of in-shell nuts they may market in the United States is subject to strict limitation under Marketing Order 982: Oregon and Washington hazelnuts.[9] The HMB, hitherto mentioned in connection with the industry's quality controls, is the agency responsible for local administration of the Marketing Order and determines the volume of in-shell nuts that may be sold in the U.S. market. The U.S. market is not large enough to consume all in-shell nuts harvested. In order to prevent in-shell prices from falling below profitable levels, the board (with USDA oversight) establishes each year in September what share of the harvest may be sold in-shell and applies that share to each producer. This quantity is known as "free" product; the rest is known as "restricted", which either may be exported as in-shell or processed into the subject product. Thus, the quantity of subject product U.S. producers produce and have available for the market largely depends on how much of the in-shell nut they are allowed to sell. For the 2002-2003 marketing year, final free and restricted percentages were 18.4392 and 81.5608, respectively. A copy of USDA's *Federal Register* notice approving the HMB's allocations for the free and restricted markets in MY 2002-2003, together with other information relating to the HMB, is shown in appendix D.

DOMESTIC LIKE PRODUCT ISSUES

The Commission must determine what domestic product is like, or in absence of like, most similar in characteristics and uses to, the imported articles as defined in Commerce's scope. The petitioners consider the domestic like product to be coextensive with the product scope, i.e., all products

[9] This Marketing Order was established in 1949 and authorizes the establishment of volume regulations for in-shell hazelnuts sold in the continental United States and provides minimum grade and size requirements. The Marketing Order is effective under the Agriculture Marketing Act of 1937 and is administered by the Agriculture Marketing Service, USDA.

specified as "certain processed hazelnuts."[10] For current lack of information that would adequately support any position to the contrary, respondents accede to petitioners' single like product, at least for purposes of this preliminary phase of the investigation.[11]

[10] Petitioners' postconference brief, pp. 2-6.

[11] Postconference brief of Harris Ellsworth & Levin, pp. 6-8; and postconference brief of Cameron & Hornbostel, pp. 2-4.

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

CHANNELS OF DISTRIBUTION AND MARKET CHARACTERISTICS

In the United States, hazelnuts are grown mainly in the Willamette Valley of Oregon with a few additional farms in Washington State. Producers of certain processed hazelnuts sell the product among themselves, may further process the product purchased from other processors into product still within the scope, and in some cases, purchase imported product for further processing. The U.S. end-user market for certain processed hazelnuts includes nut mix producers;[1] grocery stores that sell both whole hazelnut kernels as a bulk product or as packaged whole, sliced, or diced hazelnut kernels;[2] and food processors who use certain processed hazelnuts in candies, baked goods, dairy products, and other food products. By far the largest use of certain processed hazelnuts is in chocolate candies.

The USDA reports that the "U.S. hazelnut production is allocated among three market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return on domestic inshell, less for export inshell, and the least for kernels."[3]

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

On the basis of available information, it is very difficult to determine the responsiveness of the supply of the U.S.-produced product to small changes in price. The market appears to be constrained by regulatory requirements and agreements between the growers and the processors rather than responding to market forces with changes in price causing changes in quantity supplied.[4] The maximum quantity of in-shell hazelnuts that processors may sell in the United States, the most profitable market for the hazelnut, is determined by a marketing order, as hitherto described. It is unclear what determines the quantity of in-shell hazelnuts sold on the international market; however, this is reported to be the second most profitable market, and if there were no constraint on these exports, processors could potentially increase their profits by selling more in-shell hazelnuts in this market rather than processing them.[5]

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[1] Nut mixes typically contain either whole natural or whole blanched kernels.

[2] Grocery stores may sell either bulk or packaged, whole or sliced/diced, in the bulk products or in the baking section. The petitioners report that they believe that product sold in bulk in grocery stores is typically used in baking products and may be further processed by the purchasers.

[3] App. D.

[4] Mike Klein, manager of the Hazelnut Growers Bargaining Association (HGBA), told staff that in the bargaining process, they consider the volume of U.S. and world production, the current price of imported hazelnuts, and the price and volume they expect for their sales of in-shell nuts to the export market. These factors determine how many nuts are exported in-shell and how many are sold for processing into kernels. Staff discussion with Mike Klein, HGBA, November 19, 2003.

[5] U.S. hazelnut industry representatives report that the quantity of in-shell hazelnuts sold is determined by prevailing conditions of competition vis-a-vis other suppliers of in-shell nuts to the world market; that U.S. in-shell nuts compete with Turkish in-shell nuts in third country markets, such as China and the EU; and that recent efforts by Turkish exporters to increase supplies of in-shell nuts to China at low prices have crowded out U.S. exports to that country. Staff discussion with Mike Klein, Manager, HGBA, November 19, 2003. The United States exported approximately 19,000 short tons of in-shell hazelnuts in 2002, the bulk of which were shipped to China.

Finally, the price of the in-shell hazelnuts is set in an agreement between growers and processors.[6] The price is based on the expected average wholesale price of hazelnuts sold by processors in three markets: the U.S. in-shell market, the export in-shell market, and the U.S. shelled market.

As mentioned above, the quantity of in-shell hazelnuts sold in the U.S. market is determined by a marketing order. Processors, by law, can only sell a fixed percentage of the hazelnuts they sell as in-shell nuts in the United States. The remainder must be shelled or exported. Every year the HMB sets a share of hazelnuts that may be sold in-shell in the United States. The board sets this share based on the amount of hazelnuts grown that year, inventories, and expected demand for in-shell nuts.[7] For example, in MY 2002-2003, 18.4 percent of processors' sales could be sold in the U.S. in-shell market; in MY 2001-2002, 6.1 percent could be sold in this market; and in MY 2000-2001, 17.0 percent could be sold in this market.[8] The marketing agreement requires that processors provide information on the size and type of their inventories. Inventories of in-shell nuts affect the share that may be sold in-shell. As a result, processors' inventory levels may respond to the marketing order rather than the needs of the kernel market.

The price processors pay hazelnut growers for the in-shell nut is set by a marketing group made up of a number of growers that band together and bargain with processors for the field price before harvest starts.[9] This price set is based on the predicted average of the wholesale price for hazelnuts sold by the processors in the in-shell U.S. market, in the in-shell export market, and in the shelled market (whether sold in the United States or exported).[10] For this year's contract, the predicted price was *** per pound (in-shell equivalent wholesale);[11] and, if the average wholesale price of the nuts rises *** per pound above *** per pound wholesale, then the processors who have signed the contract give the growers the earnings above *** per pound.[12] On the other hand, if the wholesale price of the hazelnuts falls below *** per pound, the processors are expected to absorb the difference. Thus, it is not clear that price increases above *** per pound in-shell equivalent will always increase the profits of processors covered by the contract. However, most processors are growers or owned by growers and they may profit as growers rather than as processors.[13]

In-Shell Growing Capacity and In-Shell Demand

U.S. production of hazelnuts varies from year to year, according to a two-year growing cycle. Hazelnuts grow on new twigs. In years with large quantities of nuts produced, the tree's energy goes

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[6] The HGBA annually negotiates the minimum price paid to growers for nuts. Cooperative farm bargaining associations are protected from antitrust violations by the Capper-Volstead Act of 1922.

[7] App. D.

[8] 67 FR 11406, March 14, 2002; 67 FR 11215, March 13, 2001; 68 FR 32325, May 30, 2003. The latter is p. 5, app. D.

[9] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, pp. 53-54 and 72-73.

[10] In these calculations, kernels are assumed to weigh 40% of the weight of in-shell nuts; $0.75 per pound in-shell would thus be equivalent to $1.875 per pound for kernels. Staff discussion with Mike Klein, HGBA, November 20, 2003.

[11] With the agreed estimate of *** per pound average wholesale selling price, the growers receive *** per pound and the processors receive on average *** per pound after paying the growers.

[12] Processors participate voluntarily in the bargaining exercise, unless at the time of the negotiation they already have a contract with any of the participating growers, in which case, they are obligated to participate. Staff discussion with Mike Klein, November 19, 2003.

[13] Jeff Kenagy, President, Northwest Hazelnut Co., conference transcript, pp. 41-42.

mainly to produce nuts, and, as a result, production of new twigs is low. In the following year, nut production is low so the trees' energy can go into producing large numbers of new twigs, which can produce a larger crop in the next year.[14] Since MY 2002-2003 was a smaller crop year, MY 2003-2004 is expected to be a larger crop year.[15] Petitioners report that the average annual production in the last 10 years was 30,000 tons.[16]

Hazelnuts are sold in-shell both within the United States and to other countries, with on average 65 percent of U.S. hazelnut production being sold in-shell.[17] In order to be sold in-shell, the processors clean, dry, and sort the hazelnuts (drying increases the in-shell hazelnuts shelf life).[18] As previously stated, the amount sold in-shell within the United States is limited by HMB volume controls, which help maintain price by controlling volume.[19] Petitioners report that U.S. sales of in-shell hazelnuts have been declining and that the U.S. industry is shifting from an in-shell orientation to a kernel orientation.[20] This shift is both because of declining demand for in-shell nuts in the United States and because the farmers are facing the Eastern Filbert Blight and the types of trees that are being developed to resist this disease produce nuts that are better suited for further processing.[21] However, the vast majority of hazelnuts currently grown in the United States are of types for in-shell use, and in-shell sales are typically the most profitable form of sales for processors.

Industry Capacity

Industry capacity is difficult to ascertain because different processors perform different processing tasks. For example, excess roasting capacity cannot be used for shelling. Average capacity utilization rates would therefore not indicate the amount of certain processed hazelnuts that could be produced unless the capacity for each processing operation were known. In addition, processing capacity may appear to be high because of the seasonal nature of some of the processing activities.[22]

Questionnaire data from the U.S. producers indicate that capacity utilization rates were 20.9 percent in 2000, 16.9 percent in 2001, and 16.1 percent in 2002. Interim data also indicate a decline in capacity utilization, with the rate at 19.1 percent in January-June 2002 and 8.1 percent in the corresponding period of 2003.

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[14] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, pp. 72-73.

[15] Jeff Kenagy, President, Northwest Hazelnut Co., conference transcript, p. 30.

[16] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, p. 21.

[17] *Noncitrus Fruit and Nuts 2002 Summary,* July 2003, Agricultural Statistics Board, National Agricultural Statistics Service, USDA.

[18] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, p. 22.

[19] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, p. 24.

[20] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, p. 23.

[21] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, pp. 24-25. Respondents report that all resistant varieties being developed in the United States are kernel type varieties. Jeffery Levin, Harris, Ellsworth and Levine, conference transcript, p. 82.

[22] Petition exhibit 18, p. 118, "According to the Turkish Government, processing capacities overestimate the capacity problem because of the seasonal nature of hazelnut processing." This may also be true for domestic capacity.

Inventory Levels

Inventories can be maintained either of in-shell nuts or in a processed form.[23] Petitioners report that they typically maintain inventories of kernels. Data from U.S. producers indicate that year-end and June inventories of certain processed hazelnuts were between 13.8 and 34.2 percent of total shipments in 2000-2002 and were 41.4 and 49.3 percent as of June 2002 and 2003, respectively.

Export Markets

The USDA reported that exports were between 37.9 and 70.5 percent by weight of all hazelnuts grown in the 1999-2000 through 2002-03 growing seasons, including in-shell and the subject product.[24] To the extent that these are in-shell sales, it would reduce the nuts used for kernel production. Exports are typically in-shell hazelnuts because the U.S. product faces less export competition for in-shell than processed hazelnuts, although certain processed hazelnuts are also exported. U.S. producers exported between 6.1 and 12.2 percent of their total shipments of certain processed hazelnuts during 2000-2002.

Production Alternatives

U.S. producers reported that they do not produce other products on the same equipment that is used to produce certain processed hazelnuts. Thus, the domestic supply response is constrained by this inability to switch production between certain processed hazelnuts and other products. In addition, U.S. processors also process in-shell hazelnuts by cleaning, sorting, and drying them. Hazelnuts that are suitable for eating but not usable in the in-shell form because of one or more defects are processed so that every year there is some underlying minimum amount of certain processed hazelnuts that will be produced in the United States from U.S.-grown nuts. This amount varies from year to year depending on the size of the harvest and other conditions.

Turkish Supply

Turkish supply is much more likely to respond to marginal changes in prices with changes in quantity supplied than is domestic supply. Imports of the Turkish product into the United States are likely to be highly responsive to changes in price mainly because of the relatively small share of Turkish product that is currently exported to the United States. Respondents report that the supply of hazelnuts grown in Turkey does not follow a two-year cycle like U.S. supply because hazelnuts are grown over a larger region with more varied growing conditions. In addition, the Turkish supply of processed hazelnuts is also less likely to be affected by year-to-year variation.[25] Processing capacity is also not a major constraint since capacity utilization rates have been low.[26] For export, Turkish hazelnuts are typically shelled in Turkey although they may be further processed either in Turkey or in the importing country. Exports of Turkish hazelnuts accounted for between 79.8 and 85.6 percent of its annual production, with most sold to the EU. Between 2.2 and 3.4 percent of annual Turkish production was

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[23] Inventories of in-shell nuts are included in the base number that the HMB uses to set the percent of nuts that processors may sell in-shell to the U.S. market. Staff discussion with Teresa Hutchinson, USDA, November 20, 2003.

[24] *FAS on line, Hazelnut Situation and Outlook in Selected Countries*, www.fas.usda.gov/htp/circular/2002/02-11/Hazelnut.htm, downloaded November 4, 2003, p. 9. These numbers have been converted to an in-shell basis.

[25] William Ince, Cameron and Hornbostel, conference transcript, p. 97.

[26] The Turkish Embassy estimated that Turkish processing capacity utilization was between 21 and 28 percent in 1999-2001. Petition, exhibit 21, p. 129.

exported to the United States. Turkish producers' inventories ranged from 9.6 percent to 11.7 percent of total shipments in 2000-2002.

