

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

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

[Date approved: July 26, 2005]²

Bill No. and sponsor: H.R. 1466 (Rep. Garrett); 109th Congress.

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

Other bills on product (109th Congress only): H.R. 1465 and H.R. 1464 (Rep. Garrett).

Nature of bill: Temporary duty suspension through December 31, 2008.

Retroactive effect: None.

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

The article description in this bill should read “Pimientos (Capsicum annuum), prepared or preserved otherwise than by vinegar or acetic acid, not frozen, in containers each holding not more than 227 g (provided for in subheading 2005.90.50).”³

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

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

The genus *Capsicum* and species *annuum* cover two broad categories: (1) sweet peppers, which are mild and non-pungent, and (2) chile peppers,⁴ which are hot and pungent.⁵ Sweet peppers include bell peppers (green, red, purple, and yellow), pimientos (or pimentos), rellenos, and sweet banana peppers, among

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

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

³ We note that this bill and H.R. 1466 together cover all goods classifiable in HTS subheading 2005.90.50. Accordingly, it would be possible to create a single chapter 99 heading for the entire scope of subheading 2005.90.50, with the article description “Pimientos (Capsicum annuum), prepared or preserved otherwise than by vinegar or acetic acid, not frozen (provided for in subheading 2005.90.50).” As discussed below, however, enacting a single chapter 99 heading would likely result in a higher customs revenue loss than would be desired. Statistical reporting number 2005.90.5020 covers the vegetables covered by this bill as “pimientos (Capsicum annuum [sic]), in containers each holding not more than 227 g[rams].”

⁴ Chile (chili) peppers are tapered, slender, thin walled hot peppers. Common chile pepper groups and varieties include cayenne, paprika, jalapeno, anaheim, serano, and poblano peppers. See “Chile Pepper Production in California,” University of California-Davis (Publication 7144), found at <http://anrcatalog.ucdavis.edu/pdf/7244.pdf>.

⁵ “Sweet Peppers: Saved by the Bell” by U.S. Department of Agriculture’s Economic Research Service, published in *Agriculture Outlook* (December 2001), found at <http://www.ers.usda.gov/publications/agoutlook/dec2001/ao287e.pdf>.

others.⁶ The pimiento (the Spanish word for “pepper”) is a vigorous, highly productive plant that produces early maturing fruit measuring 3-4 inches long and 2-3 inches wide.⁷ It is a sweet, succulent miniature pepper that is more aromatic and has a more distinctive flavor than the red bell pepper.⁸ The pimiento fruit pods are smooth, typically conical or heart-shaped, pointed at the blossom end, thick walled, and red to reddish-yellow in color.⁹ Prepared or preserved pimientos are covered by HTS subheading 2001.90.35 (pimientos prepared or preserved by vinegar or acetic acid)^{10 11} and statistical reporting numbers 2005.90.5020 (otherwise prepared or preserved pimientos in containers each holding not more than 227 g) and 2005.90.5040 (other such pimientos).

Aggregated pepper production data cover both hot and sweet peppers. A reported 23.2 million metric tons (mt) of peppers were produced worldwide in 2003.¹² China was the largest producer of peppers, accounting for 50 percent of world production. Mexico and Turkey each accounted for another 8 percent of world production, followed by Spain and the United States each with 4 percent and Nigeria for 3 percent.¹³ Complete information on pimiento production in the United States is unavailable. USDA’s National Agricultural Statistics Service (NASS) and the California Agriculture Statistics Service (CASS) aggregate all data under one of two categories: bell peppers or chile peppers.¹⁴ Limited production data on pimiento are available for some key producing counties in California, where the majority of domestically-produced pimientos are grown. These data indicate that pimiento production (fresh and processed) in 2003 totaled about 10,900 mt.¹⁵ Other U.S.-producing states include Florida,¹⁶ Georgia, North Carolina, Texas, Arizona, and New Mexico.¹⁷ Estimates of U.S. production in this report are based on California figures only and likely reflect a lower bound for domestic production.

⁶ “Sweet Peppers” at ChiliPepperPlants.com found at http://www.chili-pepper-plants.com/html/sweet_peppers.html.

⁷ Ibid.

⁸ “Sweet Peppers,” University of Georgia, found at <http://www.uga.edu/vegetable/pepper.html>.

⁹ “United States Standards and Grades for Canned Pimientos” by the U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division (October 23, 1967). Found at <http://www.ams.usda.gov/standards/cnpiment.pdf>.

¹⁰ Some processed pimiento product might also be imported under HTS heading 2004, “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006” (HTS statistical reporting number 2004.90.8580, “Other, including mixtures”). These data include a number of other products and mixtures and are difficult to separate out precisely.

¹¹ Fresh sweet peppers are classified under HTS subheading 0709.60, “Fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., allspice).” Dried product is classified under HTS heading 0904, “Pepper of the genus *Piper*; dried or crushed or ground fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., allspice).”

