

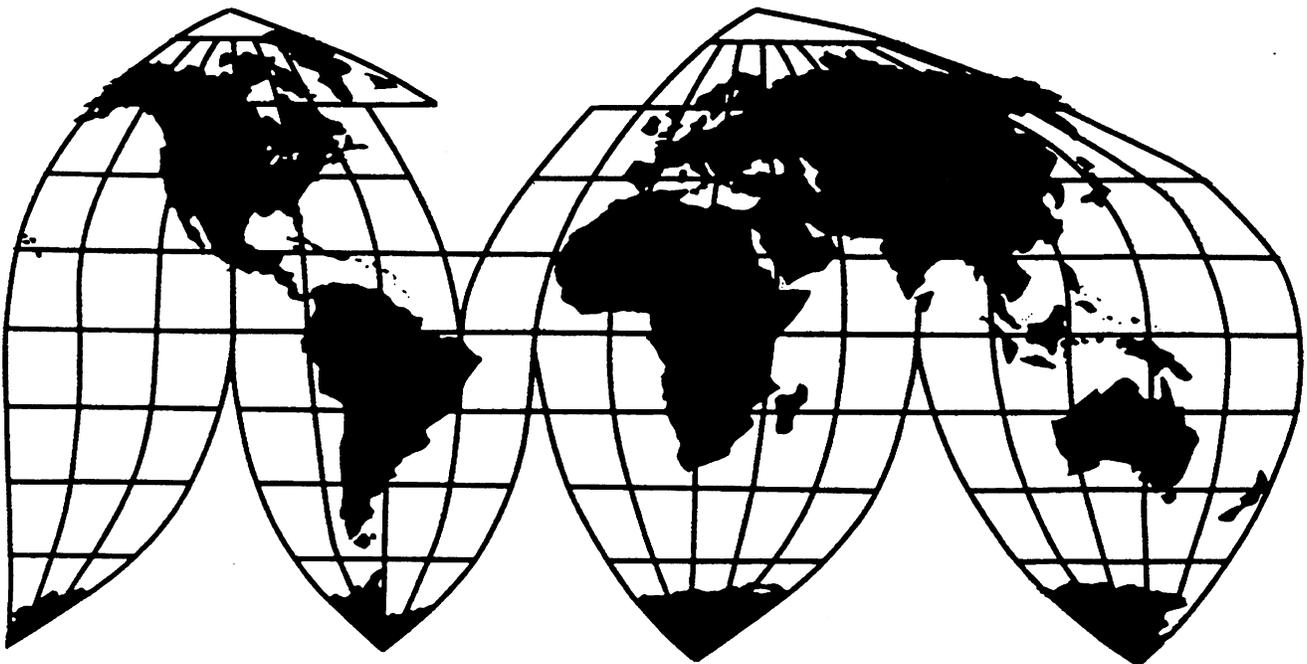
Butter Cookies in Tins From Denmark

Investigations Nos. 701-TA-374 and
731-TA-780 (Preliminary)

Publication 3092

March 1998

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-374 and 731-TA-780 (Preliminary)

BUTTER COOKIES IN TINS FROM DENMARK

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines,² pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Denmark of butter cookies in tins, provided for in subheading 1905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Denmark and the European Union and sold in the United States at less than fair value (LTFV).

BACKGROUND

On February 6, 1998, a petition was filed with the Commission and the Department of Commerce by the Hearthside Baking Company, Inc. (D/B/A Maurice Lenell Cooky Company), Chicago, IL, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of butter cookies in tins from Denmark. Accordingly, effective February 6, 1998, the Commission instituted countervailing duty investigation No. 701-TA-374 (Preliminary) and antidumping investigation No. 731-TA-780 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 17, 1998 (63 FR 7828). The conference was held in Washington, DC, on February 27, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Vice Chairman Bragg dissenting.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-374 and 731-TA-780 (Preliminary)

BUTTER COOKIES IN TINS FROM DENMARK

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of butter cookies in tins from Denmark that allegedly are subsidized and sold in the United States at less than fair value ("LTFV").^{1 2}

I. COMMISSION'S VIEWS ON DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."³ Section 771(4)(A) of the Tariff Act of 1930 as amended ("the Act") defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."⁴ In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."⁵

¹ Vice Chairman Bragg determines that an industry in the United States is threatened with material injury by reason of the allegedly subsidized and LTFV imports. *See Dissenting Views of Vice Chairman Bragg.*

² In reaching our determinations, we have been mindful of the legal standard for preliminary antidumping and countervailing duty determinations, which requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly subsidized and LTFV imports. 19 U.S.C. § 1673b(a); *see also American Lamb Co. v. United States*, 785 F.2d 994 (Fed. Cir. 1986); *Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994); *Calabrian Corp. v. United States*, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992). *American Lamb* 785 F.2d at 1001.

³ 19 U.S.C. § 1677(4)(A).

⁴ *Id.*

⁵ *Id.* at § 1677(10).

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

Notwithstanding respondents' reliance on the Commission's determination in a 1980 investigation involving butter cookies from Denmark,¹⁰ the Commission is not bound by prior determinations concerning similar imported products.¹¹ Rather, the Commission based its domestic like product determination on the record in these investigations.

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations, as:

Flat baked sweet biscuits made from a mixture of ingredients which may include, but are not limited to butter, flour, eggs, and sugar. As defined by the U. S. Food and Drug Administration Compliance Policy Guide 7102.06, Chapter 5, Sec. 505.200, butter cookies are distinguishable from all other cookies in that "all of the shortening ingredient is butter." The butter cookies covered by these investigations are only those in hard containers ("tins"), which include, but are not limited to, those that are made of metal, and are round, printed with colorful decorative logos and/or pictures, and which have closeable lids.¹²

⁶ See, e.g., Nippon Steel Corp. v. United States, 19 CIT ___, Slip Op. 95-57 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

⁷ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁸ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

⁹ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ Butter Cookies from Denmark, Inv. No. 701-TA-51 (Final), USITC Pub. 1077 (June 1980).

¹¹ Nippon Steel, Slip Op. 95-57 at 11; Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988).

¹² *Initiation of Antidumping and Countervailing Duty Investigations: Butter Cookies in Tins from Denmark, U.S.*
(continued...)

In the preliminary phase of these investigations, Chairman Miller defines the like product as all cookies in tins, and finds no reasonable indication that the domestic industry producing cookies in tins is materially injured or threatened with material injury by reason of the subject imports. Commissioner Crawford defines the like product as all cookies, and finds no reasonable indication that the domestic industry producing cookies is materially injured or threatened with material injury by reason of subject imports.¹³ Their separate views concerning like product, domestic industry and no reasonable indication of material injury by reason of the subject imports follow. Their joint views of no reasonable indication of threat of material injury by reason of the subject imports follow their separate views.

II. VIEWS OF CHAIRMAN MARCIA E. MILLER

On the basis of the information obtained in these preliminary investigations, I determine that there is no reasonable indication that an industry in the United States producing cookies in tins is materially injured or threatened with material injury by reason of imports of butter cookies in tins from Denmark that allegedly are subsidized and sold in the United States at less than fair value ("LTFV"). I join the Commission majority decision on standard of review in preliminary determinations, on the background and product description sections of the like product and domestic industry discussion, and on no threat of material injury. My analysis of the like product and domestic industry, and my discussion of no material injury to that industry follows.

A. Like Product and Domestic Industry

In my consideration of the appropriate like product in these investigations, I address two central questions, whether butter cookies are distinct from all cookies, and whether cookies in tins are distinct from cookies otherwise packaged.¹⁴ Taking into account the six factors traditionally considered by the Commission, I determine that the domestic product that is like the subject imports, butter cookies in tins, consists of all cookies in tins.

1. Butter Cookies Compared to All Cookies

The first factor generally considered by the Commission in its like product analysis is physical characteristics. There is some basis for distinguishing butter cookies in this regard. Butter cookies differ from other cookies in that the shortening ingredient is 100 percent butter. However, on that basis, nearly every variety of cookie could be argued to have a distinct flavor component. For example, a chocolate cookie contains chocolate and an oatmeal cookie contains oatmeal, ingredients not shared by all cookies.

¹² (...continued)
Department of Commerce, 63 Fed. Reg. 10822/23 (March 5, 1998).

¹⁴ Petitioner argued that the like product should be defined coextensive with the scope, limited to butter cookies in tins. Petitioner's Postconference Brief at 7-22. Respondents argued for a broader like product, encompassing all cookies. Respondents' Postconference Brief at 1.

Many more ingredients, such as flour or sugar, are common to all cookies, notwithstanding a difference in the flavoring component.

With respect to other factors traditionally considered by the Commission, I find no distinction between butter and all other cookies.

The primary end use of a cookie is consumption as a snack or dessert item. For this purpose, interchangeability essentially exists across all types of cookies. The vast majority of cookies, whether butter or not, are sold through retail grocery stores, largely supplied by local distributors.¹⁵ Some producers, such as the petitioner, also sell their butter cookies through drug chains, wholesale/warehouse chains, discount drug chains, and mass merchants; other cookies are also found in these same channels of distribution. Butter cookies and non-butter cookies are produced at the same facilities, on the same production lines, using the same processes, equipment, and employees. Although the choice of any particular type of cookie may reflect the individual preferences of the consumer, there is no evidence that producers' or consumers' perceptions create any type of clear dividing line to distinguish butter cookies from other cookies. Finally, prices for cookies vary widely, and depend upon a variety of factors, perhaps most importantly brand recognition. Name-brand, vegetable shortening cookies sold in bags typically sell at the same or higher prices than certain butter cookies, while off-brand non-butter cookies may be priced below butter cookies.¹⁶

Based on this analysis, I do not find a sufficient dividing line to distinguish butter cookies from all other cookies. All cookies share a number of common ingredients, and many types may have distinguishing flavor characteristics, such as the shortening or chocolate flavoring. All cookies share the same end uses, are interchangeable, are sold through similar channels of distribution, and are produced in common production facilities, using common processes and employees. Prices vary widely, depending on factors such as name-brand recognition, and there is no indication that butter cookies are consistently priced differently than any other type of cookie.

2. Cookies in Tins Compared to Cookies Not in Tins

Having determined that no clear dividing line exists between butter and all other cookies, I next address whether cookies packaged in tins are a distinct product, as argued by the petitioner. As compared to cookies otherwise packaged, cookies in tins are offered in a unique packaging form that generally creates a distinctive look for the final cookie product and provides a longer shelf life for the cookies.¹⁷ Cookies in tins are purchased primarily as gift items or for the decorative nature of the tin. The record indicates that the primary end use for cookies in tins is distinguished from cookies otherwise packaged in that they are seasonal items. The vast majority of consumer sales of cookies in tins occurs

¹⁵ Confidential Report ("CR") at I-14, III-6-7; Public Report ("PR") at I-12, III-5.

¹⁶ CR at I-14, PR at 12.

¹⁷ CR at I-12, PR at I-10, Transcript of Conference, February 27, 1998 ("Tr") at 60-61. Petitioner suggests that, in this respect, this case is analogous to cases in which the Commission has narrowly defined the like product to consist of only of a canned food product. Petitioner's Postconference Brief at 12-13. *See, e.g., Canned Pineapple Fruit from Thailand*, Inv. No. 731-TA-706 (Preliminary), USITC Pub. 2798 at I-6-7.

during the holiday season.¹⁸ That the predominant end use of cookies in tins is for seasonal gift-giving limits the interchangeability of these cookies with cookies not packaged in tins. It is unlikely that a consumer would substitute cookies packaged in a cellophane wrapper or a paper bag if the intended purpose is for a gift.

Channels of distribution differ somewhat based on packaging. Cookies in tins are sold nationally to distributors, retailers, and wholesalers such as drug chains, wholesale/warehouse clubs, discount drug chains, and mass merchants.¹⁹ In contrast, the predominant channel of distribution for cookies not in tins is through retail grocery stores.²⁰ Petitioner does not sell any butter cookies in tins to grocery chains.²¹

Cookies packed in tins are produced at the same facilities, on the same production lines, using generally the same processes, equipment, and employees as cookies otherwise packaged. For example, petitioner produces cookies regardless of the ultimate packaging in its plant in Chicago. However, packaging of cookies into tins requires additional labor and costs. Also, cookies in tins are hand-packed using specially trained labor.²² The petitioner hand packages all of its butter cookies in tins, and approximately *** percent of its 2-pound "holiday bear" tins of vegetable shortening cookies are hand packed in paper holders.²³

As noted above, cookies in tins are perceived by producers and consumers as seasonal items, often purchased as a gift or as a collectible.²⁴ In contrast, cookies in other forms of packaging, including butter cookies such as Pepperidge Farm's Chessman, are perceived by producers and customers as strictly food items and generally would not be considered a suitable gift.²⁵

As noted in the previous section, prices for cookies, as a general matter, fluctuate widely depending upon a variety of factors. Notwithstanding the added cost and value of the tins, name-brand vegetable-shortening cookies sold in bags typically sell at the same or higher prices than cookies sold in tins.²⁶ For example, Pepperidge Farm's average price per pound of its butter cookies in bags is ***

¹⁸ CR at Table V-1 and V-9, PR at Table V-1 and V-6 (Statement that Little Dutch Boy sold 1-pound tins of butter cookies ***).

¹⁹ CR at I-13, PR at I-12.

²⁰ CR at I-14 and III-6-7, PR at I-12 and III-5.

²¹ CR at I-13, PR at I-12.

²² CR at I-12, PR at I-11, Transcript of Commission meeting, March 20, 1998 at 5-7. The packing process for some cookies requires that each cookie be placed into cups containing several individual cookies and packed into a metal container. A paper circle is inserted over the cup cookies, a metal lid is applied and sealed, and a shrink wrap is applied. This process substantially adds to the cost of producing some cookies in tins. CR at VI-8-9, PR at V-6.

²³ CR at I-11, n. 49, PR at I-10, n. 49.

²⁴ CR at I-13, PR at I-11.

²⁵ Id.

²⁶ CR at I-14, PR at I-12.

percent greater than the average price per pound of U.S.-produced butter cookies in tins.²⁷ In other cases, cookies in tins sell for higher prices than off-brand artificial-butter-flavored cookies sold in cellophane trays or paper boxes.²⁸ Cookies in tins usually are sold at similar and standard "price points" -- \$2.99 per tin, or two for \$5.00, at the retail level.²⁹

Based on this analysis, I determine that a clear dividing line does exist between cookies in tins and cookies not packaged in tins. The packaging of cookies in tins requires additional labor and costs, and imparts certain physical characteristics, including longer shelf life and aesthetics, that affect producer and consumer perceptions. These in turn distinguish cookies in tins as gift items rather than strictly food items. These differences are further reflected in the mostly distinct channels of distribution and types of stores in which they are sold, and in the established low-margin price points that end users expect to pay for this product. Interchangeability between cookies in tins and those not in tins is limited by the degree to which cookies in tins are purchased as gift items rather than for household consumption. I find that these factors outweigh the commonality in the production processes and employees used for cookies packed in tins and other cookies.³⁰

Accordingly, I conclude that the domestic like product in these investigations includes all cookies in tins. The Commission is directed to consider the impact of the subject imports on the domestic industry, defined as "the producers as a [w]hole of a domestic like product."³¹ Based on my domestic like product definition, I define the corresponding domestic industry as all domestic producers of cookies in tins.³²

²⁷ CR at V-8, PR at V-6.

²⁸ CR at I-14; PR at I-12.

²⁹ *Id.*

³⁰ The packaging-based distinctions in these investigations are unusual, in that the cost and labor associated with the process of packaging, and the distinct physical characteristics, end uses, and customer perceptions, create a clear dividing line. My like product determination in these investigations should not be read to signal any type of generic acceptance of the notion that packaging by itself is sufficient to warrant like product distinctions.

³¹ 19 U.S.C. § 1677(4)(A).

³² The members of the domestic industry who replied to the Commission questionnaire include Maurice Lenell, Little Dutch Boy, and Boca Foods, Inc., D/B/A Century Cookies. See Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (Aug. 1989) at 11-12 (inclusion in domestic industry of firms that import bulk cephalexin and process it into oral dosage forms); Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 (Oct. 1994) at I-7-9 (inclusion in domestic industry of firm that decorated and finished imported raw pencils).

B. No Reasonable Indication of Material Injury by Reason of Allegedly Subsidized and LTFV Imports from Denmark

In preliminary antidumping and countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.³³ In making these determinations, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on regional producers of the domestic like product, but only in the context of U.S. production operations.³⁴

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly subsidized or LTFV imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.³⁵ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁶

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry producing cookies in tins is materially injured by reason of allegedly subsidized and LTFV imports of butter cookies in tins from Denmark.

1. Conditions of Competition³⁷

Imports of Danish butter cookies in tins have a long and well established presence in the U.S. cookie market. Over the period of investigation, imports from Denmark accounted for an average 89.8 percent of the U.S. market.³⁸ In 1994, petitioner Maurice Lenell and Little Dutch Boy, both well established cookie producers, entered the market for butter cookies in tins.

³³ 19 U.S.C. §§ 1671b(a)(1) and 1673b(a)(1). The statute defines "material injury" as "harm which is not inconsequential, immaterial or unimportant." 19 U.S.C. § 1677(7)(A).

³⁴ 19 U.S.C. § 1677(7)(B)(I). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

³⁵ 19 U.S.C. § 1677(7)(C)(iii).

³⁶ *Id.*

³⁷ Subject imports accounted for virtually all butter cookies in tins imported into the United States in 1997. CR at Tables IV-1, PR at Table IV-1. Consequently, negligibility is not an issue.

³⁸ CR at Table IV-3 and Table IV-4, PR at Table IV-3 and Table IV-4.

Although cookies in tins are manufactured and sold year-round, the preponderance of retail level sales occurs during the fourth quarter, as these products are purchased largely for gift-giving, especially during the holiday season.³⁹ The shipment figures for both the domestic and imported products confirms that the vast majority of these items are shipped in the last two quarters of the year.⁴⁰

Consumption of all cookies in tins increased by 21 percent during the investigation period. Much of this increase reflects the growing number of wholesale/warehouse club stores and drug store chains, larger holiday inventories, and additional advertising by the retailers. Importers stated that warehouse clubs are becoming more important and that they request larger tin sizes.⁴¹ Historically, the subject cookies imported from Denmark have been butter cookies packaged in 16-ounce tins. The U.S. producers stated that they do not produce butter cookies in tins larger than 16-18 ounces, because it is not cost effective for them given the high cost of butter.⁴²

2. Volume of Subject Imports

Imports of butter cookies in tins from Denmark have generally held a sizeable, but relatively constant, share of the U.S. market for cookies in tins. In 1995, 1996, and 1997, the volume of shipments of subject imports was *** pounds, *** pounds, and *** pounds, respectively.⁴³ The value of U.S. shipments of subject imports was *** in 1995, *** in 1996, and *** in 1997.⁴⁴ The volume share of apparent consumption for the cookies in tins market held by these imports was *** percent in 1995, *** percent in 1996, and *** percent in 1997.⁴⁵ By value, subject imports' market share was *** percent in 1997, *** percentage points lower than the *** percent market share held in 1995.⁴⁶

In light of these high market shares, I consider the volume of subject imports to be significant. However, given the size of the subject imports initial presence in the market, I do not consider the increases during the period to be significant, either in relative or absolute terms.

³⁹ Petitioner's Postconference brief at 13-15; Tr. at 114.

⁴⁰ CR at I-9, n. 37 and Table V-1, PR at I-8, n. 37 and Table V-1. These figures represent producers' shipments to retailers. Petitioner indicated that the commitments for the holiday season are secured early in the year, with the actual shipments occurring in the third and fourth quarters. CR at I-9, PR at I-8. Petitioner indicated that "seasonality" is measured at the retail level, so third quarter producer shipments could likely be of products that will be sold to the end consumer during the fourth quarter. Tr. at 139-140.

⁴¹ CR at II-6, PR at II-4.

⁴² CR at V-2, PR at V-2.

⁴³ CR at Table C-5 and Table IV-3, PR at Table C-5 and Table IV-3.

⁴⁴ *Id.* The volume and value of subject imports showed the same trends as U.S. shipments of subject imports. CR at Table IV-1, PR at Table IV-1. By volume, subject imports declined from *** pounds in 1995 to *** pounds in 1996, and then rose to *** pounds in 1997. The value of subject imports was *** in 1995, *** in 1996, and *** in 1997.

⁴⁵ CR at Table C-5, PR at Table C-5.

⁴⁶ *Id.*

3. Price Effects of Subject Imports

In these investigations, the Commission obtained producer and importer pricing data that enabled it to make price comparisons for sales of butter cookies in 16- and 18-ounce tins -- the only sales for which the domestic producers and the importers compete head-to-head. The parties agreed that the domestic and imported products are highly substitutable and that price is the driving force in a sale.⁴⁷

The record reveals that, in every quarter from January 1995 through March 1997, the imported product consistently was priced above the domestic product by margins ranging from 17.9 percent to 38.9 percent.⁴⁸ The prices for the imported product generally increased through the first quarter of 1997, despite being priced above the competing domestic product. For the last three quarters of 1997, the price of the imported product declined somewhat, thereby underselling the domestic product by margins of 6.8 percent, 3.1 percent, and 3.1 percent, respectively. The underselling occurred, however, in the context of a significant increase in the price of the domestic product. Therefore, I do not find the underselling to be significant.

Nor do I find that the subject imports have depressed or suppressed prices for the domestic products. The U.S.-produced butter cookies in tins entered the market at prices substantially below those of the imported product, and continued to undersell the imports by large margins for slightly more than two years. U.S. producers sold their product for prices ranging from *** to ***, while the comparable imported product was sold for prices ranging from *** to ***. In no quarter during that two-year period did the U.S. and import prices come within *** of each other. Because subject imports consistently oversold the domestic product by large margins during 1996, I find no basis for concluding that subject imports suppressed domestic price increases in that year, as argued by petitioner.

Moreover, even in the third and fourth quarters of 1997, when the imported product undersold the domestic butter cookies in tins, the domestic producers of cookies in tins were able to sustain a significant price increase as compared to the same period in 1996, to ***, albeit at a lower volume than during the comparable quarters in 1996.⁴⁹ This price increase occurred during the time in which petitioner alleges that subject imports depressed prices or prevented price increases that otherwise would have occurred, and in the context of a reduction in costs as a result of lower prices for a primary input.⁵⁰

⁴⁷ Tr. at 15, 24, 27-29 (testimony of Messrs Levine and T. Cohen) and Petitioner's Post-Conference Brief at 45-46; Tr. at 113 (testimony of Mr. Norgaard).

⁴⁸ CR at Table V-1; PR at Table V-1.

⁴⁹ I do not find that the second quarter 1997 price increase to *** provides an appropriate point of comparison because of the seasonal nature of the sales of cookies in tins.

⁵⁰ See CR at Table C-5; PR at Table C-5.

Although the domestic producers alleged lost sales and revenues to the subject imports, their allegations were not specific, in that ***.⁵¹ These allegations were generally not confirmed by the purchasers.⁵²

In light of the evidence discussed above, I do not find a reasonable indication that the subject imports are suppressing or depressing prices to a significant degree.

4. Impact of Subject Imports⁵³

I do not find that subject imports of butter cookies in tins from Denmark are having a significant impact on the domestic industry producing cookies in tins. In 1994, the petitioner decided to enter the market for butter cookies in tins, after concluding that high prevailing prices of the imported Danish product and the absence of significant domestic competition presented an excellent business opportunity for an otherwise established producer of cookies, including other cookies in tins. Recognizing that price would be important to winning market share, petitioner initially offered an 18-ounce product to compete with the imported 16-ounce tin, for a price far below the prevailing price for subject imports from Denmark. The petitioner then planned in 1997 to reduce the volume of cookies in its tins to 16 ounces and increase the price.⁵⁴

The domestic industry began the investigation period in a relatively weak financial condition.⁵⁵ In 1995 and 1996 the industry reported ***. In 1997, the industry's overall financial performance improved, with ***.⁵⁶

⁵¹ CR at V-13 and Table V-2, PR at V-10 and Table V-2, Petition Exhibit 24. ***.

⁵² CR at V-13-15; PR at V-11.

⁵³ As part of its consideration of the impact of imports, the statute as amended by the Uruguay Round Agreements Act (URAA) specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 850. New section 771(35)(C), 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a preliminary determination as the margin or margins published by Commerce in its notice of initiation. In these investigations, although petitioner alleged dumping margins ranging from 42 to 83 percent, Commerce did not identify the magnitude of estimated dumping margins. Given that Commerce has not provided estimated margins, I do not have a solid basis upon which to consider the margins. In any event, given the lack of significant price effects by the subject imports, I find that even the magnitude of the dumping margins as alleged by petitioner does not have a significant bearing on the state of the industry in this case.

⁵⁴ Petition at 27, and Tr. at 15-17 (testimony of Mr. Levine).