U.S. Demand

Based on available information, U.S. aggregate demand for certain processed hazelnuts is likely to respond little to changes in certain processed hazelnut prices. The main factor contributing to this low degree of price sensitivity is the small range of end-use products in which substitutes are viable.

Demand Characteristics

The U.S. end-user market for certain processed hazelnuts is segmented into the nut, the retail, and the food processor markets. By far, the largest use for certain processed hazelnuts is in chocolate candies. Petitioners report that certain processed hazelnuts are in demand throughout the year.[27] However, respondents report that demand follows a cyclical annual pattern with more purchases of shelled nuts in nut mix containers and in baked goods during the year-end holiday season.[28] Respondents report that the Turkish product is more readily available for this period of relatively high demand because its harvest season is earlier. The Turkish harvest begins in August and the U.S. season begins in October.[29]

U.S. producers and importers were asked if demand had risen, stayed the same, or fallen since January 2000. Four producers and four importers reported that demand had increased, four producers and five importers reported that demand was unchanged, and two importers reported that demand had fallen.[30] U.S. producers reported that demand had increased as a result of the marketing program for hazelnuts, the FDA information on the benefits of nuts, and improved U.S. diet. Importers reporting increased demand reported increased purchases of imported hazelnuts by the Oregon processors during off years, market fluctuation, and increased advertising. The only reason reported for falling demand was increased price.

Producers and importers were also asked to report if there had been any significant changes in the marketing of certain processed hazelnuts. Five of the eight responding producers and nine of the ten responding importers reported no change. The three producers and the one importer reporting changes attributed them to increased marketing by the HMB.

Substitute Products

Four U.S. producers and six importers reported substitutes for certain processed hazelnuts.[31] Substitutes reported by both the U.S. producers and importers included almonds, walnuts, and pecans; importers also reported that cashews, brazilnuts, and peanuts were substitutes. Producers and importers

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[27] Ben Michell, Manager, Willamette Filbert Growers, conference transcript, p. 23.

[28] Mordy Dicker, President, Sunrise Commodities, conference transcript, p. 86.

[29] Mordy Dicker, President, Sunrise Commodities, conference transcript, pp. 86-87.

[30] One of the importers reported that demand had both risen and fallen during the period based on changes in price. This importer's response is included in both the number of importers reporting that demand increased and in those reporting demand had fallen.

[31] One U.S. producer reported that whole and broken grade nuts could be used as a substitute for certain processed hazelnuts; however, since these nuts are included in the product definition, its answer has not been included in the group reporting that substitutes were available.

reported substitution might occur in mixed nuts, confections, bakery products, toppings, and ice cream. When asked if the price of these substitutes had affected demand for their product, three producers and two importers reported that they had, while two producers and four importers reported that they had not. One producer reported that changes in the price of substitute nuts caused small changes in the price of hazelnuts and another reported that the effect was determined by the price-value relationship.

Petitioners reported that although it is very difficult to substitute one kind of nut for another in most recipe applications, substitution may be more likely in shelled nut mixes where the relative share of hazelnuts may be changed, but typically not eliminated altogether from the mixes.[32] The respondents reported that the price of other tree nuts varies considerably from year to year.[33]

Cost Share

Producer questionnaires provided little information on the cost share of certain processed hazelnuts in foods produced using these nuts. The only producer reporting any share reported that certain processed hazelnuts made up *** percent of the cost of roasted nuts. Importers reported cost shares for six different markets, including: roasted- 100 percent; mixed nuts- 5 to 65 percent; salted nuts- 40 percent; bakery- 20 to 25 percent; confection- 10 to 15 percent; and distribution- 25 percent.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported certain processed hazelnuts depends upon such factors as relative prices, quality, variety, type of processing, and conditions of sale. Based on available data in this preliminary phase of the investigation, as discussed below, staff believes that there is a moderate degree of substitution between domestic certain processed hazelnuts and subject imports from Turkey.

Factors Affecting Sales

U.S. producers and importers agreed that there are at least "sometimes" differences other than price between Turkish and U.S. product (table II-1). Two U.S. producers explained their answers: one reported that quality standards vary slightly and the other reported that U.S. product cannot compete with the large amount of Turkish product in the market. Differences reported by importers included: the preferred quality of the Turkish product; it is better suitable for blanching than the U.S. product; differences in oil content, flavor, and size; its better availability to meet demand, particularly in the fourth quarter when demand is high; that Turkish and U.S. products roast differently; that the U.S. product is grown for in-shell use; that the Turkish product costs less to transport to the East Coast; that all imported roasted product is blanched; and that the imported product is purchased by the U.S. hazelnut industry. Respondents reported that some purchasers specify the variety of nuts that they will purchase, and nut varieties grown in Turkey differ from those grown in the United States. They stated that for many uses buyers require nuts from specific regions in Turkey and that switching from Turkish to Oregon nuts could dramatically change the flavor of a specific item.[34] U.S. production traditionally has

[32] Mordy Dicker, President, Sunrise Commodities, conference transcript, pp. 126-128.

[33] Mordy Dicker, President, Sunrise Commodities, conference transcript, p. 127 and Roni Detoledo, Vice President, Bedemco, conference transcript, p. 128.

[34] Mordy Dicker, President, Sunrise Commodities, conference transcript, p. 138.

Table II-1
Certain processed hazelnuts: Perceived importance of factors other than price between U.S. and foreign-produced product

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	Always	Frequently	Sometimes	Never	Always	Frequently	Sometimes	Never
U.S. vs. Turkey	2	1	4	0	2[1]	4[1]	5[1]	0
U.S. vs. other	2	2	3	0	0	0	1	0
Turkey vs. other	2	1	3	0	0	0	1	0

[1] One importer reported that for some applications there were "always" differences other than price between the U.S. and Turkish product and for some there were "frequently" differences other than price. A second importer reported that for some uses there were "frequently" differences other than price and for other applications there were "sometimes" differences other than price.

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

been of nuts grown primarily to be sold in-shell, including the Barcelona and Ennis varieties.[35] The hazelnuts grown in Turkey are Giresun and Levant varieties, which are typically grown for processed kernels rather than for sale as in-shell nuts.[36] The Turkish varieties have higher oil content affecting their flavor and the ease of blanching.[37] Respondents also reported that the smaller size of the Turkish kernels improves roasting consistency.[38]

Comparison of Domestic and Subject Imported Certain Processed Hazelnuts

Most U.S. producers and importers agreed that U.S.-produced and imported product were frequently or always interchangeable (table II-2). Only one U.S. producer provided an explanation, stating that the U.S. and imported Turkish product were frequently interchangeable, but that Oregon kernels tend to be larger than Turkish kernels and that Oregon hazelnuts do not blanch completely.[39] Seven of the importers explained why the Turkish and U.S. grown product were sometimes not interchangeable. Differences reported by these importers included varieties of nuts, oil content, flavor, ability to blanch, size, appearance, chemical composition, and that U.S. product is not always available.

[35] Ben Mitchell, Manager, Willamette Filbert Growers, conference transcript, p. 25.

[36] Ali Haydar Goren, exporter Istanbul Exporters Union, conference transcript, p. 118. However, Salih Cicek, Foreign Trade Expert, Undersecretariat for Foreign Trade, Republic of Turkey, reports selling both processed and in-shell Turkish hazelnuts in the Far East, conference transcript, p. 108. Cicek and Goren report that exports of in-shell nuts make up at most 2 to 3 percent (but more likely 1 percent or less) of the Turkish crop, conference transcript, p. 135.

[37] Roni De Toledo , Vice President of Bedemco, reports that the hazelnuts grown in Oregon and Washington cannot be blanched while the Turkish hazelnuts can, conference transcript, p. 89. Ben Mitchell, Manager, Willamette Filbert Growers, reported that the traditional Oregon varieties do not blanch well, conference transcript, p. 68.

[38] Roni De Toledo, Vice President of Bedemco, conference transcript, p. 89.

[39] This producer reported that Oregon hazelnuts could not be used in some applications because of these differences; however, it also reported that these differences were significant for the European market, but when the price of the Turkish product is high, buyers will shift to U.S. product. Finally, it also reported that the Oregon product could be blanched if there were economic incentives to do so.

Table II-2
Certain processed hazelnuts: Perceived degree of interchangeability of product produced in the United States and in other countries

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	Always	Frequently	Sometimes	Never	Always	Frequently	Sometimes	Never
U.S. vs. Turkey	4	2	0	1	1[1]	6[1]	4[1]	0
U.S. vs. other	3	1	0	1	0	2	0	0
Turkey vs. other	3	0	0	1	0	2	0	0

[1] One importer reported that U.S. and Turkish product were frequently interchangeable in some applications and sometimes interchangeable in other applications. A second importer reported that U.S. and Turkish product were frequently interchangeable in some applications and always interchangeable in other applications.

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

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of 6 firms that are believed to account for about 85 percent of the subject product produced in the United States in the period examined.[1] The operations of another firm, which toll produces the subject product, were partially deduced from questionnaire respondents and incorporated into the aggregate data.[2] Because of the tolling and trading relations between firms in this industry and because the subject product consists of products that are made from each other, there is considerable risk of double or even triple counting the industry's reported trade data. The data were thoroughly examined to minimize this risk and, as corrected and adjusted where necessary, are believed to represent a reasonably accurate summation of the subject product produced in the United States.

Petitioners did not file their petition on behalf of hazelnut growers, claiming that the growers did not satisfy the Commission's criteria for inclusion in the industry, and the Commission did not solicit data therefrom in this preliminary investigation. Nevertheless, subject producers and growers have many common interests, and most U.S. producers are related in some way to one or more growers. The details of such cross-ownership, however, are unknown.

Responding producers' plant locations, positions on the petition, and individual shares of U.S. production in 2000-2003 are presented in table III-1. Also included in table III-1 is the quantity of Turkish product, if any, each firm imported or purchased. During the period examined, none of the reporting firms imported the Turkish product, but *** purchased such product, ***. The Turkish product was purchased to meet the volume needs of existing customers. As indicated previously, because of the relatively higher profitability on the in-shell nut, U.S. producers will generally sell as many in-shell nuts as the HMB allows under the Marketing Order, the remainder being available for processing into the products subject to this investigation. When the remaining nuts are not sufficient to meet customer needs, producers may purchase other U.S. producers' product or foreign-produced product. None of the producers produce products other than in-shell and processed hazelnuts.

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[1] Thirteen known small producers, which are believed to account for the remaining 15 percent of U.S. production, did not respond to the Commission's questionnaire. The filing of the petition and the Commission's schedule coincided with the hazelnut harvest season–probably the most critical and certainly the most time consuming period of the crop year, especially for the smaller producers.

[2] The firm in question is Willamette Shelling Inc., an affiliate of Willamette Filbert Growers, one of the petitioners. Its production data were deduced from questionnaire responses of the *** firms for which it toll produces–***. Evergreen has no production capacity itself and is not a "producer" as such, although its sales and shipment information is fully incorporated into the aggregate data.

Table III-1
Certain processed hazelnuts: U.S. producers, locations of production facilities, positions with respect to the petition, shares of U.S. production, 2000-2002, and quantity of imported or purchased Turkish product, January 2000-June 2003

Company	Locations of production facilities	Position with respect to the petition	U.S. production *(1,000 pounds)*	Share of U.S. production *(percent)*	Quantity of imported or purchased Turkish product, Jan. 00-Jun. 03	
					Imported	Purchased
Blue Diamond[1]	Salem OR	Support	***	***	***	***
Evonuk[2]	Eugene, OR	Petitioner	***	***	***	***
HGO/Westnut[3]	Cornelius, OR/ Dundee, OR	Petitioner(s)	***	***	***	***
Northwest[4]	Hubbard, OR	Petitioner	***	***	***	***
Willamette[5]	Newberg, OR	Petitioner	***[6]	***	***	***
Total responding			21,775	85.0	***	***
Total processors[7]			25,620	100.0	Unknown	Unknown

[1] Blue Diamond is not owned, in whole or in part, by any other firm.
[2] Evonuk is not owned, in whole or in part, by any other firm.
[3] Westnut is a wholly owned subsidiary of HGO; HGO is not owned, in whole or in part, by any other firm.
[4] Northwest is not owned, in whole or in part, by any other firm.
[5] Includes Willamette Filbert Growers and Willamette Shelling, both 100-percent owned by the same families.
[6] Includes Willamette Shelling's toll production for ***.
[7] Based on NASS data.

Note.–Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires and data published by NASS.

Combined data for responding U.S. producers are shown in table III-2. Because of the number of interdependent products within the investigation's scope, U.S. producers' capacity is subject to considerable debate. Since all the subject products originate from the raw kernel, shelling capacity should reasonably reflect the industry's production capabilities, but some firms have limited shelling capacity and all can supplement their raw kernel needs for other subject products with purchases or imports. Notwithstanding the questionable usefulness of the aggregate capacity reported herein, it is reasonably clear that capacity has remained at constant levels during the period examined. Production, on the other hand, noticeably declined, falling by over 19 percent from 2000 to 2002 and by 63 percent from January-June 2002 to January-June 2003. Capacity utilization fell accordingly. Part of the decline in January-June 2003 is attributable to *** shortfall in availability of the subject product due to sales of the in-shell nut. To meet customer needs for the subject product, *** purchased ***. None of the firms reported any unusual circumstances–such as plant closures, power outages, strikes, raw material shortages, or equipment failure–that adversely impacted the production quantity or quality of the subject product during the period examined.

