

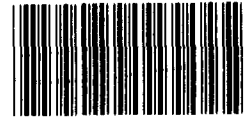


United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-251510

April 21, 1993



148982

The Honorable Charles W. Stenholm
The Honorable Steve Gunderson
The Honorable Ralph Regula
The Honorable David R. Obey
The Honorable Jim Leach
House of Representatives

Section 702 of Public Law 96-39, the Trade Agreements Act of 1979 provides that if a party believes that imported quota cheese¹ is subsidized and that its price is undercutting U.S. prices, that party may petition the Secretary of Agriculture to investigate. In your June 11, 1992, letter to us, you stated that a section 702 complaint had been filed by the Farmers Union Milk Marketing Cooperative of Madison, Wisconsin. The complaint alleged that the price of Swiss cheese imported from Switzerland was being undercut. In your letter, you asked us to address a number of questions about the section 702 provision. In subsequent discussions with your office, it was agreed that most of the questions raised in your letter would be addressed by the U.S. Department of Agriculture's (USDA) investigation of the complaint, and that our work would be limited to providing information on

- how the Farmers Union Milk Marketing Cooperative case was resolved,
- how effective the section 702 remedy is, and
- what other remedies for countering unfair dairy import competition are available.

In summary, our work showed that

- section 702 of the Trade Agreements Act of 1979 for addressing the price-undercutting of imported quota

¹A quota is a limit on the quantity of a commodity that may be imported into a country. In the United States, import quotas were first imposed on dairy products in 1951.

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cheese was effective in bringing about a timely and successful conclusion to the recent Farmers Union case;

- according to USDA and the Department of Commerce, the section 702 remedy has been effective and not overly burdensome and has been used effectively in 9 of the 10 cases that have been filed since it was established in 1979; and
- other legal remedies for addressing unfair dairy import competition are more complex and time-consuming than the section 702 remedy.

BACKGROUND

Section 702 of the Trade Agreements Act of 1979 counters the effects of foreign subsidies on quota cheese imported into the United States.² Section 702 is a unique legislative remedy available only to producers of cheese subject to import quotas. This remedy is not available for nonquota cheeses, such as Goya, goat's milk cheeses, and soft-ripened cow's milk cheeses. According to USDA data, in 1991 only 1.9 percent of U.S. dairy product consumption was of imported dairy products. According to Commerce data, 41.5 percent of the 1991 total imported dairy products were quota cheese.

Under section 702, if a party believes that imported quota cheese is subsidized and that its price is undercutting U.S. prices, that party may file a written complaint with the Secretary of Agriculture. The Secretary of Agriculture must investigate and determine the validity of the allegation of price-undercutting, and the Secretary of Commerce must

²Section 702 applies to sales of foreign subsidized cheese subject to quota restrictions under section 22 of the Agricultural Adjustment Act of 1933, as amended. Domestic cheese producers hurt by quota cheese from countries, such as Switzerland, which have undertaken, in an approved bilateral cheese agreement, not to use subsidies to undercut U.S. prices must use section 702 rather than the U.S. countervailing duty law for a remedy. Quota cheese from those few countries whose bilateral agreements with the United States include no such commitment is subject to both section 702 and the countervailing duty law. All nonquota cheeses are subject to the countervailing duty law.

determine the amount of any foreign government subsidy. After the complaint is received, the government investigation must be completed within 30 days. If it is determined that the cheese is subsidized and is being offered at less than the wholesale price of similar cheese produced in the United States, the U.S. Trade Representative notifies the foreign government involved that it has 15 days to eliminate the subsidy or ensure that the duty-paid wholesale price of the imported cheese is not less than the wholesale price of the U.S.-produced cheese. If the foreign government involved--after being notified of this determination--fails to take appropriate action, the Secretary of Agriculture must recommend to the President that a fee or further quantitative restriction be imposed.

COMPLAINT OF PRICE-UNDERCUTTING
OF SUBSIDIZED SWISS CHEESE
IMPORTS IS RESOLVED

On May 14, 1992, USDA received a complaint from the Farmers Union Milk Marketing Cooperative of Madison, Wisconsin, and other dairy interests alleging that the price of imported Swiss cheese produced in Switzerland was being subsidized and was undercutting the price of domestic Swiss cheese. On June 18, 1992, the Secretary of Agriculture announced that the U.S. government had determined that this allegation was correct. The U.S. government requested that the Swiss government take action to stop the price-undercutting.