⁵⁵ CR at Table C-5; PR at Table C-5.

⁵⁶ While wages declined and productivity increased during the period of investigation, the industry's workforce was reduced by *** percent. CR at Table C-5; PR at Table C-5.

Although production and domestic shipments were lower in 1997 than in 1996, they remained higher than in 1995. As such, production and domestic shipments increased overall during the period of investigation. The unit value of domestic shipments, after falling from *** in 1995 to *** in 1996, recovered in 1997 to ***.⁵⁷

The industry's improvement in 1997 coincides with the period in which Commission data shows prices of the subject imports falling and those of the comparable domestic product rising. Thus, the industry improved its financial performance during the one year in which there is evidence of some underselling by the subject imports. I have found that the subject imports did not have significant price effects on the domestic industry. The lack of any significant correlation between the subject imports' prices and the condition of the domestic industry is further confirmed by the inverse relationship between the industry's performance and subject import pricing.

Likewise, the industry data indicate that the volume of subject imports, although significant, did not have an adverse impact on the industry's performance. The industry's worst year financially was 1996, the year in which the subject import's presence in the market was at its period low, both in absolute terms and by market share. In 1996, subject imports' market share by value dropped to *** percent from the *** percent they held in 1995; subject import's market share by volume dropped to *** percent from the *** percent they held in 1995. Concurrent with the subject imports' loss of market share, the domestic industry gained market share in 1996, increasing to *** percent by value, from *** percent in 1995, and to *** percent by volume, from *** percent in 1995. Yet, despite the loss of subject import market share and gain of domestic industry market share in 1996, the industry experienced its weakest financial performance of the period investigated. Even though production and U.S. shipments peaked that year, the industry reported ***. The evidence indicates that these *** resulted from ***.⁵⁸ As noted, there is no indication that the industry's poor 1996 financial performance was by reason of the subject imports, which were at their period low during that year.

In sum, because I do not find that the subject imports are having significant price effects, and because I do not find a correlation between the industry's financial performance and the volume and prices of the imports, I determine that the domestic industry producing cookies in tins is not materially injured by reason of the subject imports.

⁵⁷ CR at Table C-5; PR at Table C-5.

⁵⁸ CR at Table C-5 and VI-2; PR at Table C-5 and VI-2.

III. VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of the information obtained in these preliminary investigations, I determine that there is no reasonable indication that the industry in the United States producing cookies is materially injured or threatened with material injury by reason of imports of butter cookies in tins from Denmark that allegedly are subsidized and sold in the United States at less than fair value ("LTFV"). I join the Commission majority in the discussion of product description and in determining that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports. However, my definition of like product differs from my colleagues' definitions. Therefore, my separate views concerning the like product, domestic industry, and no reasonable indication of material injury by reason of the subject imports follow.

A. Like Product and Domestic Industry

I determine that the domestic like product is all cookies, and that the relevant domestic industry consists of all U.S. producers of cookies. In my view, the key question is whether a product's packaging is an appropriate basis for defining the like product. In these investigations, the question is whether the packaging, *i.e.*, the tin, creates a clear dividing line between cookies in tins and other cookies.

The first step is to distinguish between packaging and processing. Here, domestic cookie producers are not further "processing" a product. Rather, the cookies themselves are finished products that remained unchanged whether they are packaged in tins, boxes, or other forms of packaging. Packaging the cookies in tins does not transform the cookies in any way. As such, the facts on this record are distinguished from other investigations in which the Commission found separate like products where significant and extensive additional operations were required to further process an upstream product into a downstream product.⁵⁹ Here, the tins are a form of packaging, not further processing, of the cookies.⁶⁰

The second step is to evaluate the focus of these investigations, that is, whether the Commission's investigations concern the cookies or the tins. Petitioner and the other domestic companies that reported packaging cookies in tins are in the business of baking cookies. Record evidence indicates that these companies produce butter cookies that they subsequently package in tins. According to petitioner, the firms do not produce the tins, but rather purchase tins that are produced

⁵⁹ *E.g.*, Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Inv. Nos. 731-TA-776-79 (Preliminary), USITC Pub. 3086 (Feb. 1998) at 7 (production required the additional steps of washing, blanching, adding solution, canning sealing, retorting and labeling, all requiring specialized equipment and separate employees); Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA 736 and 737 (Final), USITC Pub. 2988 (Aug. 1996) at 6 n.23.

⁶⁰ *See, e.g.*, Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the People's Republic of China, Inv. No. 731-TA-621 (Final), USITC Pub. 2671 (Aug. 1993) at 22-23 (packaging of purchased components insufficient to constitute domestic production.)

mainly in ***.⁶¹ Therefore, it is appropriate for the Commission to focus on the cookies, rather than the tins, in order to define the like product based on what petitioner and the other firms actually produce, *i.e.*, the cookies, rather than what they import, *i.e.*, the tins. Thus, it is not appropriate to define the like product based on the tin. Doing so would create an anomalous situation. The cost of the tins represents a significant portion,*** percent, of the total cost of the butter cookies in tins. In fact, the cost of the tins is *** the cost of the cookies.⁶² Therefore, since petitioner and the other firms do not produce, but rather import the tins, it would be reasonable to conclude that their production of only cookies is not sufficient to make them "producers" of a like product defined as butter cookies in tins.⁶³ Consequently, defining the like product based on the tins would have the anomalous result of not including the producers of the cookies in the domestic industry. On the other hand, if these firms were to be included in the domestic industry, then so should producers of the tins, given the relative costs of the cookies and tins.⁶⁴

Finally, applying the Commission's six factor like product test further confirms that the tins do not represent a clear dividing line between cookies packaged in tins and those sold in other forms of packaging. All cookies, no matter how packaged, ultimately have the same end use, that is, to be eaten as a dessert or snack. The cookies themselves are functionally interchangeable as food items, and any cookie can be packaged in a tin or in any other form of packaging. Domestic cookie producers bake the cookies that are ultimately packaged in tins at the same facilities in which they bake other cookies. They also generally use the same production lines, processes, equipment and employees to bake all their cookies. Despite the additional cost of the tin, there is no apparent price correlation reflecting this additional cost. Rather, name-brand cookies sold in bags typically sell at the same or higher prices than cookies sold in tins,⁶⁵ while cookies in tins may sell for higher prices than off-brand cookies sold in other forms of packaging such as cellophane trays or paper boxes.⁶⁶ The only apparent distinguishing factor between cookies in tins and cookies not in tins is the channels of distribution.⁶⁷ However, the differences in channels of distribution are outweighed by identical end uses, interchangeability and production processes. For these reasons I find that the tins do not create a clear dividing line between cookies in tins and cookies not in tins.

⁶¹ CR at V-1, PR at V-1.

⁶² CR at VI-9; PR at VI-4.

⁶³ See 19 U.S.C. § 1677(7)(B)(III) (Commission to evaluate impact of subject imports on domestic producers of like products, but "only in the context of production operations within the United States."); Minivans from Japan, Inv. No. 731-TA-522 (Preliminary), USITC Pub. 2402 (July 1991) at 19-25 (Chrysler's Canadian production is not included in the U.S. industry).

⁶⁴ See DRAMS of One Megabit and Above from the People's Republic of Korea, Inv. No. 731-TA-556, (Final), USITC Pub. 2629 at 12-16 (Views of the Commission), 40-41 (Dissenting Views of Vice Chairman Watson and Commissioners Brunsdale and Crawford) (May 1993) (finding that companies that performed wafer fabrication or wafer assembly in the United States should be included in the domestic industry.)

⁶⁵ For example, Pepperidge Farm's average price per pound of its butter cookies in bags is *** percent greater than the average price per pound of U.S.-produced butter cookies in tins. CR at V-8; PR at V-6.

⁶⁶ CR at I-14, PR at I-12 .

⁶⁷ Cookies in tins generally are sold to distributors, retailers and wholesalers such as drug chains, wholesale/warehouse clubs, discount drug chains and mass merchants. Other cookies generally are sold in supermarkets and other grocery stores. CR at I-13-14; PR at I-12.

Having found that the packaging, *i.e.* the tin, does not establish a clear dividing line between cookies in tins and cookies not in tins, I next examine whether there is a clear dividing line between butter cookies and other cookies. I find that all cookies represent a continuum of similar products in which there is not a clear dividing line between butter cookies and non-butter cookies.⁶⁸

Along this continuum, different cookies have different physical characteristics. Although butter cookies are distinguished by the shortening ingredient (butter), there are many ingredients, such as flour and sugar, that are common to all cookies. In addition, nearly every variety of cookie has a distinguishing feature, often the flavor. For example, chocolate cookies contain chocolate along with the other ingredients, regardless of the shortening ingredients used, making it difficult to envision a clear dividing line between chocolate butter cookies and chocolate non-butter cookies.

The largest producers of butter cookies sell both these cookies and other cookies predominantly through retail grocery stores.⁶⁹ Thus, butter cookies often are sold in the same channels of distribution as other cookies. While some butter cookies usually are sold to distributors, retailers and wholesalers such as drug chains, wholesale/warehouse clubs, discount drug chains and mass merchants,⁷⁰ some non-butter cookies also are distributed through those same channels.⁷¹

Butter cookies and non-butter cookies are produced at the same facilities, on the same production lines, using the same processes, equipment and employees. Although the choice of any particular type of cookie may reflect the individual preferences of the end users, there is no evidence that producers' or consumers' perceptions create a clear dividing line that distinguishes butter cookies from other cookies.

The record demonstrates that there is no clear dividing line between butter cookies and non-butter cookies based on price. As a general matter, the prices for cookies fluctuate widely depending upon a variety of factors, not the least of which is brand recognition. Name-brand vegetable-shortening cookies often sell at the same or higher prices than some butter cookies,⁷² while in other cases butter cookies may sell for higher prices than non-butter cookies, particularly off-brand cookies.⁷³

Based on the factors discussed above, I conclude that the record does not establish a clear dividing line between butter cookies and non-butter cookies. Although butter cookies are distinguished by their shortening ingredient, all cookies share many common ingredients. Butter cookies and non-

⁶⁸ In a case such as the present one, where the domestically manufactured merchandise is made up of a continuum of similar products, the Commission does not consider each item of merchandise to be a separate domestic like product that is only "like" its counterpart in the scope, but considers the continuum itself to constitute the domestic like product. Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 at 7 (Nov. 1997).

⁶⁹ CR at I-14 and III-6-7, PR at I-12 and III-5.

⁷⁰ CR at I-13, PR at I-12.

⁷¹ Tr. at 21-22 and 26.

⁷² CR at I-14; PR at I-12.

⁷³ Id.

butter cookies have the same end uses, are interchangeable, are sold through the same channels of distribution, share common production facilities, processes and employees, and fluctuate in price based upon factors such as brand recognition. Consequently, I conclude that the domestic like product in these investigations consists of all cookies.

The Commission is directed to consider the impact of the subject imports on the domestic industry, defined as "the producers as a [w]hole of a domestic like product."⁷⁴ Based on my finding that the domestic like product consists of all cookies, the domestic industry therefore consists of domestic producers of all cookies.

B. Analytical Framework

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the allegedly subsidized and LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,*
- (II) the effect of imports of that merchandise on prices in the United States for like products, and*
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States*⁷⁵

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."⁷⁶ In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁷⁷

The statute directs that we determine whether there is a reasonable indication of "material injury by reason of the allegedly subsidized and dumped imports." Thus we are called upon to evaluate the effect of allegedly subsidized and dumped imports on the domestic industry and determine if there is a reasonable indication that they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the alleged subsidies and dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether there is a reasonable indication that any injury "by reason of" the allegedly subsidized and dumped imports is material. That is, the Commission must determine if there is a reasonable indication that the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if

⁷⁴ 19 U.S.C. § 1677(4)(A).

⁷⁵ 19 U.S.C. § 1677(7)(B)(i).

⁷⁶ 19 U.S.C. § 1677(7)(B)(ii).

⁷⁷ 19 U.S.C. § 1677(7)(C)(iii).

unfairly traded imports are materially injuring the domestic industry."⁷⁸ It is important, therefore, to assess the effects of the allegedly subsidized and dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the alleged subsidization and dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the alleged subsidization and dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.⁷⁹

In my analysis of material injury, I evaluate the effects of the alleged subsidization and dumping⁸⁰ on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the alleged subsidization and dumping on domestic prices, I compare domestic prices that existed when the imports were allegedly subsidized and dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of alleged subsidization and dumping on the quantity of domestic sales,⁸¹ I compare the level of domestic sales that existed when imports were allegedly subsidized and dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the effects on the statutory impact factors⁸² (e.g., employment, wages, etc.) are derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the alleged subsidization and dumping, either separately or together, demonstrate that there is a reasonable indication that the domestic industry would have been materially better off if the imports had been priced fairly. If so, there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly subsidized and dumped imports.

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry producing cookies is materially injured by reason of allegedly subsidized and LTFV imports of butter cookies in tins from Denmark.

⁷⁸ S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997).

⁷⁹ Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, at 1361 (Fed.Cir. 1996), *aff'd* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

⁸⁰ As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

⁸¹ In examining the quantity sold, I take into account sales from both existing inventory and new production.

⁸² 19 U.S.C. § 1677(7)(C)(iii).

C. Conditions of Competition

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the subsidization and dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

In these investigations, I have given petitioner the benefit of the doubt concerning the conditions of competition in the domestic market, even though an analysis of the facts could support a contrary conclusion. Therefore, I do not discuss in these Views the specific conditions of competition in the domestic cookie market.⁸³

D. No Reasonable Indication of Material Injury by Reason of Allegedly Subsidized and LTFV Imports of Butter Cookies in Tins from Denmark⁸⁴

1. Volume of Subject Imports

The volume of subject imports was *** pounds in 1995, *** pounds in 1996, and *** pounds in 1997.⁸⁵ The value of subject imports was *** in 1995, *** in 1996, and *** in 1997.⁸⁶

The market share of subject imports derives from the apparent consumption of all cookies. Given the short time frame provided for preliminary investigations, it was not feasible to obtain consumption data from the nearly 200 domestic producers of cookies⁸⁷ or all importers of cookies. However, Commission staff estimated that apparent consumption of all cookies exceeded \$5 billion in 1996.⁸⁸ While this estimate of apparent consumption is not precise, it does demonstrate the order of magnitude of total cookie consumption relative to the value of subject imports. This record evidence indicates that the market share of subject imports by value was less than one percent in 1997. It is clear that the larger the volume of subject imports, the larger effect they will have on the domestic industry. Whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the

⁸³ For an example of a complete discussion of my application of the conditions of competition factors, see Certain Preserved Mushrooms, USITC Pub. 3086 at 21 (Views of Commissioner Carol T. Crawford.)

⁸⁴ Subject imports accounted for virtually all butter cookies in tins imported into the United States in 1997. CR at Table IV-1, PR at Table IV-1. Consequently, negligibility is not an issue.

⁸⁵ CR at Table IV-1; PR at Table IV-1.

⁸⁶ Id.

⁸⁷ The Commission received completed questionnaire responses from only five of approximately 191 domestic cookie producers, and two of the three largest cooking producers did not complete the questionnaire. CR at III-1 & n 1, PR at III-1 & n. 1.

⁸⁸ Memorandum INV-V-017 (March 19, 1998). While apparent consumption was estimated to increase by 3.9 percent from 1994 to 1996, I have assumed no increase from 1996 to 1997, and have used the 1996 estimate in my analysis.

context of its price and volume effects. Based on the extremely small market share of subject imports, I find that the volume of the subject imports is not significant in light of its price and volume effects.

2. Effect of Subject Imports on Domestic Prices

I find that subject imports are not having significant effects on domestic prices for cookies. To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices had the subject imports not been subsidized and dumped.

In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. For purposes of these preliminary investigations, I have used the dumping margins, which range from 42 percent to 83 percent, alleged by petitioner.⁸⁹ Based on the alleged dumping margins alone, prices for the subject imports likely would have risen significantly if they had been priced fairly, and they would have become more expensive relative to the domestic product and other alternative sources for the product (*e.g.*, nonsubject imports). In such a case, if the products are substitutable, demand would have shifted away from subject imports and towards the relatively less-expensive products. There are no precise data on the record concerning the volume of nonsubject imports in the domestic market. Therefore, for purposes of these preliminary investigations, I have given petitioner the benefit of the doubt and assumed that the domestic industry is the primary source available to meet any shift in demand away from subject imports.

I have given petitioner the benefit of the doubt and assumed that the subject imports would have been priced out of the market had they not been subsidized and dumped. Also, I have assumed that the domestic product and subject imports are good substitutes for each other, and that the entire demand for subject imports would have shifted to the domestic product, had subject imports been priced fairly. However, these cookies represent such a small share, less than one percent, of the entire cookie market that the increase in demand for the domestic product would not have been significant or affected prices. In addition, while the members of the domestic cookie industry that completed the Commission's questionnaire account for only a small portion of the overall industry, they alone had sufficient capacity available to satisfy the demand supplied by the subject imports.⁹⁰ The available capacity would have enforced price discipline in the market. Therefore, given the extremely small market share of subject imports and the available capacity in the domestic industry, I find that domestic prices would not have increased had the subject imports been fairly traded. Consequently, I find that subject imports are not having significant effects on domestic prices for cookies.

⁸⁹ Petition at 17. No specific subsidy margins were alleged.

⁹⁰ CR at Table III-1, PR at Table III-1.

3. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.⁹¹ These factors together either encompass or reflect the volume and price effects of the allegedly subsidized and dumped imports, and so I gauge the impact of the dumping and subsidization through those effects.

As noted above, I have given petitioner the benefit of the doubt and assumed that the entire demand for subject imports would have shifted to the domestic product, had the subject imports been priced fairly. However, as I have noted, the market share of subject imports, less than one percent, is so small that the increase in demand for the domestic product would not have been significant. Therefore, any increase in the domestic industry's output and sales would not have been significant. Consequently, subject imports are not having a significant impact on the domestic industry.

4. Conclusion

Based on my findings that the subject imports are not having significant effects on domestic prices and are not having a significant impact on the domestic industry, I find that the domestic industry would not have been materially better off if the subject imports had been priced fairly. Consequently, I determine that there is no reasonable indication that the domestic cookie industry is materially injured by reason of allegedly subsidized and LTFV imports of butter cookies in tins from Denmark.

IV. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS OF BUTTER COOKIES IN TINS FROM DENMARK

We determine that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports. Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by determining whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."⁹² The Commission considers the threat factors "as a whole" and may not make

⁹¹ 19 U.S.C. § 1677(7)(C)(iii).

⁹² 19 U.S.C. §§ 1671b(a), 1673b(a) and 1677(7)(F)(ii).

such determination "on the basis of mere conjecture or supposition."⁹³ In making our determination, we have considered all of the statutory factors that are relevant to these investigations.⁹⁴

Chairman Miller finds that there is no reasonable indication that the domestic industry producing cookies in tins is threatened with material injury by reason of the subject imports. Commissioner Crawford finds that there is no reasonable indication that the domestic industry producing cookies is threatened with material injury by reason of the subject imports.

Commerce initiated an investigation of the following two alleged subsidy programs: (1) *European Union Program*: Export Restitution Payments on Butter, Sugar and Wheat Flour; and (2) *Government of Denmark Programs*: Export Credit and Insurance Program, Export Training Program, and Assistance for Export Groups. Commerce provided no further information as to the nature of these alleged subsidies in its initiation notice. Respondents admit the existence of the EU subsidy program, but note that these subsidies have been reduced during the last two years. Respondents deny that they receive export subsidies from the Government of Denmark.⁹⁵ We have taken petitioner's subsidies allegations into account, but note respondents' statements that the alleged subsidies have been reduced during the past two years and gradually are being phased down pursuant to the WTO Agriculture Agreement.⁹⁶ Given the likelihood that the levels of the alleged subsidies will decline, not increase, we find that imports of the subject merchandise are not likely to increase substantially because of the alleged subsidies.

We also note that petitioner's concerns about the alleged subsidies are focused largely on the alleged subsidization of butter used in butter cookies.⁹⁷ Chairman Miller has defined the domestic industry as all U.S. producers of cookies in tins, and Commissioner Crawford has defined the domestic industry as all U.S. cookie producers. Since we have each defined the domestic industry to include production of cookies other than butter cookies, any relationship between the alleged subsidies and any threat of material injury by reason of the subject imports is further attenuated.

We find that the information concerning production capacity and capacity utilization in Denmark does not show that a substantial increase in subject imports into the United States is likely. Capacity in Denmark to produce butter cookies in tins has declined from 141.8 million pounds in 1995 and 1996 to

⁹³ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." *Metallwerken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), *citing* *American Spring Wire Corp. v. United States*, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). *See also* *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387 & 388 (Ct. Int'l Trade 1992), *citing* H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

⁹⁴ 19 U.S.C. § 1677(7)(F)(I). Factor VII is inapplicable because these investigations do not involve a raw agricultural product, as defined in 19 U.S.C. § 1677(4)(E)(iv).

⁹⁵ Respondents' Postconference Brief at 17 and Exhibit I, Tr. at 78 and 89.

⁹⁶ Tr. at 78-79 and 89-90.

⁹⁷ *See* Tr. at 86.

132.3 million pounds in 1997, and is expected to remain at that level.⁹⁸ Capacity utilization has been fairly steady since 1995, and is expected to remain at this level.⁹⁹ Although industry-wide annual Danish capacity utilization has ranged from 62 to 66 percent, the largest Danish exporter of subject imports, Kelsen, ran its butter cookie lines at 100 percent of capacity in 1997.¹⁰⁰ Exports to other countries in the European Union, as well as to Asian countries such as Hong Kong and China, have declined during the period of investigation. However, these countries remain strong markets for Danish butter cookies in tins.¹⁰¹ For these reasons we find that unused capacity in Denmark does not indicate a likelihood of substantially increased imports of the subject merchandise.

Although the volume of subject imports increased overall during the period of investigation,¹⁰² Chairman Miller does not find that there has been a significant rate of increase of the volume or market penetration of subject imports indicating the likelihood of substantially increased imports. In her discussion of no reasonable indication of material injury by reason of subject imports, she found that the subject imports' share of the U.S. apparent consumption of cookies in tins declined, by both volume and value, from 1995 to 1997.¹⁰³ This decline first occurred in 1996, when apparent domestic consumption was at its lowest levels for the three-year period.¹⁰⁴ Although apparent consumption then rose 32.9 percent by volume and 20.6 percent by value, to its period high in 1997, the subject imports' market share did not increase proportionately to the increased apparent consumption. Rather, market share increased only modestly from 1996 to 1997, that is, *** percent by volume and *** percent by value. Even with that increase, import market share was lower in 1997 than it was in 1995.¹⁰⁵ This irregular movement of import market share within a few percentage points is not indicative of threat. As such, Chairman Miller does not find evidence of a significant, if any, rate of increase in market penetration by the subject imports.

In her determination of no reasonable indication of material injury by reason of the subject imports, Commissioner Crawford found that the market share of subject imports, less than one percent, is extremely small. Given this small base, an increase in the volume of the subject imports could result in a large rate of increase. However, since the market share is so small, it is not likely that any increase in the imports themselves would be substantial. Consequently, Commissioner Crawford finds that the rate of increase of the volume or market penetration of subject imports does not indicate the likelihood of substantially increased subject imports.

⁹⁸ CR at Table VII-1, PR at Table VII-1.

⁹⁹ Id.

¹⁰⁰ Respondents' Postconference Brief at 21.

¹⁰¹ CR at Table VII-1, PR at Table VII-1, Respondents' Postconference Brief at 20-21.

¹⁰² CR at Table IV-1, PR at Table IV-1.

¹⁰³ CR at Table C-5, PR at Table C-5.

¹⁰⁴ Id.

¹⁰⁵ Id.

In our respective discussions of no reasonable indication of material injury by reason of the subject imports, we found that subject imports are not having significant effects on domestic prices. We find nothing in the record to indicate that subject imports are likely to have significant price effects in the immediate future.¹⁰⁶

The evidence on the record does not indicate that inventories of the subject merchandise, either in the United States or in Denmark, represent a threat of material injury to a domestic industry. Although the volume of subject import inventories in the United States increased from 1995 to 1997, the inventories do not represent a high percentage of the quantity of subject imports.¹⁰⁷ In Denmark, the ratio of inventories of butter cookies in tins to both production and shipments is low, peaking for both at *** percent in 1997.^{108 109}

Despite petitioner's argument that it is easy for Danish producers to shift production between butter cookies and non-butter cookies,¹¹⁰ the Danish producers currently devote more than *** percent of their cookie production to butter cookies.¹¹¹ The evidence suggests that the ability of the Danish producers to increase significantly their production of butter cookies and thereby significantly increase their exports to the United States is relatively limited. In addition, given the relatively constant volumes exported to the United States during the period of investigation, the record does not suggest that the Danish producers are likely in the imminent future to shift production from nonbutter cookies to butter cookies. Thus, the evidence does not indicate that the ability of the foreign producers to turn some of their production to butter cookies poses a threat of material injury to either the domestic industry producing cookies in tins or to the domestic industry producing cookies, particularly in light of the other evidence discussed above.