The trend in U.S. producers' commercial shipments reflects the trend in production, both in quantity and value. The trend is not reflected in unit values, which rose somewhat in the period, but these values represent the average prices of a multitude of different products for which the actual quantities sold in any specific period are unknown. Exports, a relatively small but significant factor in U.S. producers' overall sales, also declined. As overall shipments fell, end-of-period inventories rose, at least as a percent of shipments. U.S. producers' employment experience reflects their production, with

Table III-2
Certain processed hazelnuts: U.S. producers' production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers, and hours worked by and wages paid to such workers, 2000-2002, January-June 2002, and January-June 2003

(Quantity=*1,000 pounds*; value=*1,000 dollars*)

Item	2000	2001	2002	J-J 2002	J-J 2003
U.S. producers'--					
Capacity quantity	38,658	38,658	38,658	19,329	19,329
Production quantity	8,367	6,660	6,748	4,220	1,561
Capacity utilization[1]	20.9	16.9	16.1	19.1	8.1
U.S. commercial shipments:					
Quantity	7,441	6,945	5,379	2,575	1,613
Value	15,412	14,107	11,564	4,924	3,106
Unit value (*per pound*)	$2.07	$2.03	$2.15	$1.91	$1.93
Export shipments:					
Quantity	1,030	716	353	445	66
Value	1,759	1,278	650	767	133
Unit value (*per pound*)	$1.71	$1.78	$1.84	$1.72	$2.01
Total shipments:					
Quantity	8,471	7,661	5,732	3,021	1,679
Value	17,171	15,385	12,213	5,691	3,239
Unit value (*per pound*)	$2.03	$2.01	$2.13	$1.88	$1.93
Ending inventory quantity	1,165	1,368	1,962	2,500	1,656
Inventories/total shipments[1]	13.8	17.8	34.2	41.4[2]	49.3[2]
Production workers	126	129	102	94	62
Hours worked (*1,000 hours*)	140	113	87	52	22
Wages paid (*1,000 dollars*)	1,496	1,271	993	574	278
Hourly wages	$10.67	$11.22	$11.37	$11.00	$12.55
Productivity (*pounds per hour*)	58.9	53.9	76.2	79.6	70.2

[1] In *percent*.
[2] Based on annualized shipment data.

Note.–Because of rounding, figures may not add to the totals shown.

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

noticeable declines in the number of production and related workers, hours worked, and wages paid. Productivity increased in 2002, but then fell in January-June 2003 from the corresponding period in 2002.

As indicated previously, two U.S. producers reported that they had purchased the subject product from Turkey during the period examined. Each firm's quantity (in 1,000 pounds) of such purchases and their U.S. production and U.S. commercial shipments for each reported period are shown in the tabulation below:

* * * * * * *

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

The Commission received questionnaires from nine U.S. importers that accounted for about 72 percent of subject product imports from Turkey in the period examined.[1] All but two are located in New York and New Jersey. None is related to any producers, Turkish or otherwise, and none further processes the subject product. Unlike U.S. producers, whose operations are devoted to hazelnuts, importers tend to buy and sell a variety of food commodities, including several different kinds of fruits and nuts. Other than some repackaging, however, no value is added to their purchased products.

U.S. imports, consumption, and market shares are shown in table IV-1. Turkey accounted for the overwhelming bulk of imports in the period examined, its share rising from 95 percent in 2000 to over 98 percent in January-June 2003 (other sources include Italy and Georgia). The bulk of imports from Turkey consists of raw kernels and blanched kernels, which importers resell to food processers and retail providers. Because of different proportions of products included therein, unit values for Turkish imports cannot be compared to those for the U.S.-produced product. The quantity of all subject products consumed in the United States increased irregularly by 8.5 percent from 2000 to 2002 and by 8.4 percent from January-June 2002 to January-June 2003. Turkey's share of consumption in this period was large and increasing. Accounting for 57 percent of consumption in 2000, imports from Turkey rose steadily to over 82 percent of consumption in January-June 2003. The U.S.-produced product fell from 40 percent to 16 percent of consumption in the same period.

Table IV-1
Certain processed hazelnuts: U.S. imports, apparent U.S. consumption, and market shares,[1] 2000-2002, January-June 2002, and January-June 2003

(Quantity=*1,000 pounds*; value=*1,000 dollars*)

Item	2000	2001	2002	J-J 2002	J-J 2003
U.S. consumption quantity: Amount	18,546	20,194	20,116	9,211	9,985
Producers' share[2]	40.1	34.4	26.7	28.0	16.2
Importers' share: Turkey[2]	56.6	61.8	71.0	69.8	82.3
All other countries[2]	3.3	3.8	2.2	2.2	1.6
Total imports[2]	59.9	65.6	73.3	72.0	83.8
U.S. consumption value: Amount	35,101	36,082	31,653	14,531	13,519
Producers' share[2]	43.9	39.1	36.5	33.9	23.0
Continued on next page.					

[1] These include American Eagle Food Products, Inc., Cedar Grove, NJ; Balsu USA, Inc., Winthrop, MA; Bedemco Import Export Inc., White Plains, NY; J. F. Braun & Sons, Inc., Westbury, NY; SLD Commodities, Inc., Purchase, NY; Sunrise Commodities, Inc., Englewood Cliffs, NJ; Totally Nuts & More, Inc., Montreal, Quebec; Ziba Nut, Inc., Port Washington, NY; and American Almond Product Co., Inc., Brooklyn, NY.

Item	2000	2001	2002	J-J 2002	J-J 2003
Importers' share:					
Turkey[2]	52.8	56.8	60.9	63.3	74.7
All other countries[2]	3.3	4.1	2.6	2.9	2.3
Total imports[2]	56.1	60.9	63.5	66.1	77.0
U.S. imports from--					
Turkey:					
Quantity	10,501	12,480	14,290	6,431	8,214
Share of total import quantity[2]	94.6	94.2	97.0	96.9	98.1
Value[3]	18,531	20,507	19,272	9,192	10,097
Share of total import value[2]	94.1	93.3	95.9	95.7	97.0
Value per pound	$1.76	$1.64	$1.35	$1.43	$1.23
Share of U.S. production	125.5	187.4	211.8	152.4	526.2
All other countries:					
Quantity	604	769	447	206	158
Share of total import quantity[2]	5.4	5.8	3.0	3.1	1.9
Value[3]	1,159	1,468	818	415	316
Share of total import value[2]	5.9	6.7	4.1	4.3	3.0
Value 1,000 pound	$1.92	$1.91	$1.83	$2.02	$2.00
All countries:					
Quantity	11,105	13,249	14,737	6,636	8,372
Value[3]	19,689	21,975	20,089	9,607	10,413
Value per pound	$1.77	$1.66	$1.36	$1.45	$1.24

[1] U.S. producers' domestic shipments plus imports.
[2] In *percent*.
[3] Landed, duty-paid.

Note.–Because of rounding, figures may not add to the totals shown.

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

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The basic raw material used in the production of certain processed hazelnuts is in-shell hazelnuts or certain processed hazelnuts that can be further processed into product within the product scope. There is little import of in-shell hazelnuts both because the major varieties grown in Turkey are not typically consumed as in-shell nuts and because shipping in-shell Turkish hazelnuts for processing in the United States would increase the cost of shipments. The cost of in-shell hazelnuts as a share of the cost of certain processed hazelnuts varies by the amount of processing and if there are other ingredients such as sugar. The price processors pay for in-shell hazelnuts is set by a bargaining association which is made up by a number of growers and processors. However, if processors sell hazelnuts for more than was anticipated at the time of the agreement, the difference is passed back to the growers.

U.S. Inland Transportation Costs and Geographic Markets

Generally, producers and importers service the entire United States, with six of the eight responding producers and seven of 13 responding importers selling nationally. The other two producers reported selling to various regions, while all six of the other importers reported selling to the Northeast with also most selling to other regions. Producers and importers were asked to report the percentage of their sales and lead times for both sales from inventories and production to order. Four producers and five importers sold most of their product from inventories, with lead time ranging from 1 to 21 days for producers and from 2 days to 2 months for importers. All but one importer and one producer reported average times of one week or less. The other four producers and four importers reported selling most of their product made to order. There was a large range of reported delivery times for made-to-order product which for producers ranged from 7 to 60 days and for importers from 5 days to 20 weeks. Most producers shipped made-to-order shipments in 2 weeks or less, while most importers shipped these in 6 or more weeks.

Transportation costs reported by producers ranged from 4 to 10 percent and between 0.01 to 15 percent for importers, with five of the six responding producers and six of the nine responding importers reporting transportation costs of 5 percent or less. All eight responding producers sold the subject product on an f.o.b. plant or warehouse basis, with five of the eight reporting that the producer arranged transportation. Three importers reported selling on an f.o.b. basis; three sold delivered; and the other four responded that they sold both on f.o.b and delivered basis. Seven of the ten responding importers reported that they arranged the transportation.

Firms were also requested to provide estimates of the share of their shipments that were made within specified distance ranges. Two U.S. producers reported shipping most shipments within 100 miles, one shipped most within 101 to 1,000 miles, and five reported shipping most distances over 1,000 miles. For the importers that provided usable responses to this question, two shipped most within 100 miles, four shipped most within 101 to 1,000 miles, two shipped most distances over 1,000 miles, and one importer did not sell the majority of its product in any of these categories.

Exchange Rates

Quarterly data for the real and nominal values of the Turkish lira are shown in figure V-1.

PRICING PRACTICES

Pricing Methods

U.S. producers seldom sell on long-term contracts, with only one of the eight responding producers selling any product on long-term contracts. Similarly, one of the ten responding importers sold most of its product on long-term contracts. Four of the responding producers sold most of their product on short-term contracts and the other four sold most via spot sales. Four importers sold most of their product on short term contracts and two sold most in spot sales.[1] In general, producers priced certain processed hazelnuts on a transaction-by-transaction basis (reported by four) or on both a transaction-by-transaction basis and in contract negotiations (reported by two). Only two U.S. producers reported having price lists. Importers were more likely to sell on a cost-plus basis. Three importers reported selling on a cost-plus basis, two reported selling on transaction-by-transaction basis, and three sold both on contract and on a transaction-by-transaction basis. Producer contracts varied between a few weeks and 12 months, with four reporting having contracts of 4 months or less. Importer contracts varied between 1 and 13 months, with only two importers reporting contracts of less than 4 months. All seven responding producers and all eight responding importers reported that contracts contained both fixed prices and fixed quantities. Only one of seven responding producers and three of eight responding importers reported that contracts contained meet-or-release provisions.

Sales Terms and Discounts

Four of the U.S. producers reported discounts from price lists and discounts to cover brokerage commissions, volume, and cash payment discounts. Only one importer reported any discounts, reporting a quick-payment discount. The most common sales terms were net 30 reported by five U.S. producers and six importers. Two U.S. producers and three importers reported selling on a net 10 basis.

PRICE DATA

The Commission requested quarterly data for the total quantity and f.o.b. value of four certain processed hazelnuts products. Data were requested for the period January 2000 through September 2003. The products for which pricing data were requested are as follows:

Product 1.–# 1 Standard hazelnut kernels, 13-15 mm (large), whole natural.

Product 2.–# 2 Standard hazelnut kernels, 11-13 mm (small), whole natural.

Product 3.–# 3 Standard hazelnut kernels, 9-11 mm (small), whole natural.

Product 4.–Roasted # 1 standard hazelnut kernels, 13-15 mm (large), whole natural.

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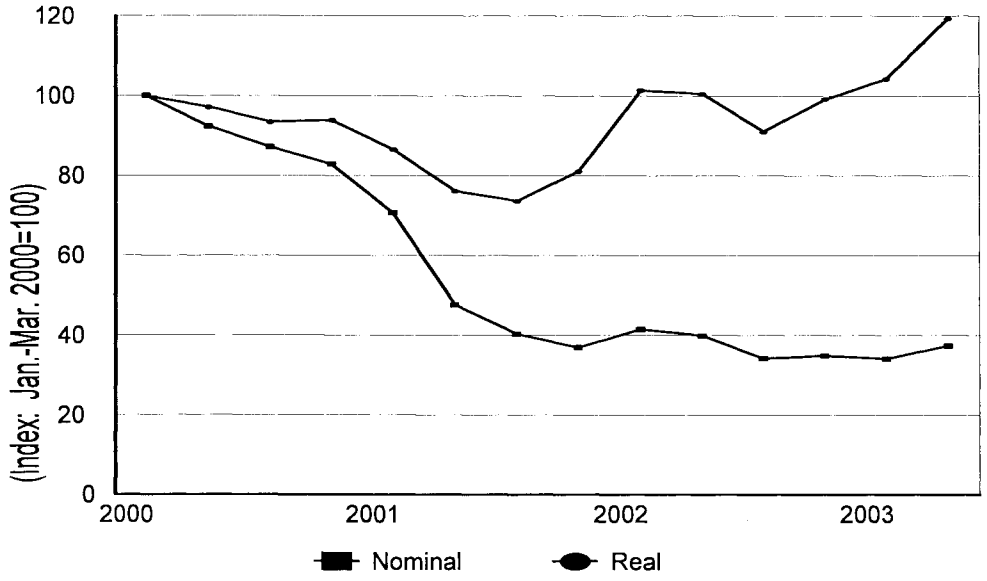
[1] One importer sold half its product on long-term contracts, two importers sold half their product on short-term contracts, and one importer sold half its product in spot sales.

Figure V-1
Exchange rates: Indices of the nominal and real exchange rates of the Turkish lira relative to the U.S. dollar, by quarter, January 2000-June 2003



Source: International Monetary Fund, *International Financial Statistics*, October 2003

Six U.S. producers and seven importers provided usable pricing data for sales of the requested products in the U.S. market, although not all firms reported pricing data for all products for all quarters. The reported price data accounted for 9.1 percent of the quantity of domestically produced commercial shipments of certain processed hazelnuts in between 2000 and June 2003, and 42.7 percent of shipments of certain processed hazelnuts from Turkey. Data on reported weighted-average prices and quantities for products 1 through 4 are presented in tables V-1 through V-4, and figure V-2.

