

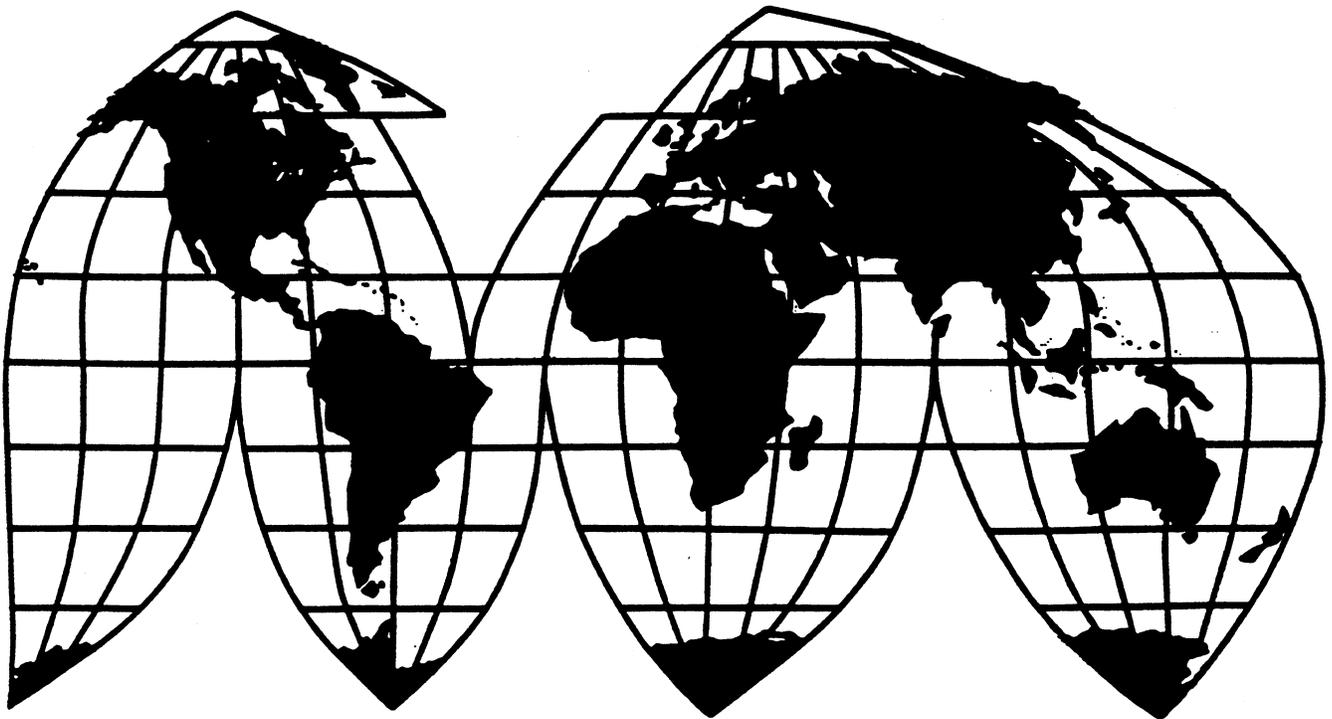
# Certain Dairy Products

Investigation No. 22-53

Publication 2659

July 1993

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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## Certain Dairy Products

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**FINDINGS AND RECOMMENDATIONS OF THE COMMISSION**



UNITED STATES INTERNATIONAL TRADE COMMISSION  
July 7, 1993

REPORT TO THE PRESIDENT ON  
INVESTIGATION NO. 22-53

Certain Dairy Products

Findings and recommendations

The Commission unanimously finds and recommends with respect to each of the articles described below that changed circumstances exist, and that the following actions may be taken without resulting in an article being or practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, a program or operation of the U.S. Department of Agriculture--

- (1) exclude cajeta not made from cow's milk, provided for in subheading 1901.90.30 of the HTS, from the quota on malted milk and articles of milk or cream;
- (2) exclude inedible dried milk powders used for calibrating infrared milk analyzers, provided for in subheading 0404.90.20 of the HTS, from the quota on malted milk and articles of milk or cream;
- (3) place margarine cheese from Sweden, provided for in subheading 1901.90.30 of the HTS, under the quota for low-fat cheese;
- (4) eliminate the import licensing requirement for dried cream and malted milk and articles of milk or cream; and
- (5) technically modify U.S. note (3)(a)(iii) of Subchapter IV of Chapter 99 of the HTS so as to enable unused country quotas for a particular dairy product to be reallocated among all countries having quota allocations for that product, including countries falling in the "other" category (unless it is specified that no quantity of such product may be entered from "other" (nonspecified) countries).

Background

On January 19, 1993, the Commission received a letter from the President stating that he had been advised by the Secretary of Agriculture "that the quota for malted milk and articles of milk or cream and the import quota licensing requirement for dried cream, and for malted milk and articles of milk or cream, wherever classified in the Harmonized Tariff Schedule of the United States, may need to be modified since there are changed circumstances with respect to these specific dairy products." The President also stated in his letter that he had been advised "that the quota allocation for Sweden for

margarine cheese which was inadvertently excluded from the Harmonized Tariff Schedule should be restored and that U.S. Note (3)(a)(iii) of Subchapter IV of Chapter 99 of the HTS should be technically modified."

The Commission instituted investigation No. 22-53 (58 F.R. 13279, Mar. 10, 1993) under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) to determine whether the HTS should be modified with respect to: (1) the exclusion of cajeta not made from cow's milk, provided for in subheading 1901.90.30 of the HTS, from the quota on malted milk and articles of milk or cream; (2) the exclusion of inedible dried milk powders used for calibrating infrared milk analyzers, provided for in subheading 0404.90.20 of the HTS, from the quota on malted milk and articles of milk or cream; (3) the inclusion of margarine cheese, provided for in subheading 1901.90.30 of the HTS, that is the product of Sweden under the quota for low-fat cheese, and the exclusion of margarine cheese from Sweden from the quota on malted milk and articles of milk or cream; (4) the elimination of the import quota licensing requirement with respect to dried cream and malted milk and articles of milk or cream; and (5) the clarification of U.S. note (3)(a)(iii) to subchapter IV of chapter 99 of the HTS to provide that, to the extent the Secretary of Agriculture determines that a particular country's quota quantity is not likely to be entered in a calendar year, such country quota for a particular dairy product may be reallocated among all countries having quota allocations for that product, including countries falling in the "other" category (unless it is specified that no quantity of such product may be entered from "other" nonenumerated countries).

The Commission held a public hearing in Washington, DC, on April 29, 1993, at which time all interested parties were allowed to present information and data for consideration by the Commission.

CERTAIN DAIRY PRODUCTS, INV. NO. 22-53  
VIEWS OF THE COMMISSION

I. Summary

On January 19, 1993, the President directed the United States International Trade Commission (the "Commission") to conduct an investigation under section 22 of the Agricultural Adjustment Act<sup>1</sup> to determine whether the Harmonized Tariff Schedule (HTS) should be modified to:

1. exclude cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream;
2. exclude from quota coverage dried milk powders used for calibrating infrared milk analyzers and not capable of being used for edible purposes;
3. allow importation of margarine cheese from Sweden under the quota for low-fat cheese;
4. eliminate the import quota licensing requirement with respect to dried cream and malted milk and articles of milk or cream; and
5. clarify the language of U.S. Note (3)(a)(iii) of Subchapter IV of Chapter 99 of the Harmonized Tariff Schedule to specifically provide that a country quota for a particular dairy product, to the extent the Secretary determines that the quota quantity is not likely to be entered in a calendar year, may be reallocated among all countries that have quota allocations for the product including the "other" category, unless it is specified that no quantity of such product may be entered from "other" countries.<sup>2</sup>

We have determined and we recommend to the President that the proposed modifications will not render or tend to render a USDA program ineffective and will not materially interfere with any USDA program and that changed circumstances require these modifications to carry out the purposes of section

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<sup>1</sup> 7 U.S.C. §624(d).

<sup>2</sup> A copy of the President's letter to the Commission is contained in Appendix A of the Commission's Report (Report).

22 of the Agricultural Adjustment Act, as amended.<sup>3</sup>

## II. Section 22 Authority

To protect the U.S. Department of Agriculture (USDA) price-support program for milk from material interference from imports, Presidential Proclamation 3019 (June 12, 1953) established import quotas and import quota licensing requirements for virtually all products derived from cow's milk, including dried cream and malted milk and articles of milk or cream, but not casein, caseinates, lactalbumin, and soft-ripened cows' milk cheese. These quotas, set forth in subchapter IV of chapter 99 of the HTS, limit imports of quota products to a quantity equal to about 2 percent of the total U.S. production of milk. In recent years, the import quotas have been substantially filled.<sup>4</sup> In terms of milk-equivalent milkfat basis, the maximum quantity of dairy products that currently may be imported under the quotas is 2.2 billion pounds (one million metric tons).<sup>5</sup>

Most of the section 22 quotas on dairy products are allocated on a country-by-country basis and are administered by the USDA through a system of import licenses.<sup>6</sup> Quotas for products not subject to licensing are administered by the Customs Service on a first-come, first-served basis.<sup>7</sup>

It is the quotas and licensing requirements under Presidential proclamation 3019 that would be modified if the President finds that changed circumstances require such modification to carry out the purposes of section

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<sup>3</sup> In this investigation the Commission focused on whether the proposed modifications would render or tend to render or would materially interfere with the USDA dairy programs. These were the only USDA programs identified by the USDA and our record of investigation that could be potentially affected by the proposed modifications.

<sup>4</sup> Report, at I-12.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

22.<sup>8</sup> To determine whether we should recommend these modifications to the President, we engaged in a two-part analysis. First, we examined whether changed circumstances exist that require the subject modifications to the HTS. In this investigation there was evidence of changed circumstances for each of the five proposed modifications.<sup>9</sup>

Upon unanimously finding changed circumstances, we then sought to determine whether the proposed USDA modifications to the HTS could be made without resulting in these products being or practically certain to be imported into the United States "under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with" USDA's support programs for dairy products.<sup>10</sup> As the Commission has stated in prior determinations, we believe that the phrase "render or tend to render ineffective" imposes a higher standard than the "materially interfere" test. Thus, any action that renders or tends to render a program ineffective would, by necessity, materially interfere with the program.<sup>11</sup> Therefore, we focus our discussion on the "materially interfere" language of the statute.

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<sup>8</sup> 7 U.S.C. §624(d).

<sup>9</sup> In the past, the Commission has cited various developments as being sufficient "changed circumstances" to require a particular change to an earlier section 22 proclamation. Among these are: (1) supply shortages (including temporary shortages, increased demand relative to production, and greater reductions in supply than in demand); (2) underutilization of the quota (Short Harsh Cotton, Inv. No. 22-1 (supplemental) (1957)). See also Certain Cotton and Cotton Waste, Inv. No. 22-1 (supplemental) (1942)); (3) reductions in CCC purchases and uncommitted stocks (Certain Cheeses, Inv. No. 22-6 (supplemental) (1960)); (4) discontinuance of domestic production (Short Harsh Cotton, Inv. No. 22-1 (supplemental) (1957)); (5) increases in prices of the product since the quota was imposed (Id.); and (6) changes in world market conditions, due, for example, to wartime disruptions in trade (Long-Staple Cotton, Inv. No. 22-1 (supplemental) (1942)).

<sup>10</sup> See 7 U.S.C. § 624(a). Section 22(a), which explicitly provides the standard for imposing section 22 quotas, also implicitly provides a standard for determining whether modification, termination, or suspension of an existing quota is appropriate.

<sup>11</sup> See Cotton Comber Waste, Inv. No. 22-51, USITC Pub. 2334 (November 1990).

In prior investigations, "material interference" has been defined as "more than slight interference but less than major interference."<sup>12</sup> When determining whether material interference is occurring or would occur if a quota were modified or terminated, the Commission has examined factors such as: (1) the available supply of imports, including import levels, changes in import volumes, world production, and world stocks of the imported product; (2) pricing data, including the relationship between import prices, U.S. prices, and the support price; (3) information relating to domestic supply and demand, including volumes and trends regarding U.S. production and U.S. demand; and (4) data relating to the Government programs, including Commodity Credit Corporation (CCC) outlays,<sup>13</sup> CCC surpluses, and changes in the cost to the Government of running a program.<sup>14</sup>

The Commission has stated previously that "[b]asic objectives of a program may be satisfied, but a program may nevertheless be materially interfered with if imports are causing increases in domestic stocks under loan or significant expenditures by the CCC."<sup>15</sup> When assessing materiality, the Commission has compared the additional USDA expenditures that might result from a quota modification with USDA's expenditures for the entire price-

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<sup>12</sup> Certain Articles Containing Sugar, Inv. No. 22-46, USITC Pub. 1462 (1983) at 30, n.11; Sugar, Inv. No. 22-45, USITC Pub. 1253 (1982) at 7; Casein and Lactalbumin, Inv. No. 22-44, USITC Pub. 1217 (1982).

<sup>13</sup> The CCC is a federally owned and operated corporation within the USDA created to stabilize, support, and protect farm income and prices through loans, purchases, payments, and other operations, but not through appropriations. All money transactions for agricultural price and income support and related programs are handled through the CCC; the CCC also helps maintain balanced, adequate supplies of agricultural commodities and helps in their orderly distribution.

<sup>14</sup> See e.g., Sugar, Inv. No. 22-45, USITC Pub. 1253 (1982); Certain Tobacco, Inv. No. 22-47, USITC Pub. 1644 (1985); Nonfat Dry Milk and Animal Feeds Containing Milk or Milk Derivatives, Inv. No. 22-34, USITC Pub. 633 (1973) at 10.

<sup>15</sup> Sugar, Inv. No. 22-45, USITC Pub. 1253 (1982) at 7-8.

support program at issue.<sup>16</sup> The Commission has also examined, among other factors, the relative size of the quota or of the commodity imports (actual or anticipated) to overall U.S. consumption.<sup>17</sup>

In this investigation we attempted to identify the amount of potential imports that could result from the proposed quota and licensing modifications and determined the amount of domestic milk production that would be displaced by these imports. By comparing the amounts of displaced milk for each proposed modification with the total amount of milk production protected by the USDA dairy program, we were able to evaluate whether each of the modifications would interfere materially with the USDA dairy programs.

### III. The dairy programs potentially affected by the requested HTS modifications

There are two USDA programs related to dairy products: the USDA price-support program for milk and the Federal Milk Marketing Orders Program. These serve as the primary price determination mechanisms for the dairy sector.

#### A. The USDA Price-Support Program for Milk

The CCC purchases dairy products to ensure that farmers receive at least a minimum price (price support) for cow's milk.<sup>18</sup> The CCC purchases all butter, cheese, and nonfat dry milk that is offered to it by processors and that meets CCC specifications at announced prices.<sup>19</sup> The CCC purchase prices

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<sup>16</sup> Cheeses, Inv. No. 22-31, TC Pub. 567 (1973) at 6.

<sup>17</sup> See, e.g., Cheeses, Inv. No. 22-31, TC Pub. 567 (1973) at 6; Certain Articles Containing Sugar, Inv. No. 22-46, USITC Pub. 1462 (1983) at 21. In some circumstances, the Commission has been required to assess the impact of imports of one product on price support programs governing another product. When doing so, the Commission has examined whether the imports are likely to displace the products that are the subject of USDA's programs and the magnitude of any such displacement. See, e.g., Casein and Lactalbumin, Inv. No. 22-44, USITC Pub. 1217 (1982).

<sup>18</sup> Report, at I-17.

<sup>19</sup> Legislative authority exists for the CCC to also purchase milk, but milk tends to be too bulky and perishable for the CCC to handle.

include manufacturing allowances, or margins, to cover the cost of processing milk into these products.<sup>20</sup> These prices are set at levels that will make it profitable for processors to pay farmers at least the minimum USDA support level for milk used for manufacturing.<sup>21</sup>

#### B. The Federal Milk Marketing Orders Program

The Federal Milk Marketing Orders Program requires "handlers" (processors) of milk to pay farmers certain minimum prices for Grade A milk<sup>22</sup> based on three classes of end use as follows: milk used for fluid products (Class I); milk used for soft products including fluid cream, ice cream, cottage cheese, and yogurt (Class II); and milk used for hard products including cheese, butter, and nonfat dry milk (Class III).<sup>23</sup> Class III milk is priced at levels near the price of Grade B milk in a two-state area in Minnesota and Wisconsin (the M-W price).<sup>24</sup> The M-W price is used as a base price for Class III milk since most of the milk produced in that area is used to manufacture butter, cheddar cheese, and nonfat dry milk, products that are purchased by the USDA under the price-support program.<sup>25</sup> Changes in the prices of Class II and Class I milk occur with changes in the price of Class III milk.<sup>26</sup>

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<sup>20</sup> Report at I-17. Purchase prices for butter, cheese, and nonfat dry milk are calculated by multiplying the amount of manufacturing milk used to produce each of these products (the whole-milk equivalent) by the announced support price for manufacturing milk. Id.

<sup>21</sup> Report, at I-17.

<sup>22</sup> Grade A milk is milk that is suitable for fluid consumption.

<sup>23</sup> Report, at I-20.

<sup>24</sup> Id. Grade B milk is milk that is not suitable for fluid consumption or soft products but is suitable for production of hard products--butter, hard cheese, and nonfat dry milk. Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

#### IV. Analysis and Determinations

##### A. Cajeta

###### 1. Background

Cajeta, also known as dulce de leche, is a light-brown paste generally used as a confection or as a dessert topping.<sup>27</sup> Mexican cajeta is made from goat's milk, cow's milk, or some combination of both.<sup>28</sup> Because the applicable section 22 quotas are essentially imposed on dairy products derived from cow's milk, the Government of Mexico has maintained for several years that cajeta made from goat's milk could be removed from section 22 quota coverage without materially interfering with the U.S. Government's price support program for cow's milk, which these quotas were intended to protect.<sup>29</sup> The United States denied all previous requests from Mexico because the U.S. Customs Service (Customs) did not have a methodology for distinguishing between cajeta made from goat's milk from cajeta made from cow's milk.<sup>30</sup> In its latest request, in the form of a diplomatic note, the Mexican Government agreed to provide technical documents, analyses, and proposed testing procedures that would chemically verify that particular shipments of cajeta had been made from goat's milk.<sup>31</sup>

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<sup>27</sup> Report at I-4. Cajeta is a term that is uniquely applied to the product produced in Mexico. In other Latin American countries the same product is referred to as dulce de leche. Cajeta is generally a mixture of milk, sweeteners (typically sugar or corn sweetener), baking soda (for browning) and, sometimes, flavoring agents. The mixture is heated until the milk is caramelized and thick (almost unpourable at room temperature). It can be eaten as a dessert by itself, used as a spread for crepes or cookies, or used as a topping on ice cream. Report at I-8.

<sup>28</sup> Based on testimony presented at the Commission's hearing, pure goat's milk cajeta accounts for about 85 percent of all cajeta sold in Mexico (transcript, pp. 40 and 41).

<sup>29</sup> Report, at I-4.

<sup>30</sup> Id.

<sup>31</sup> Id.