Petitioner and Little Dutch Boy suggested that the subject imports may negatively affect ***.¹¹² *** bases this assertion on the current levels of pricing in the U.S. market, while ***.¹¹³ Because she has found that there is no reasonable indication that the domestic industry is presently adversely affected by

¹⁰⁶ See *Timken Co. v. United States*, 20 CIT ___, Slip Op. 96-8 at 9 (Jan. 3, 1996) (in assessing immediate future harm resulting from domestic price suppression or depression by subject imports, the Commission is permitted to rely on its findings on material injury that subject imports had no "present effect on prices.")

¹⁰⁷ CR at Table VII-2, PR at Table VII-2. At the end of 1997, the ratio of U.S. importers' inventories of subject imports to imports was 7.7 percent; their ratio to U.S. shipments of imports was 7.9 percent.

¹⁰⁸ CR at Table VII-1, PR at Table VII-1.

¹⁰⁹ Commissioner Crawford finds that these inventories of subject imports in Denmark and the United States account for a minuscule percentage of U.S. apparent domestic consumption of cookies, and thus do not represent a threat of material injury to the domestic industry. See Memorandum INV-V-017.

¹¹⁰ Petitioner's Postconference Brief at 49-50.

¹¹¹ Foreign Producers' Questionnaires at page 2.

¹¹² CR at E-4, PR at E-3.

¹¹³ *Id.*

the subject imports, Chairman Miller discounts the argument that pricing will in the imminent future negatively impact development and production efforts of the domestic producers of cookies in tins.¹¹⁴

Commissioner Crawford finds that butter cookies in tins represent a minuscule percentage of all U.S. cookie production.¹¹⁵ Therefore, any negative effects on petitioner's and Little Dutch Boy's development and production efforts represent only a minuscule effect on the overall cookie industry. Consequently, she finds that any actual or potential negative effects of the subject imports on existing development and production efforts do not constitute a threat of material injury to the domestic cookie industry.

Finally, we find no indication of any "other demonstrable adverse trends" that indicate that there is likely to be material injury by reason of the subject imports.

Evaluating all the statutory factors, we find that further dumped or subsidized imports of butter cookies in tins from Denmark are not imminent and that material injury by reason of allegedly subsidized and LTFV imports would not occur unless a countervailing duty or antidumping order is issued. Therefore, we determine that there is no reasonable indication that a domestic industry is threatened with material injury by reason of allegedly subsidized and LTFV imports of butter cookies in tins from Denmark.

V. CONCLUSION

For the foregoing reasons, we determine there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly subsidized and LTFV imports of butter cookies in tins from Denmark.

¹¹⁴ The statute provides that [t]he presence or absence of any factor . . . shall not necessarily give decisive guidance with respect to the determination." 19 U.S.C. § 1677(F)(ii). Particularly where evidence about a statutory factor is speculative in nature, the Commission may discount it or give it limited weight, *See, e.g., Bic Corp. V. United States*, 964 F.Supp. 391, 406-407 (Ct. Int'l Trade 1997), *aff'd*, No. 97-1443 (Fed. Cir. March 11, 1998).

¹¹⁵ Compare CR and PR at Table C-1 with Memorandum INV-V-017.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-374 and 731-TA-780 (Preliminary)

BUTTER COOKIES IN TINS FROM DENMARK

DISSENTING VIEWS OF VICE CHAIRMAN LYNN M. BRAGG

Based on the record in Investigations Nos. 701-TA-374 and 731-TA-780 (Preliminary), *Butter Cookies in Tins from Denmark*, I find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of butter cookies in tins from Denmark that allegedly are subsidized and sold in the United States at less than fair value ("LTFV").

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly subsidized or LTFV imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."²

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."³ Section 771(4)(A) of the Tariff Act of 1930 as amended ("the Act") defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major

¹ 19 U.S.C. §§ 1671b(a) and 1673b(a); *see also American Lamb Co. v. United States*, 785 F.2d 994 (Fed. Cir. 1986); *Calabrian Corp. v. United States*, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

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

³ 19 U.S.C. § 1677(4)(A).

proportion of the total domestic production of the product."⁴ In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

Flat baked sweet biscuits made from a mixture of ingredients which may include, but are not limited to butter, flour, eggs, and sugar. As defined by the U. S. Food and Drug Administration Compliance Policy Guide 7102.06, Chapter 5, Sec. 505.200, butter cookies are distinguishable from all other cookies in that "all of the shortening ingredient is butter." The butter cookies covered by these investigations are only those in hard containers ("tins"), which include, but are not limited to, those that are made of metal, and are round, printed with colorful decorative logos and/or pictures, and which have closeable lids.¹⁰

⁴ *Ibid.*

⁵ *Ibid* at § 1677(10).

⁶ *See, e.g., Nippon Steel Corp. v. United States*, 19 CIT ___, Slip Op. 95-57 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See Nippon Steel* at 11, n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

⁷ *See, e.g., S. Rep. No. 249*, 96th Cong., 1st Sess. 90-91 (1979).

⁸ *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

⁹ *Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ *Initiation of Antidumping and Countervailing Duty Investigations: Butter Cookies in Tins from Denmark*, U.S. Department of Commerce, 63 Fed. Reg. 10822/23 (March 5, 1998).

The imported products subject to these investigations are butter cookies in tins: small, baked confectionery items produced by mixing portions of butter, sugar, flour, eggs, and other flavoring, and then baking. They are distinguished from other cookies on the basis of their shortening ingredient, which, as defined by the U.S. FDA (see above), must only be butter. While butter cookies in general may be packaged in a variety of fashions (*e.g.*, tins, paper bags, plastic tubs, cardboard boxes, trays, or plastic foil), the butter cookies subject to these investigations are carefully packed in small paper cups, tastefully arranged inside elaborate decorative tins, covered with a padded paper insert, and sealed.¹¹

C. Domestic Like Product and Domestic Industry Issues in These Investigations

At issue in these investigations is whether to include within the domestic like product certain categories of domestically produced merchandise in addition to that included by Commerce in the scope of its investigations. While petitioner contends that the like product should be coextensive with the scope, respondents argue that the like product should be broadened to include all cookies.

In general, when making a like product determination, I first attempt to identify a domestic product that is "like" the merchandise subject to the scope of the investigation as identified by Commerce, and only in the absence of a product that is "like" the subject merchandise do I attempt to identify a product that is "most similar in characteristics and uses." Notwithstanding respondents' reliance on the Commission's determination in a 1980 investigation involving butter cookies from Denmark,¹² the Commission is not bound by prior determinations concerning the same imported products.¹³

For the reasons discussed below, based on the record in the preliminary phase of these investigations, I find a single domestic like product, butter cookies in tins, consisting of all products corresponding to the scope description. Likewise, I find a domestic industry consisting of the two domestic producers of butter cookies in tins: Maurice Lenell and Little Dutch Boy.

1. Physical Characteristics and Uses

The most prominent physical characteristics of butter cookies in tins, not surprisingly, are the composition of the cookies themselves and the unusual containers which simultaneously serve to protect, preserve, and market the cookies. Neither characteristic is unique in and of itself; however, in combination, they serve to differentiate butter cookies in tins from other cookies.

¹¹ Confidential Staff Report ("CR") at I-7 and I-8, Public Staff report ("PR") at I-7.

¹² Butter Cookies from Denmark, Inv. No. 701-TA-51 (Final), USITC Pub. 1077 (June 1980).

¹³ Nippon Steel, Slip Op. 95-57 at 11; Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988).

Under guidelines established by the U.S. FDA, a "butter cookie" must have butter as its sole shortening ingredient, while all other cookies contain either no shortening or some amount of non-butter shortening.¹⁴ The domestic producers typically prepare an assortment of shapes and flavorings of butter cookies which they pack in individual paper holders and sell exclusively in their standard blue and white 16-18 ounce decorated tins.¹⁵ These tins preserve the cookies and extend their shelf life beyond that of cookies sold in other forms of packaging.¹⁶ Other cookies are typically prepared for sale in uniform flavor and size lots and contained within paper or other less-substantial packaging. Even non-butter cookies contained in tins are usually loose packed.¹⁷

The ultimate "use" for virtually any cookie is as a snack or dessert. However, cookies in tins (including butter cookies) are often purchased as gift items or for decorative purposes. Moreover, butter cookies in tins are primarily seasonal items, manufactured and sold predominantly for the Christmas season, whereas other cookies are sold throughout the year.¹⁸ Although respondents contend that butter cookies in tins are becoming less of a seasonal item,¹⁹ all parties agree that the peak season for butter cookies in tins is the Christmas season.²⁰

2. Interchangeability

All types of cookies are interchangeable in the sense that they are baked for the express purpose of being devoured as snack or dessert items. The same could be said of many baked goods. However, cookies in tins are viewed as gift or collectible items.²¹ And while all cookies in tins share the positive characteristics associated with the tin packaging, including the value added by the tin and longer shelf life for the cookies, butter cookies and non-butter cookies are packaged in different tins, rather than co-

¹⁴ Respondents allege that petitioner's "butter cookies" are actually misnamed, because laboratory tests commissioned by respondents presumably show that petitioner's cookies contain other types of shortening. Conference Transcript at 86-87 (testimony of Mr. Norgaard); Respondents' Postconference Brief at 7-10. In response, petitioner affirmed that all of its butter cookies are made with 100 percent butter as the shortening, and provided information obtained from independent laboratories indicating that the types of tests conducted by respondents are inherently inaccurate. Conference Transcript at 138-139 (testimony of Mr. W. Cohen); Petitioner's Postconference Brief at 3, n.5 and Exhibits 2 and 3. Given the clear definition of butter cookies by the U.S. FDA, I do not find cause to dispute the petitioner's characterization of its product.

¹⁵ CR at I-11, PR at I-10. Maurice Lenell's 18-ounce tin is the same size as its 16-ounce tin, though it is packed with an additional cup of cookies and is labeled accordingly. CR at I-8, n. 27, PR at I-7, n. 27. Little Dutch Boy sells butter cookies only in 16-ounce tins. CR at V-9, PR at V-6.

¹⁶ CR at I-12, PR at I-10; Conference Transcript at 61 (testimony of Mr. W. Cohen).

¹⁷ CR at I-12, n. 49, PR at I-10, n. 49.

¹⁸ CR at I-13, PR at I-11.

¹⁹ Conference Transcript at 105 (testimony of Mr. Norgaard).

²⁰ Petitioner's Postconference Brief at 13-15; Conference Transcript at 114 (testimony of Mr. Norgaard). *See also* the volume of shipments to retailers in the fourth quarters of 1995, 1996, and 1997 by U.S. producers and importers. Table V-1, CR at V-12, PR at V-9.

²¹ CR at I-9 and I-11, PR at I-8 and I-10.

mingled.²² Petitioner stated that it tried to sell non-butter cookies similar in appearance to butter cookies in gift packaging to compete with butter cookies in tins, but failed at that effort.²³

3. Channels of Distribution

The predominant channel of distribution for cookies generally (including butter cookies not in tins) is through retail grocery stores.²⁴ In contrast, cookies in tins (including both butter and non-butter cookies) are sold in a national market, to distributors, retailers and wholesalers such as drug chains, wholesale/warehouse clubs, discount drug chains and mass merchants.²⁵ Within this broad channel structure, there is evidence of further differentiation: both domestic producers and reporting U.S. importers overwhelmingly sell butter cookies in tins directly to retailers, rather than through distributors.²⁶

4. Customer and Producer Perceptions

As discussed above, cookies packed in tins are perceived as gift items. In contrast, cookies (including butter cookies) in other forms of packaging are perceived by customers and producers as common food items and generally would not be considered a suitable gift.²⁷

Petitioner indicated that, prior to producing butter cookies in tins, it conducted significant market research, which showed a distinct product and market for butter cookies in tins. According to petitioner, butter cookies sold in the distinctive blue tins are perceived as seasonal items, generally given as gifts during the Christmas season.²⁸ While Little Dutch Boy did not comment on this factor, it too packages its butter cookies in a traditional blue tin.²⁹ Respondents suggested that their cookies are becoming less of a seasonal item, although they conceded that the large majority of sales occur in the last quarter of the calendar year.³⁰

²² Public Meeting Transcript at 7 (testimony of Mr. Eninger).

²³ Petitioner's Postconference Brief at 16, Conference Transcript at 23 (testimony of Mr. T. Cohen).

²⁴ CR at I-14 and III-6-III-7, PR at I-12 and III-5.

²⁵ CR at I-13, PR at I-12.

²⁶ CR at II-2, PR at II-2. *See also* Petitioner's Postconference Brief at 19.

²⁷ CR at I-13, PR at I-11.

²⁸ Petitioner's Postconference Brief at 20.

²⁹ Conference Transcript at 128 (testimony of Mr. Berry).

³⁰ Conference Transcript at 114 (testimony of Mr. Norgaard).

5. Common Manufacturing Facilities, Production Processes, and Production Methods

At the baking stage, butter cookies and non-butter cookies are produced at the same facilities, on the same production lines, and using the same processes, equipment, and employees. However, packaging butter cookies requires several times more labor than baking butter cookies,³¹ and it is at the packaging stage that distinctions between butter cookies in tins and other cookies emerge. The packaging of butter cookies in tins is often more labor intensive than the packaging of other types of cookies, even non-butter cookies packaged in tins. Butter cookies are hand packaged into paper cups and tins using specially trained labor, whereas most other cookies are mechanically inserted into their containers or otherwise require no specialized labor.³²

6. Price

The prices of cookies fluctuate widely depending upon a variety of factors, not the least of which is brand recognition.³³ However, at the retail level, the record indicates that there exist particular "price points" at which butter cookies in tins tend to be sold (*e.g.*, \$2.99 or 2 for \$5.00 price points for butter cookies in a 1-pound tin).³⁴

7. Conclusion

Applying the traditional six-factor analysis, for purposes of the preliminary phase of these investigations I find the like product to be coextensive with the scope of these investigations, based on differences in customer and producer perceptions, channels of distribution, pricing practices, and specific uses, as well as the additional, specialized labor and the particular physical characteristics attributable to the use of the tin container. I find that these factors outweigh the degree of interchangeability existing between butter cookies in tins and other cookies based on a commonality of general uses and the overlap in terms of manufacturing facilities, production processes, and production methods at the baking stage of production. Therefore, I find a domestic industry consisting of the two domestic producers of butter cookies in tins: Maurice Lenell and Little Dutch Boy.

³¹ Public Meeting Transcript at 5-7 (testimony of Mr. Eninger and Mr. Fischer). Maurice Lenell reported that the cost of bakery labor accounted for *** per pound of butter cookies in tins produced in 1997, while the cost of packing labor accounted for a significantly higher amount, *** per pound. CR at VI-9, PR at VI-4.

³² Even other cookies packaged in tins are, for the most part, loose packed, requiring no special labor. *See, e.g.*, CR at I-8, n. 32, PR at I-7, n. 32, describing packaging operations at Maurice Lenell. Approximately *** percent of Lenell's "holiday bear" tins, which contain an assortment of vegetable shortening cookies, are loose packed. CR at I-11, n. 49, PR at I-10, at n. 49.

³³ For example, Pepperidge Farm's average price per pound of its butter cookies in bags is *** percent higher than the average price per pound of U.S.-produced butter cookies in tins. CR at V-8, PR at V-6.

³⁴ CR at I-14, PR at I-12. There does not appear to be a corresponding price point for butter cookies in tins at the wholesale level. *Ibid.*

III. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS

In preliminary investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports subject to investigation.³⁵ The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."³⁶ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.³⁷ Although the Commission may consider causes of injury to the industry other than the allegedly subsidized and LTFV imports,³⁸ it is not to weigh causes.³⁹

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.⁴⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴¹

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry producing butter cookies in tins is materially injured by reason of allegedly subsidized and LTFV imports from Denmark.

³⁵ 19 U.S.C. §§ 1671b(a)(1) and 1673b(a).

³⁶ 19 U.S.C. § 1677(7)(A).

³⁷ 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

³⁸ Alternative causes may include the following:

[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

³⁹ See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

⁴⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁴¹ *Ibid.*

A. Conditions of Competition

I find several conditions of competition relevant to my analysis in these investigations. First, I note that imports of Danish butter cookies in tins have had a significant presence in the U.S. market for a number of years, while Maurice Lenell and Little Dutch Boy are relatively new to high-volume, commercial production of butter cookies in tins.⁴² I also note that while domestically produced and Danish butter cookies in tins are similar in appearance and quality, competition for customers (primarily mass merchandise chain stores) is affected by the absence of U.S.-produced butter cookies in tins in sizes greater than 18 ounces.⁴³

Furthermore, butter cookies in tins are a seasonal product, with a large majority of sales occurring in the fourth quarter of each calendar year, and are often bought as Christmas gifts. There is some evidence, however, that this seasonality may be diminishing with the growth of mass merchandise chain stores, where butter cookies in tins are offered for sale year-round.⁴⁴

Finally, the butter content in butter cookies is significant and the cost relative to other forms of shortening and to other ingredients in butter cookies is high and subject to noticeable fluctuations.⁴⁵ The parties agree that fluctuations in the price of butter can have a major impact on the cost structure for producing butter cookies in tins.⁴⁶

B. Volume of Subject Imports

On balance, I find that the volume and the increase in the volume of imports of butter cookies in tins from Denmark was significant between 1995 and 1997. While U.S. consumption of butter cookies in tins increased over the period examined, the growth in U.S. imports of the subject merchandise outstripped the rise in consumption.⁴⁷ The quantity of subject imports fell from *** pounds in 1995 to *** pounds in 1996, then rose to *** pounds in 1997, a net increase of *** percent over the period examined. The value of subject imports fell from *** in 1995 to *** in 1996, then rose to *** in 1997, a net increase of *** percent over the period examined.⁴⁸

⁴² Conference Transcript at 113 (testimony of Mr. Norgaard); CR at III-3-III-6, PR at III-2-III-4.

⁴³ CR at II-7-II-9, PR at II-5-II-6. Only *** percent of the sales of the largest importer of butter cookies in tins from Denmark, Kelsen, were in 16 ounce tins. CR at II-7, PR at II-5.

⁴⁴ Conference Transcript at 105 (testimony of Mr. Norgaard).

⁴⁵ The butter content of butter cookies is 26-32 percent. The cost per pound of butter is reportedly several times the cost of vegetable shortening and sugar, and can range from \$0.70 per pound to \$1.40 per pound. Conference Transcript at 63 and 66 (testimony of Mr. W. Cohen).

⁴⁶ Conference Transcript at 66 and 67 (testimony of Mr. W. Cohen); Petition at 28; Respondents' Postconference Brief at 22.

⁴⁷ *Compare*, Tables IV-1, CR at IV-3, PR at IV-2 with Table IV-3, CR at IV-6, and PR at IV-5.

⁴⁸ Table IV-1, CR at IV-3, PR at IV-2. According to Commission questionnaire responses, imports of butter cookies in tins from Denmark accounted for no less than 99 percent of total imports in any given year during the period examined. Consequently, I find that the subject imports should not be deemed negligible.

The market share of U.S. shipments of subject imports, by quantity, fell from *** percent in 1995 to *** percent in 1996, then recovered to *** percent in 1997, for a net increase of *** percentage points. The market share of U.S. shipments of subject imports, by value, fell from *** percent in 1995 to *** percent in 1996, then recovered to *** percent in 1997, for a net increase of *** percentage points. In contrast, the domestic industry's market share by quantity increased from *** percent in 1995 to *** percent in 1996, then decreased to *** percent in 1997, a net decline of *** percentage points during 1995-97. Market shares by value followed a similar, though less pronounced, trend, resulting in a net decrease of *** percentage points.⁴⁹

Based on the rising volume and market share of the subject imports over the period examined as a whole, as well as their displacement of domestic production in 1997,⁵⁰ I find both the volume of subject imports and the increase in that volume over the period examined to be significant.

C. Price Effects of Subject Imports

On balance, I find that there has not been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and that the subject imports have not depressed prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree. At the outset, I note two facts about the companies that comprise the domestic industry producing butter cookies in tins. First, the petitioner, Maurice Lenell, entered the market by offering a greater volume of tinned product at a lower price than its Danish competitors, then in 1997, the company both reduced the weight of its tinned product and increased its price to purchasers.⁵¹ Second, Little Dutch Boy sold butter cookies in tins to ***, at a *** throughout the period examined.⁵² I find that these company-specific facts help to place the industry-wide data in perspective.

The Commission collected quarterly pricing data on butter cookies in 16- and 18-ounce tins sold to retail stores. The Danish product oversold the domestic product throughout the 9 quarters of 1995, 1996, and first quarter 1997 by an average of 32.6 percent. During the last 3 quarters of 1997, the imported product undersold the domestic product by an average of 4.4 percent.⁵³

The price trend for the Danish product was generally stable, though drifting upward, through the first quarter of 1997, then falling from *** per pound to *** per pound in the second quarter and *** per pound in the third and fourth quarters. The price trend for the domestic product drifted upward through the first quarter of 1997, rising from *** per pound to *** per pound (but reaching *** per pound in the

⁴⁹ Tables IV-3 and IV-4, CR at IV-6 and IV-8, PR at IV-5 and IV-7.

⁵⁰ Nonsubject imports of butter cookies in tins declined throughout the period examined, both absolutely and as a share of apparent consumption. *Ibid.* Accordingly, subject imports displaced both the domestic and the nonsubject imported product from the U.S. market.

⁵¹ Conference Transcript at 15-16 (testimony of Mr. Levine).

⁵² Table VI-2, CR at VI-4-VI-6, PR at VI-2.

⁵³ Table V-1, CR at V-12, PR at V-9.

fourth quarter of 1996). In the second quarter of 1997, small volumes of domestic product reached *** per pound,⁵⁴ what had been a comparable level with the Danish product, before falling to *** per pound in the third and fourth quarters.⁵⁵

Given that the price of U.S. product increased irregularly through the second quarter of 1997, before declining to a level still well above 1995 prices, I find no evidence of price depression. Likewise, a finding of price suppression would be difficult to reconcile with petitioner's expressed strategy to undersell its Danish competition, at least until 1997. In 1996, when the cost to U.S. producers for butter soared,⁵⁶ Danish prices remained stable at *** per pound, always at least *** higher than domestic prices.⁵⁷ Even in 1997, when Danish prices dipped, they appear to have fallen only to meet U.S. prices. In light of the evidence of limited underselling, both in terms of frequency and magnitude, and increases in prices for the domestic like product (and, for most of the period examined, the subject imports as well), I find that imports of butter cookies in tins from Denmark have not depressed prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.

D. Impact of Subject Imports

After evaluating (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, I do not find that the subject imports are having a significant adverse impact on the domestic industry.⁵⁸

⁵⁴ As noted earlier, in 1997 Maurice Lenell both increased the unit price per tin and reduced the volume of cookies per tin from 18 to 16 ounces. This action is reflected in the abrupt upward movement in price by the domestic product in 1997 (measured in price per pound).

⁵⁵ Table V-1, CR at V-12, PR at V-9. I note that the Petitioner reported detailed lost sales and lost revenue allegations for the period 1995-97, while Little Dutch Boy was unable to provide any details to substantiate its allegations during the period examined. Despite staff efforts, none of the allegations could be verified, due to the inability or the unwillingness of purchasers to provide the necessary information. CR at V-13-V-15, PR at V-10-V-11. Were there to be a final phase of these investigations, I would surely have requested an in-depth exploration of the allegations by means of detailed purchaser questionnaires, backed with the force of subpoenas.

⁵⁶ Conference Transcript at 64 (testimony of Mr. T. Cohen).

⁵⁷ Table V-1, CR at V-12, PR at V-9.

⁵⁸ As part of its consideration of the impact of imports, the statute as amended by the Uruguay Round Agreements Act (URAA) specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 850. New section 771(35)(C), 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a preliminary determination as the margin or margins published by Commerce in its notice of initiation. In these investigations, although petitioner alleged dumping margins ranging from 42 to 83 percent, Commerce did not identify the magnitude of estimated dumping margins. Given that Commerce has not provided estimated margins, I do not have a solid basis upon which to consider the margins. In any event, I do not ordinarily consider the subsidy or dumping margins to be of particular significance in evaluating the effects of subject imports on domestic producers. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg in*

(continued...)