Price Trends and Comparisons

Pricing trends and average margins of under/overselling are provided in tables V-5 and V-6. Consistent pricing data were available only for products 1 and 4. The price for both U.S.-produced and Turkish product 1 fell irregularly over the period covered. The price of U.S.-produced product 4 rose over the period covered while the price of the Turkish product 4 fell. The Turkish product undersold the U.S. product in all reporting periods by margins ranging from 0.7 to 34.6 percent. For product 4, the Turkish product undersold the U.S. product in 14 of the 15 periods with margins ranging from 2.1 to 41.2 percent.

Table V-2
Certain processed hazelnuts: Weighted-average f.o.b. selling prices and quantities for product 2, and margins of overselling, by quarters, February 2000-September 2003

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Table V-3
Certain processed hazelnuts: Weighted-average f.o.b. selling prices and quantities for product 3, by quarters, January 2000-September 2003

* * * * * * *

Table V-4
Certain processed hazelnuts: Weighted-average f.o.b. selling prices and quantities for product 4, and margins of underselling/(overselling), by quarters, January 2000-September 2003

* * * * * * *

Figure V-2
Certain processed hazelnuts: Weighted-average f.o.b. prices for products 1, 2, and 4, by countries and by quarters, January 2000-September 2003

* * * * * * *

Table V-5
Certain processed hazelnuts: Summary of weighted-average f.o.b. prices for products 1 through 4, by countries

Country	Number of quarters	Highest price	Lowest price	Change in price
		Per pound	*Per pound*	*Percent*
	Product 1			
United States	15	$2.11	$1.59	-18.1
Turkey	15	1.89	1.26	-20.6
	Product 2			
United States	3	***	***	***
Turkey	8	***	***	***
	Product 3			
United States	2	***	***	***
Turkey	--	--	--	--
	Product 4			
United States	15	***	***	***
Turkey	15	***	***	***

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

Table V-6
Certain processed hazelnuts: Summary of Turkish underselling/overselling, by year

Period	Number of quarters of underselling	Number of quarters of overselling	Simple average margin of underselling/ (overselling)	Weighted average margin of underselling/ (overselling)
2000	7	1	7.6	7.8
2001	8	0	9.6	8.9
2002	8	0	21.5	22.9
2003 (January-September)	6	1	26.8	26.0
Total	29	2	17.1	10.6

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

LOST SALES AND LOST REVENUES

The petition contained information on allegations of lost sales due to imports of certain processed hazelnuts from Turkey.[2] The four reported allegations of lost sales totaled between $*** and $*** and involved *** pounds of certain processed hazelnuts. ***. The lost sales allegations are reported in table V-7.

Table V-7
Certain processed hazelnuts: Lost sales allegations against Turkey, as reported by U.S. producers

* * * * * * *

[2] In addition, ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Five producers[1] of certain processed hazelnuts, accounting for 85 percent of U.S. production of certain processed hazelnuts in 2000-2002, supplied requested financial data. Further, Evergreen's[2] data were used as ***.

* * * * * * *

OPERATIONS ON CERTAIN PROCESSED HAZELNUTS

Income-and-loss data for the U.S. producers on certain processed hazelnut operations are presented in table VI-1; selected financial data, by firm, are presented in table VI-2. Because of unknown variations in product mix from period to period, a variance analysis is not presented. The operating income margin increased from 3.4 percent of total net sales in 2000 to 16.6 percent in 2001, and then dropped to 6.1 percent in 2002. The operating income margin dropped from a positive 10.2 percent in January-June 2002 to a negative 1.6 percent in January-June 2003.

From 2000 to 2001, the volume of total net sales declined by about 15 percent; on a per-pound basis, the average cost of goods sold (COGS) decreased faster than the decline in the average unit value of sales, resulting in a higher gross profit. The field price per pound determined by the Hazelnut Growers Bargaining Association[3] was lowest ($0.310) in 2001. This lower field price may account for the lower COGS in 2001. Moreover, the selling, general, and administrative (SG&A) expenses in absolute dollars and per pound declined, contributing to the higher operating income in 2001. From 2001 to 2002, the volume of total net sales declined by about 32 percent; on a per-pound basis, the average COGS increased faster than the decline in the average unit value of sales, resulting in a lower gross profit, and SG&A expenses per pound declined slightly, contributing to a lower operating income. From January-June 2002 to January-June 2003, the volume of total net sales dropped by about 46 percent; on a per-pound basis, the average unit value of sales increased by 5.5 percent while the average COGS rose by 16.4 percent, resulting in a lower gross profit. SG&A expenses in absolute dollars declined but increased per pound due to the lower volume, resulting in a negative operating income.

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[1] U.S. producers' fiscal year ends are ***.

[2] Evergreen's fiscal year end is ***.

[3] See petition p. 10.

Table VI-1
Results of operations of U.S. producers in the production of certain processed hazelnuts, fiscal years 2000-2002, January-June 2002, and January-June 2003

Item	Fiscal years			January-June	
	2000	2001	2002	2002	2003
	Quantity (*1,000 pounds*)				
Net sales	8,025	6,820	4,653	2,866	1,559
	Value (*$1,000*)				
Net sales	16,342	13,204	8,952	5,456	3,132
Cost of goods sold	13,881	9,555	7,496	4,232	2,679
Gross profit	2,461	3,649	1,456	1,224	453
SG&A expenses	1,911	1,460	913	669	504
Operating income or (loss)	550	2,189	543	555	(51)
Interest expense	475	314	198	181	104
Other expense	185	87	126	1	21
Other income items	40	51	6	20	0
Net income or (loss)	(70)	1,839	225	393	(176)
Depreciation/amortization	318	293	286	146	159
Cash flow	248	2,132	511	539	(17)
	Ratio to net sales (*percent*)				
Cost of goods sold	84.9	72.4	83.7	77.6	85.5
Gross profit	15.1	27.6	16.3	22.4	14.5
SG&A expenses	11.7	11.1	10.2	12.3	16.1
Operating income or (loss)	3.4	16.6	6.1	10.2	(1.6)
	Unit value (*per pound*)				
Net sales	$2.04	$1.94	$1.92	$1.90	$2.01
Cost of goods sold	1.73	1.40	1.61	1.48	1.72
Gross profit	0.31	0.54	0.31	0.43	0.29
SG&A expenses	0.24	0.21	0.20	0.23	0.32
Operating income or (loss)	0.07	0.32	0.12	0.19	(0.03)
	Number of firms reporting				
Operating losses	3	0	3	1	3
Data	6	6	6	5	5

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

Table VI-2
Results of operations of U.S. producers in the production of certain processed hazelnuts, by firms, fiscal years 2000-2002, January-June 2002, and January-June 2003

* * * * * * *

With respect to raw materials cost, HGO stated that:

* * * * * * *

With respect to HGO's better financial results in 2001 (i.e., HGO's fiscal year end July 2002) and worse financial performance in January-June 2003, HGO indicated that:

* * * * * * *

With respect to its *** in 2000 (i.e., FY 2001), 2002 (i.e., FY 2003), and January-June 2003, *** explained that:

* * * * * * *

Mr. Jeff Kenagy, president of Northwest, testified in the conference that:

Differences in the value added cost to make the different forms are significant. Consider some believed averages or approximations in that regard. The processing cost of getting from the in-shell to the raw kernel form is about 20 percent as a percent of grower price to the packer.

The processing cost to transform from the in-shell to the roasted kernel is 50 percent, with an additional 24 percent for sales and general administrative expenses and nine percent for shrinkage or yield loss.

The processing cost to go from in-shell to natural diced or sliced is 48 percent, with an additional 24 percent for sales and general administrative expenses. The cost to go from in-shell to paste, sugar added, is 60 percent, with additional 16 percent for sales and general and administrative expenses and five percent for shrinkage.

Finally, the cost to go from in-shell to butter is about 70 percent, with an additional 28 percent for sales, general and administrative and eight percent for shrinkage.[4]

[4] Conference transcript pp. 19-20. Mr. Kenagy and his counsel were not sure whether the percentages cited above were as a share of grower price to the packer. Petitioners' counsel mentioned that he would clarify this matter in the postconference brief but no further comment was made. Petitioners' counsel provided these processing costs as cents per pound of raw kernel weight on page 5 of postconference brief.

INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' data on capital expenditures, R&D expenses, and the value of their property, plant, and equipment for their certain processed hazelnuts operations are shown in table VI-3.

Table VI-3
Capital expenditures, research and development expenses, and value of assets of U.S. producers of certain processed hazelnuts, fiscal years 2000-2002, January-June 2002, and January-June 2003

Item	Fiscal years			January-June	
	2000	2001	2002	2002	2003
Capital expenditures	134	767	129	656	81
R&D expenses[1]	0	0	0	0	0
Fixed assets:					
Original cost	8,162	8,928	9,044	7,683	7,767
Book value	3,503	4,232	3,958	3,864	3,558

[1] ***.

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

Evergreen stated that it has ***.[5] Evonuk ***.[6]

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of certain processed hazelnuts from Turkey on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown below.

Actual negative effects:

* * * * * * *

Anticipated negative effects:

* * * * * * *

[5] E-mail from Evergreen dated November 13, 2003.

[6] Evonuk's submission dated November 14, 2003.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE TURKISH INDUSTRY

Turkey is by far the largest producer of hazelnuts in the world. Of the approximately 1.6 billion pounds of hazelnuts produced worldwide in MY 2002-2003, Turkey accounted for 1.3 billion, or over 81 percent. (The remainder were produced in Italy (14 percent), Spain (3.5 percent), and the United States (1.5 percent).[1] Turkey also dominates the production of the subject product, which constitutes the overwhelming bulk of export trade (relatively few of its in-shell hazelnuts are exported). According to information published by USDA's Foreign Agricultural Service, there are about 350 processors/traders of hazelnuts in Turkey, although the five largest account for an estimated 40 percent of production. Eight processors, accounting for an estimated 50 percent of subject-product production in Turkey and about 60 percent of exports to the United States in the period examined, responded to the Commission's questionnaire. Their combined data are shown in table VII-1.[2] Turkish capacity, like that in the United States, is confined to the production of the subject product. Although sizeable quantities of the Turkish product are consumed in the home market, the bulk is exported–mainly to Europe. Shipments to the United States account for a relatively small proportion of Turkey's exports; however, from 2000 to January-June 2003 the United States' share of Turkish exports increased from 2.2 to 5.2 percent. Turkish capacity is projected to increase only marginally for full-year 2003 and 2004.

REMEDIES IN THIRD-COUNTRY MARKETS

In addition to the United States and many countries in Europe, Turkey has exported the subject product to Japan, Israel, Egypt, and several countries in southern Africa; however, so far as it is known such exports are not subject to any antidumping orders or any other trade remedies to date.

U.S. INVENTORIES OF IMPORTED PRODUCT

Aggregate end-of-period inventory data for the nine importers responding to the Commission's questionnaires are shown below (as indicated previously, these importers represent about 72 percent of subject-product imports from Turkey in the period examined):

	2000	2001	2002	J-J 2002	J-J 2003
Inventories (*1,000 pounds*)	491	785	1,182	670	909
Ratio of inventories to imports (*percent*)	6.4	8.1	13.6	8.6	8.8

[1] USDA Foreign Agricultural Service statistics.

[2] One firm, ***, was not able to supply data for 2000 and 2001 and could not be incorporated into the aggregate data; however, its exports to the United States were relatively small.

Table VII-1
Certain processed hazelnuts: Turkey's production capacity, production, shipments, and inventories, 2000-2002, January-June 2002, January-June 2003, and projections for 2003 and 2004[1]

Item	Calendar year			January-June		Projected	
	2000	2001	2002	2002	2003	2003	2004
	Quantity (*1,000 pounds*)						
Capacity	323,068	323,068	323,068	162,434	168,491	335,182	335,182
Production	141,020	263,857	304,153	86,768	95,355	268,807	301,009
End-of-period inventories	14,001	23,989	33,461	23,354	18,757	18,933	19,263
Shipments:							
Internal consumption/ intercompany transfers	0	0	0	0	0	0	0
Home market	28,765	36,003	50,806	17,279	23,835	48,670	52,901
Exports to--							
United States	3,155	8,190	9,867	3,559	5,776	9,519	9,960
All other markets	110,795	206,242	225,562	64,463	80,666	222,324	237,371
Total exports	113,950	214,432	235,429	68,022	86,442	231,843	247,331
Total shipments	142,715	250,435	286,235	85,301	110,277	280,513	300,232
	Ratios and shares (*percent*)						
Capacity utilization	43.7	81.7	94.1	53.4	56.6	80.2	89.8
Inventories/production	9.9	9.1	11.0	13.5	9.8	7.0	6.4
Inventories/shipments	9.8	9.6	11.7	13.7	8.5	6.7	6.4
Share of total shipments:							
Internal consumption/ intercompany transfers	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Home market	20.2	14.4	17.7	20.3	21.6	17.4	17.6
Exports to--							
United States	2.2	3.3	3.4	4.2	5.2	3.4	3.3
All other markets	77.6	82.4	78.8	75.6	73.1	79.3	79.1
Total exports	79.8	85.6	82.3	79.7	78.4	82.6	82.4

[1] Data shown are for Arslanturk Tarim Urn. San. Ihr. Ith. A.S.; Gursoy Tar. Ur. Gida San. Tic. A.S.; Oltan Gida Md. Ihr. Ith. Itc. Ltd. Sti.; Poyraz Karliebel-Findik Entegre San. Ve Tic. A.S.; Sabirlar Findik Ihr. Ltd. Sti.; Yavuz Gida San. Ve Tic. Ltd. Sti.; and Progida Tarim Urun. San. Ve Tic. A.S.

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

APPENDIX A

FEDERAL REGISTER NOTICES

Dated: October 14, 2003.

Roseann Gonzales,

Acting Deputy Director, Office of Program and Policy Services.

