

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-337-807]

**Initiation of Countervailing Duty Investigation: IQF Red Raspberries From Chile**

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

**ACTION:** Initiation of countervailing duty investigation.

**EFFECTIVE DATE:** June 28, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Craig W. Matney or Jennifer D. Jones at (202) 482-1778 and (202) 482-4194, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**Initiation of Investigation****The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (April 2000).

**The Petition**

On May 31, 2001, the Department received a petition filed in proper form by the IQF Red Raspberry Fair Trade Committee (hereinafter "the petitioner"). The Department received information supplementing the petition throughout the initiation period.

In accordance with section 702(b)(1) of the Act, the petitioner alleges that manufacturers, producers, or exporters of the subject merchandise from Chile receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner and its members filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and they have demonstrated sufficient industry support. *See infra*, "Determination of Industry Support for the Petition."

**Scope of Investigation**

The products covered by this petition are imports of individually quick frozen

(IQF) whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (e.g., organic or not), the size of the container in which packed, or the method of packing. The scope of the petition excludes fresh red raspberries and block frozen red raspberries (i.e., puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this investigation is classifiable under 0811.20.2020 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*see* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The 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.

**Consultations**

On June 13, 2001, the Department held consultations with representatives of the Government of Chile (GOC) pursuant to section 702(b)(4)(ii) of the Act. During these consultations, the GOC submitted copies of public laws relating to certain programs alleged in the petition. The points raised in the consultations are described in the Memorandum to the File, "CVD Consultations with Officials from the Government of Chile," dated June 13, 2001, and in the subsequent "Letter to Susan H. Kuhbach," dated June 14, 2001.

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A)

of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product, and (2) 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.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the 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 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 domestic like product, such differences do not render the decision of either agency contrary to the law.<sup>1</sup>

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 subtitle." 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.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section above. No party has commented on the petition's definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains

<sup>1</sup> *See Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

adequate evidence of industry support; therefore, polling is unnecessary (*see Initiation Checklist*, dated June 20, 2001 (*Initiation Checklist*), at Industry Support). The petitioner indicated that there may be several additional small U.S. producers accounting for less than 10 percent of U.S. production who are not petitioners. We have no knowledge of any other domestic producers. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

#### Injury Test

Because Chile is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Chile materially injure, or threaten material injury to, a U.S. industry.

#### Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in net operating income, net sales volume and value, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

#### Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

#### Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on IQF red raspberries from Chile and found that it

complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of IQF red raspberries from Chile receive countervailable subsidies.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Chile:

1. Suppliers Development Program
2. Export Promotion by ProChile
3. Corporacion de Fomento de la Produccion (CORFO) Export Subsidies
4. Law 18,576 Export Credit Limits
5. Law 18,634 Import Duties on Capital Goods
6. Law 18,480 Simplified Duty Drawback

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in Chile:

1. Law 18,645 Loan Guarantees

The petition alleges that Law 18,645 provides to Chilean exporters of non-traditional goods loan guarantees of up to 50 percent of a loan's value, for loans which do not exceed U.S.\$150,000. The petition further alleges that these guarantees are specific because they are limited to exporters. According to information provided by the petitioner, only products which qualify for simplified duty drawback under Law 18,480 are within the scope of Law 18,645.

The GOC states that the regulations implementing Law 18,645 (which are reasonably available to the petitioner) set conditions for receipt of these loan guarantees. Either the product must be eligible for simplified duty drawback (*see above*) or the industry must have exported less than U.S.\$16.7 million on average over the past two years. The IQF red raspberry industry does not meet either criterion. Moreover, the same allegation was made in *Salmon*, and was rejected by the Department because the petitioners failed to identify any preferential treatment or benefit from the program. (*See Notice of Initiation of Countervailing Duty Investigation: Fresh Atlantic Salmon From Chile*, 62 FR 36772, 36775 (July 9, 1997). Therefore, the Department is not initiating an investigation of Law 18,645.

#### 2. Start-up Assistance of Fundación Chile

The petition alleges that Fundación Chile has participated in the development of the Chilean raspberry industry since 1980 when production, processing and marketing tests of raspberries began. The petition further alleges that in 1985, Fundación Chile created two new producer/exporter berry companies in regions IX and X under its "Development of New Species for Export" program. However, the petition does not allege any potential assistance subsequent to 1985. Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. 19 CFR 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For the asset class which includes IQF red raspberries, "manufacture of other food products," the IRS Tables prescribe an AUL of 12 years. Therefore, the Department is not initiating an investigation of Fundación Chile start-up assistance because any potential benefit would have been received outside the applicable AUL.

However, we will reexamine the allegation if the petitioner provides sufficient information that either extends the AUL to incorporate the period during which a benefit was received or if additional information is provided indicating that start-up assistance was provided to a producer or exporter during the appropriate period.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will determine no later than July 16, 2001, whether there is a reasonable indication that imports of IQF red raspberries from Chile are causing material injury, or threatening to cause material injury to, a U.S. industry. A negative ITC determination

will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

Dated: June 20, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Guidance for Fiscal Year 2001 Coral Reef Management Funding**

**AGENCY:** National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Announcement of funding opportunity for financial assistance for Island coral reef conservation and management cooperative agreements.