U.S. production of butter cookies in tins rose from *** pounds in 1995 to *** pounds in 1996, then fell to *** pounds in 1997, a net decrease of *** percent during the period examined. Capacity utilization increased *** percent to *** percent between 1995 and 1996, then fell to *** percent in 1997, a net decline of *** percentage points.⁵⁹

The volume of U.S. producers' commercial shipments of butter cookies in tins increased from *** pounds in 1995 to *** pounds in 1996, then fell to *** pounds in 1997, a net decrease of *** percent. However, the value of U.S. producers' commercial shipments of butter cookies in tins increased from *** in 1995 to *** in 1996, then fell to *** in 1997, resulting in a net increase of ***. Moreover, the average unit value of these commercial shipments increased steadily during the period examined, rising from *** per pound in 1995 to *** in 1996 and *** in 1997, a net increase of *** percent.⁶⁰

End-of-period inventories of butter cookies in tins held by U.S. producers rose from *** pounds in 1995 to *** pounds in 1996, then fell sharply to only *** pounds in 1997. As a ratio to production and shipments, such inventories remained stable between 1995 and 1996 at *** percent, then declined to *** percent in 1997.⁶¹

The number of production and related workers remained stable between 1995 and 1996, then declined from *** to *** in 1997. Both the hours worked by, and the wages paid to, these workers increased between 1995 and 1996, then decreased between 1996 and 1997, but reflected a net increase over the period examined (although hourly wages decreased over the period examined). Productivity fell, and unit labor costs rose, throughout the period examined.⁶²

Capital expenditures by the one reporting domestic producer, Maurice Lenell, declined throughout the period examined, falling from *** in 1995 to *** in 1996 and *** in 1997. Research and development expenditures declined from *** in 1995 to *** in 1996 and 1997.⁶³

Other financial indicators dipped between 1995 and 1996, as cost-related effects (notably the rising cost of butter) more than offset growth in the volume, value, and unit value of net sales. However, this situation was reversed in 1997, as higher unit sales values (despite lower overall sales levels) and lower unit SG&A costs overshadowed a slight increase in unit COGS. Gross profit fell from *** in 1995 to *** in 1996, then rose to *** in 1997. Operating losses worsened from *** in 1995 to *** in 1996,

⁵⁸ (...continued)

Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁵⁹ Table III-1, CR at III-9, PR at III-7. I note, however, that the domestic industry's reported capacity of *** pounds is based on their overall capacity to produce cookies. I therefore place little weight on the capacity utilization data derived from these capacity figures.

⁶⁰ Table III-2, CR at III-11, PR at III-9.

⁶¹ Table III-3, CR at III-13, PR at III-11.

⁶² Table III-4, CR at III-13, PR at III-11.

⁶³ Table VI-4, CR at VI-11, PR at VI-5.

then improved noticeably to *** in 1997. Cash outflow expanded from *** in 1995 to *** in 1996, then contracted to *** in 1997.⁶⁴

The domestic industry earned *** less gross profits in 1996 concurrent with gaining market share at the expense of the Danish importers, and earned *** more in gross profits in 1997 concurrent with losing market share at the expense of the Danish importers. Likewise, the domestic industry lost *** more at the operating income level while gaining market share in 1996, and lost *** less while surrendering market share in 1997. The domestic industry's cash flow worsened by *** between 1995 and 1996, but improved by *** between 1996 and 1997.⁶⁵ These trends do not support the conclusion that subject imports have adversely affected the domestic industry's financial condition.

Based on the foregoing, I am unable to find that the significant volume of subject imports is affecting adversely the prices charged, or revenue received, by the domestic industry. Accordingly, I find no reasonable indication that the domestic industry is materially injured by reason of the subject imports.

IV. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS

For the purposes of determining whether there is a reasonable indication that a U.S. industry is threatened with material injury by reason of the subject merchandise, Section 771(7)(F) of the Act lists a number of factors for the Commission to consider.⁶⁶ While an analysis of the statutory threat factors necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."⁶⁷ In these investigations, the Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

(I) if an countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Appendix), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

⁶⁴ Table VI-1, CR at VI-3, PR at VI-2.

⁶⁵ Tables IV-4 and VI-1, CR at IV-8 and VI-3, PR at IV-7 and VI-2.

⁶⁶ 19 U.S.C. § 1677(7)(F)(ii); see 19 U.S.C. §§ 1671b(a), 1673b(a).

⁶⁷ 19 U.S.C. § 1677(7)(F)(ii); see, e.g., S. Rep. No. 249 at 88-89; see also Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990).

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).⁶⁸

Further direction is provided by the amendment to Section 771(7)(F)(ii), which adds that the Commission consider the threat factors "as a whole" in making its determination "whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur" unless an order issues.⁶⁹ In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.⁷⁰

A. Statutory Threat Factors

1. Nature of the Subsidies

Commerce initiated an investigation of the following alleged subsidy programs: (1) *European Union Program*: Export Restitution Payments on Butter, Sugar, and Wheat Flour; (2) *Government of Denmark Programs*: Export Credit and Insurance Program, Export Training Program, and Assistance for Export Groups. Commerce provided no further information as to the nature of these alleged subsidies in its notice of initiation.⁷¹

⁶⁸ 19 U.S.C. § 1677(7)(F)(I). Factor VII is inapplicable because these investigations do not involve a raw agricultural product, as defined in 19 U.S.C. § 1677(4)(E)(iv).

⁶⁹ 19 U.S.C. § 1677(7)(F)(ii).

⁷⁰ 19 U.S.C. § 1677(7)(F)(iii)(I). There are no such findings relevant to these investigations.

⁷¹ *Initiation of Antidumping and Countervailing Duty Investigations: Butter Cookies in Tins from Denmark, U.S.*
(continued...)

Petitioner alleges that the EU Export Restitution program is an export subsidy, *i.e.*, a subsidy described in Article 3 of the Subsidies Appendix.⁷² Respondents admit the existence of the EU subsidy program, but argue that these subsidies have been reduced during the last two years. Respondents deny that they receive export subsidies from the Government of Denmark.⁷³

2. Foreign Production Capacity

While overall capacity declined between 1995 and 1997, there is significant existing unused capacity in Denmark, exceeding the total volume of butter cookies in tins sold in the United States in 1997. Other export markets are available to absorb additional exports, but the United States became Denmark's largest export market in 1997 and is projected to remain the largest in 1998 and 1999.⁷⁴

3. Volume and Market Penetration of Subject Imports

As I noted earlier in my discussion of the volume of the subject imports in the context of present material injury, I find that the volume and the increase in the volume of imports of butter cookies in tins from Denmark was significant between 1995 and 1997. The quantity of subject imports increased by *** percent over the period examined, and the quantity market share increased by *** percentage points. Over the same period, the value of subject imports increased by *** percent and the market share increased by *** percentage points.⁷⁵ Exports of Danish butter cookies in tins to the United States decreased from *** pounds in 1995 to *** pounds in 1996, then increased sharply to nearly *** pounds in 1997, and are projected to increase further in 1998 and 1999.⁷⁶

I find that the significant rate of increase of the volume and market share of imports of the subject merchandise, together with the existence of unused foreign production capacity and the primacy of the U.S. export market to Danish producers, indicates the likelihood of substantially increased imports.

⁷¹ (...continued)

Department of Commerce, 63 Fed. Reg. 10824 (March 5, 1998).

⁷² Petitioner's Postconference Brief at 49.

⁷³ Respondents' Postconference Brief at 17.

⁷⁴ Table VII-1, CR at VII-4, PR at VII-4. I note that respondents suggest that capacity utilization data may be affected by the seasonal nature of butter cookie production: it is normal, according to respondents, for production to be lower in the first half of the year, only to pick up in the second half to meet the Christmas rush. Respondents also state that their sales in Asia are mostly to Hong Kong and China, and have not been affected by the economic troubles in East Asia. Respondents' Postconference Brief at 20-21.

⁷⁵ Tables IV-2 and IV-4, CR at IV-4 and IV-8, PR at IV-3 and IV-7.

⁷⁶ Table VII-1, CR at VII-4, PR at VII-4. I note that respondents argue that over the longer term (the last ten years) Danish exports of butter cookies in tins to the United States have declined. Respondents' Postconference Brief at 10.

4. Likely Price Effects of Subject Imports

As I noted earlier in my discussion of the price effects of the subject imports in the context of present material injury, I find that there has not been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and that the subject imports have not depressed prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree. However, the noticeable decline in selling price as well as the underselling of Danish butter cookies in tins that did take place during the period examined occurred during the last three quarters of 1997.⁷⁷ Further, Little Dutch Boy ***, reportedly by reason of lower-priced butter cookies in tins from Denmark.⁷⁸ Based on these events, I find a reasonable indication that adverse price effects would likely occur unless orders were issued.⁷⁹

5. Inventories of Subject Merchandise

End-of-period inventories of the subject merchandise held in Denmark nearly doubled between 1995 and 1997, rising from *** pounds in 1995 to *** pounds in 1996 and to *** pounds in 1997. Danish inventories are projected to decline in 1998 and 1999.⁸⁰ I note, however, that production is projected to exceed total shipments in both 1998 and 1999, a situation that would normally imply an *increase* in inventories. Moreover, end-of-period inventories of the subject merchandise held in the United States more than doubled between 1995 and 1997, rising from *** pounds in 1995 to *** pounds in 1996 and to over *** pounds in 1997.⁸¹

6. Potential for Product Shifting

Each of the four reporting Danish producers currently use production facilities to produce cookies other than butter cookies in tins, and therefore the potential for product shifting exists.⁸²

⁷⁷ Table V-1, CR at V-12, PR at V-9.

⁷⁸ CR at III-5, PR at III-4. Little Dutch Boy accounted for *** percent of the U.S. industry's net sales of butter cookies in tins in 1997, and was the only company to report *** during the period examined. Table VI-2, CR at VI-4-VI-6, PR at VI-2. By another calculation, Little Dutch Boy accounted for *** percent of commercial U.S. shipments in 1997. Table III-2 and Figure III-4, CR at III-11 and III-12, PR at III-9 and III-10. I note that this allegation, which I find threatening to the industry as a whole if accurate, has not been independently confirmed by ***.

⁷⁹ I note that Kelsen predicts a price increase of at least 15 percent in 1998, due to higher butter prices, increases in other costs, and decreases in EU subsidies. Respondents' Postconference Brief at 22. However, the importer that retains ***, not Kelsen. Compare CR at VII-6, PR at VII-6 with CR at II-3, PR at II-2.

⁸⁰ Table VII-1, CR at VII-4, PR at VII-4.

⁸¹ Table VII-2, CR at VII-7, PR at VII-6.

⁸² CR at VII-3-VII-7, PR at VII-3-VII-6, as revised by OINV Memorandum INV-V-014.

7. Negative Effects on Development and Production Efforts

Petitioner states that without protection under the antidumping and/or countervailing duty law, *** in 1998. Little Dutch Boy reports that it ***.⁸³ Based on these representations, which I find credible in light of the production and financial data reported by the domestic industry, I find a reasonable indication of potential negative effects on the development and production efforts of the relatively newly-fledged domestic industry.

8. Other Demonstrable Adverse Trends

The Danish industry is almost completely dependent on export shipments; its home market sales account for only *** percent of its total shipments.⁸⁴ It is therefore unlikely that any significant portion of the butter cookies in tins shipped by the newest producer in Denmark will be to the home market.⁸⁵ Rather, such shipments will be produced in large part for export, and, as noted previously, the largest single export market for Danish butter cookies in tins is the United States.⁸⁶

V. CONCLUSION

For the foregoing reasons, I determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of butter cookies in tins from Denmark that allegedly are subsidized and sold in the United States at less than fair value.

⁸³ CR at E-4, PR at E-3.

⁸⁴ Table VII-1, CR at VII-4, PR at VII-4.

⁸⁵ See the testimony of Mr. Norgaard ("And interestingly enough, we are actually seeing a new competitor building a plant in Denmark today."). Conference Transcript at 99.

⁸⁶ Table VII-1, CR at VII-4, PR at VII-4.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by the Hearthside Baking Company, Inc. (D/B/A Maurice Lenell Cooky Company), Chicago, IL, on February 6, 1998, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from Denmark of butter cookies in tins¹ that are alleged to be subsidized by the Government of Denmark and the European Union, and by reason of less-than fair-value (LTFV) imports of such cookies from Denmark. Information relating to the background of the investigations is provided below.²

Date	Action
Feb. 6, 1998	Petition filed with Commission; Commission institutes investigations ¹
Feb. 26, 1998	Commerce initiates investigations ²
Feb. 27, 1998	Commission's conference
Mar. 20, 1998	Commission's briefing and vote
Mar. 23, 1998	Commission's determinations to Commerce
Mar. 30, 1998	Commission's views to Commerce

¹ 63 FR 7828, Feb. 17, 1998.
² 63 FR 10822, Mar. 5, 1998.

¹ For purposes of these investigations, butter cookies in tins are defined as flat baked sweet biscuits made from a mixture of ingredients which may include, but are not limited to butter, flour, eggs, and sugar. As defined by the U.S. Food and Drug Administration Compliance Policy Guide 7102.06, Chapter 5, Sec. 505.200, butter cookies are distinguishable from all other cookies in that "all of the shortening ingredient is butter." The butter cookies covered by these investigations are only those in hard containers ("tins"), which include, but are not limited to, those that are made of metal, and are round, printed with colorful decorative logos and/or pictures, and which have closeable lids. The merchandise subject to these investigations is classifiable under subheadings 1905.30.0041 and 1905.30.0049 of the *Harmonized Tariff Schedule of the United States (HTS)*.

² *Federal Register* notices cited in the tabulation are presented in app. A. A calendar of the Commission's conference held on Feb. 27, 1998, is presented in app. B.

ORGANIZATION OF THIS REPORT

Section 771(7)(B) of the Act (19 U.S.C. § 1677(7)(B)) provides that in making its determination of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and ...may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

...

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether. . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

...

In examining the impact required to be considered under subparagraph (B)(I)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in [an antidumping investigation], the magnitude of the margin of dumping.

Information on the subject merchandise, alleged subsidies and margins of dumping, and domestic like product are presented in Part I. Information on conditions of competition and other relevant economic factors are presented in Part II. Part III presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Part VI presents information on the financial experience of U.S. producers.

The statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury are presented in Part VII.

SUMMARY OF DATA PRESENTED IN THIS REPORT

The Commission sent questionnaires to 59 cookie producers in the United States believed to represent a significant share of U.S. cookie production.³ Five companies responded that they produced butter cookies (whether or not in tins) or other cookies in tins during 1995-97.^{4 5} U.S. producers' trade, financial, and pricing data presented throughout this report are based on the responses of these five firms, unless otherwise noted.

The Commission sent questionnaires to 29 U.S. importers of cookies believed to represent a significant share of U.S. imports of butter cookies during 1995-97.⁶ Four companies responded that they imported butter cookies from Denmark during 1995-97.^{7 8} U.S. importers' trade and pricing data presented throughout this report are based on the responses of these four firms, unless otherwise noted.

Data on butter cookies in tins are presented in the body of this report. Summary trade and financial data on "butter cookies in tins," "all cookies," "all butter cookies," "cookies (other than butter cookies) in tins," and "all cookies in tins" are presented in appendix C.

³ The producers' questionnaire asked only those companies producing either butter cookies (cookies containing only butter as the sole shortening ingredient) or other cookies in tins to respond.

⁴ Two companies, Maurice Lenell and Little Dutch Boy Bakeries, reported production of butter cookies in tins. Two companies, Pepperidge Farm (a division of Campbell Soup Co.) and Bestfoods, reported production of butter cookies not sold in tins. Two companies, Bestfoods and Boca Foods (Century Cookies), reported production of other cookies (other than butter cookies) in tins.

⁵ Twenty-three U.S. producers responded that they did not produce either butter cookies or cookies in tins during the period. Thirty-one U.S. producers did not respond to the Commission's producers' questionnaire.

⁶ The Commission also sent importers' questionnaires to U.S. producers. Based on these responses, no U.S. producer imported butter cookies during this period.

⁷ Companies reporting import data were Kelsen, Ripensa a/s, Danco Import, and Bork & Associates.

⁸ One company, Magna Foods, reported importing butter cookies from Indonesia. Twelve importers responded that they did not import butter cookies from any source. The remaining 12 importers did not respond to the Commission's importers' questionnaire.

PREVIOUS INVESTIGATIONS

In 1980, the Commission conducted a countervailing duty investigation concerning butter cookies from Denmark.⁹ That investigation concerned all butter cookies, not just butter cookies in tins. In that investigation, the Commission made a negative determination regarding material injury or threat of material injury. Based on the record developed in that investigation, the Commission found the domestic like product to be all varieties of cookies and defined the domestic industry to include all U.S. cookie producers.^{10 11}

THE NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

On March 5, 1998, Commerce published in the *Federal Register* its notice of initiation of countervailing duty and antidumping investigations concerning imports of butter cookies in tins from Denmark.¹² A copy of Commerce's notice is presented in appendix A. Commerce is scheduled to make its preliminary countervailing duty determination on or before May 4, 1998, and its preliminary antidumping duty determination on or before July 16, 1998, unless otherwise aligned or extended.

In its notice of initiation, Commerce identified four subsidy programs alleged in the petition that will be examined in its preliminary investigation:¹³

1. *European Union Export Restitution Payments on Butter, Sugar and Wheat Flour*
2. *Government of Denmark Export Credit and Insurance Program*
3. *Government of Denmark Export Training Program*
4. *Government of Denmark Assistance for Export Groups*

⁹ U.S. International Trade Commission, *Butter Cookies From Denmark* (Inv. No. 701-TA-51 (Final)), USITC Pub. No. 1077, June 1980.

¹⁰ *Ibid.*, pp. 1-15. In the 1980 investigation, the Commission noted that although the record in the investigation contained a substantial quantity of data concerning the domestic production of butter cookies, the U.S. producers did not utilize separate facilities or specific workers in the production of butter cookies, nor did they keep separate data in terms of the production process, labor and overhead costs, or profits which would have enabled the Commission to identify a separate butter cookie industry. Therefore, the effect of subsidized imports was assessed on the production of all cookies. One Commissioner also noted that there was some consideration of defining the like product as "butter cookies in tins" since the record in the 1980 investigation indicated that more than 90 percent of the Danish butter cookies shipped to the United States were in tins.

¹¹ The petitioner in the 1980 investigation was Deer Park Baking Co., Hammonton, NJ. That company is no longer in business. The Commission found that Deer Park Baking Co. and Pepperidge Farm were the only two companies producing butter cookies on a continuous basis, and that the production of butter cookies by both firms accounted for a very small percentage of their overall production. Neither of these producers was able to provide separate financial data on their butter cookie operations.

¹² 63 FR 10822, Mar. 5, 1998.

¹³ Respondents submitted a letter for the record from the Danish Agency for Trade and Industry dated Feb. 19, 1998, stating that Kelsen, Ripensa, Intergoods Bakery, and Queen's Biscuits had not received funds or assistance under the Danish Government programs. Respondents' postconference brief, exhibit I and pp. 17-18, and conference transcript, pp. 89-92.

Based on comparisons of a range of normal values found in Denmark to calculated and constructed export prices, petitioner's alleged dumping margins range from 45 percent to 83 percent.¹⁴

TARIFF RATES

In Commerce's notice, it stated that butter cookies in tins are provided for in chapter 19 under subheading 1905.30.00 (statistical reporting numbers 1905.30.0041 and 1905.30.0049) of the HTS (1998).¹⁵ The general or most-favored-nation (MFN) tariff rate, applicable to imports from Denmark, for this HTS subheading is free.

Respondents argue that the appropriate HTS category for U.S. imports of butter cookies in tins is 1905.90.1090.¹⁶ Petitioner argues that the appropriate HTS provision for U.S. imports is 1905.30.0040 (1997 HTS) and that Danish exports are classified by the European Union under the Danish Harmonized Schedule subheading 1905.30.30.0.^{17 18}

All parties agree, however, that no matter which subheading(s) or official statistics are used, none provide an accurate basis for determining the true level of imports of the subject butter cookies in tins entering the United States.^{19 20} For these reasons, import data presented in this report, unless otherwise noted, are based on data compiled from questionnaires of the Commission.

¹⁴ Petition, p. 17 (as revised on Feb. 9, 1998).

¹⁵ U.S. Department of Commerce Notice of Initiation, 63 FR 10823, Mar. 5, 1998. As stated by Commerce in its initiation notice, "Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive."

¹⁶ Respondents' postconference brief, pp. 14-15, and conference transcript, p. 87. However, respondents supplied European Union export data for Danish exports of butter cookies under Harmonized Schedule heading 1905.30. Respondents' postconference brief, exhibits G & H.

¹⁷ Petition, pp. 8-9 and exhibit 6 (containing U.S. Customs classification ruling dated Oct. 4, 1990). *See also*, U.S. Department of Commerce Antidumping (A-409-801) and Countervailing Duty (C-409-802) Initiation Check List at p. 3 in exhibit 1 of petitioner's postconference brief.

¹⁸ The Harmonized Schedule puts these goods in 1905.30. This international category is not subdivided in the United States (which has a duty of free on all items in this subheading). At least for exports, the European Union subdivides the 6-digit class.

¹⁹ All HTS subheadings cited are "basket categories" that include other types of sweet biscuits (cookies), waffles, and wafers, irrespective of packaging. In addition, all goods classified under any of the cited HTS subheadings enter the United States free of duty, probably increasing the possibility of misreporting.

²⁰ Petition, p. 9, and conference transcript, pp. 108-110.

MARKET PARTICIPANTS

Based on information gathered in these investigations, two U.S. producers, Maurice Lenell Cooky Co. (Maurice Lenell) and Little Dutch Boy Bakeries (Little Dutch Boy), were identified as producing butter cookies in tins during the period 1995-97.²¹ Four importers of butter cookies in tins from Denmark were identified: Kelsen, Inc., Ripensa a/s, Inc., Danco Import, and Bork & Associates. Four Danish producers of butter cookies were identified as exporting butter cookies in tins to the United States: Kelsen A/S, Ripensa A/S, Intergoods Bakery Ltd. A/S, and Queen's Biscuits I/S.²² Major U.S. purchasers of butter cookies in tins include national and regional drug chains, discount stores, club stores, mass merchandisers, and supermarket chains.

THE PRODUCT

The Subject Product

This section presents information on both imported and domestically produced butter cookies in tins, as well as information related to the Commission's "like product" determination.²³

Commerce has defined the subject product, butter cookies in tins, as--

*flat baked sweet biscuits made from a mixture of ingredients which may include, but are not limited to butter, flour, eggs, and sugar. As defined by the U.S. Food and Drug Administration Compliance Policy Guide 7102.06, Chapter 5, Sec. 505.200, butter cookies are distinguishable from all other cookies in that "all of the shortening ingredient is butter." The butter cookies covered by these investigations are only those in hard containers ("tins"), which include, but are not limited to, those that are made of metal, and are round, printed with colorful decorative logos and/or pictures, and which have closeable lids.*²⁴

²¹ Based on responses to the Commission's producers' questionnaire, two other companies, Pepperidge Farm and Bestfoods (Entenmann's), indicated that they produce butter cookies; however, neither company produces butter cookies in tins.

²² See also, conference transcript, p. 88.

²³ The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors, including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and, where appropriate, (6) price.

²⁴ Commerce's notice of initiation, 63 FR 10823, Mar. 5, 1998.

Butter cookies are small, baked confectionery items produced by mixing portions of butter, sugar, flour, eggs, and other flavoring, and then baking.²⁵ They can be distinguished from other cookies solely on the basis of their shortening ingredient, which, as defined by the FDA (see above), must only be butter.²⁶ However, butter cookies may also contain additional ingredients such as flavorings or decorations.

Butter cookies may be packaged in traditional blue tins, paper bags, plastic tubs, cardboard boxes, trays, and plastic foil. The petitioner packages butter cookies only in the traditional blue tins, in 1-pound and 18-ounce sizes.²⁷ Within the tin, the cookies are packed in small paper cups (generally 3-5 cookies per cup), with a padded paper insert on top. Danish producers offer 1-, 2-, 2½-, 3-, 4-, and 5-pound tin sizes, with the same inner packaging.²⁸ In addition to the traditional blue tin in varying sizes, counsel for respondents stated that butter cookies are offered in a variety of alternative packaging, including plastic tubs, trays, mini cups of three cookies, plastic foils, and 7- and 14-ounce cardboard boxes.²⁹ The respondents identified U.S. companies that produce butter (or butter-flavored) cookies in trays and boxes, and foreign companies that produce such cookies in non-traditional tins of varying shape and decoration, and in boxes. Petitioner contends, however, that Danish butter cookies sold in the United States are marketed predominantly in tins.³⁰

The production process for butter cookies in tins is a single-line process from the dough to the shipping pallets. In general, butter cookies are produced using the same process and equipment as non-butter cookies. The only exception occurs at the packaging stage. Ingredients are added to a mixer, which sends dough through a machine that shapes and slices cookies onto a conveyor, which takes them through the ovens (ovens must be set uniquely for each type of cookie).³¹ Butter cookies are then packaged first into paper cups, which for the petitioner requires specially trained labor, and then into

²⁵ Petition, p. 6.