[FR Doc.03–27108 Filed 10–27–03; 8:45am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Freeport Regional Water Project, Sacramento, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Extension of comment period for review of Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation), the lead Federal agency; the United States Army Corps of Engineers, a cooperating Federal agency; and the Freeport Regional Water Authority (FRWA), the State lead agency, are extending the review period for the Draft EIS/EIR to December 15, 2003. The notice of availability of the Draft EIS/EIR and notice of public workshop and notice of public hearing was published in the **Federal Register** on August 8, 2003 (68 FR 47363). The public review period was originally to end on October 7, 2003.

DATES: Submit comments on the Draft EIS/EIR on or before December 15, 2003.

ADDRESSES: Written comments on the Draft EIS/EIR are to be addressed to Mr. Kurt Kroner, Freeport Regional Water Project, Freeport Regional Water Authority, 1510 J Street #140, Sacramento CA 95814, Fax: 916–444–2137.

FOR FURTHER INFORMATION CONTACT: Mr. Rob Schroeder, Reclamation, at 916–989–7274, TDD 916–989–7285, or e-mail: *rschroeder@mp.usbr.gov*; or Mr. Kurt Kroner, at 916–326–5489, or e-mail: *k.kroner@frwa.com*.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 7, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–27154 Filed 10–27–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1057 (Preliminary)]

Certain Processed Hazelnuts From Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a Preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1057 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Turkey of certain processed hazelnuts, provided for in subheadings 0802.22.00 and 2008.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 5, 2003. The Commission's views are due at Commerce within five business days thereafter, or by December 12, 2003.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 21, 2003, by Westnut LLC, Dundee, OR; Northwest Hazelnut Co., Hubbard, OR; Hazelnut Growers of Oregon, Cornelius, OR; Willamette Filbert Growers, Newberg, OR; Evergreen Orchards, McMinnville, OR; and Evonuk Orchards, Eugene, OR.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a

conference in connection with this investigation for 9:30 a.m. on November 12, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis, (202) 205–3185, not later than November 7, 2003, to list their appearance and witnesses (if any). Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 17, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 22, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–27112 Filed 10–27–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

SPA Dynamic Wholesalers: Denial of Request for Registration to Handle List I Chemicals

On May 1, 2001, Spa Dynamic Wholesalers (Respondent) applied to be registered with the Drug Enforcement Administration (DEA) as a distributor of the List I chemicals ephedrine, pseudoephedrine and phenylpropanolamine (PPA), Control Number K2202014201J. On April 24, 2002, after an investigation by DEA investigators, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause (OTSC) why DEA should not deny Respondent's application. Prior to the issuance of the OTSC, on March 13, 2002, Respondent's owner Ann Marie Tess Wrigley (Ms. Wrigley) left a voicemail message at DEA regarding the status of her application. The call-back number left by Ms. Wrigley turned out to be a number for a facsimile machine. A DEA investigator used the number to send a facsimile to Ms. Wrigley, asking her to contact the investigator at DEA. Ms. Wrigley did not respond to the fax, and has not contacted DEA since that time.

The OTSC was sent by certified mail to the latest address provided by Ms. Wrigley to DEA. The OTSC was not claimed, indicating that Respondent was no longer at the latest address provided by Ms. Wrigley, and had left no forwarding address.Since the OTSC was issued, Ms. Wrigley has not contacted DEA concerning the status of her application.

Therefore, the Acting Deputy Administrator, finding that DEA has made reasonable attempts to serve the OTSC on Respondent, and no request for a hearing has been received, concludes that Respondent is deemed to have waived its hearing right. The Acting Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1301.43 and 21 CFR 1301.46, based upon the following finding of fact and conclusions.

The Acting Deputy Administrator finds that the List I chemicals ephedrine and pseudoephedrine are legitimate chemicals that also may be used in the illicit manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34), 21 CFR 1310.02(a). Both chemicals are commonly used to illegally manufacture methamphetamine, a schedule II controlled substance.

The Food and Drug Administration (FDA) has approved ephedrine for over-the-counter (OTC) use as a bronchodilator for the treatment of asthma. Ephedrine is also lawfully marketed as a nasal decongestant. Ephedrine is also used lawfully in hospitals in the treatment of hypotensive crisis and acute bronchospasm. Physicians have also used ephedrine to promote urinary continence. OTC ephedrine products have also been misused for their stimulant properties and for use as diet aids. FDA has not approved these products for such uses.

Pseudoephedrine is lawfully marketed under the Federal Food Drug and Cosmetic Act provisions for OTC use as a decongestant. It is often found in combination with other active ingredients such as antihistamines, expectorants and/or antitussives.

On November 6, 2000, the FDA issued a public health advisory warning of the dangers associated with the use of PPA, including, but not limited to, the risk of hemorrhagic stroke. The FDA advised that it was taking steps to remove PPA from all drug products and requested that all drug companies discontinue the sale of products containing this listed chemicals.

DEA has observed nationwide that the vast majority of sales of ephedrine and pseudoephedrine drug products destined for end users are made in supermarkets, drug stores, and large discount stores. An extremely small amount of face-to-face purchases are made in smaller retail outlets. DEA has observed that many smaller or non-traditional stores, such as liquor stores, gas stations, and some small markets, purchase inordinate amounts of these products and become conduits for the diversion of listed chemicals into illicit drug manufacturing.

During March 2001, DEA utilized an expert in the field of retail marketing and statistics to analyze national sales data for over-the-counter non-prescription drugs. Using official Government and commercially available sales data, he was able to construct a model of the traditional market for pseudoephedrine in the retail sector. His study showed that over 90% of all sales of non-prescription drug products occurred in drug stores, grocery stores and large discount merchandisers. A very small percentage of such sales occurred in convenience stores. Additionally, this expert analyzed expected sales of non-prescription drugs by convenience stores and found that they constituted about 2% of their total

6645–00–NIB–0107—12" Wall Clock—Putty Case—Federal Logo;
NPA: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, Illinois
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York, Product/NSN: Wobble Wedges M.R. 1835
NPA: West Texas Lighthouse for the Blind, San Angelo, Texas
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Deletions

On September 19, 2003 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 54887) of proposed deletion to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Grounds Maintenance, Vacant Family Housing Quarters, Fort Campbell, Kentucky
NPA: Progressive Directions, Inc., Clarksville, Tennessee
Contract Activity: Department of the Army, Fort Campbell, Kentucky

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–28522 Filed 11–13–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: December 14, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Virtual Call Center Services, Internal Revenue Service, Oxon Hill, Maryland.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contract Activity: U.S. Treasury, IRS Headquarters, Oxon Hill, Maryland.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–28523 Filed 11–13–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–813]

Notice of Request for Information and Extension of Time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey

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

EFFECTIVE DATE: November 14, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier at (202) 482–1394 or Ann Barnett-Dahl at (202) 482–3833, Fax: (202) 482–0613, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In addition, inquiries regarding any information on this notice may be sent via email to the following address: *Michael_Ferrier@ita.doc.gov* or *Ann_Barnett-Dahl@ita.doc.gov.*

The Petition

On October 21, 2003, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Williamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards (collectively, "Petitioners"). The Petitioners are domestic producers of processed hazelnuts.

Scope of the Petition

The scope of this Petition covers certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and

butter. Harmonized Tariff Schedule of the United States ("HTS") categories 0802.22 and 2008.19.20 should cover these imports. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive. In-shell hazelnuts are excluded from this scope.

Domestic Like Product

The Petitioners maintain that, pursuant to section 771(10) of the Tariff Act of 1930, as amended ("the Act"), the product that is, "like, or in the absence of like, most similar in characteristics and uses" with the article subject to the Petition for an antidumping duty investigation is processed hazelnuts.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Request for Information

Because the Department has been unable to locate a reliable source of information upon which to rely for purposes of determining industry support, we are now requesting additional information.

In accordance with section 732(c)(4)(D) of the Act and in order to determine whether the petition establishes support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, we are hereby requesting that all domestic producers/manufacturers of processed hazelnuts submit responses to the Department on company letterhead. These questions are attached as an Appendix to this notice. The questions attached to this notice are also on file in B–099 of the Commerce Department's building at 14th St. and Constitution Ave., NW., Washington DC. In addition, a complete version of the questions and this notice can be accessed directly on the World Wide Web at *http://www.ia.ita.doc.gov.*

Filing Requirements

Given the very short period in which we must determine industry support, the number of potential responses, and the fact that industry support may not be re-examined after initiation, we are waiving the filing requirements set forth in 19 CFR 351.303 for certain parties submitting information on industry support. This waiver of the filing requirements will not apply to: (1) the submission of documents that are not in response to the information requested in this notice, or (2) parties that are familiar with the conduct of antidumping and countervailing proceedings through prior involvement in such proceedings (*e.g.*, parties represented by law firms that are involved in other AD/CVD cases).

This limited waiver is applicable only until November 20, 2003, the deadline for submitting the information requested in this notice. This waiver is intended to expedite the receipt of information that is essential to our analysis of industry support by providing information on the production of the domestic like product by petitioning and non-petitioning companies. By avoiding delays in the receipt of such information, we will have more time to analyze whether the statutory requirements concerning industry support for the above-referenced petitions have been met.

All parties submitting any information must include the following statement in their response: "I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact." In addition, note that all proprietary documents received by the Department in response to this notice will be served to those individuals with access to business proprietary information under the Administrative Protective Order ("APO"). All company names will be treated as public information. All public documents may be made available to those parties on the public service list. The APO service lists and the public service lists are available on Import Administration's Web site: *http://www.ia.ita.doc.gov.*

Therefore, information submitted to the Department in response to this notice should be faxed to the following number: 202–482–0613. All information received by the Department will be treated as proprietary information as outlined under our regulations (19 CFR 351.304–306), unless otherwise noted in the response. Furthermore, all such information will be placed on the official record of the proceeding. Responses to this notice are due no later than November 20, 2003. Responses after this date may not be reviewed by the Department and therefore, not included in the analysis.

Extension of Time

Section 732(c)(1)(A)(ii) of the Act provides that within 20 days of the filing of an antidumping duty petition, the Department will determine, *inter alia*, whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) provides that the deadline for the initiation determination can be extended by 20 days in any case in which the Department must "poll or otherwise determine support for the petition by the industry. * * *"

We will require additional information from the Petitioners and the domestic producers of processed hazelnuts in order to make our determination regarding industry support and/or time to analyze the Petitioners' responses to our requests for information. *See Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III from Richard O. Weible, Office Director, Group III, Office 8 regarding Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey: Extension of Deadline for Determining Industry Support*, dated November 10, 2003. Therefore, it is necessary to extend the deadline for decision on initiation for a period not to exceed 40 days from the filing of the petition. As a result, the initiation determination is now due no later than December 1, 2003.

International Trade Commission Notification

Because the Department has extended the deadline for the initiation determination, the Department will contact the Commission and will make

this extension notice available to the Commission.

Dated: November 10, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

Appendix—Petition on Processed Hazelnuts from Turkey

All of the information you provide on this sheet will be entered on the record of this investigation as business proprietary information.

1. Please provide the following information about your company:

Company name

Name and title of the company president, director or manager

Your name and title

Business address

Phone number

Facsimile number

2. Please check all that apply to describe the business activities of your company:

Processing of hazelnut kernels	☐
Importation of hazelnut kernels	☐
Sales of hazelnut kernels	☐
Other hazelnut kernel activities (please explain)	☐

3. If your company imported hazelnut kernels between October 2002 and September 2003 and sold the imported kernels as is without any further processing, please provide the quantity imported in the hazelnut kernel equivalent in pounds.

Yes: _____ (Skip to question #5)
Quantity: _____ Lbs.
No: _____ (Please answer question #4)

4. If your company processed hazelnuts during the period October 2002 to September 2003, please provide the quantity of hazelnuts processed from domestic and imported sources in the hazelnut kernel equivalent:

Type of product	Quantity in lbs. (Imports)	Quantity in lbs. (Domestic Sources)
Raw or natural		
Shelled		
Roasted		
Blanched		
Diced		
Sliced		
Meal		
Flour		
Butter		
Paste		
Croquant		
Other (please explain)		

Note: Make sure that you report only production quantity of the final marketed product. Please make sure that you do not double count the quantity of intermediate hazelnut products.

5. Is your company affiliated with a Turkish producer, manufacturer or exporter of hazelnuts?

Yes _____
No _____

6. Does your company (please check one):

A. Support this petition? _____
B. Oppose this petition? _____
C. Have no opinion? _____

[FR Doc. 03–28662 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing the First Symposium on Building Trust and Confidence in Voting Systems

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of public symposium.

SUMMARY: The Help America Vote Act of 2002 ("HAVA") tasks the National Institute of Standards and Technology with assisting the Election Assistance Commission in the development of voluntary voting system guidelines. The First Symposium on Building Trust and Confidence in Systems offers the election community an opportunity to initiate collaboration prior to the implementation of HAVA. Four panel discussions will focus on the following key issues for improving voting systems: Specification, testability and qualification; security and openness; usability and accessibility; next steps/consensus issues. A draft agenda and invited panelists for the Symposium will be available at the NIST Web site at: *http://vote.nist.gov* by November 15, 2003.

DATES: The Symposium will be held on December 10 and 11, 2003, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The Symposium will be held in the Red Auditorium, Building 101 at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Additional information and electronic registration is available at the NIST Web site *http://vote.nist.gov* or by contacting Kimberly Snouffer on 301–975–2776. Because of NIST security regulations, advance registration is required. There will be no same day, on-site registration.

Dated: November 5, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–28552 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards, and requests proposals from the public to amend existing, or begin the process of developing new, NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results

After our analysis of the comments received, we determine that Degussa-AJ's factors of production have not changed substantially since Degussa AG's investment in AJ Works. As a result, the Department will consider in any relevant future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works.