Based in part on the positive evaluation of Mexico's proposed testing methodology by the United States Agriculture Research Service (ARS),<sup>32</sup> the USDA task force that analyzed Mexico's request recommended that cajeta not made from cow's milk be excluded from the quota coverage.<sup>33</sup> <sup>34</sup> The task force reasoned that if the quota was modified to exclude from coverage cajeta not made from cow's milk, Customs could reserve the right to conduct random testing to alleviate the possibility of fraud or circumvention.<sup>35</sup> Also, the task force concluded that there are established precedents for limiting section 22 quota coverage to dairy products made from cow's milk.<sup>36</sup> As an example, the task force cites the article descriptions for HTS subheadings 9904.10.42 and 9904.10.45, which specifically limit the quota to ". . . cheeses, made from cow's milk . . ."<sup>37</sup> Also cited was HTS subheading 9904.10.54, which reads in part "Cheeses and substitutes for cheese...(except cheese not containing cow's milk and soft ripened cow's milk cheese). . . ."<sup>38</sup>

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<sup>32</sup> On the whole, the ARS found the methodology to be acceptable for identification of the major milk sources of milk used in the production of cajeta. Report at I-5.

<sup>33</sup> Report at I-5. The exclusion would apply primarily to cajeta made from goat's milk, but it apparently would also apply to any cajeta made from other species (e.g., buffalo). *Id.*

<sup>34</sup> The same USDA task force that analyzed the cajeta proposal also analyzed the other four proposals that are the subject of this investigation. The task force was composed of eight employees of the USDA, representing different expertise within the department. Two of the employees were with the Foreign Agricultural Service and one each represented the Agricultural Stabilization and Conservation Service, the Office of Budget and Planning Analysis, the Agricultural Marketing Service, the Economic Research Service, the World Agricultural Outlook Board, and the Office of the General Counsel. In addition, the Deputy Assistant Administrator, Marketing Commodity and Marketing Programs, Foreign Agricultural Service was the Chairman of the Task Force.

<sup>35</sup> Report, at I-5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

## 2. Changed Circumstances

As noted above, previous requests for exclusion of goat's milk cajeta from quota coverage were denied by the United States because of the inability to distinguish between cow's milk cajeta and goat's milk cajeta. We find therefore that, with regard to cajeta, the development of testing procedures that would chemically verify that particular shipments of cajeta are made from goat's milk constitutes a "changed circumstance."

## 3. Effect on the U.S. Dairy Programs

To assess any potential impact on the dairy price-support program of the proposal to remove goat's milk cajeta from the quota restrictions, we have projected the likely exports of goat's milk cajeta to the United States and calculated the quantity of milk that could be displaced due to these imports.<sup>39</sup> Based on available data, the Commission estimates that the exclusion of cajeta not made from cow's milk from the quota would likely result in a displacement of \*\*\* pounds of milk in 1993 and \*\*\* pounds (about \*\*\* metric tons) in 1994.<sup>40</sup> However, these numbers are minuscule relative to total U.S. milk production. In 1992, U.S. milk production totaled 149.67 billion pounds; therefore, the estimated amount of displaced milk would

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<sup>39</sup> Data on exports of goat's milk cajeta to the United States were provided by Productos de Leche Coronado S.A. de C.V. (Coronado), a firm that accounts for approximately \*\*\* percent of the goat's milk cajeta market in Mexico. Coronado estimated that it would export \*\*\* metric tons of product in 1993 and \*\*\* metric tons in 1994. Based mainly on data for Coronado's total shipments, exports to the United States, and its share of the Mexican market, the Commission estimates that exports of goat's milk cajeta from Mexico to the United States would total \*\*\* metric tons in 1993 and 1994, respectively. Report at I-33.

<sup>40</sup> These numbers are derived by multiplying the amount of estimated exports by 2, which assumes that each pound of cajeta that enters the United States displaces 2 pounds of milk that would have gone into either U.S.-produced cajeta or substitute products that use milk. This projection on the displacement of U.S. milk is likely to be a high estimate.

displaced milk would account for less than 0.005 percent of 1992 U.S. milk production.<sup>41</sup> Because these numbers are very small, it is likely that the exclusion of goat's milk cajeta from quota coverage would have no, or a *de minimis* at best, impact on the U.S. dairy price-support program.<sup>42 43</sup>

We therefore determine that the requested modification of the quota on imports of cajeta not made from cow's milk will not result in imports of cajeta entering under such conditions and in such quantities as to interfere materially with any USDA dairy program.

## B. Inedible Dried Milk Powders Used for Calibrating Infrared Milk Analyzers

### 1. Background

On December 18, 1990, Customs issued a tariff classification ruling for

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<sup>41</sup> These estimates do not account for imports of goat's milk cajeta from countries other than Mexico. The Commission received no information concerning other sources of cajeta; however, because the estimated impact is so small, it is not likely that additional sources of imports would increase the amount of displaced milk to significant levels.

<sup>42</sup> The extent to which imports of cajeta not made from cow's milk will reduce the amount of cajeta processed in the United States will depend on the relative pricing, marketing, quality, and acceptability of the foreign-produced cajeta compared with the U.S.-produced cajeta.

During the course of the investigation the Commission located four domestic producers of cajeta. The Commission was able to obtain data on their size, production, how long they have been producing, and other relevant economic information.

Although only one of the domestic producers produces goat's milk cajeta, there is clear potential for competition in the U.S. market between cajeta made from cow's milk and that made from goat's milk. The domestic producers have expressed concern about an influx of goat's milk cajeta from Mexico if the quota restriction is removed; however, it is also possible that the additional supply of cajeta on the market will have the positive effect of increasing the demand for the product and opening up greater potential sales for both the domestic producers as well as the importers.

<sup>43</sup> During the investigation the National Milk Producers Federation (NMPF) expressed opposition to the proposed change of quota treatment for goat's milk cajeta because relief for the Mexican cajeta producers would be available through the bilateral agreements in NAFTA. NMPF's concern about providing a unilateral concession to the Mexican cajeta producers raises a policy issue, which would be more appropriately addressed by the President.

a product marketed in Canada under the trademark name "CAL-EZE."<sup>44</sup> CAL-EZE is a product imported in kits<sup>45</sup> that consists of 12 calibration milk powders which, when reconstituted, are used to calibrate infrared milk analyzers.<sup>46</sup> The 1990 ruling stated that the applicable tariff classification for CAL-EZE is HTS subheading 0404.90.20.<sup>47</sup> Articles imported under this HTS subheading are subject to a quota under HTS subheading 9904.10.60 of subchapter IV of chapter 99 of the HTS. The quota limits the aggregate amount of such products which may be imported from all countries (including Canada) to an annual quota quantity of 2,721 kilograms (6,000 pounds).<sup>48</sup>

In 1991, Glengarry Biotech, the Canadian manufacturer of CAL-EZE, sought a review of the tariff classification ruling for CAL-EZE.<sup>49</sup> Glengarry argued that CAL-EZE is not a food product but a scientific product, and as such should not, therefore, be classified with food products "consisting of milk constituents," and, because CAL-EZE is only manufactured in Canada, removing import quota restrictions would not cause a dramatic increase in imports of the product. On June 18, 1991, Customs reaffirmed its December 1990 ruling that the applicable tariff classification of CAL-EZE is HTS subheading 0404.90.20, which is subject to an annual worldwide quota.

The Canadian Government intervened on behalf of Glengarry by requesting

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<sup>44</sup> Report at I-5.

<sup>45</sup> The kits also include other items such as storage containers and preservation tablets. Report at I-5.

<sup>46</sup> Report at I-5. Infrared milk analyzers measure the fat, protein, and lactose components of milk. Id. U.S. calibrating products, which are at least in part fluid milk, are perishable (requiring refrigeration) and have a short shelf life, whereas the Canadian product, a powder, is described by the Canadian manufacturer as being shelf-stable with a shelf life of 6-12 months. Report at I-9.

<sup>47</sup> Report, at I-5.

<sup>48</sup> Id.

<sup>49</sup> Id.

that the United States conduct a review of its quota on malted milk and articles of milk or cream for the purpose of excluding from the quota dried milk powders used to calibrate infrared milk analyzers and not capable of being used for edible purposes.<sup>50</sup> In response to the Canadian request, the USDA task force recommended that the quota be modified because of the existence of changed circumstances. The task force concluded that there were precedents for limiting the coverage of a section 22 dairy quota to imports of articles for edible use based on the HTS article description for certain other section 22 import quotas for dairy products.<sup>51</sup>

## 2. Changed Circumstances

These dried milk calibrants did not exist at the time the quota coverage for articles of milk or cream was established. The USDA task force analyzing the proposed modifications concluded that had these dried milk calibrants been in existence at that time, it is very likely that a recommendation would have been made to exclude the product from coverage because it is used only as a scientific, nonedible product.<sup>52</sup> Upon the subsequent introduction of the dried milk calibrants to the U.S. market, Customs (not USDA) classified these dried milk powders imported in kits and used for calibrating infrared milk analyzers as an article of milk or cream. It is this 1990 Customs ruling that first classified dried milk powders imported in kits and used for calibrating infrared milk analyzers as an article of milk or cream that we find constitutes a "changed circumstance."

## 3. Effect on the USDA Dairy Programs

We further find that this modification would likely cause no, or at the

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<sup>50</sup> Report at I-6.

<sup>51</sup> Id.

<sup>52</sup> Id.

most, a *de minimis* effect on the USDA dairy programs. In the United States, infrared milk analyzers are calibrated with standards (calibrants) that are at least in part fluid milk; there are no U.S. producers of inedible dried milk powders used to calibrate infrared milk analyzers.<sup>53</sup> The Canadian product (CAL-EZE), which is a powder, has a longer shelf life (i.e., 6 to 12 months) and a higher cost than the domestic fluid products.<sup>54</sup> While U.S. firms and those from countries other than Canada have the capability to produce dry powder calibrants, they reportedly do not think the higher cost of the dry powder is justifiable. Available information indicates that the CAL-EZE product will not enter the United States in large quantities.<sup>55</sup> Further, it has been recommended by the Test Procedures Committee for Federal Milk Markets, a research committee, that USDA federal milk laboratories not use CAL-EZE until further testing shows that the CAL-EZE samples produce a calibration that is equivalent to or better than current procedures.<sup>56 57 58</sup>

We therefore conclude that the requested modification of the quota with

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<sup>53</sup> Based on information obtained from the Dairy Quality Control Institute, St. Paul, MN (a major dairy testing laboratory), the aggregate amount of milk used in domestically-produced calibrants for infrared milk analyzers is estimated to be less than 100,000 pounds per year, or less than 0.00007 percent of the 1992 U.S. milk production of 149.67 billion pounds.

<sup>54</sup> The U.S. products reportedly cost about \$86 per kit, whereas the Canadian product is reported to cost \$250 per kit.

<sup>55</sup> Glengarry has estimated (for the USDA task force) that the maximum U.S. sales of CAL-EZE would be \*\*\* units; at 1 kilogram per kit, this amount \*\*\* the quota level of 2,721 kilograms.

<sup>56</sup> Report at I-10.

<sup>57</sup> Currently, there is no known U.S. production and no imports of dried milk powders used to calibrate infrared milk analyzers. The potential market for this product consists of cooperative-owned dairy testing laboratories that test producer raw milk samples for butterfat, protein, lactose, and solids, as required under the Federal milk marketing orders program. However, the failure of this product to accurately test for fat and protein content of raw milk samples when compared with fresh calibration milk makes it unacceptable for testing purposes. Report at I-12.

<sup>58</sup> Glengarry Biotech, the Canadian producer of CAL-EZE, has reported to the Commission that \*\*\*. See Glengarry Biotech letter to the Commission, app. J.

respect to dried milk calibration powders will not result in imports of that product entering the United States under such conditions and in such quantities as to interfere materially with any USDA dairy program.

### C. Margarine Cheese from Sweden

#### 1. Background

Margarine cheese is cheese to which more than a *de minimis* quantity of nondairy fat or oil (typically vegetable oil) has been added.<sup>59</sup> It typically has little or no butterfat. Some margarine cheese is reported to be made from skimmed cow's milk and is promoted as a low-cholesterol, low-fat, or no-cholesterol product.<sup>60</sup> Trade and industry sources report that margarine cheese is the same as, or similar to, so-called filled cheese that is produced in the United States.<sup>61</sup>

In the Tokyo Round of the Multilateral Trade Negotiations, the United States entered into a bilateral agreement with Sweden which included a commitment by the United States that margarine cheese would enter the United States under the former Tariff Schedules of the United States (TSUS) quota item 950.10 as a low-fat cheese.<sup>62</sup> With the conversion of the former TSUS to the HTS, margarine cheese was classified as a preparation in chapter 19 rather than as a cheese in chapter 4.<sup>63</sup> Margarine cheese currently enters under HTS subheading 1901.90.30, articles of milk or cream, subject to a section 22

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<sup>59</sup> Report, at I-6, note 13; and I-10.

<sup>60</sup> Report, at I-10.

<sup>61</sup> *Id.*

<sup>62</sup> Report, at I-6.

<sup>63</sup> *Id.* The Explanatory Notes to the Harmonized System (Customs Cooperation Council, Harmonized System E.N., Brussels 1986, p. 30), which state the intent of the framers of the Harmonized System, exclude from chapter 4 of the Harmonized System "Products obtained from milk by replacing one or more of the natural constituents (e.g., butyric fats) by another substance (e.g., oleic fats)...".

quota for articles of milk or cream (subheading 9904.10.60 of subchapter IV of chapter 99) with an annual worldwide quota of 2,721 kilograms.

The Government of Sweden has requested that margarine cheese be entered under the corresponding HTS quota for low-fat cheese, subheading 9904.10.57, as was agreed to in the Tokyo Round.<sup>64</sup> Sweden's annual allocated quota under that HTS subheading is 250 metric tons.<sup>65</sup>

The USDA task force recommended that the quota allocation for margarine cheese from Sweden be restored in accordance with the bilateral agreement between the United States and Sweden and that the HTS be modified to provide for the inclusion of the product under HTS subheading 9904.10.57.

## 2. Changed Circumstances

We find that the unintended reclassification of margarine cheese as a preparation in HTS chapter 19 rather than as a cheese as it had formerly been classified in the TSUS constitutes a "changed circumstance."

## 3. Effect on the USDA Dairy Programs

USDA dairy programs are not likely to be affected by the proposal to allow margarine cheese from Sweden to enter under the HTS quota for low-fat cheese. The proposal conforms to an agreement between the United States and Sweden in the Tokyo Round of Multilateral Trade Negotiations and does not change any existing overall quota for margarine cheese.

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<sup>64</sup> Report, I-6.

<sup>65</sup> Available data indicate that imports of low-fat cheese from Sweden totaled \*\*\* in 1988, \*\*\* in 1989, \*\*\* in 1990, and \*\*\* in 1991. There were zero imports of low-fat cheese from Sweden in 1992. Prior to Sept. 13, 1991, U.S. imports from Sweden were entered under the quota for low-fat cheese under subheading 9904.10.57 of the HTS. However, following a classification ruling by Customs issued on Sept. 13, 1991 (HRL 088827), margarine cheese was reclassified as a food preparation, making such imports subject to the quota under subheading 9904.10.60 of the HTS. On Mar. 26, 1992, Customs reaffirmed its decision in HRL 088827.

Because the overall quota for margarine cheese entering the United States is not being changed, we determine that this modification will not result in imports of that product entering the United States under such conditions and in such quantities as to interfere materially with any USDA dairy program.

**D. Elimination of Certain Import Quota Licensing Requirements on Dried Cream and Malted Milk and Articles of Milk or Cream**

**1. Background**

Elimination of the import quota licensing requirement is proposed for two quota categories. The first is dried cream (HTS subheading 9904.10.15), which provides for concentrated cream in powder, granules, or other solid forms, not containing added sugar or other sweetening matter, of a fat content by weight exceeding 35 percent, and dried sour cream containing over 35 percent but not over 45 percent by weight of butterfat.<sup>66</sup>

The elimination of the licensing requirement is also proposed for malted milk and articles of milk or cream (HTS subheading 9904.10.60). Malted milk is prepared by drying a mixture of whole milk and the fluid separated from a mash of ground barley malt and wheat flour.<sup>67</sup> Malted milk is commonly mixed with fluid milk and ice cream.

Within HTS subheadings 9904.10.15 and 9904.10.60, the specific products for which the elimination of import licensing requirements are proposed include:

- milk and cream in powder, granules, or other solid forms, containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 1.5

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<sup>66</sup> Report, at I-10.

<sup>67</sup> Id.

percent (HTS subheading 0402.29.00);<sup>68</sup>

- milk and cream (except condensed milk), whether or not concentrated, not in powder, granules, or other solid forms, containing added sugar or other sweetening matter (HTS subheading 0402.99.60);
- yogurt in dry form (HTS subheading 0403.10.00);
- certain buttermilk, curdled milk and cream, kefir, and other fermented or acidified milk and cream (except yogurt and except sour cream) (HTS subheading 0403.90.80);
- certain articles of milk or cream (HTS subheading 0404.90.20);
- certain preparations for infant use, put up for retail sale (HTS subheading 1901.10.00);
- articles of milk or cream not specially provided for (HTS subheading 1901.90.30);
- edible ice (except ice cream) (HTS subheading 2105.00.00); and
- milk-based drinks (other than chocolate milk drinks) (HTS subheading 2202.90.20).<sup>69</sup>

The imported articles for which the elimination of import quota licensing requirements are proposed are largely used in manufacturing food products and are comparable to domestically-produced products.<sup>70</sup>

An importer must obtain a license to import articles under the section 22 quotas for dried cream and for malted milk and articles of milk or cream.<sup>71</sup> The purpose of the licensing system is to allocate quotas in a fair and equitable manner among importers and users,<sup>72</sup> and the cost of the program is

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<sup>68</sup> In commercial practice, milk and cream that is sweetened is, at least to some degree, condensed.

<sup>69</sup> Report, at I-10-11.

<sup>70</sup> Report, at I-11.

<sup>71</sup> Report, at I-7.

<sup>72</sup> No licenses are issued that would permit any articles to be entered during any 12-month period in excess of the quota quantities. Licenses may not be

(continued...)

supported by the user fees charged for each license, currently \$88.00.<sup>73</sup> On its own initiative, the USDA task force recommended elimination of the licensing requirements for the above stated products. The task force found that the quotas for these products are underutilized because the cost of the user fee relative to the size of the quota renders importing uneconomical.<sup>74</sup>

## 2. Changed Circumstances

The changed circumstance requiring the modification of the licensing program to exclude dried cream (HTS subheading 9904.10.15) and malted milk and certain articles of milk or cream (HTS subheading 9904.10.60) from the license requirements is the underutilization of the quota established for those products. Underutilization has been caused by the increasing user fees that are imposed by the USDA to cover the cost of administering the licensing program.<sup>75</sup> With the small number of products permitted to be imported under the quotas and the cost of the user fee, importation of these products has become uneconomical.

## 3. Effect on the USDA Dairy Programs

Using current quotas and quantity of imports for these products, we calculate that, if this proposal is adopted, only three metric tons over the current import levels would enter the United States.<sup>76</sup> Given this low amount,

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<sup>72</sup>(...continued)

transferred or assigned to others, except as authorized by the Secretary of Agriculture. Report, at I-7.

<sup>73</sup> Report, at I-7.