²⁶ Respondents argue that Maurice Lenell butter cookies contain other types of shortening in addition to butter, and therefore are not butter cookies in accordance with FDA regulations, nor do they meet the scope definition for butter cookies. Respondents presented lab tests which showed coconut oils present in the tested samples. Conference transcript, pp. 86-87, and respondents' postconference brief, pp. 7-10 and exhibits D, E, and F.

Petitioner counters that the respondents' allegations that Maurice Lenell butter cookies contain fats other than butter are completely untrue. Petitioner presented its own lab tests and affidavits attesting to the fact that such tests are inherently inaccurate; that Kelsen's butter cookies tested as containing vegetable oil; and that cookies made in the testing lab with pure butter also tested as containing vegetable oil. Conference transcript, pp. 138-139, and petitioner's postconference brief, p. 3 (footnote 6) and exhibits 2 and 3.

²⁷ Petitioner initially offered butter cookies in an 18-ounce tin to compete with the imported Danish butter cookies in a 16-ounce tin. There is virtually no difference in the two tins, except that one contains 2 more ounces of cookies (the 18-ounce tin is packed more tightly and labeled accordingly).

²⁸ Petition, p. 7.

²⁹ Conference transcript, p. 103.

³⁰ *Ibid.*, pp. 136-137.

³¹ Staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

tins.³² Once in tins, a plastic seal is placed around the tin and the tins are boxed and placed on palettes for shipping.

The peak selling season for butter cookies in tins is the fourth-quarter, particularly during the Christmas holiday season, when customers purchase such cookies mainly as a gift item.³³ Tins are typically viewed by consumers as a collectible or "value added" item.³⁴ Commitments from buyers to producers are usually made between January and March, and production typically begins in April.³⁵ Shipments to buyers typically occur from October to December.³⁶ The petitioner claims that sales occur predominantly in the fourth quarter of the year, while respondents claim they have sold butter cookies in tins on an everyday basis, on a year-round basis, and they are seeing seasonality disappear, with flatter sales throughout the year.³⁷

Butter cookies in the traditional blue tins are mostly sold through channels other than grocery stores.³⁸ Both the petitioner and the respondents sell butter cookies to distributors, retailers, and wholesalers such as drug chains, wholesale/warehouse clubs, discount drug chains, and mass merchants.³⁹ The respondents sell a smaller proportion of butter cookies in tins to grocery stores than to other outlets, whereas the petitioner does not sell any butter cookies in tins to grocery chains.

³² Maurice Lenell uses manual labor to place butter cookies into cups and tins, whereas it uses machinery to put other types of cookies into their containers. Staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

³³ Petitioner's economic consultant maintains that seasonality is measured at the retail level, not by the volume of shipments or sales activity at the wholesale level; conference transcript, pp. 139-140.

³⁴ Conference transcript, pp. 56-57 and 133.

³⁵ Staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

³⁶ Ibid.

³⁷ Conference transcript, p. 105. Table V-I of this report indicates that *** percent of aggregate U.S. producers' sales of butter cookies in 16- or 18-ounce tins during 1995-97 were made in the fourth quarter of the year; an additional *** percent of sales were made in the third quarter. In comparison, 65 percent of aggregate U.S. sales of Danish butter cookies in 16-ounce tins were made in the fourth quarter and an additional 21 percent were made in the third quarter. Similarly, table D-1 in app. D indicates that U.S. producers sold *** percent of their aggregate U.S. retail sales of all butter cookies during 1995-97 in the fourth quarter; an additional *** percent were sold in the third quarter. For imports of all Danish butter cookies, the comparable figures were 56 percent in the fourth quarter and 24 percent in the third quarter.

³⁸ This appears to be due to the better advertising potential and shelf space access at non-grocery chains. Staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

³⁹ Respondents' postconference brief, exhibit O.

Like Product Issues

Petitioner has argued that domestically produced butter cookies in tins are the only product "like" the subject imports and that the scope of the investigations should be limited to such. Petitioner bases its argument on the standard factors applied by the Commission, including: the product is physically distinct from other products, it is sold through distinct distribution channels, it fosters customer and producer perceptions distinct from other products, and it is priced distinctly from other products.⁴⁰ In addition, petitioner cites a number of Commission determinations of like product as precedent for defining butter cookies in tins as the sole domestic like product.⁴¹ Petitioner also cites Commerce's definition of the like product as being identical to the subject imports.^{42 43} Petitioner argues that butter cookies in tins are not interchangeable with other cookies because they are a Christmas holiday gift item for which one would not consider substituting another type of cookie in a bag or plastic tray; they use specifically trained employees for packaging and production; the price points (roughly \$2.99, or 2 for \$5.00 for butter cookies in a 1-pound tin) have been well established in the market and clearly differ from other types of cookies; and they sell butter cookies in tins mostly direct to retail, a clear distinction from their non-butter cookies, which they sell mostly to distributors.⁴⁴

Respondents argued that the like domestic product should include all cookies. Respondents base this argument on the Commission's definition of the "like product" as stated in its 1980 investigation, which determined that the industry in question was the entire cookie industry and that butter cookies in tins constituted only a segment of that industry.⁴⁵ Respondents see no differences between the facts in the 1980 case and the current case. Further, they claim that packaging (in tins) does not make an industry.⁴⁶

⁴⁰ Petition, pp. 9-10, and conference transcript, pp. 9-13.

⁴¹ Including *Disposable Lighters From Thailand*, Inv. No. 731-TA-701 (Final), USITC Pub. No. 2876 (April 1995); *Stainless Steel Angle From Japan*, Inv. No. 731-TA-699 (Final), USITC Pub. No. 2887 (May 1995); and *Minivans From Japan*, Inv. No. 731-TA-522 (Final), USITC Pub. No. 2887 (May 1995). Petitioner's postconference brief, pp. 8-12.

⁴² Commerce's Initiation of Antidumping and Countervailing Duty Investigations, 63 FR 10823, Mar. 5, 1998.

⁴³ Petitioner's postconference brief, p. 7.

⁴⁴ Conference transcript, pp. 9-13.

⁴⁵ U.S. International Trade Commission, *Butter Cookies From Denmark*, Inv. No. 701-TA-51 (Final), USITC Pub. No. 1077, June 1980.

⁴⁶ Conference transcript, pp. 76-77.

Physical Characteristics and Uses

All butter cookies are distinguished from all other cookies by their shortening ingredient, which is 100 percent butter. However, butter cookies in tins can be distinguished from butter cookies not in tins by their packaging and by their shape and size assortment. Petitioner and respondents agree that the tin itself can be considered a unique physical characteristic, adding value and collectibility.⁴⁷ Butter cookies in tins are packaged in small paper cups within the traditional, decorative blue tin bearing distinct logos, a picture of the cookies, and a scenic photograph. These tins contain an assortment of butter cookie sizes, shapes and flavors, whereas other types of packaged butter cookies (not in tins) are generally uniform in those characteristics.⁴⁸ Cookies other than butter cookies are also packaged in tins, but differ from butter cookies in tins in that the tins are not decorated in the traditional style described above.⁴⁹ ⁵⁰ Both butter cookies and non-butter cookies in tins are generally considered to be a seasonal item and are typically given as gifts, particularly at Christmastime.⁵¹ However, the relative sales volume of butter cookies in the traditional tins is historically higher, both for the petitioner and the respondents.⁵²

Both butter cookies and non-butter cookies are sold in packages other than tins. Both can be found in trays, foils, cups, bags, and boxes.⁵³ Cookies in packaging other than tins are typically not used as gift items and are strictly a food item. Advantages to packaging cookies in tins include extended product freshness and the value added by the collectibility of the tin.

⁴⁷ Petitioner's postconference brief, p. 12, and conference transcript, pp. 61 and 124.

⁴⁸ Petitioner's postconference brief, p. 11.

⁴⁹ Maurice Lenell sells a variety of non-butter cookies in various sized tins (2-, 2¼-, 3½-, 4-, and 5-pounds). Most tins have designs aimed at attracting holiday gift purchasers. An example of this is Maurice Lenell's 2-pound "holiday bear" tin containing an assortment of vegetable shortening cookies. This "holiday bear" tin contains non-butter cookies that are either "loose" packed or packed in paper cups. The assortment of cookies is similar to Maurice Lenell's butter cookies in tins. Approximately *** percent of these bear tins have cookies packaged in paper cups; the remaining *** percent are loose packed. Staff conversation with David Levine, counsel to the petitioner, Mar. 11, 1998.

⁵⁰ Kelsen also sells vegetable shortening cookies in tins. Kelsen sells a "margarine" cookie and a chocolate chip cookie assortment that are packaged in the same tins as their butter cookies except that the tins are painted light blue and beige, respectively.

⁵¹ Conference transcript, pp. 43 and 125.

⁵² *Ibid.*, pp. 33 and 124; comparison of sales data in producer questionnaires submitted by Kelsen and Maurice Lenell.

⁵³ Data obtained during these investigations show that, on the basis of either quantity or value, 99 percent of the Danish butter cookies marketed in the United States during 1995-97 were packaged in tins (compare tables C-1 and C-3). In comparison, the proportion of U.S. producers' aggregate shipments of all butter cookies represented by such cookies packaged in tins was much lower and declined (on a quantity basis) from *** percent in 1995 to *** percent in 1996 and *** percent in 1997.

Manufacturing Facilities and Production Employees

The production process for all cookies is generally similar across cookie types, with equipment and employees being the same for most cookies.⁵⁴ Production is generally a single-line process, from the mixing of the dough to the shaping/cutting of the individual cookies, to the ovens, and to the packages and shipping palettes. Production tends to differ among all types of cookies at the packaging stage, depending on whether the cookies are packaged in a bag, tray, box, or tin. At Maurice Lenell, packaging of butter cookies in tins differs from packaging of non-butter cookies in tins. After the butter cookies cool, they are packaged by hand into paper cups and then into tins using specially trained labor.⁵⁵ Respondents do not use manual labor to package butter cookies into cups and tins, and they use the same machinery to package their non-butter cookies in cups and tins.⁵⁶ Most domestic non-butter cookies that are packaged in tins are loose packed in the container, requiring no special labor.⁵⁷

Customer and Producer Perceptions and Interchangeability

Petitioner states that butter cookies in tins carry a unique customer perception that is not interchangeable with butter cookies not in tins, other cookies in tins, or any other cookies. According to the petitioner, butter cookies in the traditional blue, decorated tins are perceived as a seasonal item. Butter cookies in tins typically are given as a gift during the Christmas season, as opposed to butter cookies or other cookies not in tins, which are strictly a food item and might not be considered a suitable gift. As such, petitioner states that "butter cookies in tins fill a distinct and unique market niche in the broader baked goods market."⁵⁸ However, non-butter cookies in tins are also perceived by consumers to be a seasonal item, their tins are often seen as collectible, and sales are not limited to Christmastime (although the bulk of sales occurs at that time). Most non-butter cookies in tins are not sold in the traditional blue tin, but have varying decorations from year to year (for example, Kelsen produces a margarine cookie in a tin similar to the traditional blue tin, with the only variation being the picture on the tin and the color of the tin). Petitioner believes that cookies other than butter cookies in tins are not interchangeable with butter cookies in tins because of varying price points, distribution differences, seasonality, and perception as a gift item. Respondents believe that all cookies are interchangeable, regardless of packaging, distribution, seasonality, or potential as a gift item.

⁵⁴ Comparison of producer questionnaires submitted to the Commission.

⁵⁵ Staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

⁵⁶ Kelsen produces margarine cookies in tins that are packaged similarly to its butter cookies in tins, whereas Maurice Lenell packages most of its non-butter cookies loose in the tin (without paper cups).

⁵⁷ Staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

⁵⁸ Petitioner's postconference brief, p. 9.

Channels of Distribution

Butter cookies in the traditional blue tins are mostly sold through channels other than grocery stores.⁵⁹ As stated earlier in this report, both the petitioner and the respondents sell butter cookies to distributors, retailers, and wholesalers such as drug chains, wholesale/warehouse clubs, discount drug chains, and mass merchants. The respondents sell a smaller proportion of butter cookies in tins to grocery stores than to other outlets, whereas the petitioner does not sell any butter cookies in tins to grocery chains. Petitioner uses different channels to distribute butter cookies in tins than non-butter cookies.⁶⁰ Respondents use the same channels of distribution for all cookies.⁶¹

According to AC Nielson reports, 95.8 percent of consumers reported buying cookies of all types at grocery stores, 51.9 percent at discount stores, 14.1 percent at warehouse/club stores, 20.4 percent at drug stores, and 7.9 percent at convenience stores; 27.2 percent reported that they purchased cookies through other channels.⁶²

Price

Petitioner contends that butter cookies in tins are sold at price points different from other types of cookies and from other kinds of baked goods, adding that "the market indicates that roughly a \$2.99 or 2 for \$5 price point for butter cookies in a 1-pound tin has been well established in the market."⁶³ Respondents stated that the wholesale price of butter cookies in tins might be \$1.85 per pound compared to \$1.75 for non-butter cookies in tins, and that buyers typically do not want to pay extra for butter cookies.⁶⁴ Respondents further maintain that retail prices for the petitioner's butter cookies recently have been greatly reduced at the consumer level, and prices generally have varied considerably.⁶⁵ Petitioner states that "demand for butter cookies in tins at retail is highly price-inelastic, a significant distinction from other cookie products."⁶⁶

As a point of comparison, a 1-pound bag of name-brand vegetable-shortening cookies such as Nabisco Chips-Ahoy cookies or Oreos generally retails for \$2.99 to \$3.29. Artificially-flavored off-brand "butter cookies" (so called, since they contain types of shortening other than butter) sold in cellophane trays or paper boxes typically retail for less than \$1.50 per pound.

⁵⁹ As indicated previously, this appears to be due to the better advertising potential and shelf space access at non-grocery chains.

⁶⁰ Staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

⁶¹ Conference transcript, p. 125.

⁶² Figures are not additive, as consumers may purchase cookies through more than one outlet. "Indulgence Is Back: Cookie Industry Refocuses as Fat-reduced Market Fades," *Milling and Baking News*, Sosland Publishing, Sept. 2, 1997, p. 38.

⁶³ Conference transcript, pp. 12-13, and staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

⁶⁴ Conference transcript, pp. 124-125.

⁶⁵ Respondents' postconference brief, advertising circulars in Exhibit J.

⁶⁶ Petitioner's postconference brief, pp. 124-125.

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

DISTINCTIVE INDUSTRY CHARACTERISTICS

The petitioner has argued that butter cookies in tins are a product distinct from other cookies and butter cookies not in tins. Butter cookies are distinguishable from other cookies in that all of the shortening ingredient is butter; thus a cookie similar to a butter cookie but made with a low-fat alternative to butter would not be classified as a butter cookie despite its similar taste and appearance. U.S. imports of Danish butter cookies are predominantly packaged in blue tins, as is a smaller but substantial portion of U.S.-produced butter cookies, and the petitioner states that this further distinguishes them from other cookies.¹ The tin, which is allegedly the most expensive packaging in the cookie industry, is an important component of the package since most butter cookies are purchased as gifts at the Christmas season.² Because butter cookies are often gift items they are customarily sold at non-grocery stores. A further distinguishing feature is that butter cookies are almost always offered in assortments of shapes and ingredients in the same tin, whereas most other cookies come in one size and shape to a package. Respondents have countered that there is only one large cookie industry in the United States. They state that butter cookies are made on the same equipment by the same employees as other cookies and that packaging does not make a separate industry.

Butter cookies are sold in various packages, and butter cookie producers also make other products. U.S. producers Maurice Lenell and Little Dutch Boy sell butter cookies only in 16- or 18-ounce tins; however, they also produce other types of cookies, and butter cookies in tins accounted for *** percent of their total cookie sales by value in 1997. Maurice Lenell sells non-butter cookies in various sized tins, and these accounted for *** percent of its cookie sales by value in 1997. U.S. producers Bestfoods and Pepperidge Farm sell butter cookies in paperboard boxes and small bags. When the four reporting U.S. producers' (Bestfoods, Maurice Lenell, Little Dutch Boy, and Pepperidge Farm) 1997 sales are summed, butter cookies in tins and butter cookies not in tins, respectively, represent *** and *** percent of their aggregate cookie sales by value. The importers of Danish butter cookies also sell non-butter cookies in tins, including low-fat alternatives to butter cookies. Out of all cookies imported from Denmark by Danco Import and Bork & Associates, all butter cookies accounted for *** percent, and non-butter cookies in tins accounted for *** percent by value.³ Danish butter cookies in tins accounted for *** percent of all butter cookies imported by Danco Import and Bork & Associates.

¹ See, footnote 53 on p. I-10 in part I of this report.

² Petitioner's postconference brief, p. 15. Despite the significant cost of the tin, it is interesting to note that U.S. producers Bestfoods and Pepperidge Farm sell butter cookies only in paperboard cartons and small bags, but they command a higher unit price than U.S. producers selling butter cookies in tins.

³ Information in this paragraph was calculated from information submitted from responses to the Commission's producer and importer questionnaires. *** and *** were the only importers that responded to the Commission's question regarding the distribution of different cookie products imported into the United States.

MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

Firms selling butter cookies generally sell in a national market. *** reports its market as being the continental United States and Puerto Rico. Importers *** and *** report selling to the entire U.S. market, and *** reports concentrating in the northern, southern, and Midwestern regions, with some sales to the national retailer ***. A few importers operate mainly in regional markets. For example, *** sells in the Southeast, and *** sells in southern California.

Three U.S. producers of butter cookies (***) and importers of Danish butter cookies alike generally sell direct to retailers. *** did not submit information on its distribution channel. Kelsen, the *** importer of Danish butter cookies, reported in its questionnaire response that it sells *** percent of its butter cookies direct to retailers. Importers Ripensa and Danco Import reported that they sell *** and *** percent, respectively, direct to retail. The petitioner reported that it sells *** percent of its butter cookies direct to retailers.

When asked if U.S.-produced butter cookies and those imported from Denmark are sold in the same marketing channel, the U.S. producer *** responded in the negative while U.S. producer *** responded in the affirmative. The importer *** responded that some U.S. retailers, such as Costco, BJ's, and Sam's, only carry 3-, 4-, and 5-pound tins, which are offered by Danish importers but not by U.S. producers. *** stated that it subdivides the retail sector into the club, mass merchandise, drug store, and grocery store subsectors, and that approximately *** percent of its butter cookie sales are to each of the first three subsectors and *** percent are to the grocery subsector.

The 10 largest customers of the petitioner and the 2 largest importers of Danish butter cookies are shown in the following tabulation. *** reported that *** of its 1997 sales were to ***. As claimed, most purchasers are non-grocery stores, and club stores such as *** and *** are among the purchasers of the imported product but not the domestic product. There are *** matches between the top 10 customers of the petitioner Maurice Lenell and those of ***; there are *** matches between those of Maurice Lenell and ***.

* * * * *

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, staff believes that U.S. producers have flexibility to respond to price changes with increased shipments to the U.S. market. Between 1995 and 1997, U.S. producers' capacity to produce all butter cookies ranged from a low of *** pounds in 1997 to a high of *** pounds in 1996. Their capacity utilization ranged only from a low of *** percent in 1995 to a high of *** percent in 1996.⁴ Thus, U.S. producers generally possess the means to expand production, although the need to import tins and to acquire butter at favorable prices may limit their ability to expand somewhat.

The petitioner entered the butter cookie market in 1993-94 and began commercial shipments in 1994. Production *** in 1995 at *** pounds. Production *** slightly in 1996 to *** pounds and *** more sharply in 1997 to *** pounds. The petitioner was able to begin production by investing in packing and handling capacity and using existing baking capacity.⁵ The same baking equipment and employees that make other cookies are used to make butter cookies. Planned expansion of baking capacity was *** when 1997 sales were ***.

U.S. producers exported *** pounds of butter cookies in tins, or *** percent of total U.S. production, in 1995. Export shipments *** to *** pounds, or *** percent of total U.S. production, in 1996. Exports *** somewhat in 1997 to *** pounds, or *** percent of total production.⁶ Inventories of butter cookies were small, less than *** percent of U.S. production,⁷ as production is often pursuant to contracts.

Subject Imports

Staff believes that Danish producers of butter cookies have the capacity to increase shipments to the U.S. market. Between 1995 and 1997, Danish producers' capacity ranged from a low of 132.3 million pounds in 1997 to a high of 141.8 million pounds in 1995 and 1996. Their capacity utilization ranged from a low of 62 percent in 1996 to a high of 66 percent in 1995 and 1997. U.S. imports of Danish butter cookies in tins, which were at *** pounds in 1995, fell by *** percent between 1995 and 1996 but grew by *** percent between 1996 and 1997.

⁴ See, table III-1, which also provides capacity, production, and utilization figures for all cookies and butter cookies in tins.

⁵ Conference transcript, p. 44.

⁶ See tables III-1 and III-2.

⁷ See table III-3.

The petitioner has alleged that Danish producers, particularly Kelsen, have a chronic problem of overcapacity.⁸ Counsel for the respondents denied there is an overcapacity problem and stated that "In fact, Kelsen butter cookie lines were run at 100 percent capacity in 1997 - day, evening, night and even some weekends."⁹

The petitioner stated at the conference that Danish exports to Asian markets are substantial and that downturns in Asian markets could lead to more Danish butter cookies being diverted to the United States.¹⁰ Mr. Norgaard of Kelsen stated that this was not the case and that exports to Asia had actually increased during the time in question.¹¹ He added that Kelsen exports mainly to Hong Kong and China, which have been hit less hard than Indonesia, South Korea, and Thailand. Danish exports of butter cookies in tins to markets other than the European Union and the United States were at *** pounds in 1995, but decreased by *** percent between 1995 and 1996 and further decreased by *** percent between 1996 and 1997.¹²

Non-subject Imports

Counsel for the respondents alleged that firms in Portugal, Mexico, Jordan, Egypt, and Indonesia ship butter cookies in tins to the United States and that firms in France, England, Germany, Belgium, Switzerland, and Canada export butter cookies to the United States in various types of containers. Nevertheless, butter cookies imported from Denmark accounted for over *** percent of the import share of butter cookies sold in tins, by quantity or by value.¹³

U.S. Demand

Demand, as indicated by apparent U.S. consumption, fell by approximately 11 percent in value terms between 1995 and 1996 to \$41.8 million. Between 1996 and 1997, apparent consumption increased to \$49.7 million, which was 19 percent greater than the 1996 figure and 6 percent greater than the 1995 figure.

*** stated that demand has increased with the emergence of club stores and drug store chains that offer butter cookies. Influencing factors are more sales outlets, larger Christmas inventories, and additional advertising by retailers. Importers also stated that warehouse clubs are becoming more important and that larger tin sizes are requested. *** added that the increased number of retail outlets, particularly club stores and chain drug stores, have exposed more potential consumers to butter cookies

⁸ Petition, p. 31.

⁹ Respondents' postconference brief, p. 21.

¹⁰ Conference transcript, pp. 31-32.

¹¹ *Ibid.*, p. 98.

¹² See table VII-1.

¹³ See table IV-1.

and have thereby increased sales. Accordingly, *** remarked that its sales to warehouse clubs had increased. *** stated that retailers are asking for larger tins and that butter cookies are more an everyday item. In contrast to these positive comments, *** stated that higher prices had decreased sales. *** and *** stated that demand had not changed.

As consumer items, demand for butter cookies is influenced by their own price, prices of substitutes, and consumer income. *** stated in its questionnaire response that ***.¹⁴

Potential substitutes include other cookies in tins and both butter cookies and non-butter cookies not in tins. *** stated in its questionnaire response that no-cholesterol cookies and chocolate chip cookies are substitutes, and *** stated that cookies made with vegetable shortening are substitutes. Because butter cookies are often purchased as gift items, they compete to some extent with all other cookies and non-cookie gift items, such as boxes of candy, in a similar price range (\$2.00 to \$3.00).¹⁵

SUBSTITUTABILITY ISSUES¹⁶

Importers of Danish butter cookies sell them in 1-, 1½-, 2-, 3-, 4-, and 5-pound tins. Kelsen reported its sale distribution in the United States by size as follows: 1-pound - *** percent, 1½-pound - *** percent, 2-pound - *** percent, 3-pound - *** percent, 4-pound - *** percent, and 5-pound - *** percent. As previously mentioned, U.S. producers sell butter cookies in 16- or 18-ounce tins or paperboard boxes and small bags.

¹⁴ *** questionnaire, p. 23.

¹⁵ The petitioner stated at the conference that there are absolutely no substitutes, as far as customers are concerned, for butter cookies in tins. The petitioner added that it had tried to compete with Danish butter cookies with various non-butter cookie products but was unsuccessful. Retailers reportedly advised the petitioner that, if it wanted to compete with Danish butter cookies, it needed to compete with a butter cookie in a blue tin. See conference transcript, p. 12.

¹⁶ No purchaser questionnaires were collected in these preliminary phase investigations. Information on substitutability is primarily based on producer and importer questionnaires.