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: November 28, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comment 1: Whether the Department Must Make a Successor-in-Interest Determination in this Changed Circumstances Review

Comment 2: Whether Ai Jian May Use Reviews In Which it Sourced its Merchandise from AJ Works to Support a Revocation Request

Comment 3: Whether Ai Jian is Subject to a Combination Antidumping Duty Rate Based on the Exporter-Producer Combination of Ai Jian and AJ Works

[FR Doc. 03–30260 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489–813]

Notice of Initiation of Antidumping Investigation: Certain Processed Hazelnuts from Turkey

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

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: John Drury at (202) 482–0195, Michael Ferrier at (202) 482–1394, or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 21, 2003, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Willamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards ("Petitioners"). Petitioners are domestic producers of certain processed hazelnuts ("hazelnuts"). On October 28, 2003, and October 29, 2003 inclusive, Petitioners submitted information to supplement the Petition ("First Petition Amendment"). Additionally, on October 30, 2003, counsel for the Petitioners met with Department officials, at which time Department officials notified Petitioners that the Petition to date was insufficient. *See Memorandum to the File from John Drury, Case Analyst: Ex-parte meeting with Counsel for Petitioners*, dated October 31, 2003. On November 4, 2003, Petitioners submitted further information to supplement the Petition ("Second Petition Amendment"). On November 24, 2003, Petitioners submitted additional information to supplement their Petition at the request of the Department ("Third Petition Amendment"). On November 10, 2003, and November 26, 2003, the Istanbul Hazelnut and Hazelnut Products Exporters Union and the Black Sea Hazelnut and Hazelnut Products Exporters Union filed comments regarding industry support. On November 28, 2003, Petitioners filed additional comments regarding industry support. In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners allege imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that Petitioners filed their Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigation they are presently seeking. *See Determination of Industry Support for the Petition* section below.

Scope of the Investigation

The scope of this investigation covers certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and butter. In-shell hazelnuts are excluded from the scope of the order.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings 0802.22 and 2008.19.2000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding the scope of the investigation. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute

directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

Moreover, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. The Petition covers certain processed hazelnuts as defined in the Scope of the Investigation section, above, and it constitutes a single class or kind of merchandise. The Department has no basis on the record to find the Petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the Petition. *See Antidumping Duty Investigation Initiation Checklist* ("*Initiation Checklist*").

Based on the Petition data, the share of total estimated U.S. production of the domestic like product from October 2002 to September 2003 represented by Petitioners and the supporting domestic producers equal over 25 percent of total domestic production but less than 50 percent of production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Memorandum to the File from Richard O. Weible, Office Director, Group III, Office 8: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey: Extension of Deadline for Determining Industry Support*, dated November 10, 2003. Petitioners did not meet the 50 percent threshold with their Third Petition Amendment for industry support because there are other hazelnut processors in the United States who are not subject to the U.S. Department of Agriculture's federal marketing order for hazelnuts and source some or all of their supply of hazelnuts from imports. Therefore, in accordance with Section 732(c)(4)(D), we polled the industry. On November 12, 2003, the Department sent a letter to possible hazelnut processors requesting U.S. production data for the period October 2002 to September 2003. This letter is on file in the Central Records Unit in room B-099 of the main Department of Commerce building and on the Import Administration website. For a detailed summary of the Department's efforts to identify relevant companies, See Memorandum to the File regarding Procedures Used to Determine Industry Support, dated December 1, 2003. Additionally, the Department published a notice in the **Federal Register** extending the twenty-day initiation and requesting production information from hazelnut processors in the United States (*See Notice of Request for Information and Extension of time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey*, (68 FR 64589) November 14, 2003.) The Department has relied upon the responses to this letter and follow-up phone calls to clarify certain responses to determine industry support. For the analysis of the data, *See Initiation Checklist*. Our analysis of the data indicates that the domestic producers of processed hazelnuts who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Initiation Checklist*.

Therefore, we find that the industry support requirements of section 732(c)(4)(A) of the Act have been met.

Period of Investigation

The anticipated period of investigation ("POI") will be October 1, 2002 through September 30, 2003.

Export Price and Constructed Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production ("COP") and constructed value ("CV") have been accorded treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

Export Price

In calculating the U.S. price, the Petitioner relied upon actual sales during the POI of Turkish processed hazelnuts to the United States. Petitioners provided sales invoices as support for their U.S. starting price. To calculate a net price, Petitioners deducted the Turkish export tax on processed hazelnuts and movement expenses, which include ocean freight, marine insurance, and brokerage. Petitioners calculated the export tax and the movement expenses from publically available data.

Constructed Value

Petitioners attempted to locate home market and third country prices of processed hazelnuts and outlined their efforts in the Third Petition Amendment. Petitioners were unable to locate home market prices that occurred within the POI or prices of subject merchandise (*i.e.*, shelled hazelnuts). Petitioners located prices of Turkish processed hazelnuts to Germany and provided information demonstrating reasonable grounds to believe or suspect that sales of processed hazelnuts in the German third county market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department initiate a country-wide sales-below-cost investigation. *See Memorandum to the File from Steve Williams, Import Analyst, Office of Policy: Telephone call with Pete Koenig regarding antidumping duty petition of Certain Processed Hazelnuts from Turkey*, dated December 01, 2003. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the Petitioners based normal value for sales in Turkey on CV. The Petitioners calculated CV using the cost of manufacturing, depreciation, selling, general and administrative expenses, and interest expense figures. Consistent with section 773(e)(2) of the Act, the Petitioners included in CV an amount for profit. For profit, the Petitioners relied upon amounts reported in a publicly available document.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacturing, selling, general and administrative expenses, and packing. The Petitioners calculated COM based on publicly available information and their own production experience, adjusted for known differences between costs incurred to produce processed hazelnuts in the United States and Turkey using publicly available data. To calculate SG&A and interest expense, the Petitioners were unable to obtain the financial statements of a Turkish hazelnut processor and therefore relied upon publicly available information for marketing and financing costs and their experience during the POI for general and administrative costs. Based upon a comparison of the price of the foreign like product in the third-country market, Germany, to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Germany. We note, however, that if we determine that the home market (*i.e.*, Turkey) is viable, our initiation of a country-wide cost investigation with respect to sales to Germany will be rendered moot.

Based upon the comparison of CV to EP, the Petitioners' calculated estimated dumping margin is 31.80 percent (*See Initiation Checklist*).

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

Petitioners contend that the industry's injured condition is evident in examining reduced production, shipments and net income, decreased employment, declining kernel prices, and lost sales and revenue. *See Petition* at pages 23–31. Petitioners assert its share of the market has declined from 2000 to 2002. *See Petition* at page 26. For a full discussion of the allegations and evidence of material injury, *See Initiation Checklist* at Attachment II.

Initiation of Antidumping Investigation

Based on our examination of the Petition covering certain processed hazelnuts, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than normal value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or April 19, 2004.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the government of Turkey.

International Trade Commission Notification

The ITC will preliminarily determine on December 10, 2003, whether there is reasonable indication that imports of certain processed hazelnuts from Turkey are causing, or threatening, material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Date: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30261 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475–819]

Certain Pasta from Italy: Notice of Rescission of Countervailing Duty New Shipper Review

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

ACTION: Notice of Rescission of Countervailing Duty New Shipper Review.

SUMMARY: On March 5, 2003, the Department of Commerce published in the **Federal Register** (68 FR 10446) a notice announcing the initiation of a new shipper review of the countervailing duty order on certain pasta from Italy, covering the time period January 1, 2002 through December 31, 2002. On March 24, 2003, the Department published a corrected notice of initiation in the **Federal Register** (68 FR 14198). We are now rescinding this new shipper review.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy or John Brinkmann, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1540 or 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department of Commerce (the "Department") received a request from Pastificio Carmine Russo S.p.A. ("Pastificio Russo"), made pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act") and 19 CFR §351.214(b), to conduct a new shipper review of the countervailing duty order on certain pasta from Italy, which was issued on July 24, 1996 (61 FR 38544). On February 24, 2003, the Department received submissions from Pastificio Russo containing additional information.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR §351.214, on February 27, 2003, the Department initiated a countervailing duty new shipper review for certain pasta from Italy, covering calendar year 2002. *See Certain Pasta from Italy: Notice of Initiation of Countervailing Duty New Shipper Review*, 68 FR 10446 (March 5, 2003). Corrections to the initiation notice were published in the **Federal Register** on March 24, 2003 (*See* 68 FR 14198). On August 29, 2003, the Department extended the time limit for the publication of the preliminary results in the new shipper review. *See Certain Pasta From Italy: Notice of Extension of Time Limit for Countervailing Duty New Shipper Review*, 68 FR 51965 (August 29, 2003).

On August 22, 2003, the Department, after receiving a timely request from Pastificio Russo pursuant to 19 CFR §351.213(b)(2), initiated an administrative review covering calendar year 2002 for that company. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). Accordingly, parallel reviews covering the same period of review were initiated

APPENDIX B

CALENDAR OF THE COMMISSION'S CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

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

Subject:	Certain Processed Hazelnuts from Turkey
Inv. No.:	731-TA-1057 (Preliminary)
Date and Time:	November 12, 2003 - 9:30 a.m.

Sessions were held in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties

Miller & Chevalier
Washington, DC
on behalf of

Westnut LLC, Northwest Hazelnut Co., Hazelnut Growers of Oregon, Willamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards

Jeff Kenagy, President, Northwest Hazelnut Co.
Ben Mitchell, Manager, Willamette Filbert Growers
Polly Owen, Oregon Hazelnut Commission

Peter Koenig – OF COUNSEL

In Opposition to the Imposition of Antidumping Duties

Harris Ellsworth & Levin
Washington, DC
on behalf of

Association of Food Industries, Inc., Hazelnut Group

Mordy Dicker, President, Sunrise Commodities, Inc.
Roni De Toledo, Vice President, Bedemco Import Export Inc.

Jeffrey S. Levin – OF COUNSEL

Cameron & Hornbostel, LLP
Washington, DC
on behalf of

The Istanbul Hazel Nut and Hazel Nut Products Exporters Union, and
The Blacksea Hazel Nut and Hazel Nut Products Exporters Union

Serdar Akinci, Chief of Section, Undersecretariat of the Prime Ministry for Foreign Trade (UFT), Republic of Turkey

The Istanbul Hazel Nut and Hazel Nut Products Exporters Union, and
The Blacksea Hazel Nut and Hazel Nut Products Exporters Union–Continued

Yasemen Korukcu, Foreign Trade Expert, UFT
Salih Cicek, Foreign Trade Expert, UFT
Priscilla Gaffney, Vice President, Indo-Med Commodities, Inc.
Ali Haydar Goren, Istanbul Exporters Union
Bilgehan Sasmaz, Commercial Counselor, Embassy of Turkey
Yukzel Akca, Trade Commissioner, Turkish Consulate General--New York

William K. Ince – OF COUNSEL
Alexander W. Sierck
Yong Lee

APPENDIX C

SUMMARY DATA

Table C-1
Certain processed hazelnuts: Summary data concerning the U.S. market, 2000-2002, January-June 2002, and January-June 2003

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

Item	Reported data			January-June		Period changes			Jan.-June
	2000	2001	2002	2002	2003	2000-2002	2000-2001	2001-2002	2002-2003
U.S. consumption quantity:									
Amount	18,546	20,194	20,116	9,211	9,985	8.5	8.9	-0.4	8.4
Producers' share (1)	40.1	34.4	26.7	28.0	16.2	-13.4	-5.7	-7.7	-11.8
Importers' share (1):									
Turkey	56.6	61.8	71.0	69.8	82.3	14.4	5.2	9.2	12.5
Other sources	3.3	3.8	2.2	2.2	1.6	-1.0	0.6	-1.6	-0.6
Total imports	59.9	65.6	73.3	72.0	83.8	13.4	5.7	7.7	11.8
U.S. consumption value:									
Amount	35,101	36,082	31,653	14,531	13,519	-9.8	2.8	-12.3	-7.0
Producers' share (1)	43.9	39.1	36.5	33.9	23.0	-7.4	-4.8	-2.6	-10.9
Importers' share (1):									
Turkey	52.8	56.8	60.9	63.3	74.7	8.1	4.0	4.1	11.4
Other sources	3.3	4.1	2.6	2.9	2.3	-0.7	0.8	-1.5	-0.5
Total imports	56.1	60.9	63.5	66.1	77.0	7.4	4.8	2.6	10.9
U.S. imports from:									
Turkey:									
Quantity	10,501	12,480	14,290	6,431	8,214	36.1	18.8	14.5	27.7
Value	18,531	20,507	19,272	9,192	10,097	4.0	10.7	-6.0	9.9
Unit value	$1.76	$1.64	$1.35	$1.43	$1.23	-23.6	-6.9	-17.9	-14.0
Ending inventory quantity	491	785	1,182	670	909	140.9	60.1	50.5	35.7
All other sources:									
Quantity	604	769	447	206	158	-26.0	27.4	-41.9	-23.0
Value	1,159	1,468	818	415	316	-29.4	26.7	-44.3	-23.9
Unit value	$1.92	$1.91	$1.83	$2.02	$2.00	-4.7	-0.5	-4.2	-1.2
Ending inventory quantity	0	0	0	0	0	(2)	(2)	(2)	(2)
All sources:									
Quantity	11,105	13,249	14,737	6,636	8,372	32.7	19.3	11.2	26.2
Value	19,689	21,975	20,089	9,607	10,413	2.0	11.6	-8.6	8.4
Unit value	$1.77	$1.66	$1.36	$1.45	$1.24	-23.1	-6.4	-17.8	-14.1
Ending inventory quantity	491	785	1,182	670	909	140.9	60.1	50.5	35.7
U.S. producers':									
Average capacity quantity	38,658	38,658	38,658	19,329	19,329	0.0	0.0	0.0	0.0
Production quantity	8,367	6,660	6,748	4,220	1,561	-19.3	-20.4	1.3	-63.0
Capacity utilization (1)	20.9	16.9	16.1	19.1	8.1	-4.9	-4.0	-0.8	-11.0
U.S. shipments:									
Quantity	7,441	6,945	5,379	2,575	1,613	-27.7	-6.7	-22.6	-37.4
Value	15,412	14,107	11,564	4,924	3,106	-25.0	-8.5	-18.0	-36.9
Unit value	$2.07	$2.03	$2.15	$1.91	$1.93	3.8	-1.9	5.8	0.7
Export shipments:									
Quantity	1,030	716	353	445	66	-65.7	-30.5	-50.7	-85.2
Value	1,759	1,278	650	767	133	-63.1	-27.4	-49.1	-82.7
Unit value	$1.71	$1.78	$1.84	$1.72	$2.01	7.7	4.5	3.1	16.6
Ending inventory quantity	1,165	1,368	1,962	2,500	1,656	68.3	17.4	43.4	-33.8
Inventories/total shipments (1)	13.8	17.8	34.2	41.4	49.3	20.5	4.1	16.4	7.9
Production workers	126	129	102	94	62	-19.0	2.4	-20.9	-34.0
Hours worked (1,000s)	140	113	87	52	22	-37.8	-19.3	-22.9	-57.5
Wages paid ($1,000s)	1,496	1,271	993	574	278	-33.7	-15.1	-21.9	-51.6
Hourly wages	$10.67	$11.22	$11.37	$11.00	$12.55	6.6	5.2	1.3	14.0
Productivity (pounds per hour)	58.9	53.9	76.2	79.6	70.2	29.4	-8.5	41.4	-11.8
Unit labor costs	$0.18	$0.21	$0.15	$0.14	$0.18	-17.6	15.0	-28.4	29.3
Net sales:									
Quantity	8,025	6,820	4,653	2,866	1,559	-42.0	-15.0	-31.8	-45.6
Value	16,342	13,204	8,952	5,456	3,132	-45.2	-19.2	-32.2	-42.6
Unit value	$2.04	$1.94	$1.92	$1.90	$2.01	-5.5	-4.9	-0.6	5.5
Cost of goods sold (COGS)	13,881	9,555	7,496	4,232	2,679	-46.0	-31.2	-21.5	-36.7
Gross profit or (loss)	2,461	3,649	1,456	1,224	453	-40.8	48.3	-60.1	-63.0
SG&A expenses	1,911	1,460	913	669	504	-52.2	-23.6	-37.5	-24.7
Operating income or (loss)	550	2,189	543	555	(51)	-1.3	298.0	-75.2	(3)
Capital expenditures	134	767	129	656	81	-3.7	472.4	-83.2	-87.7
Unit COGS	$1.73	$1.40	$1.61	$1.48	$1.72	-6.9	-19.0	15.0	16.4
Unit SG&A expenses	$0.24	$0.21	$0.20	$0.23	$0.32	-17.6	-10.1	-8.3	38.5
Unit operating income or (loss)	$0.07	$0.32	$0.12	$0.19	($0.03)	70.3	368.3	-63.6	(3)
COGS/sales (1)	84.9	72.4	83.7	77.6	85.5	-1.2	-12.6	11.4	8.0
Operating income or (loss)/ sales (1)	3.4	16.6	6.1	10.2	(1.6)	2.7	13.2	-10.5	-11.8