<sup>74</sup> Report, at I-7.

<sup>75</sup> Hearing transcript at 15.

<sup>76</sup> Since it is anticipated that the elimination of the licensing requirements will result in full utilization of the quota, the projected increase of three metric tons of imports is equal to the quota levels already established for these products. These particular quotas are very small relative to the quotas established for the other dairy products for which the licensing requirement exists and in comparison to the total domestic milk production.

it is unlikely that the elimination of the licensing requirement would have an impact on USDA dairy programs provided the quotas are all enforced by Customs. Customs officials have stated that they would enforce the quotas on a first-come-first-served basis and that elimination of these quotas would not hinder quota enforcement by the Customs Service.<sup>77 78</sup>

Therefore, we determine that the proposed elimination of the licensing requirement for imports of dried cream and malted milk and articles of milk or cream will not result in imports of these products entering the United States under such conditions and in such quantities as to interfere materially with the USDA dairy programs.

#### E. Clarification of U.S. Note (3)(a)(iii) of subchapter IV of Chapter 99 of the HTS

##### 1. Background

U.S. Note (3)(a)(iii) to subchapter IV of chapter 99 of the HTS provides authority for the Secretary of Agriculture to reallocate an unused quota allocation to other countries specified as countries of origin for that product. The USDA task force, on its own initiative, recommended that this note be modified to provide clearly that the underutilized quota quantity may be reallocated among all countries that have quota allocations for the specified product, including the nonenumerated-country ("other") category, unless it is specified that no quantity of such product may be entered from

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<sup>77</sup> Staff telephone conversation with Julia Walker, Supervisory Quota Compliance Specialist, Quota Branch, Office of Commercial Operations, U.S. Customs Service (June 23, 1993); Staff telephone conversation with Diana Wanamaker, USDA. INV-Q-100 (June 21, 1993), Memorandum to Commissioner Nuzum from Director, Office of Investigations.

<sup>78</sup> One possible side effect of this proposed change is a reduction in revenues for the U.S. Treasury. However, this amount would be very small since, as of January 1993, licenses had been issued to only 24 importers. At a cost of \$88 for each license, the lost revenue to the U.S. Treasury would amount to \$2,112.

"other" countries.<sup>79</sup>

## 2. Changed Circumstances

The underutilization of the quotas under Note (3)(a)(iii) to subchapter IV of Chapter 99 of the HTS constitutes a "changed circumstance" that provides a basis for the modification of that Note. As the note is currently written, it does not appear to authorize the redistribution of unused quota allocations to the nonenumerated-country ("other") category. The modification would specifically provide that unused quotas could be redistributed to countries in the "other" category as well as those that are named and enumerated under that product category.

## 3. Effect on the USDA Dairy Programs

Modification of Note (3)(a)(iii) of Subchapter IV of Chapter 99 of the HTS also would not affect any USDA dairy program. The clarification of this Note does not affect the overall levels of the quotas; rather it merely allows for reallocation from countries that are not filling their quotas to "other" countries. The absolute quota levels would remain unchanged and the quotas were set at levels so as not to interfere with USDA dairy programs.

We therefore determine that the proposed modification to Note 3(a)(iii) of Subchapter IV of Chapter 99 of the HTS will not result in imports of those products covered by that Note entering the United States under such conditions and in such quantities as to interfere materially with any USDA dairy program.

### CONCLUSION

Based on the information provided in this investigation and our analysis of the data and the effect of the proposed modifications on the USDA dairy programs, we recommend to the President that he find and proclaim that changed

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<sup>79</sup> Report, at I-8.

circumstances require the proposed modifications be made to carry out the purposes of section 22 of the Agricultural Adjustment Act.



**INFORMATION OBTAINED IN THE INVESTIGATION**



## INTRODUCTION

On January 19, 1993, the Commission received a letter from the President stating that he had been advised by the Secretary of Agriculture "that the quota for malted milk and articles of milk or cream and the import quota licensing requirement for dried cream, and for malted milk and articles of milk or cream, wherever classified in the Harmonized Tariff Schedule of the United States, may need to be modified since there are changed circumstances with respect to these specific dairy products." The President also stated in his letter that he had been advised "that the quota allocation for Sweden for margarine cheese which was inadvertently excluded from the Harmonized Tariff Schedule should be restored and that U.S. Note (3)(a)(iii) of Subchapter IV of Chapter 99 of the Harmonized Tariff Schedule should be technically modified."<sup>1</sup>

As directed by the President, the Commission instituted investigation No. 22-53 under section 22(d) of the Agricultural Adjustment Act, as amended (7 U.S.C. 624(d)), to determine whether the Harmonized Tariff Schedule of the United States (HTS) should be modified with respect to (1) the exclusion of cajeta not made from cow's milk, provided for in subheading 1901.90.30 of the HTS, from the quota on malted milk and articles of milk or cream; (2) the exclusion of inedible dried milk powders used for calibrating infrared milk analyzers, provided for in subheading 0404.90.20 of the HTS, from the quota on malted milk and articles of milk or cream;<sup>2</sup> (3) the inclusion of margarine cheese from Sweden, provided for in subheading 1901.90.30 of the HTS, under the quota for low-fat cheese, and the exclusion of margarine cheese from Sweden from the quota on malted milk and articles of milk or cream; (4) the elimination of the import quota licensing requirement with respect to dried cream and malted milk and articles of milk or cream; and (5) the clarification of U.S. note (3)(a)(iii) to subchapter IV of chapter 99 of the HTS to provide that to the extent the Secretary of Agriculture determines that a particular country's quota quantity is not likely to be entered in a calendar year, such country quota for a particular dairy product may be reallocated among all countries having quota allocations, including countries falling in the "other" category (unless it is specified that no quantity of such product may be entered from "other" nonenumerated countries).

Notice of institution of the Commission's investigation and of a public hearing 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 March 10, 1993 (58 F.R. 13279).<sup>3</sup> The Commission's hearing was held in Washington, DC, on April 29, 1993, at which time all interested parties were allowed to present information and views for consideration by the Commission.<sup>4</sup>

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<sup>1</sup> A copy of the President's letter is presented in appendix A.

<sup>2</sup> Articles classifiable in HTS subheadings 0404.90.20 and 1901.90.30 are subject to quota quantity restrictions listed in subchapter IV of chapter 99 under HTS subheading 9904.10.60, which limits the amount of such products, which may be imported from all countries (including Canada), to an annual quota quantity of 2,721 kilograms.

<sup>3</sup> A copy of the Commission's notice is presented in appendix B.

<sup>4</sup> A list of witnesses appearing at the hearing is presented in appendix C.

The President asked that the Commission report its findings and recommendations at the earliest practicable date. The Commission submitted its report to the President on July 7, 1993.

#### BACKGROUND

Section 22(d) of the Agricultural Adjustment Act authorizes the President to suspend or terminate certain import fees or quotas "whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist" or to modify them "whenever he finds and proclaims that changed circumstances require such modification" (7 U.S.C. 624(d)).

In order to protect the U.S. Department of Agriculture (USDA) price-support program for milk from interference from imports, Presidential Proclamation 3019 (June 12, 1953)<sup>5</sup> established import quotas and import quota licensing requirements for virtually all products derived from cow's milk, including dried cream and malted milk and articles of milk or cream.<sup>6</sup> The President was advised by the Secretary of Agriculture that changed circumstances require modification of section 22 import quotas and, therefore, requested an investigation. The proposed modifications are discussed below.

#### Exclusion of Cajeta Not Made From Cow's Milk From the Quota Coverage

Cajeta, also known as dulce de leche, is a light-brown paste generally used as a confection or as a dessert topping.<sup>7</sup> Mexican cajeta is made from goat's milk, cow's milk, or some combination of both.<sup>8</sup> Because the applicable section 22 quotas are essentially imposed on dairy products derived from cow's milk, the Government of Mexico has maintained for several years that cajeta made from goat's milk could be removed from section 22 quota coverage without materially interfering with the U.S. Government's price support program for cow's milk, which these quotas were intended to protect. Although Mexico claims that cajeta made from goat's milk is distinctive and different from cajeta made from cow's milk, the United States denied all previous requests from Mexico because the U.S. Customs Service (Customs) did not have a methodology for distinguishing between the two. In its latest request, in the form of a diplomatic note, the Mexican Government agreed to provide technical documents, analyses, and proposed testing procedures that would chemically verify that particular shipments of cajeta had been made from goat's milk.

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<sup>5</sup> A copy of Presidential Proclamation 3019 is presented in appendix D.

<sup>6</sup> A list of products derived from milk that are covered by section 22 quotas, as set forth in chapter 99 of the HTS, is presented in appendix E.

<sup>7</sup> Cajeta is a term that is uniquely applied to the product produced in Mexico. In other Latin American countries the same product is referred to as dulce de leche.

<sup>8</sup> Based on testimony presented at the Commission's hearing, pure goat's milk cajeta accounts for about 85 percent of all cajeta sold in Mexico (transcript, pp. 40 and 41).

The agreed-upon documentation was submitted to the USDA's Foreign Agricultural Service (FAS), which in turn forwarded the submitted documentation to the Agricultural Research Service (ARS) for evaluation.

Based in part on the ARS's positive evaluation of Mexico's proposed testing methodology,<sup>9</sup> the task force established by the USDA to analyze Mexico's request recommended that cajeta not made from cow's milk be excluded from the quota coverage.<sup>10</sup> The task force reasoned that, if the quota was modified to exclude from coverage cajeta not made from cow's milk, Customs could reserve the right to conduct random testing to alleviate the possibility of fraud or circumvention. Also, the task force concluded that established precedents for limiting section 22 quota coverage to dairy products made from cow's milk exist. As an example, the task force cites the article descriptions for HTS subheadings 9904.10.42 and 9904.10.45, which specifically limit the quota to "cheeses, made from cow's milk." Also cited was HTS subheading 9904.10.54, which reads in part: "Cheeses and substitutes for cheese...(except cheese not containing cow's milk and soft ripened cow's milk cheese)...."

#### Exclusion of Inedible Dried Milk Powders Used for Calibrating Infrared Milk Analyzers from the Quota Coverage

In a letter dated November 12, 1990, A.N. Deringer, Inc. (Fort Covington, NY) requested a tariff classification ruling from Customs on a product marketed in Canada under the trademark name "CAL-EZE." CAL-EZE is a product imported in kits<sup>11</sup> that consist of 12 calibration milk powders that, when reconstituted, are used to calibrate infrared milk analyzers.<sup>12</sup> The ruling was sought on behalf of the Canadian manufacturer, Glengarry Biotech (Cornwall, Ontario, Canada). On December 18, 1990, Customs issued a tariff classification ruling stating that the applicable tariff classification for CAL-EZE is HTS subheading 0404.90.20. Articles imported under this HTS subheading are subject to a quota under HTS subheading 9904.10.60 of subchapter IV of chapter 99 of the HTS. The quota limits the aggregate amount of such products that may be imported from all countries (including Canada) to an annual quota quantity of 2,721 kilograms (6,000 pounds).

In a letter dated January 17, 1991, Glengarry sought a review of Customs' tariff classification ruling for CAL-EZE. Glengarry's request for a review was based on two arguments. First, Glengarry argued that CAL-EZE is unique in that no other product like it is manufactured in any other country.

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<sup>9</sup> On the whole, the ARS found the methodology to be acceptable for identification of the major milk sources of milk used in the production of cajeta.

<sup>10</sup> The exclusion would apply primarily to cajeta made from goat's milk, but it apparently would also apply to cajeta made from other species (e.g., buffalo).

<sup>11</sup> The kits reportedly also include such other items as storage containers and preservation tablets.

<sup>12</sup> Infrared milk analyzers measure the fat, protein, and lactose components of milk.

Second, Glengarry argued that CAL-EZE is not a food product but a scientific product and, as such, should not be classified with food products "consisting of milk constituents." On June 18, 1991, Customs reaffirmed its December 1990 ruling that the applicable tariff classification of CAL-EZE is HTS subheading 0404.90.20, which is subject to an annual worldwide quota. Glengarry thus requested the assistance of the Canadian Government in seeking to modify the quota. Glengarry has reportedly estimated that its maximum U.S. sales would be \*\*\* kits of CAL-EZE at one kilogram per kit, thus \*\*\* the quota level of 2,721 kilograms.

In the form of a diplomatic note, the Canadian Government formally requested that the United States conduct a review of its quota on malted milk and articles of milk or cream for the purpose of excluding from the quota dried milk powders that are used to calibrate infrared milk analyzers and that are not capable of being used for edible purposes. Following receipt of the diplomatic note, the USDA established a departmental task force to analyze the Canadian request and to prepare a recommendation. The USDA's task force recommended that the quota be modified because of the existence of changed circumstances. In conducting its analyses, the task force concluded that there were precedents for limiting the coverage of a section 22 dairy quota to imports of articles for edible use based on the HTS article description for certain other section 22 import quotas for dairy products. The task force also concluded that had dry milk powder used to calibrate infrared milk analyzers been in existence at the time of the establishment of the quota coverage, it is very likely that a recommendation would have been made to exclude the product from the coverage based on the fact that it was used only as a scientific, nonedible product.

#### Amending the HTS for Margarine Cheese From Sweden

In the Tokyo Round of the Multilateral Trade Negotiations, the United States entered into a bilateral agreement with Sweden which included a commitment by the United States that margarine cheese would enter the United States under the former Tariff Schedules of the United States (TSUS) quota item 950.10 as a low-fat cheese.<sup>13</sup> The Government of Sweden has requested that margarine cheese be entered under the corresponding HTS quota for low-fat cheese, subheading 9904.10.57, as was agreed to in the Tokyo Round. Sweden's annual allocated quota under that HTS subheading is 250 metric tons.<sup>14</sup>

However, with the conversion from the former TSUS to the HTS, margarine cheese was classified as a preparation in chapter 19 rather than as a cheese

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<sup>13</sup> Margarine cheese is cheese to which more than a *de minimis* quantity of nondairy fat or oil (typically vegetable oil) has been added. Margarine cheese imported from Sweden is currently marketed in the United States under the name "Mini-Chol."

<sup>14</sup> U.S. imports of cheese and other subject quota dairy products are shown in table F-1.

in chapter 4.<sup>15</sup> Margarine cheese currently enters under HTS subheading 1901.90.30, articles of milk or cream, subject to a section 22 quota for articles of milk or cream (subheading 9904.10.60 of subchapter IV of chapter 99) with an annual worldwide quota of 2,721 kilograms.

The USDA's task force recommended that the quota allocation for margarine cheese from Sweden be restored in accordance with the bilateral agreement between the United States and Sweden and that the HTS be modified to provide for the inclusion of the product under HTS subheading 9904.10.57.

#### Elimination of Import Quota Licensing Requirements

The section 22 quotas for dried cream and for malted milk and articles of milk or cream require that articles imported under the quotas may be entered only by or for the account of a person or firm to which a license has been issued under the authority of the Secretary of Agriculture and only in accordance with the terms of the license. The purpose of the licensing system is to allocate quotas in a fair and equitable manner among importers and users. When issuing licenses, the Secretary of Agriculture must, to the fullest extent practicable, ensure that the manner in which the licenses are issued will result in (1) the equitable distribution of the quota among importers and users and (2) the allocation of quota shares among supplying countries based on trade during a previous representative period, taking due account of any special factors that may have affected or may be affecting trade in the articles concerned. No licenses are issued that would permit any articles to be entered during any 12-month period in excess of the quota quantities. Licenses may not be transferred or assigned to others, except as authorized by the Secretary of Agriculture.

The USDA import regulations (7 CFR 6.33(a)) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the USDA for the cost of administering the licensing system. The fee per license is currently \$88.

The USDA's task force on its own initiative recommended that the section 22 quota be modified to eliminate the licensing requirement for dried cream and malted milk and articles of milk or cream because of changed circumstances, primarily underutilization.<sup>16</sup> The task force concluded that the cost of the licensing fee (\$75 in 1992) relative to the size of the allotment allocated among eligible import license applicants (113 kilograms or 250 pounds) tends to render importing uneconomical. The task force cited Presidential Proclamation 4708 (December 11, 1979) as a precedent for

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<sup>15</sup> The Explanatory Notes to the Harmonized System (Customs Cooperation Council, Harmonized System E.N., Brussels 1986, p. 30), which state the intent of the framers of the Harmonized System, exclude from chapter 4 of the Harmonized System "Products obtained from milk by replacing one or more of the natural constituents (e.g., butyric fats) by another substance (e.g., oleic fats)...."

<sup>16</sup> The number of persons or firms to whom/which licenses had been issued as of January 1993 totaled 24.

modifying the quota to eliminate the licensing requirement. If the licensing requirement was eliminated, the quota would be administered on a first-come-first-serve basis.

Clarification of U.S. Note (3)(a)(iii) of  
Subchapter IV of Chapter 99 of the HTS

U.S. Note (3)(a)(iii) to subchapter IV of chapter 99 of the HTS provides that--

Notwithstanding any other provision of this subchapter, if the Secretary of Agriculture determines that a quantity specified in the column entitled "Quota Quantity" opposite the name of any country is not likely to be entered from such country within any calendar year, he may provide with respect to such article for the adjustment for that calendar year, within the aggregate quantity of such article permitted to be entered from all countries during such calendar year, of the quantities of such article which may be entered during such year from the countries specified as countries of origin for such article. The Secretary of Agriculture shall notify the Secretary of the Treasury of such adjustment and, with respect to country of origin adjustments for any article for which a license is not required, file notice thereof with the Federal Register. With respect to articles for which a license is not required, such adjustment shall become effective 3 days after the date of publication in the Federal Register.

The USDA task force, on its own initiative, recommended that the above note (3)(a)(iii) to the HTS be modified to specifically provide that the underutilized quota quantity be reallocated among all countries that have quota allocations for the specified product, including the nonenumerated-country ("other") category unless it is specified that no quantity of such product may be entered from "other" countries.

## THE PRODUCTS

### Description and Uses

#### Cajeta

Cajeta is generally a mixture of milk,<sup>17</sup> sweeteners (typically sugar or corn sweetener), baking soda (for browning), and, sometimes, flavoring agents.<sup>18</sup> The mixture is heated until the milk is caramelized and thick (almost unpourable at room temperature). It can be eaten as a dessert by itself, used as a spread for crepes or cookies, or used as a topping on ice cream. The term cajeta is used in Mexico, but a similar (or the same) product

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<sup>17</sup> Milk for cajeta may be derived from cows, goats, buffaloes, or possibly from other animals or a combination of animals.

<sup>18</sup> These products may include cinnamon, vanilla, fruit, nuts, or alcohol, or a mixture of products may be used.

appears in other parts of Latin America as dulce de leche (sweetened milk), arequipe, or manjar blanco. Cajeta is typically packaged in retail-sized containers and does not need to be refrigerated; indeed, it is thought to have evolved as a way to store milk before refrigeration and reportedly is still useful in parts of the world where refrigeration is not available or is unreliable. Cajeta made from goat's milk has a darker appearance, richer taste, and a different texture than that made from cow's milk.<sup>19</sup> Popular among Hispanic-Americans, cajeta is reported to be produced in the home for family consumption. A typical home formulation for cajeta is as follows:

1 quart goat's milk  
 1 cup sugar  
 1 tablespoon corn syrup  
 1/2 inch cinnamon stick  
 1/4 teaspoon baking soda  
 1 tablespoon grain alcohol  
 or 1 tablespoon sweet sherry, rum, or brandy.