Domestic producers Maurice Lenell and Little Dutch Boy reported in their questionnaire responses that the usual lead time, especially for Christmas, is *** days. Importers' lead times were more variable.¹⁷ Kelsen stated that lead times ranged from *** days to *** weeks and depended upon the customer and their location. Bork & Associates, Danco Import, and Ripensa reported times varying between *** and ***. *** added that if the desired product was in its local warehouse, then the lead time would only be *** week. Crackin' Good Bakers stated that its lead time was *** months. Despite longer reported lead times for domestic producers, Maurice Lenell also reported in its producer questionnaire that ***. Importers stated that lead times do not vary by type or size of packaging or by cookie type.

According to questionnaire responses, domestic butter cookie producers usually sell under their own brand name, although *** produced some butter cookies for *** in 1996. Importers generally sold under both their own brand name and private labels, although *** only sold under its own brand name. *** and *** reported that there was no difference in price or marketing between their own brand and private labels. In contrast, *** reported that private labels are normally priced higher.

Butter cookies with various shapes, flavors, and sizes are offered in tins. For example, chocolate flavoring, fruit toppings, or other ingredients may be included. The assortments are somewhat similar from tin to tin, and there appear to be no price or marketing differences based on different assortments of butter cookies offered in the tins.

U.S.-produced and imported Danish butter cookies are purchased for similar reasons, according to U.S. producers *** and *** and importer ***. They are primarily gift items, particularly at Christmas. *** stated in its questionnaire response that butter cookies are becoming more of an everyday item and that it has significant year-round sales, especially at club stores where it sells more than the domestic producers due to size differences. However, *** also stated in its questionnaire response that *** percent of its sales (to the final consumer) are in the fourth quarter. *** stated that, even though the Danes originally developed the butter cookie market, final consumers do not usually know the origin of the product they are purchasing.

U.S. producers and U.S. importers of Danish butter cookies generally agreed that there are no significant differences other than price between U.S.-produced and imported Danish butter cookies. Both are offered in blue tins, and quality appears comparable. One importer stated that, although differences between U.S.-produced and Danish butter cookies were not significant, nonsubject imports offered the appearance of a quality product but turn out to be of inferior quality. Importers *** and *** and U.S. producer *** stated that non-subject butter cookies are purchased for the same reasons as U.S.-produced cookies.

¹⁷ Data on lead times were reported in both producer and importer questionnaires.

PART III: CONDITION OF THE U.S. INDUSTRY

Information presented in this section is based on the questionnaire responses of five firms accounting for all known U.S. production of butter cookies in tins and a significant share of U.S. production of all butter cookies during 1995-97. Summary trade data on "butter cookies in tins," "all cookies," "all butter cookies," "cookies other than butter cookies in tins," and "all cookies in tins" are presented in appendix C.¹

OVERVIEW OF THE U.S. INDUSTRY

U.S. Cookie Producers

In the 1990s, the U.S. cookie industry has seen a steady trend towards consolidations, acquisitions, and mergers. Industry sources report that there are fewer small, independent bakery operations in the United States today than 10 years ago.² In 1996, *Milling and Baking News* reported 191 cookie and cracker plants in the United States.³ Twenty percent of these producers reported annual sales of more than \$20 million and 8 percent reported sales of less than \$5 million.⁴ The top U.S. producers of cookies during the last 3 years were Nabisco, Keebler, and Pepperidge Farm, with Nabisco holding a market share of over 30 percent.⁵

Annual cookies sales (based on supermarket data only) were estimated at \$3.6 billion during the 52-week period ending June 15, 1997, up 0.2 percent from the comparable period in 1995/96.⁶ The average unit price per pound during the 1996/97 period was \$1.94.⁷ Cookie prices rose an average of 2.7 percent per year since June 1995.

¹ Data on "butter cookies in tins" are based on the questionnaire responses of Maurice Lenell and Little Dutch Boy. Data on "all butter cookies" are based on the questionnaire responses of Maurice Lenell, Little Dutch Boy, Pepperidge Farm, and Bestfoods. Data on "all cookies" are based on the responses of these 4 companies plus Boca Foods, Inc. D/B/A Century Cookies. Data on "cookies other than butter cookies in tins" are based on the response of 4 companies, Maurice Lenell, Little Dutch Boy, Bestfoods, and Century Cookies.

² Staff phone interview, Cookie and Cracker Manufacturers Association, Feb. 23, 1998.

³ *Milling and Baking News*, "Baking/Snack Directory & Buyer's Guide," 1996.

⁴ "Baking Directory Shows Plant Locations, Population Growth in Balance," *Milling and Baking News*, Sosland Publishing, Apr. 16, 1996, p. 28.

⁵ "Indulgence is Back: Cookie Industry Refocuses as Fat-reduced Market Fades," *Milling and Baking News*, Sosland Publishing, Sept. 2, 1997; and "State of the Industry--Cookies and Crackers," *Snack and Bakery Foods*, Stagnito Communications, June 1997.

⁶ In the Commission's 1980 investigation, U.S. cookie consumption was estimated to be \$2 billion in 1979, with 171 cookie plants in the United States. Cookie production was highly concentrated, not unlike today, with 4 firms accounting for two-thirds of commercial production.

⁷ Unit sales for the period declined by 2.9 percent to 1.8 billion during the 1996/97 period. "Indulgence is Back: Cookie Industry Refocuses as Fat-reduced Market Fades," *Milling and Baking News*, Sosland Publishing, Sept. 2, 1997.

With sales leveling in the overall U.S. cookie market, companies are currently refocusing on recognized core brands. This trend is contrary to the predominant trend in the late-1980s in which cookie producers launched a vast array of new products in an attempt to build market share.⁸ In addition, sales of reduced- and no-fat cookies, which became popular in the mid-1990s, are now declining and the latest trend appears to be toward sugar-free/fructose sweetened cookies.⁹

According to the petitioner, demand for butter cookies has increased since 1993, and buyers have requested that petitioner expand its cookie line accordingly. Although ***, there is little industry data available on sales of butter cookies or butter cookies in tins.

U.S. Butter Cookie Producers

This section presents a summary of the major U.S. butter cookie producers during the period 1995-97. Based on responses to questionnaires of the Commission, there were four U.S. producers of butter cookies during this period. Two of these producers, Maurice Lenell and Little Dutch Boy, produced butter cookies in tins.

Figure III-1 presents the market share (based on production) of U.S. producers of butter cookies in tins for the period 1995-97. Figure III-2 presents market share of U.S. producers of all butter cookies for the same period.

Maurice Lenell Cooky Company

Hearthside Baking Company, Inc., Chicago, IL (doing business as Maurice Lenell Cooky Co.), is a family-owned bakery that produces a variety of cookies, including butter cookies and non-butter cookies sold in tins. The company has a significant presence in the greater Chicago area, where its cookies are sold in supermarkets and grocery stores.

The company began commercial production of butter cookies in tins in 1994.¹⁰ All of the firm's butter cookies are sold in tins. Most of its sales of butter cookies in tins are sold outside of the Chicago area and are marketed through discount chain stores and drugstore chains. Some of Maurice Lenell's largest customers during the period 1995-97 included ***. Maurice Lenell has stated that in 1997 it lost almost all of its large accounts to Danish butter cookie suppliers.¹¹

⁸ "Biscuits Change at Top While Products Proliferate," *Milling and Baking News*, Sosland Publishing, May 25, 1993.

⁹ "To the Core: Cookie Makers Look to Established Brands for Growth," *Milling and Baking News*, Sosland Publishing, Apr. 1, 1997.

¹⁰ Prior to 1994, Maurice Lenell did not produce butter cookies.

¹¹ For a discussion of lost sales and lost revenue allegations, see Part V of this report.

Figure III-1
Butter cookies in tins: U.S. production (in pounds), by firm, 1995-97

* * * * *

Figure III-2
Butter cookies: U.S. production (in pounds), by firm, 1995-97

* * * * *

Maurice Lenell had U.S. shipments of *** pounds of butter cookies in tins valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.¹² Shipments of butter cookies in tins (based on value) accounted for *** percent of the company's overall U.S. shipments of cookies in 1995, *** percent in 1996, and *** percent in 1997.¹³ Shipments of the company's butter cookies in tins as a share of its overall shipments of all cookies sold in tins (based on value) were *** percent of shipments in 1995, *** percent in 1996, and *** percent in 1997.

Little Dutch Boy Bakeries

Little Dutch Boy Bakeries, Inc. (Little Dutch Boy), Draper, UT, produces a variety of cookies and baked goods, including butter cookies in tins and other cookies (other than butter cookies) in tins, sold under the Little Dutch Boy and Mrs. Bakker's brand names.¹⁴ ***. Little Dutch Boy's ***. However, in early 1998, the company lost the account to a Danish producer.

Little Dutch Boy had shipments of *** pounds of butter cookies in tins valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.¹⁵ Shipments of butter cookies (based on value) accounted for *** percent of the company's overall cookie shipments in 1995, *** percent in 1996, and *** percent in 1997.¹⁶

Bestfoods Baking Company

Bestfoods Baking Co. (Bestfoods), Bay Shore, NY, a wholly-owned subsidiary of CPC Bestfoods, Englewood Cliffs, NJ, sells a variety of baked goods under the Entenmann's brand name, including butter cookies and cookies other than butter cookies in tins.¹⁷ Bestfoods' butter cookies are sold in white paperboard boxes. The company sells *** of cookies other than butter cookies that are sold

¹² Maurice Lenell had overall U.S. cookie shipments of *** pounds valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.

¹³ Maurice Lenell had U.S. shipments of *** pounds of other cookies (other than butter cookies) sold in tins valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997. Shipments of such cookies sold in tins (based on value) accounted for *** percent of the company's overall U.S. cookie shipments in 1995, *** percent in 1996, and *** percent in 1997.

¹⁴ Two other companies, Mrs. Bakker's Cookies, Inc. and Far-West Cookies, Inc., produce cookies under the Mrs. Bakkers brand name. Both companies are small retail cookie shops selling cookies in shopping malls in Southern California. Annual sales for each company are estimated to be less than ***.

¹⁵ Little Dutch Boy had overall cookie shipments of *** pounds valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.

¹⁶ Little Dutch Boy's shipments of other cookies (other than butter cookies) sold in tins (based on value) accounted for *** percent of the company's overall cookie shipments in 1995, *** percent in 1996, and *** percent in 1997.

¹⁷ ***.

in tins.¹⁸

Bestfoods had shipments of *** pounds of butter cookies valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.¹⁹ Shipments of butter cookies (based on value) accounted for *** percent of the company's overall cookie shipments in 1995, *** percent in 1996, and *** percent in 1997.

Pepperidge Farm

Pepperidge Farm, Norwalk, CT, a wholly-owned division of Campbell Soup Co., Camden, NJ, is a large multiline baker producing a wide variety of baked goods.²⁰ On the basis of value of shipments, the company ***, but it does not sell butter cookies in tins. Rather, it sells butter cookies in 7½-ounce paper bags under the *Chessmen* label. The predominant channel of distribution for these butter cookies is retail grocery stores.

Pepperidge Farm had shipments of *** pounds of butter cookies valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.²¹ Shipments of butter cookies (based on value) accounted for *** percent of the company's overall U.S. cookie shipments in 1995, *** percent in 1996, and *** percent in 1997.

Other Producers

The Commission sent questionnaires to all of the largest cookie producers in the United States. Several large bakers such as Keebler, Sunshine Biscuits, Pillsbury,²² and Archway Cookies responded that they did not produce butter cookies or cookies in tins during 1995-97. However, the Commission did not receive responses from several large bakers, including Nabisco, Lance, Flowers, and President Baking.

¹⁸ Shipments of cookies other than butter cookies sold in tins (based on value) accounted for *** percent of the company's overall cookie sales in 1995, *** percent in 1996, and *** percent in 1997.

¹⁹ Bestfoods had overall cookie sales of *** pounds valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.

²⁰ Pepperidge Farm has manufacturing facilities in Denver, PA, Willard, OH, and Richmond, UT.

²¹ Pepperidge Farm had overall U.S. cookie shipments of *** pounds valued at *** in 1995, *** pounds valued at *** in 1996, and *** pounds valued at *** in 1997.

²² ***.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Data on U.S. producers' capacity, production, and capacity utilization during the period 1995-97 are presented in table III-1 and figure III-3. Only one producer, ***, was able to provide specific capacity data for butter cookies. All other producers reported capacity data for their "all cookies" production capability.²³ Caution should therefore be used when analyzing capacity utilization rates for butter cookies and butter cookies in tins presented in this section.

U.S. PRODUCERS' SHIPMENTS

Data on U.S. producers' shipments of butter cookies in tins during the period 1995-97 are presented in table III-2. Data on U.S. producers' commercial shipments, by firm, are presented in figure III-4.

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' inventories of butter cookies in tins during the period 1995-97 are presented in table III-3.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data on U.S. producers' employment, wages, and productivity during the period 1995-97 are presented in table III-4.

²³ Neither Maurice Lenell or Little Dutch Boy could provide capacity data for production of butter cookies in tins. To the extent that capacity for producing butter cookies in tins differs from capacity for producing all butter cookies or all cookies, constraints would occur at the packaging end of production operations, such as limits on packaging cookies by hand in cups and on the available supply of tins. Overall, however, capacity and capacity utilization are a function of production mix decisions.

Table III-1
U.S. producers' capacity, production, and capacity utilization, by type of cookie, 1995-97¹

Item	1995	1996	1997
	Quantity (1,000 pounds)		
Capacity: ¹			
All cookies	159,555	157,231	144,019
Butter cookies	***	***	***
Butter cookies in tins	***	***	***
Production:			
All cookies	85,873	89,442	93,553
Butter cookies	5,671	7,334	6,051
Butter cookies in tins	***	***	***
	(In percent)		
Capacity utilization:			
All cookies	53.8	56.9	65.0
Butter cookies ²	***	***	***
Butter cookies in tins ³	***	***	***

¹ Only one producer, ***, was able to provide specific capacity data for butter cookies. All other producers reported capacity data for their "all cookies" production capacity.

² "Butter cookie" capacity utilization data are based on the production of butter cookies (the numerator) but the capacity for "all cookies" (the denominator), except as noted.

³ "Butter cookie in tins" capacity utilization data are based on the production of butter cookies in tins (the numerator) but the capacity for "all cookies" (the denominator), except as noted.

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

Figure III-3
Butter cookies in tins: U.S. producers' capacity, production, and capacity utilization, 1995-97

* * * * *

Table III-2
Butter cookies in tins: U.S. producers' shipments, by type, 1995-97¹

Item	1995	1996	1997
	<i>Quantity (1,000 pounds)</i>		
Commercial U.S. shipments	***	***	***
Export shipments	***	***	***
Total	***	***	***
	<i>Value (1,000 dollars)</i>		
Commercial U.S. shipments	***	***	***
Export shipments	***	***	***
Total	***	***	***
	<i>Unit value (per pound)</i>		
Commercial U.S. shipments	***	***	***
Export shipments	***	***	***
Total	***	***	***
¹ ***			
Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.			

Figure III-4
Butter cookies in tins: U.S. producers' commercial shipments, by firm, 1995-97

* * * * *

Table III-3

Butter cookies in tins: U.S. producers' end-of-period inventories, 1995-97

Item	1995	1996	1997
	Quantity (1,000 pounds)		
Inventories	***	***	***
	Ratios (percent)		
Inventories to--			
Production	***	***	***
U.S. shipments	***	***	***
Total shipments	***	***	***
Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.			

Table III-4

Average number of production and related workers producing butter cookies in tins, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 1995-97

Item	1995	1996	1997
Production & related workers (number)	***	***	***
Hours worked (1,000)	***	***	***
Wages paid (1,000 dollars)	***	***	***
Hourly wages	***	***	***
Productivity (pounds per hour)	***	***	***
Unit labor costs (per pound)	***	***	***
Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.			

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

U.S. IMPORTERS

The Commission sent importers' questionnaires to 29 companies believed to be possible importers of butter cookies. Four companies, Kelsen, Inc., Ripensa a/s, Inc., Danco Import Ltd., and Bork & Associates, were identified as importers of butter cookies in tins from Denmark during the period 1995-97.¹ One firm, Magna Foods, reported imports of butter cookies from ***.² Twelve importers responded that they did not import butter cookies during the period, and 12 firms did not respond to the Commission's importers' questionnaire.

Kelsen, Inc., Mellville, NY, a wholly-owned subsidiary of Kelsen A/S (Denmark), is ***.³ Ripensa a/s, Inc., Ft. Myers, FL, is the ***.⁴ Danco Import Ltd., Pine Brook, NJ, a subsidiary of Intergoods Bakery Ltd. (Denmark), is a *** importer of Intergoods Bakery exports of butter cookies to the United States. Bork & Associates, La Canada, CA, is a *** importer of Queen's Biscuits I/S (Denmark) exports of butter cookies to the United States.

U.S. IMPORTS

Data presented in this section on imports of butter cookies in tins are based on the questionnaire responses of Kelsen, Ripensa, Danco Import, and Bork & Associates, which are believed to account for the great bulk of imports of butter cookies (whether or not in tins) from Denmark.^{5 6} Aggregated data on U.S. imports of butter cookies in tins are presented in table IV-1.⁷ U.S. imports of butter cookies in tins from Denmark, by firm, are presented in table IV-2 and figure IV-1.

¹ This information was confirmed by respondents at the conference. Conference transcript, p. 88.

² Magna Foods Corp., City of Industry, CA, ***. ***.

³ Kelsen, Inc. also imports non-butter cookies in tins. Kelsen, Inc. sells butter cookies under the Kelsen brand name and under private label. Kelsen's largest accounts, ***, accounted for approximately *** percent of its sales in 1997. Respondents' postconference brief, exhibit O.

⁴ Ripensa a/s, Inc. was incorporated in the United States on Jan. 1, 1997. Prior to this date, ***.

⁵ As indicated previously, Magna Foods reported importing butter cookies from ***.

⁶ There is disagreement among the parties as to the appropriate HTS subheadings that should be used to classify imports of butter cookies. See, "Tariff Rates" section in part I of this report for a more detailed discussion of this issue. Moreover, official statistics of the U.S. Department of Commerce were deemed by all parties and the Commission staff not to be a sufficiently accurate measure of imports of butter cookies in tins. The relevant HTS subheadings are "basket categories" and contain imports of other types of sweet biscuits (cookies), waffles, and wafers in all forms of packaging. Even if butter cookies could be segregated from such data, the distinction over packaging could not be determined. Petition, p. 9, and conference transcript, pp. 108-110.

⁷ The 4 Danish exporters of butter cookies in tins, Kelsen, Intergoods, Ripensa, and Queen's Biscuits, reported combined exports of butter cookies in tins to the United States of *** pounds in 1995, *** pounds in 1996, and *** pounds in 1997. Based on these data, U.S. import coverage was 92.8 percent in 1995, 93.8 percent in 1996, and 97.7 percent in 1997.

Table IV-1 Butter cookies in tins: U.S. imports, by source, 1995-97			
Item	1995	1996	1997
	Quantity (1,000 pounds)		
Denmark ¹	***	***	***
Other sources ²	***	***	***
Total	***	***	***
	Value (1,000 dollars)		
Denmark ¹	***	***	***
Other sources ²	***	***	***
Total	***	***	***
	Unit value (per pound)		
Denmark ¹	***	***	***
Other sources ²	***	***	***
Total	***	***	***
	Share of quantity (percent)		
Denmark ¹	***	***	***
Other sources ²	***	***	***
Total	100.0	100.0	100.0
	Share of value (percent)		
Denmark ¹	***	***	***
Other sources ²	***	***	***
Total	100.0	100.0	100.0
¹ Imports from Denmark are based on the questionnaire responses of four companies, Kelsen, Ripensa, Danco Import, and Bork & Associates. ² Imports from "other sources" are based on the questionnaire responses of one company, Magna Foods, which imports butter cookies in tins from ***. Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.			

Table IV-2

Butter cookies in tins: U.S. imports from Denmark, by firm, 1995-97¹

Item	1995	1996	1997
	Quantity (1,000 pounds)		
Kelsen	***	***	***
Ripensa	***	***	***
Danco Import	***	***	***
Bork & Associates	***	***	***
Total	***	***	***
	Value (1,000 dollars)		
Kelsen	***	***	***
Ripensa	***	***	***
Danco Import	***	***	***
Bork & Associates	***	***	***
Total	***	***	***
	Unit value (per pound)		
Kelsen	***	***	***
Ripensa	***	***	***
Danco Import	***	***	***
Bork & Associates	***	***	***
Total	***	***	***
	Share of quantity (percent)		
Kelsen	***	***	***
Ripensa	***	***	***
Danco Import	***	***	***
Bork & Associates	***	***	***
Total	100.0	100.0	100.0
	Share of value (percent)		
Kelsen	***	***	***
Ripensa	***	***	***
Danco Import	***	***	***
Bork & Associates	***	***	***
Total	100.0	100.0	100.0
¹ Four Danish producers of butter cookies in tins, Kelsen, Intergoods, Ripensa, and Queen's Biscuits, reported exports of butter cookies in tins to the United States of *** pounds in 1995, *** pounds in 1996, and *** pounds in 1997. Based on these data, U.S. import coverage was 92.8 percent in 1995, 93.8 percent in 1996, and 97.7 percent in 1997.			
² Not applicable.			
Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.			

Figure IV-1
Butter cookies in tins: Imports of U.S. importers, by firm, 1995-97

* * * * *

U.S. PRODUCERS' IMPORTS OF SUBJECT MERCHANDISE

The Commission sent importers' questionnaires to 59 U.S. producers of cookies. None of the U.S. producers responding to the Commission's questionnaires imported butter cookies during the period 1995-97. In addition, the petitioner, Maurice Lenell, ***.

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of butter cookies in tins are presented in table IV-3 and figure IV-2. Data on apparent U.S. consumption of all butter cookies are presented in appendix C.

Table IV-3 Butter cookies in tins: U.S. shipments of domestic product, U.S. import shipments, by source, and apparent consumption, 1995-97			
Item	1995	1996	1997
	Quantity (1,000 pounds)		
U.S. producers' shipments ¹	***	***	***
U.S. shipments of imports from--			
Denmark ²	***	***	***
All other sources ³	***	***	***
Total import shipments	***	***	***
Apparent consumption ⁴	27,673	24,090	31,759
	Value (1,000 dollars)		
U.S. producers' shipments ¹	***	***	***
U.S. shipments of imports from--			
Denmark ²	***	***	***
All other sources ³	***	***	***
Total import shipments	***	***	***
Apparent consumption ⁴	46,738	41,778	49,656
¹ U.S. producers' shipment data are based on data of two firms, Maurice Lenell and Little Dutch Boy. ² U.S. shipments of imports from Denmark are based on data of four importers, Kelsen, Ripensa, Danco Import, and Bork & Associates. ³ U.S. shipments of imports from all other sources are based on the data of one importer, Magna Imports, which imported butter cookies in tins from ***. ⁴ Apparent U.S. consumption data may be understated. The data do not include imports from sources other than Denmark and ***. Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.			

Figure IV-2
Butter cookies in tins: U.S. shipments of domestic product, U.S. import shipments, and apparent consumption, by source, 1995-97

* * * * *

U.S. MARKET SHARES

Data on market shares for butter cookies in tins are presented in table IV-4 and figure IV-3. Data on market shares for all butter cookies are presented in appendix C.

Table IV-4			
Butter cookies in tins: Apparent U.S. consumption and market shares, 1995-97¹			
Item	1995	1996	1997
	Quantity (1,000 pounds)		
Apparent consumption	27,673	24,090	31,759
	Value (1,000 dollars)		
Apparent consumption	46,738	41,778	49,656
	Share of quantity (percent)		
U.S. producers' shipments ¹	***	***	***
U.S. shipments of imports from--			
Denmark ²	***	***	***
All other sources ³	***	***	***
Total import shipments ⁴	***	***	***
	Share of value (percent)		
U.S. producers' shipments ¹	***	***	***
U.S. shipments of imports from--			
Denmark ²	***	***	***
All other sources ³	***	***	***
Total import shipments ⁴	***	***	***
¹ U.S. producers' shipment data are based on data of two firms, Maurice Lenell and Little Dutch Boy. ² U.S. shipments of imports from Denmark are based on data of four importers, Kelsen, Ripensa, Danco Import, and Bork & Associates. ³ U.S. shipments of imports from all other sources are based on the data of one importer, Magna Imports, which imported butter cookies in tins from ***. ⁴ Apparent U.S. consumption data may be understated. The data do not include imports from sources other than Denmark and ***. Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.			

Figure IV-3
Butter cookies in tins: U.S. market shares, by source, 1995-97

* * * * *

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

Butter cookies are produced in various shapes and sizes, and ingredients may vary somewhat. For example, chocolate and jelly-filled varieties are offered in addition to plain butter cookies. Nevertheless, although a cookie tin may contain various assortments of butter cookies, the contents of the tins themselves are basically homogeneous, and price does not vary by type of butter cookie. Raw material costs, transportation costs, and the exchange rate do influence price and are discussed below.