¹² FAOSTAT database maintained by the United Nations available at <http://www.fao.org>. Includes production under the category of “Chillies & Peppers, green” but does not include production under the category of “Peppers, White, long, black.”

¹³ Ibid.

¹⁴ Telephone discussion with Biz Wallingsford at USDA NASS (Aug. 30, 2004) indicate that USDA defines chile peppers as all peppers excluding bell peppers. Also see footnote to table on chile peppers for fresh market and processing in NASS’ *Vegetables 2003 Summary* at <http://usda.mannlib.cornell.edu/reports/nassr/fruit/pvg-bban/vgan0104.txt>. Email communication with Gary Nelson, California Agriculture Statistics Service (Aug. 31, 2004) indicate that data for pimientos are reported with bell peppers in the annual County Agricultural Commissioners’ Report (<http://www.nass.usda.gov/ca/bul/agcom/indexcac.htm>). Also see “A Pest Management Strategic Plan for Pepper Production in California Production” by the California Pepper Commission.

¹⁵ Information submitted to the Commission by the Agricultural Commissioners’ offices for Monterey and Ventura counties, August 31, 2004. Other information provided by Gary Nelson, California Agriculture Statistics, Aug. 31, 2004. Equivalent to about 24 million pounds. 1 metric ton = 2,205 pounds.

¹⁶ Telephone conversation with Dan Bosch, Florida Fruit & Vegetable Association on Aug. 18, 2004, suggests that there is limited pimiento production for processing in Florida.

¹⁷ Telephone conversation with Paul Basland, New Mexico State University (Chili Pepper Institute) on August 18, 2004, suggests that there is limited pimiento production in New Mexico.

In 2003, the combined volume of U.S. imports of all processed pimientos, including products imported under each of the three import categories for prepared or preserved pimientos totaled 21,000 mt, net weight.¹⁸ On a drained weight basis, excluding the preserving solution and other packing media, the estimated volume of processed pimiento imports totaled about 14,700 mt.¹⁹ Based on these estimates of U.S. production (California-grown fresh and processed pimientos) and U.S. imports (expressed on a drained weight basis), and on the assumption that there are no U.S. exports of these products, the Commission estimates that imported products account for approximately 40 percent of U.S. annual commercial sales.

In 2003, the combined volume of U.S. imports of all processed pimientos totaled 21,000 mt, net weight.²⁰ On a drained weight basis, excluding the preserving solution and other packing media, the estimated volume of processed pimiento imports totaled about 14,700 mt.²¹ Based on estimates of U.S. production in California and U.S. imports of processed pimientos (expressed on a drained weight basis), and on the assumption that there are no U.S. exports, the Commission estimates that imported products account for approximately 40 percent of U.S. sales. By value, processed pimiento imports totaled \$29.7 million in 2004,²² and goods imported under HTS statistical reporting number 2005.90.5020 were valued at \$5.2 million.²³ Between 2000-2004, the volume of imports nearly doubled. Spain is the largest supplier with 70 percent of imports in 2003 and 90 percent in 2004. In 2004, other suppliers included Turkey, Mexico, Greece, Peru, and Italy.

Estimated effect on customs revenue:

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

HTS subheading: 2005.90.50 (stat. no. 2005.90.5020)					
	2005	2006	2007	2008	2009
Col. 1-General rate of duty (AVE) <u>1/</u>	8.1%	8.1%	8.1%	8.1%	8.1%
Estimated value <i>dutiable</i> imports <u>2/</u>	\$4,700,000	\$5,000,000	\$5,400,000	\$5,700,000	\$6,100,000
Customs revenue loss <u>3/</u>	\$380,700	\$405,000	\$437,400	\$461,700	\$494,100

¹⁸ Based on import data from official U.S. Government statistics. Reflects combined imports under HTS statistical reporting numbers 2005.90.5020 and 2005.90.5040 and subheading 2001.90.35.

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

²⁰ Based on import data from official U.S. Government statistics. Reflects combined imports under HTS subheadings 2005.90.50 and 2001.90.35.

²¹ Commission estimates based on information indicating that the drained weight of pimientos is roughly 70 percent compared to its net weight that contains both fruit and packing media (larger container sizes). Information is from “Pimientos and Peppers” found at <http://www.fufesa.com/Webingles/Pimientos.htm> and retrieved on Sept. 2, 2004.

²² Ibid.

²³ Based on import data from official U.S. Government statistics.

1/ The AVE is the ad valorem equivalent of a specific or compound duty rate expressed as a percent, using the most recent import data available. The rate shown is the general or normal trade relations rate. Other preferential rates may apply to countries entitled to special tariff treatment, including duty-free access for eligible products from Canada and Mexico (North America Free Trade Agreement), some Central American nations (Caribbean Basin Economic Recovery Act), Israel (U.S.-Israel Free Trade Area), and certain countries under the Generalized System of Preferences. A reduced rate of 6.0 percent ad valorem applies to eligible imports from Chile (U.S.-Chile Free Trade Agreement).