On July 7, 1992, the Swiss government responded to the U.S. government's June 24, 1992, request and agreed to take action to stop the price-undercutting. In addition, the Swiss government gave assurance that it will respect the price commitments in past agreements between the United States and Switzerland concerning cheeses. Because the government of Switzerland responded within the time period provided in section 702, no further action by the United States was required.

In discussing this case with the petitioner, Farmers Union, we found that the petitioner was satisfied with the outcome of the case and the timeliness of the government's response. The petitioner reported that the section 702 filing process was straightforward, easier, and less expensive than other remedies, such as countervailing or antidumping measures, which are discussed later in this letter.

However, the petitioner told us of two concerns that it had regarding the section 702 process. These concerns were that the U.S. government should (1) be able to subpoena needed information from the foreign government and (2) play a more active role in monitoring the quota cheese market for price-undercutting. Regarding the first concern, a domestic subpoena power cannot be used to obtain information from other sovereign nations in the absence of a provision in a bilateral or multilateral agreement allowing such use. We did not assess the potential impacts or costs associated with the petitioner's second concern--an increased government role in monitoring the quota cheese market for price-undercutting.

We asked the petitioner how it learned about the section 702 remedy and learned that it was informed of the remedy by its industry contacts and trade associations.

SECTION 702 REMEDY TO UNFAIR TRADE PRACTICE
IS EFFECTIVE AND NOT OVERLY BURDENSOME

On the basis of our review of the recent Farmers Union case and discussions with U.S. government officials at Agriculture and Commerce, we believe the section 702 remedy has been effective and not overly burdensome. According to a Commerce investigator, in the 10 cases that she could recall, the remedy had been used effectively in 9 of them since it was created in the 1979 legislation. Prior to the recent Farmers Union case, a USDA investigator said, it was last used almost 4 years ago. According to the USDA investigator, in all but 1 of the 10 cases, the government determined that price-undercutting existed and the foreign governments ceased their offending action. According to the Commerce investigator, all but two cases involved Swiss cheese and the countries involved included Denmark, Finland, France, Germany, and the Netherlands.

USDA and Commerce case investigators told us that the section 702 filing process was not a burden to the complainant because all that is required to initiate the investigation is a letter to the Secretary of Agriculture describing the complaint, along with any supporting information known to the complainant. In addition, in the cases considered so far, the USDA and Commerce investigators told us that investigating the petitioner's complaint was not a major burden to the government. The Commerce investigator cautioned, however, that the ease of the

investigation depends on such factors as the voluntary cooperation of the parties involved and whether single or multiple complaints are filed. In the recent Farmers Union case, for example, the Commerce official said the Swiss government and its cheese-marketing arm cooperated fully.

Although both USDA and Commerce officials said that the 30-day limitation for the investigation has been adequate, they believe it could be a problem if the foreign government does not cooperate fully. The USDA investigator told us that just a 1-week delay in contacting appropriate industry and foreign government officials or their representatives could jeopardize the government's efforts to meet the deadline.

In an attempt to determine if any barriers existed to the use of the section 702 remedy, we asked the USDA and Commerce investigators why this remedy has not been used more often. These officials offered the following possible explanations: (1) the price of imported cheese generally does not unfairly compete with that of domestic cheese, (2) domestic producers are unable to detect unfair competition, (3) producers adversely affected are unaware of the section 702 remedy, or (4) the quota system in and of itself is an effective aid to the cheese industry.

OTHER REMEDIES ARE MORE COMPLEX
AND TIME-CONSUMING

Other legal remedies are available for addressing unfair foreign competition. Specific remedies are available to deal with each of the following situations:

- Increased imports that materially interfere with a U.S. farm program.
- Unfair foreign competition in the U.S. market.
- Increased imports that seriously affect a domestic U.S. industry.

The remedies available to deal with these situations are more complex and time-consuming than the section 702 provision.

Remedy to Address Imports That Materially Interfere With a U.S. Farm Program

Section 22 of the Agricultural Adjustment Act of 1933, as amended, provides for the imposition of fees or quantitative restrictions to prevent interference with USDA domestic commodity programs, such as the milk price support program. Such determinations are usually based on USDA import-monitoring activities, although private parties can request the Secretary of Agriculture to take action pursuant to this section. If the Secretary believes that articles are being imported into the United States under such conditions or in such quantities as to materially interfere with USDA commodity price support programs, the Secretary may recommend that the President direct the U.S. International Trade Commission (ITC) to undertake an investigation.³ Following ITC's report of its findings and recommendations, the President may impose fees or quantitative restrictions on the imports.