Raw Material Costs

The petitioner lists the following cost components: tin, freight, shrink wrap, circle, master case, cups, cookies, packing labor, bakery labor, and storage.¹ Of these, the tin and the cookie account for about *** of the total cost. The domestic producers purchase most of their tins from ***,² and the Danish producers purchase theirs in Denmark.³ The cost of the tin was stable during 1994-97 at *** per 16- or 18-ounce tin. The tin accounted for *** percent of Maurice Lenell's total cost. Cookie cost was more variable, ranging from *** per tin and accounting for *** percent of total unit costs. Maurice Lenell stated in its producer questionnaire that cookie ingredients, such as butter, flour, sugar, eggs, etc., are ***. The cost of butter, which is substantial, directly affects revenues and frequently fluctuates. To reduce cost uncertainty, Maurice Lenell ***. Little Dutch Boy noted that butter has become ***. Respondents presented a price series for butter that shows world butter prices increasing by approximately 35 percent over the course of 1997.⁴ Prices for eggs, flour, sugar, and other ingredients also fluctuate. U.S. producers also pay more than the world price for sugar due to controls on sugar imports.

Maurice Lenell sold only 18-ounce net weight tins prior to 1997 but both 16-ounce and 18-ounce net weight tins in 1997. These were offered in the same tins; the 18-ounce variety was packed more tightly and labeled accordingly. Cookie costs ranged from *** per ounce from 1994 to 1996;⁵ thus, the unit cost of the 18-ounce tins ranged from *** more than the 16-ounce tin.

¹ Petition, exhibit 23.

² Maurice Lenell's producer questionnaire, p. 15, and staff plant trip to Maurice Lenell, Chicago, IL, Feb. 25, 1998.

³ Conference transcript, p. 107.

⁴ Respondents' postconference brief, exhibit L. The exhibit also shows European butter prices as greater than world prices.

⁵ Calculated from exhibit 23 of petition.

As the size of the cookie container increases, the cookie represents a relatively greater share of the cost of the unit (since volume increases faster than the perimeter of the container). The petitioner stated that it is at a competitive disadvantage in the cost of the cookies themselves,⁶ primarily because Danish producers can purchase butter more cheaply. Because the cost disadvantage in cookies is magnified at larger tin sizes, the U.S. producers have focused efforts on the smaller container sizes. Except for a small volume of 3½-pound tins offered in 1995, all of Maurice Lenell's butter cookie production has been offered in 16- or 18-ounce tins. Little Dutch Boy reported that it only sells 1-pound tins. Pepperidge Farm, which sells in grocery stores and its distribution network, offers butter cookies in small bags. Bestfoods sells almost entirely in paperboard boxes, although it did submit quantity and value data for the category of 16- and 18-ounce tins for one quarter.⁷

As previously mentioned, importers of the Danish product offer butter cookies in larger tins. Danco Import reported that it is able to sell the larger sizes at less per pound. For example, the 1-pound price is *** per pound, compared to *** per pound for a 2-pound tin, *** per pound for a 3-pound tin, and *** per pound for a 4-pound tin. For importers of butter cookies that submitted price data, 1-pound tins represented *** percent of their aggregate U.S. sales of butter cookies. Accordingly, the per pound price of all Danish butter cookies sold in the United States was less than the per-pound price of those sold in 1-pound tins.

Transportation Costs and Tariffs⁸

An indication of the freight and insurance cost to transport the subject Danish butter cookies to the U.S. market can be gained by examining the difference between the c.i.f. value and customs value for U.S. imports from Denmark under HTS heading number 1905.90.1090 (the heading under which most of the subject product enter, according to the respondents). Data for 1995-97 indicate that these costs to the U.S. market ranged from 7.4 to 7.9 percent of the value of the subject product.

Maurice Lenell reported that its U.S. transportation cost was approximately *** percent of its total delivered cost. There may be price premiums for less-than-full load amounts, and the premiums depend upon prevailing freight rates. Although importer responses varied, Commission staff believe that domestic producers and importers pay similar amounts for U.S. inland transportation. *** stated that some mass marketing firms have their own shipping operations and prefer to handle all shipping arrangements themselves.

⁶ Conference transcript, p. 47.

⁷ Based on total value of sales of all butter cookies in both the distributor and retail channels between 1995-97, *** is the largest U.S. producer followed by *** and ***.

⁸ There are no U.S. tariffs on butter cookies imported from Denmark.

Alleged Margins of Dumping/Subsidy

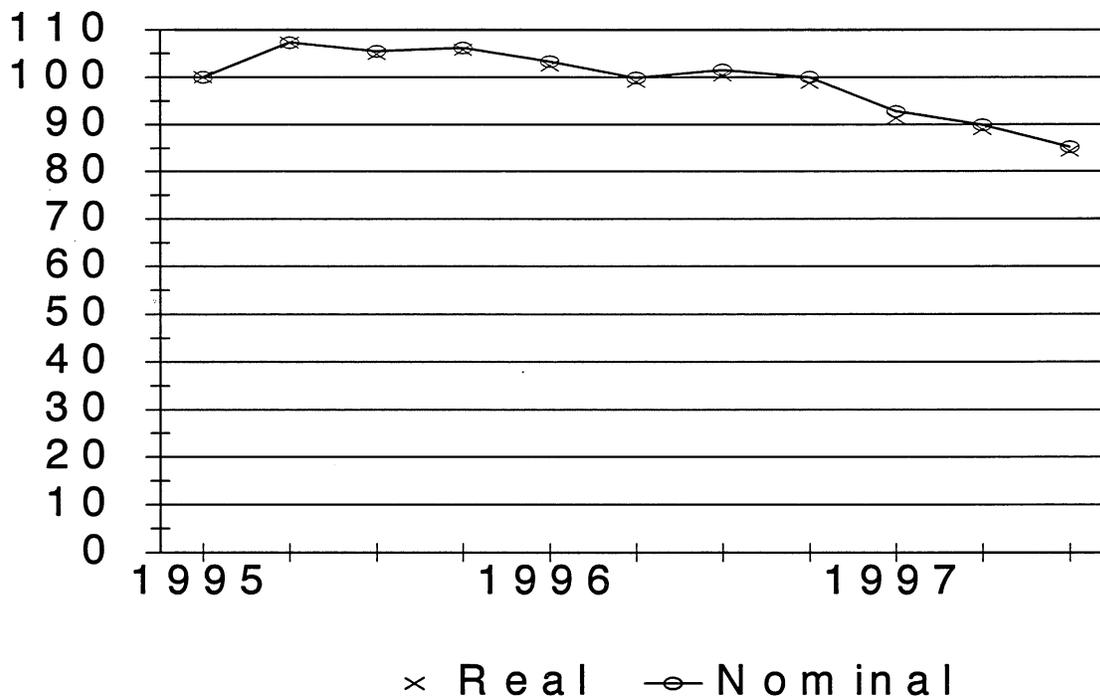
Commerce's preliminary determinations are due by May 4, 1998, for the countervailing duty investigation and by July 16, 1998, for the antidumping investigation. The petitioner has alleged that LTFV margins range from 45 to 83 percent in the antidumping investigation. Petitioner has alleged that Danish butter cookie exporters benefit from restitution payments on raw material inputs and from the Danish Law on Business Promotion. One significant allegation, if substantiated, is that the butter restitution payment equals 26 percent of the price of butter cookies in tins imported into the United States from Denmark.

Exchange Rates

Relative to the U.S. dollar, the Danish kroner appreciated by approximately 6 percent between the first and fourth quarters of 1995. Since then, the trend has been negative, with the value in the third quarter of 1997 about 15 percent less than in the first quarter of 1995. A real exchange rate index was constructed by using consumer price indexes in the United States and Denmark, although the real index was almost identical to the nominal one. Both are shown in figure V-1. Respondents stated that the lower U.S. dollar price of the Danish kroner is a principal factor explaining the lower U.S. dollar price of imported Danish butter cookies.⁹ The petitioner acknowledged the changing exchange rate but stated that its impact was minimal.

⁹ Respondents' postconference brief, p. 19.

Figure V-1
Exchange rates: Indexes (Jan.-Mar. 1995 = 100) of the nominal and real U.S. dollar price of the Danish kroner, by quarters, Jan. 1995 - Sept. 1997



Source: IMF, *International Financial Statistics*, Jan. 1998.

PRICING PRACTICES

U.S. producers arrive at selling prices through negotiation with customers. Maurice Lenell reported that it may ***. It also stated that ***. Little Dutch Boy stated that its sales price is determined ***. Pepperidge Farm stated it sets prices ***.

Importers determine prices in a similar manner. Kelsen reported that prices are usually set ***. Ripensa reported setting prices based on ***. Danco Import stated that it determines prices ***.

Typical sale terms for both U.S. producers and U.S. importers of the Danish product were 1 or 2 percent 10 days, net 30 days. U.S. producers stated their price basis was usually f.o.b. their warehouse dock, although Maurice Lenell reported that its price basis could also be delivered. Importers Kelsen and Danco Import reported their price basis as delivered.

All domestic producers that responded to the question regarding discount policy reported that they do not offer discounts. Similarly, most importers stated in their questionnaire responses that they do not offer discounts, either quantity or year-end discounts. *** stated that it offers net prices, although it may discuss year-end bonuses with larger customers. *** added that it primarily offers just net prices with no annual total volume discounts.

The petitioner has alleged that importers of Danish butter cookies use discounts and "loyalty payments" to lower their effective sale price.¹⁰ At the conference, the petitioner explained that a loyalty fund operated as an up-front payment to a customer of say, \$50,000 or \$100,000, that is amortized over the amount of units that they sell.¹¹ Kelsen's representative admitted the existence of loyalty funds, but denied that they were up-front payments.¹² Staff requested additional information in the postconference briefs concerning loyalty payments but was unable to ascertain their prevalence or overall effect on pricing.

Most business is transacted on a contract basis. Maurice Lenell stated that *** percent of its sales are based on contracts and *** percent are in the spot market, such as late season Christmas sales. Danco Import and Crackin' Good Bakery reported that *** percent of their sales are contracted. Kelsen stated that *** percent of its sales are contracted and *** percent are in the spot market. By contrast, Little Dutch Boy reported that ***. Contracts usually fix price, quantity, and delivery dates for both domestic producers and importers. Both domestic producers and importers charge extra for sub-minimum shipments. Maurice Lenell reported that its contracts ***, but Kelsen reported that ***. *** stated that it usually makes yearly contracts and renegotiates at or before the contract's end. *** stated that it contracts ***.

¹⁰ Petition, p. 30 and exhibit 17, which includes a copy of a letter from a distributor, ***.

¹¹ Conference transcript, p. 48.

¹² *Ibid.*, pp. 118-119.

PRICE DATA

In the Commission's producer and importer questionnaires, quarterly quantity and value information was requested for 1995-97. Products for which information was requested include 16- and 18-ounce tins of butter cookies, and all butter cookies. Separate price data were requested for shipments to retailers and shipments to distributors. No price data were collected for non-butter cookies.

Four U.S. producers submitted pricing data: Bestfoods, Maurice Lenell, Little Dutch Boy, and Pepperidge Farm. Four importers submitted pricing data: Kelsen, Bork & Associates, Danco Import, and Ripensa. The importers sell almost exclusively to retailers. All of *** sales and approximately *** percent of *** sales of butter cookies were to the retail sector; therefore only retail sales were examined. Pepperidge Farm is discussed separately below.

Pepperidge Farm presented quantity and value data showing that it sold ***¹³ pounds of butter cookies in 1995, 1996, and 1997, respectively. ***. Pepperidge Farm reported that its prices were ***. It does not sell butter cookies in tins, but in 7½- and 9½-ounce bags, and its average price per pound for 1995-97, as calculated from questionnaire data, is *** percent greater than the average per-pound price of the U.S. producers of butter cookies in tins and *** percent greater than the per-pound average of importers of Danish butter cookies. If Pepperidge Farm's data were added to other U.S. producers in the "all butter-cookies" category, the U.S. producer price is greater than the price of the imported Danish product in every quarter. Pepperidge Farm stated in its questionnaire that ***. Although its prices have been higher than other U.S. producers, its per-pound price *** in 1997. Pepperidge Farm's data are not included in the price discussion that follows.

Price data submitted by U.S. producers Maurice Lenell and Little Dutch Boy only show sales of 16-ounce and 18-ounce tins of butter cookies. Their data for shipments of 16- and 18-ounce containers to the retail sector are thus identical to their data for shipments of all butter cookies to the retail sector. Maurice Lenell, the only producer (either domestic or Danish) to offer 18-ounce tins, submitted price data showing sales of this product in every quarter between January 1995 and December 1997 except ***. Maurice Lenell submitted data for sales of 16-ounce tins only for ***. Because Maurice Lenell presented its sales of 18-ounce tins on a 1-pound basis, its 16- and 18-ounce sales were added together. Little Dutch Boy sold 1-pound tins ***. Bestfoods submitted data for 16- or 18-ounce tins ***. Price data for the 16- and 18-ounce category submitted by U.S. producers account for approximately *** percent of the known U.S. sales of butter cookies in tins between 1995 and 1997.

¹³ Reported quantities sold in the pricing section of Pepperidge Farm's producer questionnaire differed from the reported volumes of shipments, which were *** pounds in 1995, 1996, and 1997, respectively.

*** submitted quarterly sales data for sales of 16-ounce tins ***. *** submitted quarterly sales data ***. *** and *** submitted yearly sales data, which were converted to quarterly data.¹⁴ Sales by *** represented *** percent of importer sales in this category, and exclusion of sales by *** and *** did not change the pattern of overselling and underselling. Price data for the 16- and 18-ounce category submitted by importers of Danish butter cookies account for approximately *** percent of the known U.S. imports of butter cookies in tins from Denmark between 1995 and 1997. The smaller coverage of Danish imports is attributable, in large part, to their sales in larger tin sizes. Price trends and comparisons of butter cookies produced in the United States and imported from Denmark for the category of 16- and 18-ounce tins are shown in figure V-2 and table V-1.¹⁵

From the first quarter of 1995 to the first quarter of 1997, prices of both U.S.-produced and imported Danish butter cookies were stable to somewhat increasing. Danish imports oversold the U.S.-produced tins in each of these 9 periods, by an average of *** per pound, or by *** percent.

From the first to the second quarter of 1997, prices of the U.S.-produced product jumped by *** percent to *** per pound, whereas prices of the imported Danish product fell by *** percent to *** per pound. Danish prices dropped again in the third quarter. The third quarter 1997 Danish price was *** percent less than the first quarter 1997 figure of *** per pound, which was the high price for the period. With the U.S. sales price at its high for the 3 years in the second quarter of 1997, U.S. sales volume fell to *** pounds. Prices of the U.S. product fell *** percent between the second and third quarters of 1997. Both Danish and U.S. prices were stable between the third and fourth quarters of 1997, and U.S. sales volumes had recovered somewhat by the fourth quarter of 1997. Danish sales of this product reached a peak of *** pounds in the fourth quarter of 1997. During the last three quarters of 1997, Danish imports undersold the U.S. product by an average of *** per pound, or by *** percent.

¹⁴ ***'s sales represented *** percent of importer sales in this category. Discussions with *** representatives in the United States and Denmark revealed that ***. ***.

¹⁵ See app. D for a table of U.S.-producer and importer prices for sales of all butter cookies to the retail sector. This table includes Danish imports in other tin sizes, as only *** percent of their U.S. sales were in the 16- and 18-ounce category. Because prices of Danish butter cookies were generally less per pound at larger tin sizes, unit prices for imported Danish butter cookies in this table are less than in the 16- and 18-ounce category. This table includes sales by Bestfoods, which sells almost exclusively in paperboard boxes. Maurice Lenell's and Little Dutch Boy's sales of 16- and 18-ounce tins are included, which represent *** percent of U.S. producer sales to the retail sector. Because ***, U.S. producer prices in this "all" category were greater than in the 16- and 18-ounce category.

Figure V-2
Butter cookies in 16- and 18-ounce tins: Weighted-average U.S. f.o.b. selling prices to retail stores as reported by U.S. producers and by importers, by quarters, Jan. 1995-Dec. 1997

* * * * *

Table V-1
Butter cookies in 16- and 18-ounce tins: Weighted-average U.S. f.o.b. selling prices to retail stores as reported by U.S. producers and by importers, and margins of underselling (overselling),¹ by quarters, Jan. 1995 - Dec. 1997

Period	United States		Denmark		Margin
	Quantity	Price	Quantity	Price	
	(1,000 pounds)	(Per pound)	(1,000 pounds)	(Per pound)	(Percent)
1995:					
Jan.-Mar.	***	***	***	***	(32.8)
Apr.-June	***	***	***	***	(33.4)
July-Sept.	***	***	***	***	(38.9)
Oct.-Dec.	***	***	***	***	(35.2)
1996:					
Jan.-Mar.	***	***	***	***	(38.4)
Apr.-June	***	***	***	***	(35.3)
July-Sept.	***	***	***	***	(29.4)
Oct.-Dec.	***	***	***	***	(17.9)
1997:					
Jan.-Mar.	***	***	***	***	(32.2)
Apr.-June	***	***	***	***	6.8
July-Sept.	***	***	***	***	3.1
Oct.-Dec.	***	***	***	***	3.2
¹ Numbers in parentheses indicate that the imported product was priced higher than the U.S.-produced product.					
Source: Compiled from data submitted in response to Commission questionnaires.					

LOST SALES AND LOST REVENUES

Two U.S. producers of butter cookies not in tins, Bestfoods and Pepperidge Farm, stated that they had not lost any sales or revenue as a result of competition from imported Danish butter cookies in tins. Little Dutch Boy and Maurice Lenell stated that they had lost revenue and sales as a result of competition from such imports; however, Little Dutch Boy provided no details concerning products, amounts, etc.¹⁶ The following discussion therefore concerns allegations of Maurice Lenell.

The petitioner's postconference brief alleged that every tin sold in 1996 but not sold in 1997 represents a lost sale. Customers with large differences in 1996 and 1997 sales are summarized in table V-2.

Table V-2
Lost sales allegations of Maurice Lenell based on differences between 1996 and 1997 sales of butter cookies in tins

* * * * *

¹⁶ ***.

Commission staff contacted ***. *** was unable to confirm or deny the allegation. *** and *** were unwilling to discuss the allegations. Regarding the alleged lost sales to ***, Maurice Lenell submitted the affidavit of ***, a sales broker for ***. The affidavit states that he received a verbal commitment from *** in the first quarter of 1997 to purchase *** tins from Maurice Lenell at *** per tin for the 1997 Christmas season. *** called *** in June and told him that they had offers for 1-pound tins from *** per tin. Maurice Lenell could not match that price and the sale went to the Danish imports. Commission staff tried to verify this allegation by contacting *** directly, but there has been a turn-over in ***'s sales staff, and current employees cannot confirm or deny the allegation.

Maurice Lenell also alleged that, because of competition from imported Danish butter cookies, it lost revenue on sales to ***. Maurice Lenell stated that it was forced to forego its planned switch to 16-ounce tins and had to continue selling *** the 18-ounce tins at the same price for which it would have sold the 16-ounce tins. Because of the higher cost of the 18-ounce tins, Maurice Lenell allegedly lost *** on these sales in 1997. Commission staff spoke to *** of ***. *** found their file on purchases of butter cookies but was unable to confirm or deny the allegation. *** stated that *** was not in the job at the time of 1997 Christmas sales and that the person who had been was no longer available.

Counsel for the petitioner alleged that Maurice Lenell lost revenue on sales to *** in 1997.¹⁷ He stated that Maurice Lenell reached an agreement with *** to supply *** cases (12 tins per case) at a price of *** per tin. Maurice Lenell reportedly received a call in May from ***, who stated that Danish producers had offered *** and that Maurice Lenell would have to match the price of the Danish product in order to retain the business.¹⁸ Maurice Lenell ***. Staff called *** to verify the allegation but was referred to ***, a corporate attorney, who stated that ***.¹⁹

¹⁷ Telephone conversation with Mr. David Levine, Mar. 11, 1998.

¹⁸ ***.

¹⁹ ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Both U.S. producers of butter cookies in tins (Maurice Lenell and Little Dutch Boy) provided income-and-loss data on their operations producing such cookies. The two firms accounted for all known domestic production of butter cookies in tins in 1995-97. Pepperidge Farm and Bestfoods also submitted financial data on butter cookies, although neither produces butter cookies in tins.

Maurice Lenell (the petitioner) is a privately held company that was formed through acquisitions. The Cohen family purchased a business which had been producing cookies for 60 years. "Hearthside Baking Company, Inc. (The "Company") began operations in July 1987 through the acquisition of certain assets of Delicious Cookie Company, Inc. The Company purchased additional assets from Maurice Lenell Cookie Company, Inc. in October 1987."¹ It had 1997 cookie sales of ***. Sales of butter cookies in tins accounted for *** percent of all cookie sales in 1997.

The other producer of butter cookies sold in tins (Little Dutch Boy) is also a privately held company, whose fiscal 1997 sales of all cookies were ***. Butter cookies in tins accounted for *** percent of all cookie sales in 1997.

Pepperidge Farm packages all of its butter cookies in bags. The butter cookies are sold at retail with the name *Chessmen* on the package. The company provided income-and-loss data on its butter cookies and its all cookies operations. Its cookie business is part of the Biscuits and Confectionery Division (BCD) of Campbell Soup, a large publicly held company. The BCD had total fiscal 1997 sales of \$1.5 billion and total cookie sales of ***. Sales of butter cookies were *** in fiscal 1997, accounting for *** percent of total cookie sales.

Bestfoods Baking Company (Bestfoods) is a division of Bestfoods International, the new name for the consumer foods business of the former CPC International, which spun-off its corn refining business as a separate business. It currently sells butter cookies in paperboard boxes with clear windows under the *Entenmann's* name. The company provided income-and-loss data on its all cookies and butter cookies operations. Its 1997 sales of all cookies were ***. Sales of its butter cookies were ***, accounting for *** percent of all cookie sales.

Boca Foods, Inc. (D/B/A as Century Cookies), a producer of cookies in tins other than butter cookies, ***. It is a privately held producer with *** in 1997 sales of all cookies and *** of sales of other types of cookies sold in tin cans. These cookies in tins accounted for *** percent of its total cookie sales. Maurice Lenell also sells other types of cookies in tins. Sales of these cookies were *** in 1997 and accounted for *** percent of its total cookie sales.

¹ Hearthside Baking Company, Inc. financial statements for the fiscal year ending June 30, 1997, p. 7.

OPERATIONS ON BUTTER COOKIES IN TINS

Combined income-and-loss data for the two producers of butter cookies in tins are presented in table VI-1. ***. Separate income-and-loss data for each producer are presented in table VI-2. ***.

Table VI-1
Results of operations of U.S. producers in the production of butter cookies in tins, 1995-97

* * * * *

Table VI-2
Results of operations of U.S. producers, by firm, in the production of butter cookies in tins, 1995-97

* * * * *

In 1997 Maurice Lenell's selling, general, and administrative expense (SG&A) ratio (SG&A/net sales) was *** percent versus *** percent for Little Dutch Boy.² However, Maurice Lenell's SG&A ratio is ***.

Maurice Lenell does not attribute its losses to imports of butter cookies in tins until 1997. According to the petition, the early losses were primarily attributable to its marketing plan. It stated:

*"Recognizing that price would be important to winning market share, Petitioner initially offered an 18-ounce product to compete with the Danes' 16-ounce tin, for a price below the prevailing Danish price. As Exhibit 21 indicates, the strategy worked, with sales increasing rapidly from zero to *** tins in 1994, to *** tins in 1995 and to *** tins in 1996, as Petitioner won a growing number of key accounts. As in the case of most new market entrants, initial financial results showed negative rates of operating income during the ramp-up period, and a sharp upward "spike" in the world price of butter in 1995-96 contributed to worsened losses in those years."*^{3 4}

Petitioner indicates that it thought that 1997 would be a profitable turnaround year. It stated that:

"Initial discussions with customers suggested that a further, substantial increase in sales volumes could be expected at higher prices that reflected the then-prevailing Danish prices. Early purchases of butter supplies at favorable "forward" prices ensured a relatively low-cost supply of that ingredient for 1997. Finally, plans called for reduced costs made possible in significant part by reducing the standard tin weight from 18 ounces to 16 ounces, while increasing the price toward then-prevailing Danish levels. The stage was set for a banner year.

*With increased volume and reduced costs, Petitioner fully anticipated a profitable rate of return from the sale of butter cookies in tins in 1997-- its fourth full year of commercial sales of butter cookies in tins. Instead, sharp price cuts by the Danes, forcing a drastic reduction in sales, caused Petitioner to incur significant losses on its butter cookies in tins business for 1997; Petitioner lost to its Danish competitors at least *** in 1997 revenue, with a corresponding loss in profits."⁵*

² Little Dutch Boy reported that *** whereas Maurice Lenell ***. ***.