#### Inedible Dried Milk Powders Used for Calibrating Infrared Milk Analyzers

The subject inedible dried milk powders used for calibrating infrared milk analyzers are described by the producer as a set of 12 dry powder calibration standards (calibrants), which, when reconstituted with warm tap water, can be used to calibrate infrared milk analyzers.<sup>20</sup> These 12 calibrants are based on dairy ingredients; that is, they consist of powdered whole milk, or skim milk, or a mixture of both or of other milk constituents, such as lactose and sodium caseinate.

An official of the National Milk Producers Federation (NMPF), an association representing domestic milk-producing cooperatives, reports that, in the United States, infrared milk analyzers are calibrated with standards (calibrants) of domestically produced fluid milk (and fluids derived from milk) of known analysis.<sup>21</sup> U.S. products, which are at least in part fluid milk, are perishable (requiring refrigeration) and have a short shelf life, whereas the Canadian product, a powder, is described by the Canadian manufacturer as being shelf-stable with a shelf life of 6 to 12 months. Domestic calibrants reportedly cost about \$86 per kit, whereas the Canadian product is reported to cost \$250 per kit.

The NMPF official contends that both domestic and foreign companies, including some in Australia, are capable of producing dry powder calibrants. Officials from these companies apparently do not think the higher cost of dry powder calibrants is justifiable in terms of the benefits to the user. Also, some domestic interests contend that the Canadian product has technical

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<sup>19</sup> Transcript, p. 35.

<sup>20</sup> Infrared milk analyzers are used by commercial dairy laboratories to measure the fat, protein, and lactose components of milk.

<sup>21</sup> Peter Vitaliano, Director of Policy Analysis, NMPF, interview by USITC staff, Mar. 17, 1993.

limitations not found in domestic products.<sup>22</sup> Indeed, it has been recommended by a research committee that "USDA Federal Milk Market Laboratories not use CAL-EZE for calibration of infrared analyzers until further evaluations have demonstrated that the CAL-EZE calibration samples can produce a calibration for producer testing that is equivalent to or better than the procedures currently used."<sup>23</sup>

#### Margarine Cheese

Margarine cheese is cheese to which more than a *de minimis* quantity of nondairy fat or oil (typically vegetable oil) has been added. It typically has little or no butterfat.<sup>24</sup> Some margarine cheese is reported to be made from skimmed cow's milk and is promoted as a low-cholesterol, low-fat, or no-cholesterol product. Trade and industry sources report that margarine cheese is the same as, or similar to, the so-called filled cheese that is produced in the United States.<sup>25</sup>

#### Articles for Which Import Licensing Requirements are Proposed to be Eliminated

Elimination of the import quota licensing requirement is proposed for dried cream (under HTS subheading 9904.10.15), classified in HTS subheading 0402.21.60, which provides for concentrated cream in powder, granules, or other solid forms, not containing added sugar or other sweetening matter, of a fat content by weight exceeding 35 percent, and HTS subheading 0403.90.60, which provides for dried sour cream containing over 35 percent but not over 45 percent by weight of butterfat.

The elimination of the licensing requirement is also proposed for malted milk and for certain articles of milk or cream (under HTS subheading 9904.10.60), classified in HTS subheading 1901.90.30. Malted milk is prepared by drying a mixture of whole milk and the fluid separated from a mash of ground barley malt and wheat flour. Malted milk is commonly mixed with fluid milk and ice cream.

Also proposed is the elimination of import quota licensing requirements on articles of milk or cream (under HTS subheading 9904.10.60), classified in

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<sup>22</sup> D.M. Barbano and J.M. Lynch, Test Procedures Committee, Federal Milk Markets, Evaluation of CAL-EZE Calibration Standards Infrared Milk Analyzers, (Cornell University), J.R. Fleming (USDA), Jan. 6, 1992.

<sup>23</sup> Ibid, p. 4.

<sup>24</sup> Butterfat or milk fat is the fat constituent of milk. Butterfat is not a single chemical compound but a variable mixture of several glycerides.

<sup>25</sup> Filled cheese is derived from filled milk, which means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

HTS subheading 0402.29.00 as milk and cream in powder, granules, or other solid forms, containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 1.5 percent;<sup>26</sup> HTS subheading 0402.99.60, as milk and cream (except condensed milk), whether or not concentrated, not in powder, granules, or other solid forms, containing added sugar or other sweetening matter; HTS subheading 0403.10.00, yogurt in dry form; HTS subheading 0403.90.80, certain buttermilk, curdled milk and cream, kephir, and other fermented or acidified milk and cream (except yogurt and except sour cream); HTS subheading 0404.90.20, certain articles of milk or cream; HTS subheading 1901.10.00, certain preparations for infant use, put up for retail sale; HTS subheading 1901.90.30, articles of milk or cream not specially provided for; HTS subheading 2105.00.00, edible ice (except ice cream); and HTS subheading 2202.90.20, milk-based drinks (other than chocolate milk drinks).

The imported articles for which the elimination of import quota licensing requirements are proposed are largely used in manufacturing food products and are comparable to domestically produced products.

## U.S. CUSTOMS TREATMENT

### Import Duties

Cajeta and margarine cheese are classified in HTS subheading 1901.90.30 (articles of milk or cream not specially provided for) and are dutiable at 17.5 percent ad valorem if from countries receiving the column 1-general rate of duty, including Mexico and Sweden.<sup>27</sup>

The subject inedible dried milk powder used for calibrating infrared milk analyzers is classified in HTS subheading 0404.90.20 (certain articles of milk or cream) and is dutiable at 17.5 percent ad valorem if from countries receiving the column 1-general rate of duty. If a product of Canada, the rate of duty is 8.7 percent ad valorem under the United States-Canada Free Trade Agreement.

Among the articles for which the elimination of import quota licensing requirements is proposed, the dried cream provided for in HTS subheading 0402.21.60 and the dried sour cream provided for in HTS subheading 0403.90.60 are dutiable at 13.7 cents per kilogram if from countries receiving the column 1-general rate of duty. Articles imported under HTS subheadings 0403.10.00, 0403.90.80, and 2105.00.00 are dutiable at 20 percent ad valorem if from countries receiving the column 1-general rate of duty.

Articles entered under the following HTS subheadings are dutiable at 17.5 percent ad valorem if the product of countries receiving the column

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<sup>26</sup> In commercial practice, milk and cream that are sweetened are, at least to some degree, condensed.

<sup>27</sup> Under the proposed North American Free Trade Agreement, cajeta containing over 50 percent goat's milk will be classified separately and will no longer be subject to the import duty or quota.

1-general rate of duty: 0402.29.00, 0402.99.60, 0404.90.20, 1901.10.00, 1901.90.30, and 2202.90.20.

## Nontariff Measures

### Section 22 Quotas

Since mid-1953, quotas have been imposed under section 22 of the Agricultural Adjustment Act of 1949, as amended, on virtually all imports of articles derived from cow's milk, except casein, caseinates, lactalbumin, and soft-ripened cows' milk cheese. The quotas have been imposed in order to protect the USDA price-support program for milk from interference from imports or threat of such interference. These quotas, set forth in subchapter IV of chapter 99 of the HTS, limit imports of quota products to a quantity equal to about 2 percent of the equivalent of U.S. production of milk. In recent years, the import quotas have been substantially filled. In terms of milk-equivalent milkfat basis, the maximum quantity of dairy products that can be currently imported under the quotas is 2.2 billion pounds (one million metric tons).

Most of the section 22 quotas on dairy products are allocated on a country-by-country basis and are administered by the USDA through a system of import licenses. Quotas for products not subject to licensing are administered by the Customs Service on a first-come, first-served basis.

### Health and Sanitary Regulations

U.S. imports of fluid milk products are prohibited unless they are accompanied by a valid permit issued by the U.S. Secretary of Health and Human Services under the provisions of the Federal Import Milk Act of 1927. Also, imports of certain dairy products, such as dried milk from countries or areas that have not been declared free of rinderpest and foot-and-mouth diseases by the U.S. Secretary of Agriculture, are subject to regulations and restrictions of the Animal and Plant Health Inspection Services (APHIS) of the USDA.

## THE U.S. MARKET

The USDA estimates that U.S. imports of all dairy products account for about 2 percent of U.S. consumption and that imports of cheeses account for slightly over 4 percent of U.S. cheese consumption.<sup>28</sup> As to U.S. consumption of the subject dairy products and the import share of such consumption, there is, first of all, no known U.S. production and no imports of dried milk powders used to calibrate infrared milk analyzers. The potential market for this product consists of cooperative-owned dairy testing laboratories that test producer raw milk samples for butterfat, protein, lactose, and solids, as required under the Federal milk-marketing orders program. However, the failure of this product to accurately test for fat and protein content of raw

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<sup>28</sup> The USDA's posthearing brief, p. 6.

milk samples when compared with fresh calibration milk makes it unacceptable for testing purposes.<sup>29</sup>

U.S. imports of cajeta are virtually nonexistent because of the small import quota limit (2,721 kilograms or 6,000 pounds) for articles entering under HTS subheading 9904.10.60, among which cajeta is included. As a traditional and widely used Mexican dessert food,<sup>30</sup> cajeta would have its widest appeal among Mexican-Americans and persons of Hispanic origin.<sup>31</sup> According to population statistics compiled by the U.S. Department of Commerce's Bureau of the Census (Census), the Hispanic population of the United States totaled 23.4 million persons, representing some 6.2 million households, in 1991, the latest year for which data are available. Based on the census of 1990, the U.S. population of Mexican-Americans totaled 4.4 million persons. Given these statistics, the U.S. market for cajeta is large. Extrapolating from official U.S. and Mexican population statistics and using data supplied by Productos de Leche Coronado, the Commission's staff estimates the potential U.S. demand for cajeta to have been approximately 2.5 million pounds (1,134 metric tons) in 1990.<sup>32</sup>

As previously stated, U.S. imports of all cheeses as a share of consumption of cheese is only about 4 percent. There are no available data on U.S. consumption of margarine cheese, which is believed to be accounted for mostly by imports from Sweden. According to USDA data, U.S. imports from Sweden of lowfat cheese declined from 213.6 metric tons in 1988 to 198.2 metric tons in 1989 and increased from 34.7 metric tons in 1990 to \*\*\* metric tons in 1991.<sup>33</sup> There were no imports after September 1991.<sup>34</sup>

#### U.S. PRODUCERS

In this investigation, the Commission sent letters of inquiry to 16 organizations that were identified as representing the interests of the U.S. dairy industry. These organizations were asked to identify any U.S. firms known to them that produce dry milk powders used to calibrate infrared milk

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<sup>29</sup> David M. Barbano and Joanne M. Lynch, Performance Evaluation of Dry Calibration Milk Powders for Raw Milk Testing With Mid-Infrared Analyzers, report (Ithaca, NY: Cornell University, 1992).

<sup>30</sup> Transcript, p. 31.

<sup>31</sup> Transcript, pp. 43 and 47.

<sup>32</sup> Calculated using average per-household consumption in Mexico multiplied by the number of U.S. households of Hispanic-Americans.

<sup>33</sup> USDA data for 1991 show imports from Sweden totalling 169.1 metric tons. However, based on data supplied by the Swedish Board of Agriculture, only \*\*\* of the 169 metric tons imported consisted of margarine cheese while the remaining \*\*\* metric tons consisted of a product known as skim milk cheese.

<sup>34</sup> Prior to Sept. 13, 1991, U.S. imports from Sweden were entered under the quota for lowfat cheese under subheading 9904.10.57 of the HTS. However, following a classification ruling by Customs issued on Sept. 13, 1991 (HRL 088827), margarine cheese was reclassified as a food preparation, making such imports subject to the quota under subheading 9904.10.60 of the HTS. On Mar. 26, 1992, Customs reaffirmed its decision in HRL 088827.

analyzers, cajeta made of goat's milk, and margarine or filled cheese. The Commission's letter also requested that the organization state its position with respect to the proposed HTS modifications. The National Independent Dairy-Foods Association (NIDA), National Milk Producers Federation (NMPF), International Dairy Foods Association (IDFA), and Cheese Importers Association of America (CIAA) were the only four organizations that responded to the Commission's request for information;<sup>35</sup> the NMPF also appeared at the Commission's hearing held in connection with the investigation. Neither the NMPF nor the IDFA could identify any U.S. producers of dried milk powders used to calibrate infrared milk analyzers or cajeta.<sup>36</sup> The CIAA was able to identify one U.S. producer of filled or margarine cheese. That producer, Pleasantview Cheese Corp. (Rock City, IL) produces a "natural-type cheese" in which the butterfat is removed and replaced with vegetable oil.

Concerning cajeta, the Commission received information that indicated that cajeta is being produced in the United States by at least four firms: Celaya Foods Corp. (Celaya), Chula Vista, CA; Indalco Foods Corp. (Indalco), Miami, FL; Milkjam U.S.A. (Milkjam), Anaheim, CA; and Olympia Cheese Co. (Olympia), Lacey, WA.<sup>37</sup> A letter was sent to all firms requesting that they supply the Commission with certain information on their operations concerning cajeta. They responded to the Commission's request and supplied limited information with respect to their cajeta operations. Their responses are summarized below.

Of the four firms mentioned above, Celaya is the only one that produces goat's milk cajeta. The firm, which has produced cajeta since 1990, produces cajeta under its own label ("Cajeta Celaya") and under private-label ("\*\*\*) for \*\*\*. Geographically, Celaya responded that it targets the sale of its product to states with traditional large populations of persons of Mexican and Hispanic origin, such as Arizona, California, Texas, New Jersey, and New York. Because of private-label orders, Celaya responded that it expected its production to \*\*\* in the second half of 1993 to about \*\*\* pounds per week or \*\*\* pounds annually.

Indalco indicated in its response that it has produced cow's milk cajeta since 1989. Production is projected to exceed \*\*\* pounds annually, which is significantly higher than the \*\*\* pounds of cajeta produced in 1992. Although it stated that it has plans to \*\*\*, its sales are currently concentrated in \*\*\*.

In its response to the Commission's request, Milkjam stated that it has been producing cow's milk cajeta and dulce de leche for \*\*\* years and that these products represent \*\*\* of the firm's operations. The bulk of its sales

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<sup>35</sup> Comments received from the NIDA, NMPF, the IDFA, and the CIAA concerning the proposed HTS modifications are presented in appendix G.

<sup>36</sup> The Commission's staff also conducted field interviews with officials of the NMPF and the IDFA for the purpose of obtaining additional information with respect to the investigation.

<sup>37</sup> Parties to the investigation were given an opportunity to comment on this new information regarding the existence of U.S. producers. Their responses are presented in appendix H.

takes place \*\*\*. The firm reported \*\*\* of its annual production capability from 1990 to 1992 and estimates that its 1993 production capability would total \*\*\* (\*\*\*) or \*\*\* pounds.<sup>38</sup>

Olympia Cheese Corp.'s primary products are natural and processed cheeses from which it generates sales of approximately \$\*\*\* annually. The company indicated that it began developing cajeta as a commercial product \*\*\* ago, making a "\*\*\*\*." Actual production, however, started in the early part of 1993 at the rate of \*\*\* pounds per month. The company anticipated increases in production to \*\*\* pounds per month by the end of May, \*\*\* pounds per month by October 1993, and \*\*\* pounds per month by June 1994.<sup>39</sup> Sales of cajeta are projected to total \*\*\* pounds in 1993 and \*\*\* pounds (\*\*\*) in 1994. Currently, the company employs a total of \*\*\* workers at its single plant located in Lacey, WA.

The Commission requested U.S. producers (1) to describe any negative effects on their growth and existing development and production efforts as a result of the elimination of the import quota for cajeta not made from cow's milk from Mexico and (2) to describe any adverse effects on the U.S. dairy industry and the U.S. dairy price-support program as a result of the importation of cajeta not made from cow's milk. Their comments are presented in appendix I.

Pleasantview Cheese Corp. (Rock City, IL) was identified by the CIAA as a U.S. producer of a lowfat cheese product in which the butterfat is removed and replaced with vegetable oil. The Commission's staff contacted the firm to confirm its production. In response to a request from the Commission, the firm reported that its production of this margarine-like cheese product increased annually from \*\*\* pounds in 1988 to \*\*\* pounds (\*\*\*) in 1990. However, from 1991 to 1992, the firm's production fell from \*\*\* pounds to \*\*\* pounds.<sup>40</sup>

#### THE FOREIGN INDUSTRIES

In its request to Customs for a review of Customs' tariff classification ruling for CAL-EZE, the Canadian manufacturer stated that its product is unique and that no similar or comparable product is produced in any other country, including the United States.<sup>41</sup> On April 6, 1993, the Commission received a letter from Glengarry Biotech stating that \*\*\*.<sup>42</sup>

Cajeta, whether of cow's milk, goat's milk, or a blend of different milk sources, is a product unique to Mexico. Based on testimony presented at the

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<sup>38</sup> Production capability reportedly based on operating \*\*\*.

<sup>39</sup> Olympia reported full-production capability on the basis of operating \*\*\*.

<sup>40</sup> The Commission also requested that Pleasantview indicate its position with respect to the proposed HTS modification concerning margarine cheese from Sweden. The firm responded that \*\*\*.

<sup>41</sup> Report of the USDA's task force, attachment 3.

<sup>42</sup> A copy of Glengarry Biotech's letter is presented in appendix J.

Commission's hearing, there are two groups of producers in Mexico. The first group comprises many small producers that produce a somewhat generic brand of cajeta (using cow's milk, goat's milk, or a blend of milks) in very limited quantities for personal or local consumption.<sup>43</sup> These producers generally do not make their product available on any wide-scale commercial basis and typically do not regard themselves as being participants of a larger industry. The second group comprise three firms, the largest of which is Productos de Leche Coronado S.A. de C.V. (Coronado). As a group, the three firms hold an estimated 85 percent share of the cajeta market in Mexico; in terms of goat's milk cajeta, their market share is closer to about 98 percent.<sup>44</sup> According to testimony presented at the Commission's hearing, all three reportedly produce strictly goat's milk cajeta.<sup>45</sup> As a party to this investigation, Coronado was requested to provide the Commission with certain information concerning its cajeta operations in Mexico. The information that follows is based on its response to the Commission's request.

Coronado is the largest of the three principal producers of cajeta in Mexico. Sales of cajeta accounted for \*\*\* of its total annual sales in its most recent fiscal year. Because of a \$\*\*\* investment in equipment modernization, Coronado's production capacity increased from \*\*\* in 1990-91 to \*\*\* in 1992 (table K-1). Production capacity is expected to remain at the current \*\*\* level through 1994. Coronado's production output \*\*\* from \*\*\* in 1988 to \*\*\* in 1992. According to estimates, production is expected to continue rising through 1994, increasing to \*\*\*. As was stated at the Commission's hearing by a company official,<sup>46</sup> and as is reflected in the table, because of its large Mexican-American population, the United States is expected to become a major export market for Coronado's cajeta, assuming the removal of the import quota.<sup>47</sup> However, notwithstanding the growing importance of this as well as other export markets relative to total sales, Mexico is expected to remain the predominant market for cajeta produced by Coronado.