According to ITC and USDA officials, this process is more complex and time-consuming than the section 702 remedy discussed earlier because more supporting evidence must be provided by a private party petitioning USDA to take action. Also, the government may have to obtain additional data in its subsequent investigation, make several determinations, and hold public hearings. According to an ITC analyst, since 1981 three section 22 dairy industry complaints have been filed. In a 1981 complaint involving casein, a milk by-product, ITC determined after a 5-month investigation that the product did not materially interfere with the price-support program. In a 1989 ice cream complaint, ITC completed its investigation and sent its recommendations to the President. As of March 5, 1993, no action had been taken. In January 1993, a dairy complaint was filed and is under ITC investigation. According to the ITC analyst, prior to these three cases, a complaint was filed in the early 1970s for dry milk and cheddar cheese.

³ITC is an independent agency with broad powers to (1) study and investigate factors relating to international trade and (2) furnish studies, reports, and recommendations to the President, the Congress, and other government agencies.

Remedies to Address Unfair Foreign
Competition in the U.S. Market

Under the countervailing and antidumping duties provisions of the Tariff Act of 1930, as amended, countervailing duties may be imposed to offset foreign government subsidies on goods exported to the United States, and antidumping duties may be imposed if products are sold in the United States at prices significantly lower than the prices at which comparable goods are sold in the domestic market of the foreign competitor or its third-country export markets.

Commerce and ITC have responsibilities in these areas. Under the countervailing provision, Commerce must determine if an imported product is subsidized. Under the antidumping provision, Commerce must determine if the foreign product is being sold in the United States at less than fair value, as described above. In all antidumping cases and most countervailing duty cases,⁴ ITC must determine that the imports in question have caused or threatened material injury to a U.S. industry before such duties may be imposed. The process is complex and time-consuming for the petitioner, the government, and the foreign parties. A greater burden is placed on a private-party petitioner to support the complaint, and additional information is typically involved in filing complaints. Also, the government may have to hold several public hearings and make several determinations. According to the Commerce investigator, these procedures and investigations may take from several months to slightly over 1 year.

According to a Commerce official, no countervailing duty orders are currently in effect for dairy products, and there are no outstanding petitions. While the section 702 legislation supplanted the countervailing duty actions as a remedy for most quota cheeses, U.S. producers of nonquota and some quota dairy products can still use these other provisions.

⁴Imports from countries which (1) have not signed the General Agreement on Tariffs and Trade (GATT) Agreement Relating to Subsidies and Countervailing Measures (Subsidies Code) or (2) assumed substantially equivalent obligations are generally not afforded an injury test in countervailing duty cases.

Remedies to Address Increased Imports
That Seriously Affect a Domestic U.S. Industry

Section 201 of the Trade Act of 1974, as amended, authorizes the President to grant import relief if imports are increasing by such quantities that they cause or threaten serious injury to a domestic industry. A trade association, firm, or union may file a complaint with ITC alleging such an impact. Action under section 201 requires no demonstration of unfair competition, but it does require a showing that imports are increasing, and it does require that a domestic industry is being seriously injured or threatened with serious injury by those increasing imports.

ITC has 180 days from the receipt of a petition to submit its findings to the President. If ITC finds injury or threat of injury, it may recommend that the President initiate international negotiations; impose a tariff-rate quota, a quantitative restriction, or a duty increase; provide trade adjustment assistance; arrange for an orderly market agreement; or any combination of these actions. According to an ITC analyst, no dairy complaint has been filed under section 201 because, in part, the less time-consuming section 702 remedy was granted in 1979 for quota cheese.

SCOPE AND METHODOLOGY

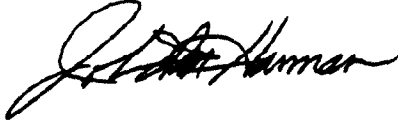
We obtained documents on the Farmers Union case and reviewed related laws and regulations. We talked to the investigators and dairy specialists from USDA's Foreign Agricultural Service, the Department of Commerce, and ITC. We also discussed the case with a representative of the petitioner, the Farmers Union Milk Marketing Cooperative, Madison, Wisconsin.

We discussed the contents of this letter with officials representing USDA, Commerce, and ITC. They agreed with the contents of this letter and provided some technical changes that we incorporated into this letter as appropriate. However, we did not obtain written comments on a draft of this letter.

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If you or your staff have any questions concerning this letter, please contact me at (202) 512-5138.



John W. Harman
Director, Food and
Agriculture Issues

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GAO/RCED-93-82R, Remedies to Counter Dairy Import Competition