2/ Source of estimated dutiable import data: U.S. Government statistics.

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

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

The table below lists the industry representatives contacted and the submissions received in late 2004, in response to similar Congressional bills of the 108th Congress. See H.R. 4814, H.R. 4815 and H.R. 4816 (108th Congress, Rep. Garrett) available at the Commission’s website.²⁴

Name of firm/organization	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		
Steve Hofmann, Sandler, Travis & Rosenberg, 1300 Pennsylvania Ave., Ste 400, Washington, DC 20004, Ph: 202-216-9307 <u>Representing:</u> Association of Food Industries, Inc., 301 RT 66, Ste. 205, Bldg. C, Neptune, NJ 07753, Ph: 732-922-3008 (proponent)	8/19/2004		Yes	No
Chris Russell, Representative Garrett’s office, Ph: 202-225-4465	8/18/2004		No	No
Schreiber Foods International, Inc. 48 South Franklin Turnpike, P.O. Box 299 Ramsey, NJ 07446, Ph: 201-327-3535	8/17/2004		Yes <u>1/</u>	No
Jerry Hensley, Saticoy Foods Corp. P.O. Box 4547, Saticoy, CA 93007, Ph: 805-647-5266	8/18/2004	Yes (processor)	Yes	Yes
Glen Fisher, California Advisory Board, California Pepper Commission, 531 N. Alta Ave, Dinuba, CA 93618, Ph: 559-591-3925	8/17/2004	Yes (grower organization)	Yes	Yes

²⁴ Access to electronic copies of these memos is available at http://www.usitc.gov/tata/hts/other/rel_doc/bill_reports/108c.htm. Paper copies are available at the Commission’s Law Library (202-205-3287) or at the Commission’s Main Library (202-205-2630).

Ed Simerly, Moody Dunbar, Inc., P.O. Box 6048, Johnson City, TN 37602, Ph: 423-952-0100	8/18/2004	Yes (processor)	Yes	Yes
Richard Henshel, Pickle Packers, International, Inc. P.O. Box 606, One Pickle and Pepper Plaza, St. Charles, IL 60174, Ph: 630-584-8950.	8/20/2004		No	No
Darryl Fryman, Central Kentucky Growers, 2190 Cincinnati, Georgetown, KY 40324, Ph: 502-863-0002	8/17/2004	No	No	No
Clinch Mountain Farmers Market Inc. 210 US Hwy 23 N, Weber City, VA 24290, Ph: 276-386-7663	8/17/2004	No	No	No
Dan Bosch, Florida Fruit & Vegetable Assoc. P.O. Box 140155, Orlando, FL 32814, Ph: 407-894-1351	8/18/2004	No	No	No
Paul Basland, New Mexico State University (Chili Pepper Institute). P.O. Box 30001, Las Cruces, NM 88003, Ph: 505-646-5171.	8/18/2004	No	No	No
Lynn Williams, Mt. Olive Pickle Co., Inc. 812 N. Chestnut St., P.O. Box 609, Mt. Olive, NC 28365, Ph: 919-658-2535	8/18/2004		No	No
Peggy Rochette, National Food Processors Association, 1350 I Street, NW, Ste 300, Washington, DC 20005, Ph: 202-639-5900	8/18/2004		No	No

1/ The Commission received multiple letters supporting the proposed legislation that are similar to that submitted by Schreiber Foods International, Inc. Many of these same companies are also noted as supporting the proposed legislation in the submission from the Association of Food Industries, Inc. The Commission cannot, in the context of this memorandum, make any statement concerning the validity of these claims.

Technical comments:²⁵

The changes proposed for the article description on page one would make the description consistent with other tariff provisions.

²⁵ The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

109TH CONGRESS
1ST SESSION

H. R. 1466

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2005

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

A BILL

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

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

3 **SECTION 1. CERTAIN PIMIENTOS, PREPARED OR PRE-**
4 **SERVED BY VINEGAR OR ACETIC ACID.**

5 (a) IN GENERAL.—Subchapter II of chapter 99 of
6 the Harmonized Tariff Schedule of the United States is
7 amended by inserting in numerical sequence the following
8 new heading:

“	9902.20.03	Pimientos (capsicum anuum), prepared or preserved otherwise than by vinegar or acetic acid, not frozen, in containers holding not more than 227 g. (provided for in subheading 2005.90.50)	Free	No change	No change	On or before 12/31/2008	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) applies to goods entered, or withdrawn from
3 warehouse for consumption, on or after the 15th day after
4 the date of enactment of this Act.

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