According to information supplied by the Embassy of Sweden, Sweden has had regular exports of margarine cheese to the United States since the 1970s.<sup>48</sup> Such exports totaled \*\*\* in 1987, \*\*\* in 1988, \*\*\* in 1989, \*\*\* in 1990, \*\*\* in 1991, and zero in 1992.<sup>49</sup> The most common brand name exported is Mini-Chol, which has a milkfat content of less than 0.5 percent and added

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<sup>43</sup> Testimony of Mr. Alberto Velarde, member of the board of directors, Productos de Leche Coronado (transcript, pp. 39-40).

<sup>44</sup> Hearing transcript, pp. 40 and 54. See also posthearing brief of Coronado, p. 6.

<sup>45</sup> Ibid., pp. 46 and 47.

<sup>46</sup> Ibid., p. 49.

<sup>47</sup> Current other export markets include El Salvador, France, Germany, Guatemala, and Spain.

<sup>48</sup> Telefax dated April 1, 1993, from Mr. Fredrik Daveby, Agricultural Counselor, Embassy of Sweden.

<sup>49</sup> U.S. importers of margarine cheese from Sweden include \*\*\*. \*\*\* holds \*\*\* percent of the allotted quota quantity.

vegetable fat.<sup>50</sup> There are currently three firms in Sweden that produce margarine cheese: Soderasens Ysteri AB, which has produced and exported the product since the 1970s; Kagerods sortens mlf, which was established in 1992 when Soderasens Ysteri AB was split into two separate entities; and ARLA Ost.

#### FEDERAL PROGRAMS FOR DAIRY PRODUCTS

No Federal programs are specifically directed toward the marketing in the United States of the specific dairy products which are the subject of the proposed HTS modifications, that is, cajeta, dry milk powders used to calibrate infrared milk analyzers, and margarine cheese. However, two programs exist that serve as the primary price determination mechanisms in the dairy sector and, as such, indirectly affect the marketing of these specific dairy products. These are the USDA price-support program for milk and the Federal Milk Marketing Orders Program.

#### The USDA Price-Support Program for Milk

##### The Commodity Credit Corporation

The Commodity Credit Corporation (CCC)<sup>51</sup> of the USDA purchases dairy products to ensure that farmers receive at least a minimum price (price support) for cow's milk. As specified by the Agricultural Act of 1949, as amended, the price support is required to "assure an adequate supply of milk, reflect changes in the cost of production, and assure a level of farm income to maintain productive capacity sufficient to meet future needs."

The CCC purchases all butter, cheese, and nonfat dry milk that is offered by processors and that meets CCC specifications at announced prices.<sup>52</sup> The CCC purchase prices include manufacturing allowances, or margins, to cover the cost of processing milk into these products.<sup>53</sup> The CCC prices are set at levels that will make it profitable for processors to pay farmers at least the minimum USDA support level for milk used for manufacturing. The prices received by farmers can move above the support level if supply and demand

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<sup>50</sup> The \*\*\* of margarine cheese exported from Sweden to the United States in 1991 was comprised of \*\*\* of Mini-Chol and \*\*\* of skim milk cheese.

<sup>51</sup> The CCC is a federally owned and operated corporation within the USDA created to stabilize, support, and protect farm income and prices through loans, purchases, payments, and other operations, but not through appropriations. All money transactions for agricultural price and income support and related programs are handled through the CCC; the CCC also helps maintain balanced, adequate supplies of agricultural commodities and helps in their orderly distribution.

<sup>52</sup> Legislative authority exists for the CCC to also purchase milk, but the latter tends to be too bulky and perishable for the CCC to handle.

<sup>53</sup> Purchase prices for butter, cheese, and nonfat dry milk are calculated by multiplying the amount of manufacturing milk used to produce each of these products (the whole-milk equivalent) by the announced support price for manufacturing milk.

warrant. The price an individual dairy farmer receives for milk for manufacturing also depends on a number of factors other than the support level, including plant location, the product manufactured, the quantity of milk delivered, local competition, and plant operating efficiency.<sup>54</sup>

#### Price-Support Policy Under Various Agricultural Acts

The Agricultural Act of 1949 required the U.S. Secretary of Agriculture to support the price of milk at a level between 75 percent and 90 percent of parity.<sup>55</sup> However, since the Agriculture and Food Act of 1981 (signed October 21, 1981), Congress has established the support for milk at specific levels rather than at parity levels. The Food Security Act of 1985 (1985 Act) provided for support prices of \$11.60 per hundredweight (cwt.) for milk containing 3.67 percent milkfat in calendar year 1986, a support price of \$11.35 per cwt. for the period January 1, 1987, through September 30, 1987, and a price of \$11.10 per cwt. for the period October 1, 1987, through December 31, 1990.

The 1985 Act also required that on January 1, of 1988, 1989, and 1990, the Secretary of Agriculture should reduce the support price by 50¢ per cwt. if net calendar year price-support purchases were projected to exceed 5.0 billion pounds of milk equivalent or increase the support price by 50¢ per cwt. if net purchases were projected at no more than 2.5 billion pounds milk equivalent. The price reductions were conditioned upon the participants in the dairy termination program<sup>56</sup> reducing their milk production by 12 billion pounds, or upon certification by the Secretary that reasonable offers were made by the CCC to achieve that reduction, but were not agreed to by the producers.

The first price reduction, to \$10.60 per cwt., occurred on January 1, 1988.<sup>57</sup> But because the January 1, 1989, support price reduction was prohibited by the Drought Assistance Act of 1988 (1988 Act), the support price remained at \$10.60 per cwt. on January 1, 1989. The 1988 Act also required that the support price be raised temporarily to \$11.10 per cwt. for the period April 1, 1989, through June 30, 1989. Public Law No. 101-7 (the 1989 Act),

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<sup>54</sup> Richard Fallert, Don P. Blayney, and James J. Miller, Dairy Background for 1990 Farm Legislation, USDA, ERS, Mar. 1990, p. 21.

<sup>55</sup> The "parity price" of a commodity is determined by the Secretary of Agriculture according to a statutory formula. It is essentially the price that a given quantity of a specific commodity would have to command in order to give the farmer the purchasing power equivalent to that in existence during a base period (1910-14 for dairy products).

<sup>56</sup> The dairy termination program, which was established in the 1985 Act, authorized dairy farmers to dispose of their entire dairy herds and terminate any interest they had in the production of milk or dairy cattle for 5 years by selling their herds for slaughter or export. According to the USDA, 13,988 dairy farmers who marketed a total of 12.3 billion pounds of milk in calendar year 1985 contracted with the CCC for sales under this program.

<sup>57</sup> On Jan. 1, 1990, the support price was reduced to \$10.10 per cwt., the second reduction.

signed on March 29, 1989, required the Secretary of Agriculture to provide that at least 75 percent of the temporary 50¢ per cwt. increase in the price support scheduled for April 1, 1989, be reflected in the purchase price for nonfat dry milk and not more than 25 percent of the increase be reflected in the purchase price of butter. In addition, the 1989 Act required the Secretary to allocate the 50¢ per cwt. decrease in the price support scheduled to occur in July 1989 between the two purchase prices in such a manner as would result in the lowest level of expenditures to the Federal Government.

The Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act), signed into law on November 28, 1990, provided that the price of milk for manufacturing be supported at a rate of not less than \$10.10 per cwt. through 1995. The Act also provided that the USDA estimate the milk-equivalent quantity of butter, cheese, and nonfat dry milk purchased by the CCC on a milk solids basis instead of a milkfat basis. The purpose of this change is to discourage production of milkfat, which is in surplus, and to encourage production of protein, which is measured by milk solids.<sup>58</sup>

As a result of the 1990 Act, the Secretary of Agriculture is also required to--

- (1) Increase the support price at least 25¢ per cwt. if the USDA's estimated purchases in each of the calendar years 1991-95 do not exceed 3.5 billion pounds milk equivalent, total milk solids basis;
- (2) Make no increase in the support price level if the USDA's estimated purchases in each of the calendar years 1991-95 exceed 3.5 billion pounds, but not 5 billion pounds milk equivalent, total milk solids basis; and
- (3) Decrease the support price by 25¢ to 50¢ per cwt. if USDA's estimated purchases in each of the calendar years 1991-95 exceed 5 billion pounds milk equivalent. However, the support price may not be reduced below \$10.10 per cwt.

The 1990 Act instructed the Secretary of Agriculture to deduct from the estimate of CCC purchases an amount equal to the difference between the most recent calendar year's dairy imports and average imports during 1986-90. The 1990 Act also limits CCC program expenditures during calendar years 1992-95 to the purchase of the equivalent of 7 billion pounds of milk, total-solids basis. Purchases above 7 billion pounds are to be financed through a producer assessment on marketings of milk for manufacturing.

The Secretary of Agriculture has the authority to adjust support purchase prices for butter and nonfat dry milk in such a way that will result in the lowest cost to the CCC or that will achieve other objectives considered appropriate. However, these adjustments are limited to not more than two per calendar year.

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<sup>58</sup> Previously, producers who delivered milk with a butterfat content below a specified minimum percent received a reduced price for their milk.

### The Federal Milk Marketing Orders Program

The Federal Milk Marketing Orders Program requires "handlers" (processors) of milk to pay farmers certain minimum prices for Grade A milk<sup>59</sup> based on three classes of end use as follows: Milk used for fluid products is designated Class I; Class II consists of milk used for soft products including fluid cream, ice cream, cottage cheese, and yogurt; and Class III consists of milk used for hard products including cheese, butter, and nonfat dry milk. Class III milk is priced at levels near the price of Grade B milk in a two-state area in Minnesota and Wisconsin (the M-W price).<sup>60</sup> The M-W price is used as a base price for Class III milk. Most of the milk produced in that area is used to manufacture butter, Cheddar cheese, and nonfat dry milk, products that are purchased by the USDA under the price-support program.<sup>61</sup>

Changes in the prices of Class II and Class I milk occur with changes in the price of Class III milk, which is supported by the USDA price-support program.

### Information on Prices and Purchase Trends

CCC purchases are normally highest during the spring and early summer when dairy cows are on pasture and milk production is most abundant, and it is necessary to convert more fluid milk products to storable products. Most CCC purchases are in bulk and are processed or repackaged into forms suitable for sales or donations. Information on CCC support price objectives, purchase prices, market prices, outlays, and other relevant information is presented in tables F-2 to F-7.

### PROBABLE ECONOMIC EFFECTS OF THE PROPOSED CHANGES

Testimony before the Commission at the public hearing and in written submissions generally agrees that most, if not all, of the proposed changes to the import quota and import quota licensing requirements would not negatively affect the U.S. dairy price-support program; however, some opposition to the proposal concerning cajeta exists.<sup>62</sup> The estimated effects of each of the proposals on the U.S. dairy price-support program are discussed below.

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<sup>59</sup> Grade A milk is milk that is suitable for fluid consumption.

<sup>60</sup> Grade B milk is milk that is not suitable for fluid consumption or soft products but is suitable for production of hard products--butter, hard cheese, and nonfat dry milk.

<sup>61</sup> Most dairy farmers in the area where the M-W price is established do not participate in the Federal Milk Marketing Orders Program. Hence, the price of milk sold in that area is not regulated.

<sup>62</sup> The National Milk Producers Federation and one U.S. producer of cajeta, Olympia Cheese Company, are opposed to the proposed exclusion of cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream. For a discussion of the comments made and the positions taken by these and various other parties and commenters, see appendixes G, H, and I.

**Exclusion of Cajeta Not Made From Cow's Milk  
From the Quota Coverage**

Available information indicates that there are at least four firms that are producing cajeta in the United States. All four firms provided data to the Commission on their U.S. production of cajeta.<sup>63</sup> While there is only one U.S. producer of goat's milk cajeta, the potential for competition in the U.S. market between cajeta made from cow's milk and that made from goat's milk is clear. To assess any potential impact on the dairy price-support program of this proposal, staff has projected the exports of goat's milk cajeta to the United States and calculated the quantity of milk that may be displaced because of to these imports.<sup>64</sup> Based on available data, staff estimates that the exclusion of cajeta not made from cow's milk from the quota would result in a displacement of \*\*\* million pounds of milk in 1993 and \*\*\* million pounds (about \*\*\* metric tons) in 1994.<sup>65</sup> However, these numbers are small relative to total U.S. milk production. In 1992, U.S. milk production totaled 149.67 billion pounds; therefore, the estimated amount of displaced milk would account for less than 0.005 percent of 1992 U.S. milk production.<sup>66</sup> Because these numbers are very small, it is likely that the exclusion of goat's milk cajeta from quota coverage would have little, if any, impact on the U.S. dairy price-support program. The extent to which imports of cajeta not made from cow's milk will reduce the amount of cajeta processed in the United States will depend on the relative pricing, marketing, quality, and acceptability of the foreign-produced cajeta compared with the U.S.-produced cajeta.

**Exclusion of Inedible Dried Milk Powders Used To Calibrate  
Infrared Milk Analyzers From the Quota Coverage**

In the United States, infrared milk analyzers are calibrated with standards (calibrants) that are at least in part fluid milk; there are no U.S. producers of inedible dried milk powders used to calibrate infrared milk analyzers. The Canadian product (CAL-EZE), which is a powder, has a longer

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<sup>63</sup> Only one of these firms (Celaya Foods Corp.) manufactures goat's milk cajeta.

<sup>64</sup> Data on exports of goat's milk cajeta to the United States were provided by Coronado, a firm that accounts for approximately \*\*\* percent of the goat's milk cajeta market in Mexico. Coronado estimated that it would export \*\*\* of product in 1993 and \*\*\* in 1994. Based mainly on data for Coronado's total shipments, exports to the United States, and its share of the Mexican market, staff estimates that exports of goat's milk cajeta from Mexico to the United States would total \*\*\* in 1993 and 1994, respectively.

<sup>65</sup> These numbers are derived by multiplying the amount of estimated exports by 2, which assumes that each pound of cajeta that enters the United States displaces 2 pounds of milk that would have gone into either U.S.-produced cajeta or substitute products that use milk.

<sup>66</sup> These estimates do not account for imports of goat's milk cajeta from countries other than Mexico. Staff has no information concerning other sources of cajeta; however, because the estimated impact is so small, it is unlikely that additional sources of imports would increase the amount of displaced milk to significant levels.

shelf life (i.e., 6 to 12 months) and a higher cost than the domestic fluid products.<sup>67</sup> While U.S. firms and those from countries other than Canada have the capability to produce dry powder calibrants, they reportedly do not think the higher cost of the dry powder is justifiable. Available information indicates that it is unlikely that the CAL-EZE product will enter the United States in large quantities.<sup>68</sup> First, it has been recommended that USDA Federal milk laboratories not use CAL-EZE until further testing can show that the CAL-EZE samples can produce a calibration that is equivalent to or better than current procedures. Second, Glengarry Biotech, the Canadian producer of CAL-EZE, has reported to the Commission that \*\*\*.<sup>69</sup> Therefore, the exclusion of inedible dried milk powders used to calibrate infrared milk analyzers from the quota coverage is likely to have little, if any, effect on the U.S. dairy program.

#### Amending the HTS for Margarine Cheese From Sweden

Currently, margarine cheese enters the United States under HTS subheading 1901.90.30 (articles of milk or cream) with an annual worldwide quota of 2,721 kilograms. The proposal is to allow margarine cheese to enter under the HTS quota for lowfat cheese, subheading 9904.10.57, as was agreed in the Tokyo Round of Multilateral Trade Negotiations. Sweden's annual allocated quota under that HTS subheading is 250 metric tons. Available data indicate that imports of low-fat cheese from Sweden totaled \*\*\* in 1988, \*\*\* in 1989, \*\*\* in 1990, and \*\*\* in 1991.<sup>70</sup> There were no imports of low-fat cheese from Sweden in 1992. Because the overall quota and the amount of margarine cheese entering the United States are not being changed, the U.S. dairy price-support program is unlikely to be affected by this proposal.

#### Elimination of Import Quota Licensing Requirements

This proposal recommends the elimination of the licensing requirement for dried cream and malted milk articles of milk or cream. Section 22 quotas for dried milk and for malted milk and articles of milk or cream currently require that articles imported under the quotas may be entered only by or for the account of a person or firm to whom/which a license has been issued. This modification is proposed because USDA believes that licensing was leading to

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<sup>67</sup> The U.S. products reportedly cost about \$86 per kit, whereas the Canadian product reportedly costs \$250 per kit.

<sup>68</sup> Glengarry has estimated (for the USDA task force) that the maximum U.S. sales of CAL-EZE would be \*\*\* units; at 1 kilogram per kit, this amount \*\*\* the quota level of 2,721 kilograms.

<sup>69</sup> See Glengarry Biotech, letter to the Commission, app. J.

<sup>70</sup> Prior to Sept. 13, 1991, U.S. imports from Sweden were entered under the quota for low-fat cheese under subheading 9904.10.57 of the HTS. However, following a classification ruling by Customs issued on Sept. 13, 1991 (HRL 088827), margarine cheese was reclassified as a food preparation, making such imports subject to the quota under subheading 9901.10.60 of the HTS. On Mar. 26, 1992, Customs reaffirmed its decision in HRL 088827.

quota underutilization.<sup>71</sup> If this proposal is adopted, only up to three additional metric tons of product would enter the United States, based on current quotas. Based on this low amount, it is unlikely that the elimination of the licensing requirement would have an impact on the U.S. dairy program. One possible side effect of this proposed change is a reduction in revenues for the U.S. Treasury; however, this amount would be very small. As of January 1993, there were 24 persons or firms to whom/which licenses had been issued. At a cost of \$88 for each license, the lost revenue to the U.S. Treasury amounts to only \$2,112.

**Clarification of U.S. Note (3)(a)(iii) of Subchapter IV of  
Chapter 99 of the HTS**

This proposal recommends that the note to the HTS would clarify that the adjustment of a country quota allocation allows the quantity to be entered for "other" in addition to named countries. This clarification does not affect the overall levels of the quotas; rather it allows for reallocation from countries that are not filling their quotas to "other" countries. Since the absolute quota levels would remain unchanged and the quotas are assumed to be set at levels that do not interfere with the dairy price-support program, this proposal should not affect the dairy price-support program.

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<sup>71</sup> The USDA task force concluded that importing is uneconomical because the cost of the licensing fee is large relative to the size of the allotment.



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APPENDIX A  
THE PRESIDENT'S LETTER

1744

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Office of the  
Secretary  
U.S. Trade Commission

THE WHITE HOUSE  
WASHINGTON

January 19, 1993

Dear Mr. Chairman:

Pursuant to Section 22 of the Agricultural Adjustment Act of 1933, as amended, I have been advised by the Secretary of Agriculture that the quota for malted milk and articles of milk or cream and the import quota licensing requirement for dried cream, and for malted milk and articles of milk or cream, wherever classified in the Harmonized Tariff Schedule of the United States, may need to be modified since there are changed circumstances with respect to these specific dairy products. I further understand that the quota allocation for Sweden for margarine cheese which was inadvertently excluded from the Harmonized Tariff Schedule should be restored and that U.S. Note (3)(a)(iii) of Subchapter IV of Chapter 99 of the Harmonized Tariff Schedule should be technically modified.