³ Petition, p. 27.

⁴ For the production of butter cookies, the price of butter is the largest cost item.

⁵ Petition, p. 28.

The cost of goods sold for butter cookies in tins consists of two portions, the cost of producing the butter cookie, and the packing cost (including the purchase of the tin and its components).⁶ The costs of these items will be shown later in this section.

Maurice Lenell uses the same tin (but labeled accordingly) for both its 16- and 18-ounce products. The 18-ounce product merely consists of 2 more ounces of cookies than are inserted in a 16-ounce tin. Maurice Lenell's petition contained an analysis of its individual costs for producing butter cookies in tins.⁷ The production cost of the butter cookies that are packed in a tin varies depending upon (a) whether there are 16 or 18 ounces of cookies and (b) fluctuations in the price of butter and other ingredients. A summary of these data for 1997 are presented in the following tabulation:

Component	Cost per pound
Net sales	***
Cost of goods sold:	
Butter cookie production:	
Cookies	***
Bakery labor	***
Production cost	***
Packing:	
Tin	***
Shrink band	***
Circle	***
Master case	***
Cups	***
Packing labor	***
Packing cost	***
Storage	***
Other costs	***
Total unit cost of goods sold	***
Gross profit	***
SG&A expenses	***
Operating income (loss)	***

⁶ Petitioner notes that "the manufacture of butter cookies in tins involves the most expensive packaging process in the cookie business. Rather than simply placing cookies into a bag, plastic tray or some other flimsy container, butter cookies in tins require that each cookie be placed into cups containing several individual cookies and then packed into a metal container. A paper circle is inserted over the cupped cookies, the metal lid is applied and sealed, and a shrink wrap is applied. The expense involved in this process substantially adds to the cost of producing butter cookies in tins, further distinguishing them from other cookie products." Petitioner's postconference brief, pp. 15-16.

⁷ Exhibit 23 of the petition. The staff has separated each item into butter cookie, packing, and storage costs.

VARIANCE ANALYSIS

The variance analysis in table VI-3 provides an assessment of changes in profitability as related to changes in pricing, costs, and volume. There was not a *** and there were ***, ***.

Table VI-3
Variance analysis for butter cookies in tins, 1995-97

* * * * *

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

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs for butter cookies in tins are shown in table VI-4. ***. The capital expenditures were for the addition of ***. Other capital expenditures included ***. Maurice Lenell's fixed assets and book value data are ***. It also had capital expenditures of *** in fiscal 1998.

Table VI-4
Value of assets, capital expenditures, and research and development expenses of Maurice Lenell in producing butter cookies in tins, 1995-97

* * * * *

OPERATIONS ON OTHER COOKIE PRODUCTS

Appendix C contains aggregate trade and financial data on the other cookie products which were collected for these investigations. Data on all butter cookies (table C-3) include Bestfoods and Pepperidge Farm, as well as the two producers of butter cookies in tins. The all butter cookie industry was profitable in each period. *** had operating income margins of ***, ***, and *** percent in 1995, 1996, and 1997, respectively. *** had operating income margins of ***, ***, and *** percent in 1995, 1996, and 1997, respectively. The all cookie industry was profitable in each period. ***. The “all cookies” data (table C-2) represent a small portion of all U.S. cookie producers, most of whom were not required to submit data because they do not produce either butter cookies or cookies in tins. Nevertheless, the all cookies sales that were provided were significantly larger than those for butter cookies. Maurice Lenell was the only producer that provided financial data on its other cookies in tins operations (table C-4). ***.⁸

CAPITAL AND INVESTMENT

The Commission requested the producers to describe any actual or potential negative effects of imports of butter cookies in tins from Denmark on their growth, investment, ability to raise capital, and/or their development efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are in appendix E.

⁸ Note: Financial data were reported on a Dec. 31 basis except for Pepperidge Farm, whose year ends July 31. Unit values vary with each type of packaging.

PART VII: THREAT CONSIDERATIONS

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that—

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Information on the nature of the alleged subsidies and sales at LTFV was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise, foreign producers' operations, and any other threat indicators, if applicable, follows.

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

ABILITY OF DANISH PRODUCERS TO GENERATE EXPORTS AND THE AVAILABILITY OF EXPORT MARKETS OTHER THAN THE UNITED STATES

The information in this section is based primarily on responses to Commission requests for information submitted directly to the four Danish butter cookie manufacturers identified as exporting products to the United States.

THE INDUSTRY IN DENMARK

The Danish cookie industry is highly concentrated, with six companies accounting for almost all cookie sales. These companies include ***: Kelsen A/S, Oxford Biscuits A/S, Coronet Cake Company ApS, Ripensa A/S, Intergoods Bakery Ltd. A/S, and Queen's Biscuits I/S.³ However, only four of these companies, Kelsen, Intergoods Bakery, Ripensa, and Queen's Biscuits, exported butter cookies to the United States during the period 1995-97.⁴

Table VII-1 presents Danish industry data on capacity, production, inventories, shipments, and exports of butter cookies in tins for 1995-97 and projections for 1998-99.

Kelsen

Kelsen The International Bakery A/S, is headquartered in Nr. Snede, Denmark. In 1890, Christian and Karen Volf founded a local bakery; in 1907, Helsingor Faellsbageir was founded by a small group of bakers; and in 1933, Marinus and Anna Kjeldsen founded a village bakery. In 1963, Helsingor Faellsbageri founded Dansk Biscuit Compagni. After acquiring the Volf Company in 1984, and the Kjeldsen Company in 1990, Dansk Biscuit Compagni became oriented toward international markets. In 1993, Kelsen was launched as a new company.⁵ Kelsen's premium brand of butter cookies in tins is called "Royal Dansk." However, it also produces butter cookies in tins under several other brand names, including "Kjeldsen," "Mermaid," and "Copenhagen." In addition, Kelsen produces margarine cookies in tins and other cookies in designer tins.⁶ It also sells butter cookies in "mini-cups."⁷

³ Petition, exhibit 12.

⁴ Of those companies exporting to the United States, Kelsen was ***. Based on production during 1995-97, Kelsen was ***.

⁵ Respondents' postconference brief, exhibit N, p. 1.

⁶ Margarine cookies accounted for *** percent of the company's sales in 1997.

⁷ Petition, exhibit 13.

Table VII-1 Butter cookies in tins: Denmark's capacity, production, inventories, capacity utilization, and shipments, 1995-97, and projections for 1998-99					
Item	Actual experience--			Projections--	
	1995	1996	1997	1998	1999
	<i>Quantity (1,000 pounds)</i>				
Capacity	141,833	141,833	132,333	132,333	132,333
Production	93,591	87,919	87,247	89,107	89,811
End-of-period inventories	1,060	1,572	2,093	1,800	1,700
Shipments:					
Home market	***	***	***	***	***
Exports to--					
United States	***	***	***	***	***
European Union	***	***	***	***	***
All other markets	***	***	***	***	***
Total exports	***	***	***	***	***
Total shipments	95,256	87,457	86,853	88,357	89,362
	<i>Ratios and shares (percent)</i>				
Capacity utilization	66.0	62.0	65.9	67.3	67.9
Inventories to production	***	***	***	***	***
Inventories to shipments	***	***	***	***	***
Share of total shipments to:					
Home market	***	***	***	***	***
Exports to--					
United States	***	***	***	***	***
European Union	***	***	***	***	***
All other markets	***	***	***	***	***
Total exports	***	***	***	***	***
Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.					

Kelsen was the largest Danish producer of butter cookies during the period 1995-97, and *** exporter of butter cookies in tins to the United States during this same period.^{8 9} The company's largest accounts in the United States include ***. Butter cookies in tins accounted for *** percent of the company's sales in 1997, while all butter cookies accounted for *** percent of sales in the same year.¹⁰

Intergoods Bakery

Intergoods Bakery Ltd., headquartered in Hedensted, Denmark and established in 1967, is wholly-owned and controlled by the Jacobsen family. They consider themselves pioneers in the export of Danish butter cookies, having started in the business over 30 years ago. Intergoods supplies a wide range of cookie products worldwide. These products are not limited to butter cookies; they include designer tins (embossed and in several shapes) and boxes, licensed products, and a wide assortment of cookies for all seasons. In addition to these products, Intergoods sells "the original" Danish Butter Cookie in 1- 1½-, 2-, and 3-pound tins.¹¹ Intergoods also exports butter cookies in 3½- and 7-ounce boxes to the United States.

Intergoods Bakery was *** exporter of butter cookies in tins to the United States during the period 1995-97.^{12 13} The company's largest accounts in the United States include ***. Butter cookies in tins accounted for *** percent of the company's sales in 1997, while all butter cookies accounted for *** percent of sales in the same year.¹⁴

Ripensa

Ripensa A/S, located in Ribe, Denmark, is a family owned company that started exporting Danish butter cookies in the early 1970s. It bought butter cookies from other Danish companies and packaged and exported them under its own label. In 1987, Ripensa established its own factory; it has sales offices in the United States, Argentina, and the United Kingdom.

⁸ Kelsen exported *** pounds of butter cookies in tins to the United States in 1995, *** pounds in 1996, and *** pounds in 1997. Exports to the United States accounted for *** percent of the company's total shipments in 1995, *** percent in 1996, and *** percent in 1997.

⁹ Kelsen's exclusive importer and distributor in the United States is Kelsen, Inc., Melville, NY.

¹⁰ Kelsen produces approximately *** pounds of butter cookies that are packed in boxes and cups.

¹¹ Respondents' postconference brief, exhibit N, p. 3.

¹² Intergoods Bakery exported *** pounds of butter cookies in tins to the United States in 1995, *** pounds in 1996, and *** pounds in 1997. Exports to the United States accounted for *** percent of the company's total shipments in 1995, *** percent in 1996, and *** percent in 1997.

¹³ Intergoods Bakery's primary importer and distributor in the United States is Danco Import, Pine Brook, NJ.

¹⁴ Shortbread, chocolate chip, and margarine cookies accounted for *** percent of Intergoods Bakery's sales in 1997.

Ripensa started exporting to the United States in 1977; its other major markets include Europe, Japan, Australia/New Zealand, and more recently, South America.¹⁵ In 1991, Ripensa began exporting cookies other than butter cookies.¹⁶

Ripensa was the *** largest exporter of butter cookies in tins to the United States during the period 1995-97.¹⁷ ¹⁸ The company's largest accounts in the United States include ***. Butter cookies in tins accounted for *** percent of the company's sales in 1997, while all butter cookies accounted for *** percent of sales in the same year.

Queen's Biscuits

Queen's Biscuits I/S, located in Copenhagen, Denmark, was the *** exporter of butter cookies in tins to the United States during the period 1995-97.¹⁹ ²⁰ The company's largest account in the United States is ***. Butter cookies in tins accounted for *** percent of the company's sales in 1997.²¹

U.S. IMPORTERS' INVENTORIES

Data on U.S. importers' inventories are presented in table VII-2.

Table VII-2

Butter cookies in tins: U.S. importers' end-of-period inventories of imports from Denmark, 1995-97

* * * * *

¹⁵ Respondents' postconference brief, exhibit N, p. 2.

¹⁶ Ibid., exhibit O.

¹⁷ Ripensa exported *** pounds of butter cookies in tins to the United States in 1995, *** pounds in 1996, and *** pounds in 1997. Exports to the United States accounted for *** percent of the company's total shipments in 1995, *** percent in 1996, and *** percent in 1997.

¹⁸ Ripensa's *** importer and distributor in the United States is Ripensa a/s, Inc., Ft. Myers, FL.

¹⁹ Queen's Biscuit exported *** pounds of butter cookies in tins to the United States in 1995, *** pounds in 1996, and *** pounds in 1997. Exports to the United States accounted for *** percent of the company's total shipments in 1995, *** percent in 1996, and *** percent in 1997.

²⁰ Queen's Biscuits' primary importer and distributor in the United States is ***. Other importers include ***.

²¹ Margarine cookies accounted for *** percent of Queen's Biscuits' sales in 1997, chocolate chip cookies for *** percent, and apple cinnamon cookies for *** percent of sales.

APPENDIX A

FEDERAL REGISTER NOTICES

Butter Cookies in Tins From Denmark

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701-TA-374 and 731-TA-780 (Preliminary)]

Butter Cookies in Tins From Denmark

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase countervailing duty investigation No. 701-TA-374 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Denmark of butter cookies in tins, provided for in subheading 1905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Denmark. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach a preliminary determination in countervailing duty investigations in 45 days, or in this case by March 23, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by March 30, 1998.

The Commission hereby also gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-780 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially

injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Denmark of butter cookies in tins, provided for in subheading 1905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by March 23, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by March 30, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-205-3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on February 6, 1998, by Hearthside Baking Company, Inc. (D/B/A Maurice Lenell Cooky Company), Chicago, IL.

Participation in the investigations and public service list.—Persons (other than petitioner) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the *Federal Register*. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in

Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

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

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on February 27, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202-205-3179) not later than February 23, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping or countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 4, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to

the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

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

Issued: February 10, 1998

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-3785 Filed 2-13-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-409-801, C-409-802]

**Initiation of Antidumping and
Countervailing Duty Investigations:
Butter Cookies in Tins from Denmark**

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

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT:
Robert Copyak (antidumping
investigation) or Christopher Cassel
(countervailing duty investigation),
Office of CVD/AD Enforcement VI,
International Trade Administration,
U.S. Department of Commerce, Room
40120, 14th Street and Constitution
Avenue, N.W., Washington, DC 20230;
telephone (202) 482-2786.

INITIATION OF INVESTIGATIONS:**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations published in the *Federal Register* on May 19, 1997 (62 FR 27296).

The Petition

On February 6, 1998, the Department of Commerce ("the Department")

received a petition filed in proper form by Hearthside Baking Company, Inc., D/B/A Maurice Lenell Cooky Co. ("the petitioner").

Petitioner alleges, in accordance with section 702(b) of the Act, that producers and/or exporters of butter cookies in tins from Denmark receive countervailable subsidies within the meaning of section 701 of the Act, and, in accordance with section 732(b) of the Act, that imports of butter cookies in tins from Denmark are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act. Petitioner also alleges that imports of such butter cookies in tins are materially injuring or threaten material injury to an industry in the United States.

The Department finds that petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support (see discussion below).

Scope of Investigation

For purposes of the antidumping and countervailing duty investigations, the products covered are butter cookies in tins. Butter cookies are flat baked sweet biscuits made from a mixture of ingredients which may include, but are not limited to butter, flour, eggs, and sugar. As defined by the U.S. Food and Drug Administration Compliance Policy Guide 7102.06, Chapter 5, Sec. 505.200, butter cookies are distinguishable from all other cookies in that "all of the shortening ingredient is butter." The butter cookies covered by these investigations are only those in hard containers ("tins"), which include, but are not limited to, those that are made of metal, and are round, printed with colorful decorative logos and/or pictures, and which have closeable lids.

The merchandise subject to these investigations is classifiable under subheadings 1905.30.0041 and 1905.30.0049 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Consultations

On February 20, 1998, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department held consultations with representatives of the European Union and the Government of Denmark about the countervailing duty petition. The officials expressed concerns about the definition of the like product. See Tab

B of Antidumping and Countervailing Duty Checklist ("Checklist"), dated February 26, 1998, which is on file in public version form in the public file in room B-099 of the main Commerce building. The officials also expressed concerns about the subsidy allegations made in the countervailing duty petition and, subsequently, submitted information regarding the alleged subsidy programs. See *ex parte* memorandum to file dated February 26, 1998, Consultation with European Union and Government of Denmark Representatives Regarding the Countervailing Duty Petition on Butter Cookies in Tins from Denmark, which is on file in the public file in room B-099 of the main Commerce building. We considered the concerns expressed by the representatives of the European Union and the Government of Denmark for purposes of this initiation.

Determination of Industry Support for the Petition

Sections 702(b)(1) and 732(b)(1) of the Act require that a petition be filed on behalf of the domestic industry. Sections 702(c)(4)(A) and 732(c)(4)(A) of the Act provide that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct statutory authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render

the decision of either agency contrary to the law.¹

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

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petitioner's definition of the domestic like product to be inaccurate. The Department has adopted the domestic like product definition set forth in the petition, making only minor adjustments for clarification purposes. In this case, the petitioner established industry support above the statutory requirement. See Tab B of Checklist which is on file in public version form in the public file in room B-099 of the main Commerce building. Accordingly, the Department determines that the petition is filed on behalf of the domestic industry within the meaning of sections 702(b)(1) and 732(b)(1) of the Act.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate the antidumping duty investigation is based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioner identified several exporters and producers of butter cookies in tins from Denmark. Petitioner provided allegations of sales at less than fair value based on export price ("EP") and constructed export price ("CEP"), within the meaning of sections 772(a) and 772(b) of the Act, and based on normal value ("NV"), within the meaning of section 773 of the Act. The petitioner based EP on price quotes U.S. buyers received from Danish companies. The petitioner calculated a net U.S.

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

price by subtracting the freight costs in Denmark as provided in a market research report ("Foreign Market Research Report") commissioned by petitioner. We discussed the information contained in this report with the author of the report. See Tab C of Checklist which is on file in public version form in the public file in room B-099 of the main Commerce building. The petitioner subtracted the freight costs to the United States to arrive at an ex-factory price. Petitioner provided separate EP calculations using freight costs to the United States based on U.S. Census Import Statistics, and freight costs to the United States based on information contained in the Foreign Market Research Report.

In deriving the CEP, the petitioner began with the price offered to a U.S. buyer from a sales broker that was not related to the Danish producer or its U.S. subsidiary. Next, the petitioner subtracted a loyalty discount offered by Danish producers. Then, the petitioner subtracted the freight cost inside Denmark. As mentioned above, this freight cost was obtained from the Foreign Market Research Report. Next, the petitioner subtracted the freight cost to the United States using as sources both U.S. Census data as well as data contained in the Foreign Market Research Report. Finally, the petitioner subtracted the freight cost inside the United States as provided by a U.S. shipping company, to arrive at the ex-factory price.

Petitioner calculated NV based on information contained in the Foreign Market Research Report. Based on a sales receipt and personal observations provided by the foreign market researcher, petitioner obtained a range of retail prices in Denmark. Then, the petitioner derived the price to the retailer by subtracting a mark-up provided by the researcher from the retail price. Next, the petitioner calculated the price to the wholesaler by subtracting from the price to the retailer the administrative cost at the wholesale level as provided by the researcher. Finally, by subtracting value-add tax and the transportation cost provided by the researcher, the petitioner arrived at NV.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of butter cookies in tins from Denmark are being, or are likely to be, sold in the United States at less than fair value.

Subsidy Programs

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

European Union Program

Export Restitution Payments on Butter, Sugar and Wheat Flour

Government of Denmark Programs

1. Export Credit and Insurance Program
2. Export Training Program
3. Assistance for Export Groups

We are not including in our investigation the following program alleged to be benefitting producers and exporters of the subject merchandise in Denmark:

International Tender Program

Information provided in the petition (see Exhibit 22) indicates that this program provides assistance to Danish companies bidding on deliveries abroad of projects, consulting, services or equipment. Because the merchandise subject to this investigation does not fall within the type of items enumerated (i.e., deliveries abroad of projects, consulting, services or equipment), this program does not apply to producers of butter cookies. Therefore, we are not initiating an investigation of this program.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise being sold at less than fair value and benefitting from the bestowal of countervailable subsidies. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioner and the Danish export statistics provided in the petition. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation. See Tab E of the Checklist which is on file in public version form in the public file in room B-099 of the main Commerce building.

Initiation of Antidumping and Countervailing Duty Investigations

We have examined the petition on butter cookies in tins and have found that it meets the requirements of sections 702 and 732 of the Act. Therefore, we are initiating antidumping and countervailing duty investigations to determine whether imports of butter cookies in tins from Denmark are being, or are likely to be, sold in the United States at less than fair value and whether producers and/or exporters of butter cookies in tins from Denmark received subsidies. Unless extended, we will make our preliminary determinations for the countervailing duty investigation no later than May 4, 1998 and for the antidumping duty investigation no later than July 16, 1998.

Distribution of Copies of the Petitions

In accordance with sections 702(b)(4)(A)(i) and 732(b)(3)(A) of the Act, and § 351.203(c)(2) of the Department's regulations, copies of the public version of the petition have been provided to the representatives of the Government of Denmark and to representatives of the European Union. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition.

ITC Notification

We have notified the ITC of our initiations, as required by sections 702(d) and 732(d) of the Act, and § 351.203(c)(1) of the Department's regulations.

Preliminary Determinations by the ITC

The ITC will determine by March 23, 1998, whether there is a reasonable indication that imports of butter cookies in tins from Denmark are materially injuring, or threatening material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to sections 702(c)(2) and 732(c)(2) of the Act and § 351.203(c)(1) of the Department's Regulations.

Dated: February 26, 1998.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.

[FR Doc. 98-5741 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-DS-P

Butter Cookies in Tins From Denmark

APPENDIX B

CALENDAR OF PUBLIC CONFERENCE



UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

CALENDAR OF PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the following investigations:

BUTTER COOKIES IN TINS FROM DENMARK

Investigations Nos. 701-TA-374 & 731-TA-780 (Preliminary)

February 27, 1998 - 9:30 am

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

IN SUPPORT OF THE IMPOSITION OF COUNTERVAILING/ANTIDUMPING DUTIES:

McDERMOTT, WILL & EMERY
Washington, DC
on behalf of

HEARTHSIDE BAKING COMPANY, INC., D/B/A MAURICE LENELL COOKY CO.

Wayne Cohen, President
Terry Cohen, CEO

ECONOMIC CONSULTING SERVICES INC.

Bruce P. Malashevich, President

David J. Levine)--OF COUNSEL
Carl B. Kress)

CALENDAR OF PUBLIC CONFERENCE--Continued

IN OPPOSITION TO THE IMPOSITION OF COUNTERVAILING/ANTIDUMPING DUTIES:

MAX N. BERRY

Washington, DC
on behalf of

KELSEN A/S
KELSEN, INC. (USA)
RIPENSA A/S
INTERGOODS BAKERY LTD. A/S
QUEEN'S BISCUITS I/S

KELSEN, INC.
Lars Norgaard, President & CEO

Max N. Berry)--OF COUNSEL
Marie-Noëlle Vulliez)

APPENDIX C

SUMMARY DATA CONCERNING THE U.S. MARKET

Butter Cookies in Tins From Denmark

Table C-1
Butter cookies in tins: Summary data concerning the U.S. market, 1995-97

* * * * *

Table C-2
All cookies: Summary data concerning the U.S. market, 1995-97

* * * * *

Table C-3
All butter cookies: Summary data concerning the U.S. market, 1995-97

* * * * *

Table C-4
Cookies other than butter cookies in tins: Summary data concerning the U.S. market, 1995-97

* * * * *

Table C-5
All cookies in tins: Summary data concerning the U.S. market, 1995-97

* * * * *

Butter Cookies in Tins From Denmark

APPENDIX D

ADDITIONAL PRICING DATA ON ALL BUTTER COOKIES

Butter Cookies in Tins From Denmark

Table D-1

All butter cookies: Weighted-average U.S. f.o.b. selling prices to retail stores as reported by U.S. producers and by importers, and margins of underselling (overselling),¹ by quarters, Jan. 1995 - Dec. 1997

Period	United States		Denmark		Margin
	Quantity	Price	Quantity	Price	
	(1,000 pounds)	(Per pound)	(1,000 pounds)	(Per pound)	
1995:					
Jan.-Mar.	***	***	***	***	15.2
Apr.-June.	***	***	***	***	20.5
July-Sept.	***	***	***	***	(15.2)
Oct.-Dec.	***	***	***	***	(19.5)
1996:					
Jan.-Mar.	***	***	***	***	6.0
Apr.-June	***	***	***	***	16.8
July-Sept.	***	***	***	***	(8.8)
Oct.-Dec.	***	***	***	***	(5.2)
1997:					
Jan.-Mar.	***	***	***	***	24.7
Apr.-June	***	***	***	***	28.3
July-Sept.	***	***	***	***	27.9
Oct.-Dec.	***	***	***	***	14.3

¹ Numbers in parentheses indicate that the imported product was priced higher than the U.S.-produced product.

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

Butter Cookies in Tins From Denmark

APPENDIX E

**EFFECTS OF IMPORTS ON PRODUCERS' EXISTING
DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH,
INVESTMENT, AND ABILITY TO RAISE CAPITAL**

The Commission requested the U.S. producers to describe any actual or potential negative effects of imports of butter cookies in tins from Denmark on their growth, investment, ability to raise capital, and/or their development efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are as follows:

ACTUAL NEGATIVE EFFECTS

* * * * *

ANTICIPATED NEGATIVE EFFECTS

* * * * *