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Not applicable.
(3) Undefined.

Note.–Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

APPENDIX D

COPY OF USDA'S *FEDERAL REGISTER* NOTICE APPROVING THE HMB'S ALLOCATION OF HAZELNUTS TO FREE AND RESTRICTED MARKETS, MY 2002-2003

[Federal Register: May 30, 2003 (Volume 68, Number 104)]
[Rules and Regulations]
[Page 32325-32328]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr30my03-1]

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Rules and Regulations

Federal Register

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV03-982-1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2002-2003 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule establishing final free and restricted percentages for domestic inshell hazelnuts for the 2002-2003 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 18.4392 and 81.5608 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts that may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ``order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the ``Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2002-2003 marketing year (July 1, 2002, through June 30, 2003). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect marketing percentages that allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ``normal'' years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in Sec. 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) estimated 2002-2003 hazelnut production at 18,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

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At its August 29, 2002, meeting, the Board adjusted the NASS crop estimate up to 19,887 tons by deducting the average crop disappearance over the preceding three years (5.23 percent) and adding the undeclared carryin (2,828 tons) to the 18,000 ton production estimate. Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 3,133 tons by taking the difference between the average of the past three years' sales (3,563 tons) and the declared carry-in from last year's crop (430 tons).

The Board computed and announced preliminary free and restricted percentages of 12.6012 percent and 87.3988 percent, respectively, at its August 29, 2002, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (3,133 tons x 80 percent/19,887 tons = 12.6012 percent.) The preliminary free percentage thus initially released 2,506 tons of hazelnuts from the 2002 supply for domestic inshell use, and the preliminary restricted percentage withheld 17,381 tons for the export and shelled (kernel) markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (i.e., desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with Sec. 982.40(e).

The Board met on November 15, 2002, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market

conditions were such that immediate release of an additional 15 percent for desirable carryout would not adversely affect the 2002-2003 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. Final free and restricted percentages were recommended at 18.4392 and 81.5608 percent, respectively. The final free percentage released 3,667 tons of inshell hazelnuts from the 2002 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2002-2003 marketing year:

	Tons
Inshell Supply:	
(1) Total production (crop estimate)	18,000
(2) Less substandard, farm use (disappearance; 5.23 percent of Item 1)	941
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	17,059
(4) Plus undeclared carryin as of July 1, 2002, (subject to regulation)	2,828
(5) Supply subject to regulation (Item 3 plus Item 4)	19,887
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,563
(7) Less declared carryin as of July 1, 2002, (not subject to regulation)	430
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	3,133
(9) Desirable carryout on August 31, 2003 (15 percent of Item 6)	534
(10) Adjusted Inshell Trade Demand plus desirable carryout (Item 8 plus Item 9)	3,667

Percentages	Free	Restricted
(11) Final percentages	18.4392	81.5608
(Free percentage = Item 10 divided by Item 5) x 100	.....	.....
(Restricted percentage = 100 minus the free percentage)	.....	.....
(12) Final free in tons (Item 10)	3,667	.....
(13) Final restricted in tons (Item 5 minus Item 10)	.....	16,220

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ``Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 534

tons for desirable carryout. The total free supply for the 2002-2003 marketing year is 4,097 tons of hazelnuts, which is the sum of the final trade demand of 3,563 tons and the 534 ton desirable carryout. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

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this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 20 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $36,500. This is computed by dividing NASS figures for the average value of production for 2000 and 2001 ($27,369,500) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return on domestic inshell, less for export inshell, and the least for kernels. Based on Board records of average shipments for 1992-2001, the percentage going to each of these markets was 13 percent (domestic inshell), 41 percent (export inshell), and 46 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. On average, 78 percent of domestic inshell hazelnut shipments occur from October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the

industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market.

The estimated inshell trade demand (3,133 tons) and the high level of carryin (2,828 tons) were key market factors leading to the 18.4392 percent final free percentage. Hazelnut production in 2002 was only 2,500 tons more than in 1998, which was the shortest crop in the last ten years. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (i.e., average trade acquisitions of 3,563 tons) equals about 18 percent of the supply (19,887 tons subject to regulation). Although the domestic inshell market is a relatively small proportion of total sales (13 percent of average shipments over the last ten years, and 10 percent of average shipments for the last two years), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, export inshell and kernels, are expected to continue to provide good outlets for U.S. hazelnut production.

Since high production years typically follow low production years (a consistent pattern for hazelnuts), higher production is expected in 2003.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1992 and 2001, from a low of 16,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year was 48 percent and 153 percent, respectively, of the 10-year average tonnage of 32,240. The coefficient of variation (a standard statistical measure of variability; ``CV'') for hazelnut production over the 10-year period is 0.36. In contrast, the coefficient of variation for hazelnut grower prices is 0.16, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower cost of production to grower revenue in recent years highlights the financial impacts on growers at varying production levels. A recent study from Oregon State University (OSU) estimated the cost of production per acre of hazelnuts to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded the OSU estimate twice between 1995 and 2000. Average grower revenue was below typical costs in the other years. Since 1995, the highest level of revenue per bearing acre was $1,552 (1997) and the lowest was $561 in 1996. Without the stabilizing impact of the order, growers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability, and help to moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2002-2003 hazelnut crop. However, without any regulations in effect, the Board believed that the industry would oversupply the inshell domestic market. Although the 2002-2003 hazelnut

crop is much smaller than last year, the release of 18,000 tons on the domestic inshell market would cause producer returns to decrease drastically, and completely disrupt the market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA the preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts

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produced in the U.S. This production represents, on average, less than 4 percent of total U.S. production for other tree nuts, and less than 4 percent of the world's hazelnut production.

During the 2001-2002 season, 78 percent of the kernels were marketed in the domestic market and 22 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a 10-year average of 5,436 tons out of total average exports of 12,132 tons. Recent years have seen a significant shift in export destinations. Inshell shipments to Europe totaled 4,526 tons in the 2001-2002 season, representing 17 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 73 percent of total exports of 25,868 tons in the 2001-2002 season. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581-0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, as mentioned earlier, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 29, and November 15, 2002, were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the Federal Register on March 12, 2003. The Board's staff mailed copies of

this rule to all Board members. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended May 12, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://frwebgate.ac Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (68 FR 11733, March 12, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982--HAZELNUTS GROWN IN OREGON AND WASHINGTON

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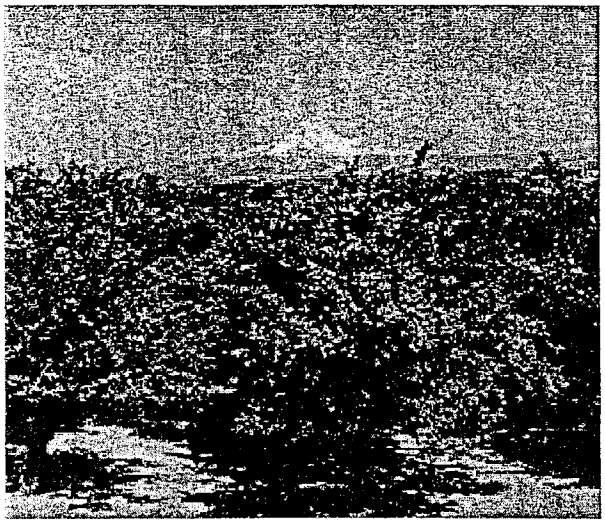
Accordingly, the interim final rule amending 7 CFR part 982 which was published at 68 FR 11733 on March 12, 2003, is adopted as a final rule without change.

Dated: May 23, 2003.
A.J. Yates,
Administrator, Agricultural Marketing Service.
[FR Doc. 03-13520 Filed 5-29-03; 8:45 am]

BILLING CODE 3410-02-P

OVERVIEW OF THE HAZELNUT INDUSTRY ORGANIZATIONS



Hazelnut Marketing Board
Oregon Hazelnut Commission
Nut Growers Society of Oregon, Washington & British Columbia
Associated Oregon Hazelnut Industries
Overview of Volume Regulation
Chart of Organization Responsibilities

The Hazelnut Marketing Board

Current Hazelnut Marketing Board Members:

Handlers:

Handler #1	Len Spesert, Cornelius	(503) 648-4176
Handler #2	Bruce Lish, Blue Diamond	(503) 363-1655
Handler #3	Jeff Kenagy, Northwest	(503) 982-8030
Handler #4	Larry George, George Packing	(503) 538-4122

Growers:

Area 1	Jeff Koenig, Aurora	(503) 678-5825
Area 2	Mark Tribbett, Salem	(503) 585-6605
Area 3	Dwayne Bush, Junction City	(541) 935-4083

Area 4	Larry Christenson, Newberg	(503) 538-3309
Area 5	April Jossy, Hillsboro	(503) 647-5668

Non-Industry:

	Laura Barton, ODA	(503) 229-6734

-Public Announcement-

The Hazelnut Marketing Board (HMB), working through USDA, administers the Hazelnut Marketing Order (HMO), which is a federal law that the growers in the industry have requested. The board members meet to determine if they want to have volume regulations for hazelnut sales each year. If so, they establish a "marketing program" that must comply with the provisions of the Hazelnut Marketing Order. The Hazelnut Marketing Board has decided that a "marketing program" should be established each year since 1949.

The HMO, when placed into effect, can establish various quality regulations. These regulations are enforced by the USDA through the State Inspection Service. It can also establish controls over the forms in which hazelnuts can be sold.

The industry believes that in most years the highest priced market for Oregon hazelnuts is the "domestic inshell" market. However, the demand for domestic inshell is not big enough to consume all of the product produced in the U.S. If all of the industry's handlers tried to sell all of their product on the domestic inshell market the buyers would soon have the price down to the lowest value market. So, one very important element of the marketing order is designed to protect the inshell market.

The Hazelnut Marketing Board (HMB) members, at their annual meeting in August, make the decisions necessary to put the "volume control" provisions of the order into effect. They in essence divide the domestic inshell market evenly between all handlers, based on the percentage of the overall industry product each handler controls.

If the Oregon-Washington hazelnut crop is 20,000 tons, for example, and the HMB feels that 5,000 tons, or 25 percent of the crop, can be sold domestically in the shell, then each handler can sell 25 percent of the product they handle on the domestic inshell market. The other 75 percent needs to be used in some other way. It is usually either exported in the shell or shelled.

The HMB refers to the 25 percent of the product handled as "free" product, because each handler is free to use it anywhere. The 75 percent is referred to as "restricted" product, because its use is restricted to shelling or export.

The HMB tracks each handler's operations by documenting all usage. Hazelnuts are usually either sold in the shell, or they are shelled. All handlers are required by law to report the following to the HMB each year:

1. How much product they purchase from growers, by grower.
2. How much product they sell in-the-shell both on the domestic and export market. (Such sales need to be supported by invoices and, if applicable, bills of lading.)
3. How much product they shell, supported by inspection certificates.

4. How much of the product they received from growers that was discarded as cull product.
5. How much product they still have in inventory on December 31 and June 30.