The United States International Trade Commission is, therefore, directed to make an investigation under Section 22 of the Agricultural Adjustment Act of 1933, as amended, to determine whether the Harmonized Tariff Schedule should be modified with respect to the above described matters: i.e., exclusion of cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream, exclusion from quota coverage of dried milk powders used for calibrating infrared milk analyzers and not capable of being used for edible purposes, importation of margarine cheese from Sweden under the quota for low-fat cheese, elimination of the import quota licensing requirement with respect to dried cream and malted milk and articles of milk or cream, and clarification of the language of U.S. Note (3)(a)(iii) of Subchapter IV of Chapter 99 of the Harmonized Tariff Schedule. The Note should be clarified to provide specifically that a country quota for a particular dairy product, to the extent the Secretary determines that the quota

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 U.S. TRADE COMMISSION

quantity is not likely to be entered in a calendar year, may be reallocated among all countries that have quota allocations for the product including the "other" category unless it is specified that no quantity of such product may be entered from "other" countries. The findings and recommendations of this investigation should be reported at the earliest practicable date.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. T. Burt". The signature is written in dark ink and is positioned to the right of the typed name.

The Honorable Don E. Newquist  
Chairman  
United States International  
Trade Commission  
Washington, D.C. 20436



B-1

APPENDIX B

THE COMMISSION'S FEDERAL REGISTER NOTICE

**SUMMARY:** Following receipt on January 19, 1993, of a request from the President for an investigation under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), the Commission instituted investigation No. 22-53 under section 22(d) of the act for the purpose of determining whether the Harmonized Tariff Schedule of the United States (HTS) should be modified with respect to the following proposed actions:

(a) The exclusion of cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60);

(b) The exclusion of inedible dried milk powders used for calibrating infrared milk analyzers from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60);

(c) The exclusion of margarine cheese from Sweden from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60), and the inclusion of margarine cheese from Sweden under the quota for lowfat cheese (HTS subheading 9904.10.57);

(d) The elimination of the import quota licensing requirement with respect to dried cream (HTS subheading 9904.10.15) and malted milk and articles of milk of cream (HTS subheading 9904.10.60); and

(e) The clarification of U.S. note (3)(a)(iii) to subchapter IV of chapter 99 to provide that, to the extent the Secretary of Agriculture determines that the specified country quota quantity is not likely to be entered in a calendar year, such country quota for a particular dairy product may be reallocated among all countries having quota allocations, including countries falling in the "other" category (unless it is specified that no quantity of such product should be entered from "other" countries).

The President asked that the Commission report its findings and recommendations at the earliest practicable date. The Commission anticipates submitting its report to the President by June 30, 1993.

**EFFECTIVE DATE:** January 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438.

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.

**SUPPLEMENTARY INFORMATION:** For further information concerning the conduct of

[Investigation No. 22-53]

**Certain Dairy Products; Institution of Investigation and Scheduling of a Public Hearing**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of a public hearing.

this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E, and part 204 (19 CFR parts 201, 204).

#### Participation in the Investigation

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

#### Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a 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. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

#### Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 29, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 14, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 21, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Testimony at the public hearing should be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. The deadline for filing prehearing briefs is the close of business on April 22, 1993. Posthearing briefs must be submitted not later than the close of business on May 6, 1993. In addition, the presiding official may permit persons to file answers to requests made by the Commission at the hearing within a specified time. The Secretary will not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

#### Written Submissions

As stated above, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 6, 1993. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the Commission's rules.

All written submissions except for confidential business information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which confidential business treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

This notice is published pursuant to § 204.4 of the Commission's rules (19 CFR 204.4).

Issued: March 5, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-5465 Filed 3-9-93; 8:45 am]

BILLING CODE 7020-02-M



APPENDIX C

LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

CALENDAR OF PUBLIC HEARING

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

Subject : CERTAIN DAIRY PRODUCTS  
Inv. No. : 22-53  
Date and Time : April 29, 1993 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room of the United States International Trade Commission, 500 E St., S.W., Washington, DC.

Government appearances:

U.S. Department of Agriculture

Mary Revelt, Deputy Assistant Administrator for International Trade Policy, Foreign Agricultural Service

Carol Harvey, Director, Import Policies and Trade Analysis Division, Foreign Agricultural Service

Jeffrey Kahn, Staff Attorney, Office of the General Counsel

ORGANIZATION AND WITNESSES:

In support of the proposed action with respect to cajeta

Brownstein Zeidman and Lore  
Washington, DC  
On behalf of

Productos de Leche Coronado, S.A.

Alberto Velarde, Member of the Board of Directors

Pablo Canedo, Member of the Board of Directors

Irwin P. Altschuler )  
Claudia G. Pasche ) --OF COUNSEL

Other witness

National Milk Producers Federation  
Arlington, VA

Dr. Peter Vitaliano, Director of Policy Analysis

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APPENDIX D

PRESIDENTIAL PROCLAMATION 3019

## Chapter I—Proclamations

Proc. 3019

DONE at the City of Washington this sixth day of June in the year of our Lord nineteen hundred and fifty-  
[SEAL] three, and of the Independence of the United States of America the one hundred and seventy-seventh.

DWIGHT D. EISENHOWER

By the President:

JOHN FOSTER DULLES,  
*Secretary of State.*

## PROCLAMATION 3019

## IMPOSING QUOTAS OR FEES ON IMPORTS OF CERTAIN DAIRY AND OTHER PRODUCTS

WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as added by section 31 of the act of August 24, 1935, 49 Stat. 773, reenacted by section 1 of the act of June 3, 1937, 50 Stat. 246, and as amended by section 3 of the act of July 3, 1948, 62 Stat. 1248, section 3 of the act of June 28, 1950, 64 Stat. 261, and section 8 (b) of the act of June 16, 1951, Public Law 50, 82d Congress (7 U. S. C. 624), the Secretary of Agriculture advised me that he had reason to believe that upon the expiration of section 104 of the Defense Production Act of 1950, as amended, the products included in the lists appended to and made a part of this proclamation are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, programs undertaken by the Department of Agriculture with respect to certain of such articles or with respect to products from which certain of such articles are processed, or to reduce substantially the amount of one or more of such articles processed in the United States from agricultural commodities with respect to which a program of the Department of Agriculture is being undertaken;

WHEREAS, having agreed with the Secretary of Agriculture's reason for such belief, I caused the United States Tariff Commission to make an investigation under the said section 22 with respect to the said articles;

WHEREAS the said Tariff Commission has made such an investigation and has reported to me its findings and recommendations made in connection therewith;

WHEREAS, on the basis of the said investigation and report of the Tariff

Commission, I find that in the event section 104 of the Defense Production Act of 1950, as amended, expires under its present terms, the articles included in the lists appended to and made a part of this proclamation are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, programs or operations undertaken by the Department of Agriculture or agencies operating under its direction, pursuant to sections 101, 201, 301, and 401 of the Agricultural Act of 1949, as amended, and Part VI of Title III of the Agricultural Adjustment Act of 1938, as amended, with respect to certain of such articles or with respect to products from which certain of such articles are processed, or to reduce substantially the amount of certain of such articles processed in the United States from agricultural commodities with respect to which the said programs or operations of the United States Department of Agriculture are being undertaken; and

WHEREAS I find and declare that in the event section 104 of the Defense Production Act of 1950, as amended, expires under its present terms, the imposition of the fees and quantitative limitations hereinafter proclaimed is shown by such investigation of the Tariff Commission to be necessary in order that the entry, or withdrawal from warehouse, for consumption of such articles will not render or tend to render ineffective, or materially interfere with, the said programs or operations, or reduce substantially the amount of products processed in the United States from agricultural commodities with respect to which certain of the said programs or operations are being undertaken:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the said section 22 of the Agricultural Adjustment Act, as amended, do hereby proclaim that on and after July 1, 1953, articles included in the lists appended to and hereby made a part of this proclamation shall be subject to quantitative limitations and fees, as follows:

1. Articles included in Lists I and II (except peanuts) shall be permitted to be entered only by or for the account of a person or firm to whom a license has been issued by or under the authority of the Secretary of Agriculture, and only

in accordance with the terms of such license. Such licenses shall be issued under regulations of the Secretary of Agriculture which he determines will, to the fullest extent practicable, result in (1) the equitable distribution of the respective quotas for such articles among importers or users and (2) the allocation of shares of the respective quotas for such articles among supplying countries, based upon the proportion supplied by such countries during previous representative periods, taking due account of any special factors which may have affected or may be affecting the trade in the articles concerned. No licenses shall be issued which will permit any such articles to be entered during any 12-month period beginning July 1 in excess of the respective quantities specified for such articles in Lists I and II and, in the case of articles included in List II, during the first 4 months and the first 8 months of any such 12-month period in excess of one-third and two-thirds, respectively, of such specified quantities.

2. No peanuts included in List II shall be entered during any 12-month period beginning July 1 in excess of the quantity specified for such peanuts in the said List II.

3. Articles included in List III shall, when entered, be subject to the fees respectively specified therefor in the said List III.

I hereby determine that the periods specified in the said report of the Tariff Commission for the purpose of the first proviso to section 22 (b) of the Agricultural Adjustment Act, as amended, are representative periods for such purpose.

The provisions of this proclamation shall not apply to articles imported by or for the account of any department or agency of the Government of the United States.

As used in this proclamation, the word "entered" means "entered, or withdrawn from warehouse, for consumption".

This proclamation shall be without force and effect if section 104 of the Defense Production Act of 1950, as amended, is extended beyond June 30, 1953.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this eighth day of June in the year of our Lord nineteen hundred and [SEAL] fifty-three, and of the Independence of the United States of America the one hundred and seventy-seventh.

DWIGHT D. EISENHOWER

By the President:

JOHN FOSTER DULLES,  
Secretary of State.

LIST I	
<i>Article</i>	<i>Quantity</i>
Butter .....	707,000 pounds.
Dried whole milk.....	7,000 pounds.
Dried buttermilk.....	496,000 pounds.
Dried cream.....	500 pounds.
Dried skimmed milk.....	1,807,000 pounds.
Malted milk, and compounds or mixtures of or substitutes for milk or cream.	6,000 pounds (aggregate quantity).

LIST II	
<i>Article</i>	<i>Quantity</i>
Cheddar cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese.	2,780,100 pounds (aggregate quantity).
Edam and Gouda cheese.....	4,600,200 pounds (aggregate quantity).
Blue-mold (except Stilton) cheese, and cheese and substitutes for cheese containing, or processed from, blue-mold cheese.	4,187,000 pounds (aggregate quantity).
Italian-type cheeses, made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, and Sbrinz).	9,200,100 pounds (aggregate quantity).
Peanuts, whether shelled, not shelled, blanched, salted, prepared, or preserved (including roasted peanuts, but not including peanut butter).	1,709,000 pounds (aggregate quantity): Provided, That peanuts in the shell shall be charged against this quota on the basis of 75 pounds for each 100 pounds of peanuts in the shell.



E-1

APPENDIX E

LIST OF DAIRY PRODUCTS SUBJECT TO QUOTAS

## HARMONIZED TARIFF SCHEDULE of the United States (1993)

Annotated for Statistical Reporting Purposes

XXII  
99-56

Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Quota Quantity			
9904.10.03	1/	Whenever, in any 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period: Milk and cream, fluid or frozen, fresh or sour, containing over 6 percent but not over 45 percent by weight of butterfat: New Zealand..... Other.....	1/ 1/	5,678,117 liters None			
				Evaporated		Condensed	
				In air-tight containers (in kilograms)	Other (in kilograms)	In air-tight containers (in kilograms)	Other (in kilograms)
9904.10.06	1/	Milk and cream, condensed or evaporated, classifiable for tariff purposes under subheadings 0402.91.20, 0402.91.40, 0402.99.20 and 0402.99.40: Netherlands..... Canada..... Denmark..... West Germany..... Australia..... Other.....	1/ 1/ 1/ 1/ 1/ 1/				
				548,393	None	153,314	None
				31,751	None	994,274	2,267
				4,989	None	605,092	None
				9,979	None	None	None
				None	None	91,625	None
				None	None	3,628	None
				Quota Quantity (in kilograms)			
9904.10.09	1/	Dried milk, dried cream and dried whey provided for in chapter 4: Described in subheadings 0402.10 and 0402.21.20.....	1/	819,641			
9904.10.12	1/	Described in subheadings 0402.21.40 and 0403.90.50.....	1/	3,175			
9904.10.15	1/	Described in subheadings 0402.21.60 and 0403.90.60.....	1/	226			
9904.10.18	1/	Described in subheadings 0403.90.40 and 0404.10.40.....	1/	224,961			
9904.10.21	1/	Butter, and fresh or sour cream containing over 45 percent by weight of butterfat, provided for in chapter 4.....	1/	320,689			
9904.10.24	1/	Butter substitutes containing over 45 percent by weight of butterfat provided for in subheading 0405.00.80 or 2106.90.15 and butter oil however provided for in the tariff schedule.....	1/	544,310			
9904.10.27	1/	Cheeses and substitutes for cheese provided for in chapter 4: Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, blue-mold cheese (provided for in subheading 0406.10, 0406.20.20, 0406.20.60, 0406.30.10, 0406.30.60, 0406.40.60, 0406.40.80 or 0406.90.80: European Economic Community..... Argentina..... Other.....	1/ 1/ 1/	2,479,000			
				2,000			
				1			

1/ See chapter 99 statistical note 2.

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Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Quota Quantity (in kilograms)
		Whenever, in any 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period (con.): Cheeses and substitutes for cheese provided for in chapter 4 (con.):		
9904.10.30	1/	Cheddar cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (provided for in subheading 0406.10, 0406.20.30, 0406.20.60, 0406.30.20, 0406.30.60, 0406.90.10 or 0406.90.80): European Economic Community.....	1/	263,000
		Australia.....	1/	1,200,000
		New Zealand.....	1/	3,100,000
		Canada.....	1/	833,417
		Other.....	1/	139,889
9904.10.33	1/	American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing, or processed from, such American-type cheese (provided for in subheading 0406.10, 0406.20.35, 0406.20.60, 0406.30.30, 0406.30.60, 0406.90.85 or 0406.90.80): European Economic Community.....	1/	254,000
		Australia.....	1/	1,000,000
		New Zealand.....	1/	2,000,000
		Other.....	1/	168,556
9904.10.36	1/	Edam and Gouda cheeses (provided for in subheading 0406.10, 0406.20.40 or 0406.90.15): European Economic Community.....	1/	4,011,000
		Sweden.....	1/	41,000
		Argentina.....	1/	125,000
		Other.....	1/	1
9904.10.39	1/	Cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (provided for in subheading 0406.10, 0406.20.40, 0406.20.60, 0406.30.40, 0406.30.60 or 0406.90.80): European Economic Community.....	1/	1,237,000
		Norway.....	1/	167,000
		Other.....	1/	25,401
9904.10.42	1/	Italian-type cheeses, made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz) (provided for in subheading 0406.10, 0406.90.35 or 0406.90.40): European Economic Community.....	1/	3,335,000
		Argentina.....	1/	3,850,000
		Uruguay.....	1/	428,000
		Other.....	1/	1
9904.10.45	1/	Italian-type cheeses, made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz and Goya) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (provided for in subheading 0406.10, 0406.20.50, 0406.20.60, 0406.30.60, 0406.90.30, 0406.90.35, 0406.90.40, 0406.90.70 or 0406.90.80): European Economic Community.....	1/	67,000
		Argentina.....	1/	643,000
		Other.....	1/	13,063

1/ See chapter 99 statistical note 2.

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Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Quota Quantity (in kilograms)
		Whenever, in any 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period (con.): Cheese and substitutes for cheese provided for in chapter 4 (con.):		
9904.10.48	1/	Swiss or Emmentaler cheese with eye formation (provided for in subheading 0406.90.45):		
		European Economic Community.....	1/	6,000,000
		Austria.....	1/	6,280,000
		Finland.....	1/	8,200,000
		Norway.....	1/	6,883,000
		Switzerland.....	1/	3,430,000
		Israel.....	1/	27,000
		Australia.....	1/	500,000
		Canada.....	1/	70,000
		Iceland.....	1/	300,000
		Argentina.....	1/	80,000
		Other.....	1/	85,276
9904.10.51	1/	Swiss or Emmentaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (provided for in subheading 0405.10, 0405.20.60, 0406.30.50, 0406.30.60 or 0406.90.80):		
		European Economic Community.....	1/	3,625,000
		Austria.....	1/	920,000
		Finland.....	1/	1,000,000
		Switzerland.....	1/	1,850,000
		Other.....	1/	79,833
9904.10.54	1/	Cheeses and substitutes for cheese provided for in subheading 0406.10, 0406.20.60, 0406.30.60 or 0406.90.80 (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter):		
		European Economic Community.....	1/	20,456,000 (of which 353,000 are reserved for Portugal)
		Finland.....	1/	1,300,000
		Iceland.....	1/	323,000
		Norway.....	1/	150,000
		Poland.....	1/	936,224
		Sweden.....	1/	1,059,000
		Switzerland.....	1/	1,220,000
		New Zealand.....	1/	11,322,000
		Canada.....	1/	1,141,000
		Austria.....	1/	650,000
		Israel.....	1/	673,000 (no more than 160,000 of which shall contain more than 3 percent by weight of butterfat)
		Argentina.....	1/	100,000
		Australia.....	1/	1,050,000
		Other.....	1/	201,635
9904.10.57	1/	Cheese, and substitutes for cheese, containing 0.5 percent or less by weight of butterfat, provided for in subheading 0406.10, 0405.20.60, 0406.30.60 or 0406.90.80 (except articles within the scope of other import quotas provided for in this subchapter):		
		European Economic Community.....	1/	4,000,000
		Poland.....	1/	174,907
		Australia.....	1/	250,000
		New Zealand.....	1/	1,000,000
		Sweden.....	1/	250,000
		Israel.....	1/	50,000
		Other.....	1/	1

1/ See chapter 99 statistical note 2.

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Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Quota Quantity (in kilograms)
9904.10.60	1/	Whenever, in any 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period (con.): Malted milk, and articles of milk or cream (except (a) yogurt that is not in dry form, (b) fermented milk other than dried fermented milk or other than dried milk with added lactic ferments, (c) mixtures of nonfat dry milk and anhydrous butterfat containing over 5.5 percent but not over 45 percent by weight of butterfat, and (d) ice cream), all the foregoing provided for in subheadings 0402.29, 0402.99.60, 0403.10.00, 0403.90.80, 0404.90.20, 1901.10.00, 1901.90.30, 2105.00.00 and 2202.90.20.....	1/	2,721
9904.10.63	1/	Chocolate provided for in subheading 1806.20.40, 1806.32.20, or 1806.90 containing over 5.5 percent by weight of butterfat (except articles for consumption at retail as candy or confection): Ireland..... United Kingdom..... Netherlands..... Australia..... New Zealand..... Other.....	1/ 1/ 1/ 1/ 1/ 1/	4,286,491 3,379,297 45,359 2,000,000 1 None
9904.10.66	1/	Chocolate, provided for in subheadings 1806.20.40, 1806.32.20 and 1806.90, and low fat chocolate crumb, provided for in subheadings 1806.20.80 and 1806.90, containing 5.5 percent or less by weight of butterfat (except articles for consumption at retail as candy or confection): United Kingdom..... Ireland..... New Zealand..... Other.....	1/ 1/ 1/ 1/	421,845 1,700,988 1 None
9904.10.69	1/	Animal feeds containing milk or milk derivatives, classified under subheading 2309.90.30: Ireland..... United Kingdom..... New Zealand..... Australia..... Other.....	1/ 1/ 1/ 1/ 1/	5,470,323 83,914 1,782,618 56,699 None

1/ See chapter 99 statistical note 2.

