

**PETITION BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE
MARKETING AND REGULATORY PROGRAMS**

March 9, 2010

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Petitioners,

v.

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Ms. Rayne Pegg
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Respondents.

PETITION TO THE SECRETARY OF AGRICULTURE TO SUSPEND FOR UP TO TWENTY DAYS FROM APRIL 10, 2010 UNTIL APRIL 30, 2010 IMPORT REGULATION NO. 4 PURSUANT TO 7 U.S.C. 608c(16)(A) AS TO TABLE GRAPES IMPORTED INTO THE UNITED STATES FROM THE COUNTRY OF CHILE AND TO CLARIFY THAT CRIMSON SEEDLESS TABLE GRAPES FROM CHILE ARE NOT SUBJECT TO THE REGULATION IN 2010

1. For humanitarian purposes in response to the devastating earthquake in Chile and to assure the orderly supply of fresh fruit from Chile to the United States at reasonable prices, the undersigned submit this citizen petition to suspend Table Grape Import Regulation No. 4 for 10 to 20 days and clarify that Crimson Seedless grapes from Chile will not be subject to regulation in 2010.
2. The petition is submitted pursuant to the Right to Petition Government Clause contained within the Administrative Procedure Act, 5 U.S.C. § 553(e) (2006), the United States Department of Agriculture Reorganization Act, 7 U.S.C. § 450 (2006) and the United States Department of Agriculture's regulations, 7 C.F.R. § 1.28 (2009)¹.
3. The undersigned petitioners hereby request that the Secretary of Agriculture suspend for up to twenty days from April 10, 2010 to April 30, 2010 the beginning of Table Grape Import Regulation 4. 7 CFR 944.503). Attachment A. In addition, the undersigned petitioners also request that the Secretary of Agriculture clarify that the Crimson Seedless variety of table grape from Chile is not subject to Import Regulation No. 4 in 2010. The Secretary of Agriculture has authority under 7 U.S.C. 608c(16)(A), the Agricultural Marketing Agreement Act

¹ Petitions, 7 C.F.R. § 1.28 (2009), ("Petitions by interested persons in accordance with 5 U.S.C. 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule. All such petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions.").

of 1937, to "suspend the operation" of Import Regulation 4 "to effectuate the declared policy [of the Act]." Attachment B. The primary objective of the Act is: "to establish and maintain such orderly marketing conditions for any agricultural commodity ... as will provide, in the interests of producers and consumers, an orderly flow of supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices." 7 U.S.C. 602.

Attachment C.

4. The grounds for the requested suspension are humanitarian and in the economic interests of United States consumers as well as the interests of the United States import and distribution system that supplies fresh fruit from Chile to every state in the United States.
5. Chile is by far the largest source of table grapes for the United States market from Thanksgiving through early May of each shipping season.
6. On February 27, 2010, Chile suffered one of the strongest earthquakes ever recorded, registering 8.8 on the Richter scale. Attachment D. Since that time, over 200 aftershocks have been recorded, including some over 6.0 on the Richter scale.
7. The first 8.8 earthquake's epicenter was approximately 100 kilometers north of Concepcion, and caused widespread and catastrophic damage to port facilities and transportation infrastructure necessary to move the Chilean harvest of table grapes to markets in the United States. Attachment E. The area affected most severely is, at this time, at the peak of the Chilean fruit harvest.

8. Approximately 145,000 small growers and harvest workers who depend for their livelihood on the Chilean fruit harvest and its successful marketing in the United States suffered the most direct damage. Attachment E.
9. Even in the face of the severity of the earthquake and the 200 aftershocks, the Chilean Government and the people of Chile have immediately taken steps to make temporary repairs to allow the continuation of the harvest and shipment of the Chilean fruit in view of its importance to the Chilean economy and the livelihood of its population.
10. The Chilean industry estimates that 10 to 20 days of its harvest season will be delayed and/or lost. Significant amounts of certain fruits will be irretrievably lost. Table grapes are among the fruit species that were not severely damaged by the earthquake. Accordingly, the harvest, export and marketing of the table grape crop are essential to salvaging some part of the fruit harvest.
11. Prior to the earthquake, the Chilean harvest was much smaller than last year due to climatic conditions. For that reason, fruit has been in short supply in the United States resulting in much higher prices than normal to consumers. Attachment F.
12. The table grape crops from Mexico and the southern part of California are expected to be 6 to 12 days later than normal. The late season Crimson Seedless variety from Chile is the only variety of seedless grape that is available in sufficient abundance to fill the gap that will certainly develop under the extraordinary conditions of this season. However, the Crimson Seedless variety

- will probably not be readily available in the United States market if subjected to Table Grape Import Regulation No. 4 inspections and restrictions.
13. Nearly 65 percent all of the fruit shipments from Chile enter the United States each year through three ports in the Delaware River region -- Gloucester in New Jersey, Philadelphia in Pennsylvania and Wilmington in Delaware. The rest of the Chilean fruit shipments come through ports in the Los Angeles area of California.
 14. This restrictive trade measure, known as Table Grape Import Regulation No. 4, has had an adverse economic impact on the Delaware River region. More specifically, the Tioga Terminal in Philadelphia estimates that their stevedores may have lost as much as \$1,328,029 in wages; the Gloucester Terminal in New Jersey calculated a loss of 8000 man hours for a total economic loss of \$2 million and the Port of Wilmington in Delaware estimated 133 full time job equivalents valued at \$5.3 million, in addition to a \$7.1 million loss of port revenue. Those losses to the port were amplified by the more general economic downturn that coincided with the implementation of an April 10 starting date for the restrictive regulation beginning in 2009. It now appears that the recent catastrophic events in Chile will aggravate the situation even further, if the petition submitted by port community is not promptly and favorably acted upon.
 15. Aggregated loss to the three ports in the region could be in excess of 168,000 tons with economic losses exceeding \$15,000,000. Attachment G.

16. Table Grape Import Regulation No. 4 places certain restrictions on seedless table grape imports that make it very risky to ship table grapes from Chile after April 10. Shipping costs are one of the largest components of the cost of the business and those costs must be paid before the grapes can come to market.
17. The voyage from Chilean to the United States takes from 10 to 14 days. Given the disruption in the harvest and shipments from Chile due to the earthquake, Chile will lose the ability to ship and market a substantial portion of the table grape harvest unless Table Grape Import Regulation No. 4 is suspended for 10 to 20 days and to clarify that the Crimson Seedless variety be exempted from regulation for the 2010 shipping season.
18. This request is urgent given the lead time required to schedule shipping and the perishable nature of the fruit.

ACCORDINGLY, the undersigned petitioners respectfully request that the Secretary of Agriculture suspend Table Grape Import Regulation No. 4 from April 10, 2010 to April 20, 2010, and clarify that Crimson Seedless grapes from Chile will not be subject to regulation in 2010. The undersigned further request immediate consideration of the petition because of the urgent need for humanitarian relief and the perishable nature of fresh fruit.

Respectfully submitted:



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