Handlers are required to report their operations to the HMB each month. They can either use the official HMB forms for this purpose or use forms of their own design as long as they provide the information needed by the HMB. There are many smaller handlers who only ship inshell for several months each fall and maybe have two or three kernel certificates. These handlers need only report to the HMB when they have activity.

The HMB manager is provided with information from various different sources concerning handler operations, which must be reconciled with handler reports. These include domestic buyer reports, inter-handler transfer documents, ODA inspections certificates, and government (customs) export/import listings.

The HMO specifies that handlers must assure the HMB that they can meet their restricted use requirement before they ship any inshell product onto the domestic inshell (free) market. They can do this in a number of ways. They can export inshell product, shell product or physically set product aside with a certification to the HMB that it will be used in some "restricted" way in the future.

Most of the larger handlers use hazelnuts in several ways during the year. They may export significant quantities early, thereby building up a large supply of "credits" which they can later use to support domestic inshell sales. One credit equates to the restricted use of one pound of hazelnuts. If the set aside or restricted percentage is 75 percent, as noted in the earlier example, then each handler will need to have three restricted credits in order to sell one pound of inshell product domestically.

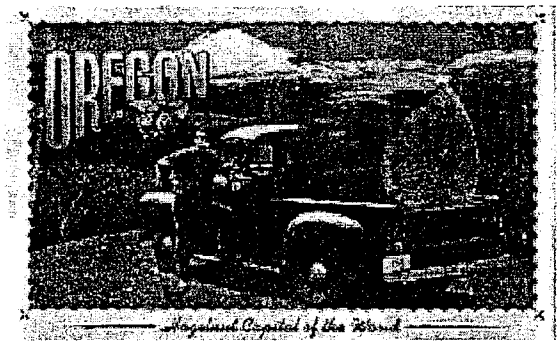
CREDITS If a handler has 1000 pounds of product when the set aside requirement is 75 percent, the handler can export or shell all of it, earning 1000 credits which can be transferred to another handler who may wish to sell more than his share of his product on the domestic market. Handlers who have a credit balance at the end of the year loose those credits. If a handler has 1000 pounds of product and wishes to sell more than 250 pounds on the domestic inshell market, that handler will need to contact some other handler and negotiate the transfer of credits that will allow him to sell more than his allotted share.

CARRYOVER PRODUCT People in the industry feel that it is good for the industry in total when handlers carry over product on June 30 for use in the following year, prior to the availability of the new crop. Handlers with product on hand on June 30 can carry that product over in several ways, as follows: (In all illustrations assume that the restricted obligation for the year is 75 percent.)

1. ***Free Carryover*** - Any handler who has credits in his account, either earned during the year because of his own operations or received by transfer from another handler, can declare the quantity of product those credits will release as free product and that part of his inventory can be carried over as free product that can be sold on the domestic inshell market without further obligation. If the handler has additional product he can also choose to carry over part free (25 percent) and part restricted (75 percent).
2. ***Restricted Carryover*** - Restricted carryover can only be used as restricted product the following year, i.e. it will either need to be shelled or exported.
3. ***Undeclared Carryover*** - If at the end of the year a handler has product but no credit balance, the handler may choose to carry over product as undeclared. This product will be handled the following year just as if it was product produced the following year. If handlers feel that the free/restricted ratio will be better in the coming year, it is to their benefit to carry product over undeclared. If they feel that the current year percentages are likely to be more generous, it is to their benefit to declare their

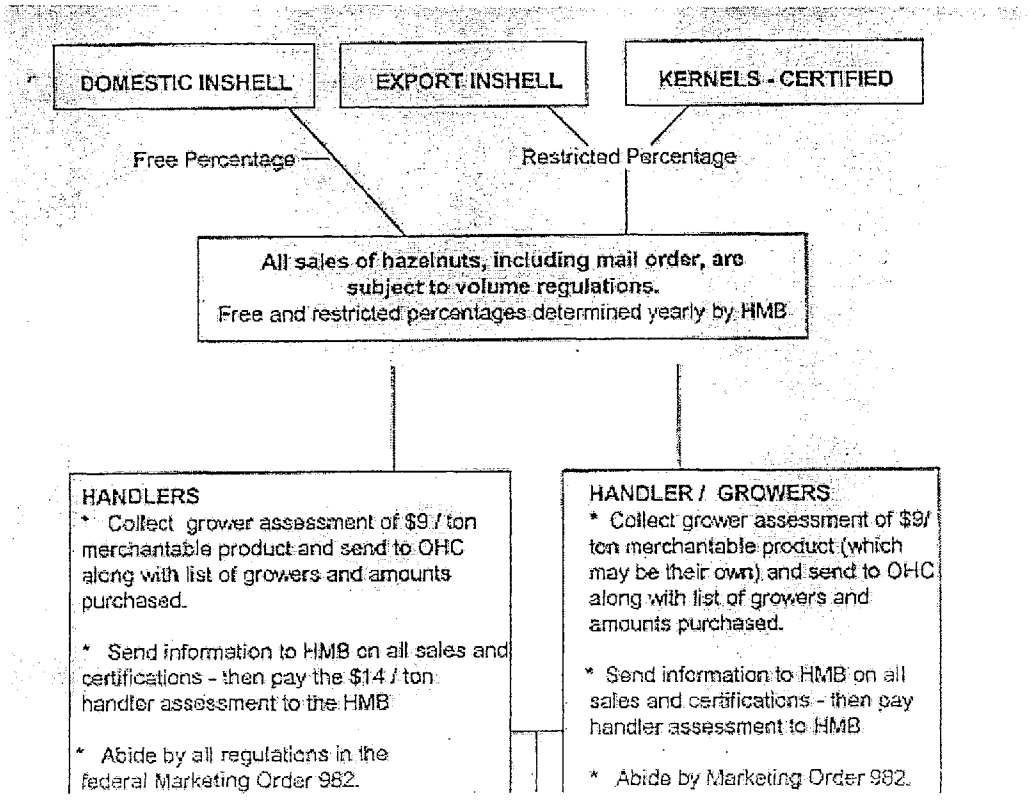
inventory and carry it over as free and restricted product. Handlers with both an inventory and excess credits at the end of a year should usually declare at least that portion of their inventory that can be carried over as free.

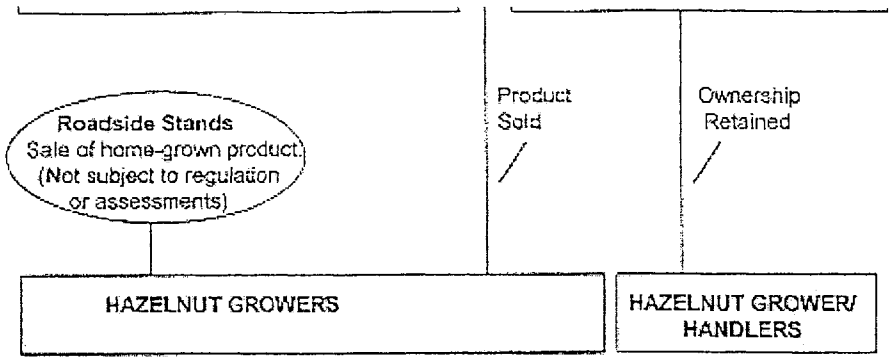
ASSESSMENTS The industry collects two different assessments from handlers and both are collected by the industry office. Hazelnut Marketing Board assessments are those collected as a result of the Marketing Order. The HMB assessment rate is set each year when the budget is approved. It has been set at $14 a ton for several years but for the 1997-98 marketing year has been changed to $8 a ton. Board assessments are used to fund various board programs and activities, primarily the industry's promotion and marketing program. The board bills handlers each month on the basis of use reports.



PROMOTION PROGRAM Currently a significant portion of the assessments fund the industry promotion program. This year the major effort is to increase awareness and use of hazelnuts in bakery and confectionery products.

GRADE AND INSPECTION STANDARDS The HMB has the ability to set grade and inspection standards. Domestic and imported product must be certified and make grade or it cannot be sold. Currently the grade processors pack to is the "Oregon No. 1" for kernels and "U.S. No. 1" for inshell.





Note: Both OHC and HMB assessment amounts are determined yearly by those growers and handlers who sit on the board and commission.

The OREGON HAZELNUT COMMISSION (OHC)

The OHC is one of the many state commodity commissions in Oregon. It was formed as Oregon Filbert Commission by legislative action in 1951. The name was changed to Oregon Hazelnut Commission in 1994. Funding for the Commission is an assessment from each grower at a rate of $9 per ton. The money is collected by the handlers who turn it into the industry office along with a list of the growers from whom it was collected. The current commission members are:

Ben Mitchell III	Chairman	(503) 538-2401
Wayne Chambers, Albany	Commissioner	(541) 928-7940
Don Christensen, McMinnville	Commissioner	(503) 835-2582
Steve Heesacker, Forest Grove	Chairman	(503) 357-3935
Gary Rodakowski, Vida	Commissioner	(541) 896-3187
Philip Walker, Salem	Treasurer	(503) 585-6437
George Wolf, Aurora	Commissioner	(503) 678-1171

Currently, the industry has chosen to use the Commission monies primarily to fund production research. The following is a list of topics that were funded during the 1997-98 year or are being funded for the 1998-99 year:

- Biology / Control of Hazelnut Insects
- Hazelnut Breeding
- Advanced Selections
- Floral / Incompatibility Biology
- Systemic Fungicide Control - EFB
- Rubigan Registration
- Hazelnut Micropropagation
- Kernel Molds of Hazelnut

- Brownstain
- EFB / Taxol Relationship
- Use of Poultry Litter on Hazelnut
- EFB Educational Tools
- Biological EFB Control

For more information on these topics and on other research projects funded by the Commission, please feel free to call the office - (503) 678-6823.

The NUT GROWERS SOCIETY OF OREGON, WASHINGTON AND BRITISH COLUMBIA

The society is a membership organization made up of growers and other people interested in hazelnuts. The main purpose of this group is to handle the transfer of information from various sources to the people in the industry. The current officers of this group are :

Jon Jossy, Hillsboro	President	(503) 647-5939
Steve Heesacker, Forest Grove	1st Vice-President	(503) 357-3935
Tony Salas, Harrisburg	2nd Vice-President	(541) 995-6025
Phil Evonuk, Junction City	Immediate Past President	(541) 998-1848
George Wolf, Aurora	Past President	(503) 678-1171

The Society has two major events each year which provide a forum for an information exchange. In January they join with the Nurserymen and the Horticulture Society to produce the Northwest AG Show in Portland. This is an event growing in scope and popularity. In the summer they host a Hazelnut Tour through different areas of the Willamette Valley where the majority of the nuts are produced.

The Society also puts out four newsletters per year and publishes an annual report which is a working history of the industry. A member automatically receives a copy of this publication.

To become a member, simply send this form to the Nut Growers at 21595-A Dolores Way NE, Aurora, OR 97002-9738

NUT GROWERS SOCIETY OF OREGON, WASHINGTON & BRITISH COLUMBIA

Membership Application

( ) Renewal ( ) New Member

Name_____ Spouse_____
Address_____
City_____ State_____ Zip + 4_____
Telephone _____ may we publish in proceedings? _____
Fax_____ email _____
No. of acres in hazelnuts: _____ Walnuts: _____ Other nuts _____

Annual Dues: $15 Canada & U.S. (Canadian members, please state U.S. funds.) Foreign $20.

THE ASSOCIATED OREGON HAZELNUT INDUSTRIES

This is a voluntary group made up of growers and handlers who deal with legislative and political issues that may impact the industry. This group is funded with contributions on an as needed basis and is administered by the Manager of the industry office. Current members are:

Don Blake, Salem	Chairman	(503) 585-5428
Daryl Kihs, Salem	Board Member	(503) 363-1655
Peter McDonald, Wilsonville	Board Member	(503) 625-7437
Richard Malone, Dundee	Board Member	(503) 538-2161
Richard Vanderschuere, Cornelius	Board Member	(503) 648-4176
Milburn Ziegler, Scholls	Board Member	(503) 628-1319

US Hazelnut Industry Organizations

The US hazelnut industry, centered almost entirely in the Willamette Valley of Oregon is comprised of growers and handlers. Through the years organizations have evolved to meet basic industry needs and to avoid duplication of efforts. The following is an overview of the organizations.

ORGANIZATION	MAKE-UP	FUNDED BY	RESPONSIBILITIES
Hazelnut Marketing Board (HMB)	5 Growers 4 Handlers 1 Public Appointed by the Secretary of Agriculture	Handlers are assessed an amount per ton of merchantable product handled ($14 currently)	• Administer Federal Marketing Order 982 (including compliance) • Administer quality and volume regulations • Oversee promotion program • Provide industry production and use statistics
Oregon Hazelnut Commission (OHC)	6 Growers - representing different areas 1 Handler Appointed by the Oregon Director of Agriculture	Growers are assessed an amount per ton of merchantable product handled ($9 currently) This is collected and sent to OHC by Handlers.	• Administer Oregon State Commodity Commission Act (including compliance) • May do Research, Education and Promotion • Currently, to administer research done primarily with OSU but also with ODA and private sector • Work with OSU Extension • Responsible for "commodity commission" legislation
Nut Growers Society (NGS)	5 Growers representing	Dues ($15/year) Northwest Ag	• Disseminate industry information from other

	different areas	know	organizations (newsletters and proceedings) • Hold Annual Meeting and Summer Tour
Associated Oregon Hazelnut Industries	1 OHC 1 NCS 3 Associated Nut Packers 1 HGBA*	Billed as needed 50/50 to growers and handlers (voluntary)	• Deal with federal and state legislative matters as needed • Deal with other industry issues as needed

*HGBA (Hazelnut Growers Bargaining Association) is a voluntary membership organization created to negotiate prices between handlers and growers.

Want to visit some more via email? We are: **hazelnut@oregonhazelnuts.org**

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