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Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Quota Quantity (in liters)
9904.10.72	1/	Whenever, in any 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period (con.): Ice cream, as provided for in heading 2105.00:		
		Belgium.....	1/	922,315
		New Zealand.....	1/	589,312
		Denmark.....	1/	13,059
		Netherlands.....	1/	104,477
		Jamaica.....	1/	3,596
		Other.....	1/	None
9904.10.75	1/	Dried milk, whey and buttermilk (described in subheading 0402.10, 0402.21.20, 0402.21.40, 0403.90.40 or 0404.10.40) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported; all the foregoing mixtures provided for in subheadings 0402.10, 0404.10.40, 0404.90.60, 1517.90.40, 1704.90.40, 1704.90.60, 1806.20.80, 1806.32.40, 1806.90, 1901.20, 1901.90.80 and 2106.90.05, except articles within the scope of other import restrictions provided for in this subchapter.....	1/	None

1/ See chapter 99 statistical note 2.

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Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Quota Quantity (in kilograms)
9904.10.78 9904.10.81	1/ 1/	<p>Whenever, in any 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period (con.):</p> <p>Articles containing over 5.5 percent by weight of butterfat, the butterfat of which is commercially extractable, or which are capable of being used for any edible purpose (except (a) articles provided for in headings 0401, 0402, 0405 or 0406 or sub-headings 1901.10 or 1901.90.30 other than mixtures of nonfat dry milk and anhydrous butterfat containing not over 45 percent by weight of butterfat classifiable for tariff purposes under subheading 1901.90.30; (b) dried mixtures containing less than 31 percent by weight of butterfat and consisting of not less than 17.5 percent by weight each of sodium caseinate, butterfat, whey solids containing over 5.5 percent by weight of butterfat, and dried whole milk, but not containing dried milk, dried whey or dried buttermilk any of which contains 5.5 percent or less by weight of butterfat; and (c) articles which are not suitable for use as ingredients in the commercial production of edible articles):</p> <p>Over 45 percent by weight of butterfat... Over 5.5 percent but not over 45 percent by weight of butterfat including mixtures of nonfat dry milk and anhydrous butterfat classifiable for tariff purposes under subheading 1901.90.30 and other articles classifiable for tariff purposes under subheading 0404.90.40, 0404.90.60, 1517.90.40, 1704.90.40, 1704.90.60, 1806.20.80, 1806.32.40, 1806.90, 1901.20, 1901.90.40, 1901.90.80, 2105.00, 2106.90.40 or 2106.90.50:</p> <p>Australia..... Belgium and Denmark (aggregate)..... Other.....</p>	1/           1/ 1/ 1/	None           1,016,046 154,221 None

1/ See chapter 99 statistical note 2.



APPENDIX F  
STATISTICAL TABLES

Table F-1

Certain dairy products: Annual quotas and U.S. imports of articles subject to the proposed HTS modifications, 1988-92

Item	(In 1,000 kilograms)					
	Annual Quota	U.S. imports--				
	1988	1989	1990	1991	1992	
Milk, condensed or evaporated (HTS subheading 9904.10.06):						
Specified countries . . . . .	1,740	0	0	0	0	0
Other . . . . .	4	0	0	0	0	0
World . . . . .	1,744	0	0	0	0	0
Dried cream (HTS subheading 9904.10.15):						
Specified countries . . . . .	(1)	(1)	(1)	(1)	(1)	(2)
Other . . . . .	(1)	(1)	(1)	(1)	(1)	(2)
World . . . . .	(2)	0	0	0	0	0
Cheese, blue mold (HTS subheading 9904.10.27):						
Specified countries . . . . .	2,481	1,905	1,610	2,180	2,230	2,024
Other . . . . .	(2)	0	(2)	0	2	0
World . . . . .	2,481	1,905	1,610	2,180	2,232	2,024
Cheese, cheddar (HTS subheading 9904.10.30):						
Specified countries . . . . .	5,396	4,399	4,589	4,393	4,523	4,388
Other . . . . .	140	91	60	88	129	135
World . . . . .	5,536	4,490	4,648	4,481	4,652	4,522
Cheese, American-type, other than cheddar (HTS subheading 9904.10.33):						
Specified countries . . . . .	3,254	3,226	3,086	3,231	3,213	3,174
Other . . . . .	169	193	296	167	157	161
World . . . . .	3,423	3,419	3,383	3,397	3,370	3,335
Cheese, Edam and Gouda (HTS subheading 9904.10.36):						
Specified countries . . . . .	4,177	3,739	3,713	4,081	4,078	4,081
Other . . . . .	(2)	0	0	0	0	0
World . . . . .	4,177	3,739	3,713	4,081	4,078	4,081
Cheese, processed from Edam and Gouda (HTS subheading 9904.10.39):						
Specified countries . . . . .	1,404	1,207	1,169	1,265	1,272	1,021
Other . . . . .	25	5	18	23	38	0
World . . . . .	1,429	1,212	1,187	1,288	1,310	1,021
Cheese, Italian-type, in original loaves (HTS subheading 9904.10.42):						
Specified countries . . . . .	7,613	7,433	6,967	7,275	7,517	6,497
Other . . . . .	(2)	0	374	0	20	915
World . . . . .	7,613	7,433	7,341	7,275	7,537	7,412

Continued on next page.

Table F-1--Continued

Certain dairy products: Annual quotas and U.S. imports of articles subject to the proposed HTS modifications, 1988-92

Item	(In 1,000 kilograms)					
	Annual Quota	U.S. imports--				
	1988	1989	1990	1991	1992	
Cheese, Italian-type, not in original loaves (HTS subheading 9904.10.45):						
Specified countries . . . . .	690	693	692	673	616	450
Other . . . . .	13	8	5	0	73	245
World . . . . .	703	701	697	673	689	694
Cheese, certain Swiss or Emmentaler (HTS subheading 9904.10.48):						
Specified countries . . . . .	31,770	23,441	25,133	29,611	26,758	23,686
Other . . . . .	85	445	1,995	1,092	1,146	846
World . . . . .	31,855	23,887	27,128	30,703	27,904	24,532
Cheese, other Swiss and Emmentaler, and Gruyere-process (HTS subheading 9904.10.51):						
Specified countries . . . . .	7,395	6,105	6,364	6,330	6,236	5,506
Other . . . . .	80	63	422	454	380	340
World . . . . .	7,475	6,169	6,786	6,784	6,617	5,846
Cheese, other (HTS subheading 9904.10.54):						
Specified countries . . . . .	40,380	32,875	29,925	39,372	38,912	37,318
Other . . . . .	202	247	50	85	642	613
World . . . . .	40,582	33,122	29,975	39,457	39,554	37,932
Cheese, lowfat (HTS subheading 9904.10.57):						
Specified countries . . . . .	5,725	3,486	5,011	4,782	3,919	3,326
Other . . . . .	(2)	(2)	112	0	0	774
World . . . . .	5,725	3,486	5,123	4,782	3,919	4,100
Malted milk and certain articles of milk or cream (HTS subheading 9904.10.60):						
Specified countries . . . . .	(1)	0	0	2	0	1
Other . . . . .	(1)	0	0	0	2	0
World . . . . .	3	0	0	2	2	1

<sup>1</sup> None specified.

<sup>2</sup> Less than 500 kilograms.

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

Source: USDA, FAS, Dairy Monthly Imports, Circular Series FD MI, January 1990-93.

Table F-2

Milk for manufacturing:<sup>1</sup> U.S. market prices and CCC announced support price objectives, marketing years 1987/88 to 1992/93<sup>2</sup>

(Per cwt)		
Marketing year	Average U.S. market price	CCC support price
1987/88 . . . . .	\$11.03	-
Oct. 1-Dec. 31 . . . . .	-	\$11.10
Jan. 1-Sept. 30 . . . . .	-	10.60
1988/89 . . . . .	11.93	
Oct. 1-Mar. 31 . . . . .	-	10.60
Apr. 1-Jun. 30 . . . . .	-	11.10
Jul. 1-Sept. 30 . . . . .	-	10.60
1989/90 . . . . .	13.28	
Oct. 1-Dec. 31 . . . . .	-	10.60
Jan. 1-Apr. 21 . . . . .	-	10.10
Apr. 22-Sept. 30 . . . . .	-	10.10
1990/91 . . . . .	10.70	10.10
1991/92 . . . . .	12.04	
Oct. 1-Jan. 16 . . . . .	-	10.10
Jan. 17-May 12 . . . . .	-	10.10
May 13-Sept. 30 . . . . .	-	10.10
1992/93 . . . . .	11.50 <sup>4</sup>	-
Oct. 1 <sup>4</sup> . . . . .	-	10.10 <sup>5</sup>

<sup>1</sup> Standardized at 3.67 percent milkfat.

<sup>2</sup> Marketing year refers to the period Oct. 1 through Sept. 30.

<sup>3</sup> Not available.

<sup>4</sup> For Oct.-Apr. 1992/93, as reported to USITC staff in telephone conversation with officials of the USDA ERS, May 12, 1993.

<sup>5</sup> Latest announced CCC support price as of May 1993.

Source: Compiled from USDA, Agricultural Stabilization and Conservation Service (ASCS), facsimile transmission to USITC, Apr. 13, 1993, table 2, except as noted.

Table F-3

Dairy products: CCC purchases under the dairy price-support program, by products, marketing years 1988/89 to 1992/93<sup>1</sup>

(Million pounds)					
Product	1988/89	1989/90	1990/91	1991/92	1992/93 <sup>2</sup>
Butter . . . . .	430	372	423	404	221
Cheese . . . . .	47	20	137	39	44
Nonfat dry milk . . . . .	0	28	322	15	7

<sup>1</sup> Marketing year refers to the period Oct. 1 through Sept. 30.

<sup>2</sup> Oct. 1, 1992, through Apr. 9, 1993.

Source: Data for marketing years 1988/89 through 1991/92 compiled from USDA, ASCS, facsimile transmission to USITC, Apr. 13, 1993, tables 10-12; data for 1992/93 compiled from ASCS Division Report Summary of Dairy Product Purchases and Sales (Contracts) COB April 9, 1993.

Table F-4

Dairy products: U.S. market prices and CCC announced purchase prices, by products, marketing years 1987/88 to 1992/93<sup>1</sup>

(Per pound)

Marketing year	Butter (Grade A)		Cheddar cheese <sup>2</sup>		Nonfat dry milk <sup>3</sup> (Grade A)	
	Average wholesale selling price (Chicago)	CCC purchase price	FOB market price (Wisconsin assembly)	CCC purchase price	FOB market price (Central states average)	CCC purchase price
1987/88:						
Oct. 1-Dec. 31 . . . . .	\$1.3546	\$1.3575	\$1.2134	\$1.2000	\$0.7824	\$0.7675
Jan. 1-Sept. 30 . . . . .	1.3280	1.3200	1.1966	1.1525	.7864	.7275
1988/89:						
Oct. 1-Mar. 31 . . . . .	1.3126	1.3200	1.2887	1.1525	.9176	.7275
Apr. 1-Jun. 30 . . . . .	1.3100	1.3200	1.2505	1.2025	.8743	.7900
July 1-Sept. 30 . . . . .	1.2938	1.2050	1.4809	1.1550	1.1281	.7990
1989/90:						
Oct. 1-Dec. 31 . . . . .	1.2033	1.2050	1.6204	1.1550	1.5005	.7900
Jan. 1-Apr. 20 . . . . .	1.0857	1.0925	1.3877	1.1100	.9035	.7900
Apr. 21-Sept. 30 . . . . .	.9908	.9825	1.4784	1.1100	1.1677	.8500
1990/91:						
Oct. 1-Sept. 30 . . . . .	.9822	.9825	1.1887	1.1100	.8798	.8500
1991/92:						
Oct. 1-Jan. 16 . . . . .	1.0102	.9825	1.3288	1.1100	1.0730	.8500
Jan. 17-Apr. 9 . . . . .	.8913	.8725	1.2400	1.1138	.9820	.9120
Apr. 10-Sept. 30 . . . . .	.8010	.8725	1.3896	1.11375	1.1080	.9120
1992/93 <sup>4</sup> . . . . .	.8049	.7625	1.2836	1.1175	1.0880	.9730

<sup>1</sup> Marketing year refers to the period Oct. 1 through Sept. 30.<sup>2</sup> In 40-pound blocks.<sup>3</sup> In 50-pound bags.<sup>4</sup> Oct.-Dec. 1992.

Source: CCC announced purchase prices compiled from USDA, ASCS, facsimile transmission to USITC, Apr. 13, 1993, table 3; U.S. market prices for Oct. 1987-Dec. 1988 derived from USDA Agricultural Marketing Service Dairy Market Statistics, annual issues; Jan. 1989-Dec. 1992, compiled from USDA, ERS, Dairy Situation (DS 438), January 1993, table 7, p. 10.

Table F-5  
Dairy products: Uncommitted stocks, purchases, and utilizations of the CCC,  
by products, marketing years 1987/88 to 1991/92<sup>1</sup>

(Million pounds)					
Item	1987/88	1988/89	1989/90	1990/91	1991/92
<b>Butter and butter products:</b>					
Beginning uncommitted stocks . . . . .	82.3	161.3	190.7	342.4	494.2
Purchases (contract basis) <sup>2</sup> . . . . .	370.2	429.7	370.7	450.6	454.3
<b>Utilizations:</b>					
Domestic sales . . . . .	.1	9.3	4.9	2.7	1.3
Export sales . . . . .	33.3	197.8	19.0	60.0	154.2
Domestic donations . . . . .	184.0	183.4	180.5	165.9	171.1
Foreign donations . . . . .	18.6	9.9	16.6	50.7	189.8
Total . . . . .	235.9	400.4	221.1	279.2	516.4
Inventory adjustments . . . . .	-55.2	0.1	2.0	-19.5	-53.9
Ending uncommitted stocks . . . . .	161.3	190.7	342.4	494.2	378.3
<b>Cheese:</b>					
Beginning uncommitted stocks . . . . .	98.5	43.9	-	-	26.0
Purchases (contract basis) <sup>2</sup> . . . . .	305.7	46.7	20.0	137.2	64.6
<b>Utilizations:</b>					
Domestic sales . . . . .	5.5	-	-	-	-
Exchange for UHT milk <sup>3</sup> . . . . .	0.1	-	-	-	-
Export sales . . . . .	32.2	-	-	6.0	8.7
Domestic donations . . . . .	465.2	125.7	30.6	99.4	81.5
Foreign donations . . . . .	1.3	-	-	-	-
Total . . . . .	504.3	125.7	30.6	105.4	90.2
Inventory adjustments . . . . .	144.0	35.1	10.6	-5.8	1.7
Ending uncommitted stocks . . . . .	43.9	-	-	26.0	2.1
<b>Nonfat dry milk:</b>					
Beginning uncommitted stocks . . . . .	63.1	9.0	-	13.8	230.3
Purchases (contract basis) <sup>2</sup> . . . . .	364.3	-	28.1	360.5	132.9
<b>Utilizations:</b>					
Domestic sales . . . . .	10.9	-	-	-	-
Exchange for UHT milk <sup>3</sup> . . . . .	-	-	-	1.2	2.0
Manufacture of casein . . . . .	-	-	-	-	-
Export sales . . . . .	82.2	-	-	76.6	205.1
Domestic donations . . . . .	131.1	18.7	10.8	18.8	22.5
Foreign donations . . . . .	197.6	-	-	33.3	113.4
Total . . . . .	421.8	18.7	10.8	129.9	343.0
Inventory adjustments . . . . .	3.4	9.7	-3.5	-15.3	-17.3
Ending uncommitted stocks . . . . .	9.0	-	13.8	230.3	4.9

<sup>1</sup> Marketing year refers to the period Oct. 1 through Sept. 30.

<sup>2</sup> Includes purchases under the Dairy Export Incentive Program.

<sup>3</sup> UHT means ultra-high-temperature milk.

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

Source: Compiled from USDA, ASCS, facsimile transmission to USITC, Apr. 13, 1993, tables 4, 5, and 6.

Table F-6

Dairy products: CCC gross outlays for dairy products under the dairy price-support program, by products, fiscal years 1988-92<sup>1</sup>

(1,000 dollars)					
Product	1988	1989	1990	1991	1992
<b>Butter and butter products:</b>					
Purchases . . . . .	433,289	570,272	382,747	417,714	374,554
Storage and handling . .	6,970	11,950	16,175	18,676	23,704
Transportation . . . . .	11,108	12,381	13,790	11,443	18,281
Processing and packaging . . . . .	10,972	14,030	7,898	14,129	23,994
Other expenses or outlays . . . . .	81,963	76,868	35,758	59,996	128,185
Total outlays . . . . .	544,302	685,501	456,368	521,958	568,718
<b>Cheese:</b>					
Purchases . . . . .	391,908	40,801	4	60,439	63
Storage and handling . .	4,004	982	322	843	612
Transportation . . . . .	19,281	3,418	33	451	563
Processing and packaging . . . . .	43,340	3,044	807	244	1,694
Other expenses or outlays . . . . .	308	665	3	2	4
Total outlays . . . . .	458,841	48,910	1,169	61,979	2,936
<b>Nonfat dry milk:</b>					
Purchases . . . . .	299,415	62	14,852	278,659	19,865
Storage and handling . .	2,875	100	91	2,933	1,391
Transportation . . . . .	19,177	526	-386	8,003	4,458
Processing and packaging . . . . .	14,353	596	385	2,479	4,403
Other expenses or outlays . . . . .	1,518	5,667	8,697	163	6
Total outlays . . . . .	337,338	6,951	23,639	292,237	30,123
<b>Other:</b>					
Red meat outlays <sup>2</sup> . . . . .	58,852	2,496	1,367	70	1
Refunds . . . . .	-	-	20	-	-
Other expenses or outlays . . . . .	-708	-	-	-	-
Diversion payments . . . .	-175	294	17	5	-87
Termination payments . .	259,471	167,947	188,805	96,121	2,381
Total outlays . . . . .	317,440	170,737	190,209	96,196	650,331
Grand total . . . . .	1,657,921	912,099	671,385	972,370	652,108

<sup>1</sup> Fiscal year refers to the period Oct. 1 of the previous year through Sept. 30 of the cited year.

<sup>2</sup> As part of the dairy production termination program, the 1985 Act required the CCC to purchase 400 million pounds of red meat to reduce the impact of the termination program on beef producers.

Note.--Because of rounding and inventory adjustments, figures may not add to the totals shown.

Source: Compiled from USDA, ASCS, facsimile transmission to USITC, Apr. 13, 1993, table 9.

