**CASE STUDY: BUTTER COOKIES**

**Introduction**
In February of 1998, the Hearthside Baking Company filed an antidumping petition claiming that Denmark was selling butter cookies in tins at less than normal value in the U.S. market, and these imports were causing material injury to the domestic industry. The U.S. International Trade Commission (ITC), however, found that the petitioner had not demonstrated injury due to imports Denmark, and rejected the petition.

**Background: The U.S. Cookie Market**

According to the ITC investigation report, there were approximately 191 cookie and cracker plants in the United States in 1996. Due to consolidation of the industry throughout the 1990s, cookie and cracker plants tended to be large corporations; twenty percent of producers had annual sales of more than $20 million while less than 8 percent reported annual sales less than $5 million. The four largest U.S. producers of cookies held a 30 percent market share at this time. Annual U.S. cookie sales were $3.6 billion in 1997.

Butter cookies are indistinguishable from other types of cookies except in their shortening ingredient; the Food and Drug Administration requires that cookies labeled as butter cookies contain no shortening ingredient other than butter. Butter cookies accounted for approximately 6.5 percent of U.S. cookie production in 1997. The specific butter cookies under investigation were those packaged in decorative tins, although butter cookies may also be sold in a variety of other containers. Demand for butter cookies in tins peaks during the Christmas holiday season, when the product is often purchased as a gift. Demand for the product fell between 1995 and 1996, but increased substantially between 1996 and 1997 growing 19 percent. At this time, U.S. market for butter cookies in tins was estimated at $49.7 million. The increase in demand was in part attributed to warehouse club and drug store chains offering and advertising the product during the Christmas season.

At the time of the antidumping investigation, two U.S. companies produced butter cookies in decorative tins -- the petitioner, Hearthside Baking Company, and Little Dutch Boy Bakeries.¹ Both firms also produced other types of cookies in decorative tins. Hearthside, a Chicago-based firm, originally began production of the product in 1994. The firm was prompted to file the antidumping petition after losing almost all of its large sales accounts to Danish imports in 1997. Specifically, company officials stated in the petition that in 1997 “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.”

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¹ Hearthside is also known as Maurice Lenell. There were two other U.S. companies that produced butter cookies not packaged in tins—Bestfoods and Pepperidge Farms.
U.S. imports under HTS codes 1905.30.0040, 1905.30.0041, 1904.30.0049, 1905.31.0041, and 1904.31.0049. Source: U.S. Census Bureau

Public data on imports of butter cookies in tins from this time period is unavailable. U.S. imports of all “sweet biscuits” from Denmark actually decreased between 1996 and 1997, as can be seen in Figure [1]. The average unit price of the imports of these products fell just slightly by 0.5 percent, as illustrated in Figure [2]. In their petition Hearthside argued that it was at a strategic disadvantage because Danish producers could produce butter more cheaply due to the European Union’s “export restitution payments on butter, sugar and wheat flour.”

The Antidumping Petition

On February 6, 1998, the Hearthside Baking Company filed an antidumping petition, claiming that producers in Denmark were selling butter cookies in tins at less than fair value and that these imports were causing (or threatening to cause) material injury to the U.S. industry. The firm also filed a countervailing duty petition at this time, claiming that the domestic industry was also materially injured by subsidized imports of butter cookies in tins from Denmark. In their petition, Hearthside argued that firm-specific antidumping duties should range from 45 to 83 percent. The DOC initiated the official investigation on February 26, 1998.

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2 Average unit value per kilogram was calculated by dividing customs value of imports by the quantity of imports.
On March 20, 1998, the ITC issued its finding that there was no reasonable indication that the domestic industry was injured or threatened with injury due to imports from Denmark, thus ending the investigation. Specifically, two Commissioners’ voted that there was not reasonable indication of injury or threat of injury, while one Commissioner found reasonable evidence that the domestic industry was threatened with material injury due to imports from Denmark. The key element in each Commissioner’s determinations was in how each defined the “like product.”

Under U.S. antidumping law, Commissioner’s must determine the like product, or the product which “is like, or in the absence of like, most similar in characteristics and uses with, the article subject to the investigation.” This determination has significant repercussions for the case, as it also defines the domestic industry and affects such characteristics as the market share of the country under investigation. In making this determination, Commissioners may consider physical characteristics, interchangeability of products, channels of distribution, customer and producer perceptions of the product, use of common manufacturing facilities and employees, and price. Commissioners may also consider other factors they deem relevant.

Of the two commissioners that found no evidence of injury, one defined the domestic industry as all cookies in tins; based on this definition this Commissioner found that there was not a significant increase in the volume or market penetration of imports from Denmark.
Denmark. The second Commissioner defined the like product as all cookies; based on this definition, the Commissioner found that the market share of imports from Denmark—less than one percent—was unlikely to threaten the U.S. cookie industry. Neither Commissioner was convinced that imports from Denmark had a significant impact on U.S. prices of the “like” product.

In contrast, the Commissioner that made the affirmative definition defined the like industry as “butter cookies in tins.” Based on this definition, the Commissioner found that the increase and market share of imports from Denmark did threaten the domestic industry with material injury. Moreover, there was reasonable indication that imports would eventually have adverse price effects in the U.S. market.

The Case Outcome

U.S. imports of all “sweet biscuits” from Denmark reached a high in 2001, growing over 200 percent from 1997 levels that prompted the filing of the antidumping petition, as can be seen in Figure [1]. Unit values of these imports decreased during this time period, falling by over 20 percent. Little Dutch Boy Bakeries continues production, with annual sales of approximately $17.3 million and approximately 75 employees, as does Maurice Lanell.

References