**SUMMARY:** The purpose of this notice is to advise the public that the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of the Interior (DOI) are soliciting proposals from the U.S. Flag Island jurisdiction of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands for the purpose of coral reef conservation and management.

**DATES:** NOAA and DOI must receive Applications for cooperative agreements according to the following schedule:

Draft applications received by NOAA and DOI: June 29, 2001

NOAA and DOI comments back to Islands: July 20, 2001

Final complete application received by NOAA and DOI: August 3, 2001

Cooperative agreements awarded on or before: October 1, 2001

**ADDRESSES:** Applications should be sent to: John King, Acting Chief, CPD/OCRM, N/ORM-3, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910, and Karen Koltes, Coral Reef Program Manager, Office of Insular Affairs, MS 4328 Department of the Interior, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** For NOAA: Bill Millhouser, Pacific Regional Manager, CPD/OCRM, N-ORM-3, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910; 301-713-3155 x 189; Internet: *bill.millhouser@noaa.gov*.

For DOI: Karen Koltes, Coral Reef Program Manager, Office of Insular Affairs, MS 4328, Department of the Interior, Washington, DC 20240; 202-208-5345; Internet: *karen\_koltes@ios.doi.gov*.

**SUPPLEMENTARY INFORMATION: (1)**

*Program Authorities:* Specific authority for this Announcement is found in 16 U.S.C. 1442, Executive Order 13089 (June 11, 1998), Coral Reef Protection, for NOAA.

(2) *Catalog of Federal Domestic Assistance Numbers:* 11.419 for NOAA Coastal Zone Management Program Administration.

(3) *Program Description:* This notice provides guidance for applying for funding appropriated by Congress to the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) in Fiscal Year (FY) 2001 to support the conservation and management of coral reefs and associated fisheries by the island jurisdictions of Puerto Rico, the U.S. Virgin Islands, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

Congress appropriated \$26,941,000 in FY 2001 funding to NOAA in support of the Administration's budget request for Coral Reef Conservation activities. The Department of the Interior Office of Insular Affairs (OIA) also received funding in FY 2001 to enhance coral reef protection and management.

Among the top coral reef conservation priorities for both agencies is support for State and Territorial coral reef conservation activities as envisioned in the 1999, *U.S. All Islands Coral Reef Initiative Strategy*, and subsequent locally generated management strategies. NOAA and DOI will jointly award \$2,435,000 in FY 2001 to support priority island coral reef ecosystem conservation efforts. Of this total, NOAA's National Centers for Coastal Ocean Science (NCCOS) will award \$350,000 to support Monitoring and Assessment cooperative agreements with the Islands. As was the case last year, NCCOS will award a separate Monitoring and Assessment award to each jurisdiction. NOAA's Office of Ocean and Coastal Resource Management (OCRM), the National Marine Fisheries Service (NMFS) Office of Protected Resources (PR), and Office of Insular Affairs (OIA/DOI) will provide an additional \$1,885,000 in funding for cooperative agreements to support Island coral reef and coral reef fishery management and conservation activities as listed below.

Program purpose	Agency	Amount (in millions)
Coral reef management.	OCRM OIA/DOI	\$1.200 .350
Coral reef fishery management.	PR/NMFS	.335
Total .....		1.885

OCRM, PR/NMFS and OIA/DOI will coordinate their funding such that each Island will need to develop only one coral reef and coral reef fishery management application. The Federal agencies will coordinate their review of both cooperative agreements to ensure comparability and continuity between the two processes. It is anticipated OCRM will make awards to three of the six jurisdictions and that DOI will make awards to the remaining three jurisdictions.

To allow each Island the ability to continue projects initiated with last year's awards, each jurisdiction is eligible to receive an award ranging from a minimum of \$225,000 to a maximum of approximately \$400,000. To be eligible for the award, the jurisdiction must have made reasonable progress in completing tasks under their FY 1999 and FY 2000 coral management awards, as evidenced in the required performance and financial reports.

(4) *Funding Availability:* Funding is contingent upon the availability of Federal appropriations. It is estimated that approximately \$1,885,000 in FY 2001 funding is available for Coral Reef and Coral Reef Fishery Management cooperative agreements. Support in outyears after FY 2001 is contingent upon the availability of funds and the requirements of the agency supporting the project.

(5) *Matching Requirements:* None.

(6) *Type of Funding Instrument:* Cooperative agreements.

(7) *Eligibility Criteria:* Eligible applicants are government jurisdictions of American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

(8) *Award Period:* Full Proposals should cover a project period of 12 to 18 months with an anticipated start date of October 1, 2001.

(9) *Indirect Costs:* If indirect costs are proposed, the total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(10) *Application Forms:* Applications should reflect the strategy developed in