Table F-7  
 Dairy products: CCC net realized losses (expenses) and net expenditures for the dairy price-support program, fiscal years 1988-92<sup>1</sup>  
 (In millions of dollars)

Item	1988			1989			1990			1991			1992		
	Expense	Outlays	Income	Expense	Outlays	Income	Expense	Outlays	Income	Expense	Outlays	Income	Expense	Outlays	Income
Expense/gross outlay:															
Purchases.....	-	1,180.2	-	-	611.1	-	-	398.9	-	756.8	-	-	-	394.5	
Storage and handling..	16.4	16.4	13.1	13.1	16.5	16.5	22.5	16.5	22.5	22.5	22.5	25.7	25.7		
Transportation.....	50.2	50.2	16.6	16.6	13.4	13.4	19.9	13.4	19.9	19.9	23.3	23.3	23.3		
Processing and packaging.....	0	68.7	-	-	17.7	-	-	9.1	-	16.9	-	-	-	30.1	
Sales.....	510.2	0	249.7	-	233.2	-	233.2	-	57.7	-	238.9	-	238.9		
Domestic donations.....	1,281.0	0	416.3	-	299.6	-	299.6	-	224.7	-	252.0	-	252.0		
Export donations.....	168.2	0	-	-	36.3	-	36.3	-	0.2	-	145.9	-	145.9		
Other expenses or outlays.....	83.1	83.1	85.2	85.2	44.6	44.6	60.2	44.6	60.2	60.2	128.2	128.2	128.2		
Diversion payments.....	-0.2	-0.2	0.3	0.3	-	-	-	-	-	-	-0.1	-0.1	-0.1		
Termination payments..	259.5	259.5	167.9	167.9	188.8	188.8	96.1	188.8	96.1	96.1	2.4	2.4	2.4		
Dairy termination program accruals.....	-51.9	0	-	-	-	-	8.2	-	8.2	-	57.6	24.4	57.6		
Assessment refunds.....	0	0	0	0	0	0	0	0	0	0	23.6	23.6	23.6		
Subtotal.....	2,316.5	1,657.9	949.1	911.9	832.4	832.4	671.3	489.5	972.4	897.5	652.1	652.1	652.1		
Income		Receipts	Income	Receipts	Income	Receipts	Income	Receipts	Income	Receipts	Income	Receipts	Income	Receipts	
Offsetting income/ receipts:															
Proceeds from sales...	-173.9	-173.9	-128.4	-128.4	-122.7	-122.7	-25.6	-122.7	-25.6	-25.6	-135.6	-135.6	-135.6		
Net transfers to blended foods.....	0	-30.3	-	-14.4	-	-	-	-	-	-3.0	-	-	-10.4		
Other income or receipts.....	-85.1	-85.1	-76.9	-76.9	-36.2	-36.2	-60.4	-36.2	-60.4	-60.4	-127.9	-127.9	-127.9		
Milk marketing reductions.....	-73.4	-73.4	-13.1	-13.1	-7.7	-7.7	-44.5	-7.7	-44.5	-44.5	-146.3	-146.3	-146.3		
Subtotal.....	-332.4	-362.7	-218.4	-232.8	-166.6	-166.6	-130.5	-166.6	-130.5	-133.5	-409.8	-409.8	-420.2		
Net realized loss or net expenditure.....	1,984.1	1,295.3	730.7	679.2	665.8	665.8	504.7	359.0	838.9	487.7	231.9	231.9	231.9		

<sup>1</sup> Fiscal year refers to the period Oct. 1 of the previous year through Sept. 30 of the cited year.

<sup>2</sup> Cost basis.

Note.--Expenses minus income equal net realized loss (expense concept), and gross outlays minus receipts equal net expenditures (expenditure concept). Because of rounding, figures may not add to the totals shown.

Source: Compiled from USDA, ASCS, facsimile transmission to USITC, Apr. 13, 1993, table 8.



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APPENDIX G

SUMMARY OF POSITIONS TAKEN BY ASSOCIATIONS

In a letter sent to groups believed to represent the interests of the U.S. dairy products industry, the Commission requested comments on the proposed modifications to the HTS that are the subject of this investigation. The comments received are shown below.

Position taken with respect to proposed modification to  
the HTS to exclude cajeta made from goat's milk from the quota

<u>Organization</u>	<u>Position</u>
Cheese Importers Association of America, Inc.....	Supports
International Dairy Foods Association.....	Does not wish to take a position
National Milk Producers Federation.....	Opposes

Position taken with respect to proposed modification to the HTS to exclude  
dried milk powders used to calibrate infrared milk analyzers from the quota

<u>Organization</u>	<u>Position</u>
Cheese Importers Association of America, Inc.....	Supports
International Dairy Foods Association.....	Does not wish to take a position
National Milk Producer Federation.....	Does not wish to take a position

Position taken with respect to proposed modification to the HTS to  
exclude margarine from the quota under HTS subheading 9904.10.60 and  
to include such products under the quota for HTS subheading 9904.10.57

<u>Organization</u>	<u>Position</u>
Cheese Importers Association of America, Inc.....	Supports
International Dairy Foods Association.....	Does not wish to take a position
National Milk Producers Federation.....	Does not wish to take a position

Position taken with respect to the proposal to eliminate  
the import licensing requirement for dried cream and  
malted milk articles of milk or cream

<u>Organization</u>	<u>Position</u>
Cheese Importers Association of America, Inc.....	Supports
International Dairy Foods Association.....	Does not wish to take a position
National Milk Producers Federation.....	Does not wish to take a position

Position taken with respect to the clarification of  
U.S. note (3)(a)(iii) to subchapter IV of chapter 99 of the HTS

<u>Organization</u>	<u>Position</u>
Cheese Importers Association of America, Inc.....	Supports
International Dairy Foods Association.....	Does not wish to take a position
National Milk Producers Federation.....	Does not wish to take a position

Additional comments on the proposed actions

Organization

Cheese Importers Association of America, Inc.

"The proposed modifications are not detrimental to the interests of our member companies, nor, in our opinion, are they detrimental to the interests of any U.S. dairy products producers.

The proposed modifications make no quantitative changes whatsoever in the Section 22 dairy products quotas. Rather, the proposed changes are basically minor technical adjustments designed to facilitate utilization within the existing quantitative limits.

Adoption of the proposed actions will not materially increase the amount of imported dairy products entering U.S. commerce. To the contrary, in our considered opinion, the proposed actions will only have a de minimus[sic] effect on the amount of dairy products imports."

Additional comments on the proposed actions--Continued

National Independent Dairy-Foods Association

"NIDA does not have a position on cajeta or quotas for dairy products; NIDA's members have requested that the U.S. Trade Representative assure open access to foreign markets if we grant access to U.S. markets."

National Milk Producers Federation

With respect to the proposal to exclude inedible dried milk powders used for calibrating infrared milk analyzers from the quota on malted milk and articles of milk or cream, the NMPP also stated:

"[T]he National Milk Producers Federation opposes making this modification unilaterally, in the absence of positive action by Canada to modify its import restrictions on yogurt and ice cream products, as requested by the United States."

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APPENDIX H

LETTERS FROM PARTIES CONCERNING NEW INFORMATION  
ON THE EXISTENCE OF U.S. PRODUCERS



United States  
Department of  
Agriculture

Foreign  
Agricultural  
Service

Washington, D. C.  
20250

May 24, 1993

Mr. Woodley Timberlake  
Office of Investigations  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

Dear Mr. Timberlake:

This is in response to the letter from Mr. Lynn Featherstone, Office of Investigations, providing information on U.S. producers of cajeta and margarine cheese in connection with USITC Investigation No. 22-53.

We appreciate being advised that the ITC has confirmed that there are three U.S. producers of cow's milk cajeta and one firm that produces goat's milk cajeta. This new information is useful to FAS, but does not change USDA's recommendation that the Section 22 quota for "malted milk and articles of milk or cream" should be modified to exclude cajeta not made from cow's milk. If the quota were modified as recommended, cajeta made from cow's milk would remain subject to quota and three of the U.S. cajeta producers would still be protected by Section 22. Cajeta made from goat's milk would be liberalized because the purpose of the Section 22 quota is to prevent material interference with USDA's price support program for cow's milk.

With respect to margarine cheese, the Government of Sweden is requesting restoration of a Tokyo Round quota concession which classified margarine cheese as a "low-fat cheese" rather than an "article of milk or cream". Since this action simply restores previous (TSUS) quota treatment, allowing the existing quota to be filled, it should not affect U.S. margarine cheese producers.

We appreciate receiving this information and if you have any further questions concerning this matter you may contact Diana Wanamaker at 720-1330.

Sincerely,

A handwritten signature in cursive script that reads "Mary Revelt".

Mary Revelt  
Deputy Assistant Administrator  
International Trade Policy

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May 26, 1993

Mr. Woodley Timberlake  
 Office of Investigations  
 Room 615-B  
 U.S. International Trade Commission  
 500 E Street, S.W.  
 Washington, D.C. 20436

Re: Inv. 22-53 (Certain Dairy Products): Cajeta Not From Goat's Milk

Dear Mr. Timberlake:

In accordance with the Commission's letter of May 19, and our conversation of May 25, we are hereby taking the opportunity to comment on the information which you provided to us regarding a number of companies apparently producing cajeta in the United States. This information came as a surprise to us, since as recently as 1991, the International Trade Commission confirmed during the 1991 GSP Annual Product Review that there was no U.S. production of cajeta. See President's List Of Articles Which May Be Designated Or Modified As Eligible Articles For Purposes Of the U.S. Generalized System Of Preferences, Inv. Nos. TA-131-17, 503(a)22, and 332-312, USITC Pub. 2464 (December 1991). Information available to our client gave no reason to believe this situation had changed.

Mr. Woodley Timberlake  
May 26, 1993  
Page 2

Our client, Productos de Leche Coronado, S.A. endeavored to find information about the U.S. companies you identified as manufacturing cajeta. Despite exercising its best efforts, Productos de Leche Coronado has not been able to obtain detailed information concerning the companies' production and sales of cajeta. From the limited information available to Productos de Leche Coronado, however, it appears that these companies are all small, local producers who manufacture small quantities of cajeta, and therefore consume only small quantities of milk in their production of cajeta. We trust that the Commission's staff has requested and obtained information from these companies as to their capacity, production and sales of cajeta.

As we noted in our post-hearing brief in this investigation, the sole issue in this investigation is whether the removal of the Section 22 quota from cajeta not of cow's milk would interfere with the USDA dairy price support program. It is our understanding that this program is concerned exclusively with the price of cow's milk. The cajeta at issue in this investigation, however, is cajeta not of cow's milk. While goat's milk cajeta imported from Mexico could compete directly with the goat's milk cajeta apparently produced by Celaya Foods Corp., depending on distribution patterns, there is no price support program for goat's milk, and given this fact, U.S. production of goat's milk cajeta provides no rationale for a quota on goat's milk cajeta. With respect to Celaya Foods, moreover, even imports of cow's milk cajeta would not interfere with the dairy price support program, since Celaya does not use cow's milk. The existence of one or more goat's milk cajeta producers in the United States does not, therefore, change our original analysis that the removal of the quota on cajeta not of cow's milk would not affect the USDA dairy price support program.

We also believe that the existence of producers of cow's milk cajeta does not change the fact that imports of cajeta not of cow's milk will not interfere with the USDA dairy price support program. Under the dairy price support program, the U.S. government provides price supports to

Mr. Woodley Timberlake  
May 26, 1993  
Page 3

milk producers in order to ensure that the United States retains a constant supply of cow's milk and cow's milk-based dairy products. The Agricultural Adjustment Act permits the imposition of quota whenever articles are imported "under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with" the dairy price support program. 7 U.S.C. § 624. Based on information available to Productos de Leche Coronado, it appears that the recently identified producers of cow's milk cajeta (and U.S. producers of Dulce de leche, which, we understand, is also made of cow's milk) are manufacturing small quantities for distribution in a very limited area. This production would require the use of very limited quantities of cow's milk. The purchase of such small quantities of cow's milk for making cajeta, or the failure to purchase milk for this purpose, would not be of a sufficient magnitude to affect, or tend to affect, the price or the supply of cow's milk in the United States. The product at issue is a specialty item which is not currently available to most consumers in the United States. Consequently, the importation of cajeta not of cow's milk would not interfere with the dairy price support program, and there is no rationale under the statute for maintaining the quota on this product.

We hope to obtain additional information about the companies identified in your letter, and will share with the Commission anything we discover. We appreciate your having given us the opportunity to comment on this new information.

Sincerely,



Irwin P. Altschuler  
Claudia G. Pasche



## National Milk Producers Federation

1840 Wilson Blvd., Arlington, VA 22201 • 703-243-6111 FAX 703-841-9328

May 25, 1993

Mr. Woodley Timberlake  
International Trade Analyst  
Office of Investigations  
U.S. International Trade Commission  
500 E. St., S.W.  
Washington, D.C. 20436

Dear Mr. Timberlake:

I appreciate the opportunity to provide additional comments on behalf of the National Milk Producers Federation in connection with USITC Investigation No. 22-53, Certain Dairy Products, in light of information that has come to the attention of the Commission subsequent to the public hearing.

The Commission has subsequently identified four U.S. firms which produce cajeta or dulce de leche.

At the public hearing, and in its various submissions in connection with USITC Investigation No. 22-53, the National Milk Producers Federation testified that it had no specific knowledge of firms in the U.S. that produced cajeta and that it opposes excluding cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60) because, among other reasons, no evidence had been presented to the U.S. dairy industry upon which to conclude that this exclusion would not have the impact of interfering with the U.S. dairy price support program.

Another witness testified that neither cajeta nor any directly competitive product is produced in the United States, that the continued inclusion of cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60) does not provide any U.S. company with a competitive benefit and merely serves to deprive U.S. producers of the opportunity to purchase this product.

Mr. Woodley Timberlake  
May 25, 1993  
Page 2

In light of the information that has come to the attention of the Commission subsequent to the public hearing in connection with Investigation No. 22-53, specifically the Commission's subsequent identification of four U.S. firms which produce cajeta or dulce de leche, the National Milk Producers Federation believes that:

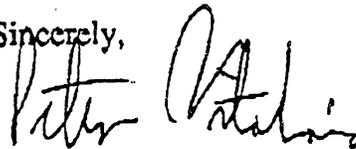
- the continued inclusion of cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60) does not clearly deprive U.S. producers of the opportunity to purchase this product, and that
- excluding cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60) may well have a negative competitive impact on at least four U.S. companies which produce this product or a directly competitive product and could therefore have the impact of interfering with the U.S. dairy price support program.

Based on this additional information, the National Milk Producers Federation remains opposed to excluding cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60).

The Commission has also subsequently identified one U.S. firm which produces margarine cheese. The National Milk Producers Federation continues to take no position on excluding margarine cheese from Sweden from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60) and including this product under the quota for lowfat cheese (HTS subheading 9904.10.57).

Thank you for the opportunity to provide additional comments on this investigation.

Sincerely,



Peter Vitaliano,  
Director of Policy Analysis



APPENDIX I

COMMENTS RECEIVED FROM U.S. PRODUCERS OF CAJETA ON THE NEGATIVE  
EFFECTS ON THEIR GROWTH AND EXISTING DEVELOPMENT AND  
PRODUCTION EFFORTS AND ON THE U.S. DAIRY INDUSTRY  
AND DAIRY PRICE-SUPPORT PROGRAM AS A RESULT OF  
THE ELIMINATION OF THE IMPORT QUOTA FOR  
CAJETA NOT MADE FROM COW'S MILK

The Commission requested U.S. cajeta producers to (1) describe any negative effects on their growth and existing development and production efforts as a result of the elimination of the import quota for cajeta not made from cow's milk from Mexico, and (2) to describe any adverse effects on the U.S. dairy industry and the U.S. dairy price-support program as a result of the importation of cajeta not made from cow's milk. The comments received from Celaya, Indalco, Milkjam, and Olympia are presented below.

Negative effects on growth and  
existing development and production efforts

Celaya

"Labels read 'Leche de Cabra' in spanish and english only milk confusing consumers. Cajeta has to be 100% goat milk, dulce de leche is cow milk."

Indalco

"It will greatly affect those markets where large numbers of Mexican-American people live (California, Texas, Illinois, etc.)."

Milkjam

"Weather[sic] the cajeta is made of goat's milk or cow's milk the end result is basically the same and therefore we can expect a marked decrease in business."

Olympia

"We are concerned with the proposed elimination of the import quota requirement for cajeta because we believe it will result in a flood of goat cajeta from Mexico.

"Goat's milk cajeta is in direct competition with cow's milk cajeta.

"When we started our product development efforts, we researched the two competing flavors. Initially, some Hispanic food distributors suggested to us that only goat cajeta would sell. However, our own tests conducted with Hispanic consumers both in the U.S.A. and Mexico showed that cow's milk more bland taste was as attractive to the user as goat's flavor. Since our product is targeted towards the U.S. Hispanic consumer and we wanted as broad an appeal as possible, we settled for cow's milk.

Olympia--Continued

"Given the above, importation of goat's milk cajeta outside of the quota system would obviously create a strong competition for our product.

"In addition, we are concerned that despite scientific claims to the contrary, it will be very difficult in practice to enforce a "goat's milk only" content on the imported product. Goat flavor can be provided without the exclusive use of goat milk, and tight controls on foreign manufacturer's raw materials use is unlikely, either at origin or at our borders. This fact would allow our foreign competitors the use of inexpensive non-fat dry milk at international prices in order to compete in the U.S. markets against our domestic product, made with raw milk purchased at federally mandated higher prices."

In a letter received by the Commission on May 5, 1993, Olympia also stated that:

"We started developing the product approximately two years ago. Considerable costs were incurred in product wasted during the many tests run, upper management and technical group time as well as technical consultants. In addition, a considerable investment was made in plant and equipment, culminating in an automated packaging machine as well as processing equipment being currently installed.

"The proposed modification would affect negatively our chances of recuperating the investment made."

Adverse effects on U.S. dairy  
industry and U.S. dairy price-support program

Celaya

"The big difference on price between goat's milk and cow milk will hurt us and other manufacturers using goat's milk. Sanitary requirements are expensive to keep."

Milkjam

"Cajeta from Mexico is found now in any Mexican market you go to. By lifting the quota the market will be over-saturated with the cajeta since we can't compete with prices. I feel we would eventually have to shut-down."

Olympia

"Our nation has a protected dairy farm sector, with raw milk prices substantially higher than international prices. U.S. manufacturers have to use the more expensive raw material. The quota system is designed to protect them from unfair competition from foreign manufacturers that have access to raw materials at less than U.S. domestic prices. Removing this protective shield for cajeta would selectively damage small companies like ours, that invested heavily in the product. We stand for free trade, but an open policy on the finished product (cajeta) while simultaneously mandating Federal minimum prices on its raw material (milk) that are high by international standards, would unfairly damage domestic manufacturers of that product."

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APPENDIX J

GLENGARRY BIOTECH'S LETTER

# GLENGARRY BIOTECH

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APPENDIX K

SALIENT DATA ON THE CAJETA OPERATIONS OF  
PRODUCTOS DE LECHE CORONADO S.A. DE C.V.

Table K-1

Cajeta: Productos de Leche Coronado's production capacity, production, shipments, and inventories, 1988-92 and projected 1993-94<sup>1</sup>

(In metric tons, except as noted)

Item	Actual--					Projected--	
	1988	1989	1990	1991	1992	1993	1994
	*	*	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.