

§ 6.42

Tariff Act of 1930 as added by section 101 of the Trade Agreements Act of 1979 (19 USC 1677(5)).

(h) The *United States* means the Customs Territory of the United States, which is limited to the United States, District of Columbia and Puerto Rico.

§ 6.42 Complaints of price-undercutting.

(a) *Submission of complaint.* Any person who has reason to believe that the price at which any article of quota cheese is offered for sale or sold in the United States on a duty-paid wholesale price basis is less than the domestic wholesale market price of similar articles produced in the United States and that a foreign government is providing a subsidy with respect to such article of quota cheese may file with the Investigating Authority a written complaint making such allegation.

(b) *Contents of complaint.* Such complaint shall contain, or be accompanied by, information to substantiate complainant's allegations, in substantially the following form:

(1) The name and address of the complainant.

(2) The location of the domestic wholesale market in which price-undercutting is alleged to be occurring.

(3) The article of quota cheese involved in the alleged price-undercutting.

(4) The country of origin of such article of quota cheese.

(5) The similar domestic article, the price of which the complainant believes is being undercut.

(6) The month and year that the complainant first concluded that the price-undercutting was taking place.

(7) To extent known to the complainant, all pertinent facts with regard to the alleged subsidy, and, if known, the statutory or other authority under which it is paid, the manner in which it is paid, and the value of such subsidy when received and used by producers or sellers of such quota cheese.

(8) All other information which the complainant believes substantiates the allegation of price-undercutting, including the complainant's estimate of the domestic wholesale market price of the similar article produced in the United States and the duty-paid whole-

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sale price of the quota cheese involved. If available, samples of the domestic and imported cheese products should be submitted.

§ 6.43 Determinations.

(a) *Making determinations.* Not later than 30 days after receiving an acceptable complaint, as described in § 6.42(b), alleging price-undercutting, the Secretary shall make a determination as to the validity of the allegation. In making such determination, the following shall apply:

(1) The "domestic wholesale market" shall be one or more of the three major U.S. market areas, viz., New York City, Chicago, and San Francisco, and/or any other market area within the Customs Territory of the United States, which the Investigating Authority determines most representative of the area specified by the complainant as the one in which price-undercutting is alleged to be occurring (hereinafter referred to as "designated area").

(2) The "duty-paid wholesale price" determined by the Investigating Authority shall be the average of prices at which wholesalers have sold or offered for sale in the designated area the article of quota cheese alleged to be involved in price-undercutting, as obtained in a survey directed by the Investigating Authority during the investigation: *Provided*, That whenever the designated area is not or does not include one of the major market areas specified in paragraph (a)(1) of this section, the Investigating Authority may adjust the average of prices determined for such designated area on the basis of the average of prices determined for the major market area which is determined to be the most representative of the designated area, taking into consideration any special factors which may be affecting prices in the designated area.

(3) The "domestic wholesale market price" determined by the Investigating Authority for a similar article produced in the United States to that article of quota cheese which is alleged to be involved in price-undercutting shall be the average of prices at which wholesalers have sold the similar article produced in the United States in the designated area, as obtained in a

survey directed by the Investigating Authority during the investigation: *Provided*, That whenever the designated area is not or does not include one of the major market areas specified in paragraph (a)(1) of this section, the Investigating Authority may adjust the average of prices determined for such designated area on the basis of the average of prices determined for the major market area which is determined to be the most representative of the designated area, taking into consideration any special factors which may be affecting prices in the designated area.

(4) "Similar article produced in the United States" shall be an article of cheese, cheese product, or imitation cheese produced in the United States and marketed in the domestic wholesale market, which is determined by the Investigating Authority, based upon available information to be most like the imported article of quota cheese alleged to be involved in price-undercutting, in terms of its physical properties and end use. In making this determination, first consideration shall be given to the normal end uses of the article produced in the United States in comparison with the end use of the article of quota cheese alleged to be involved in price-undercutting. If the end use of both articles is determined to be the same (e.g., processing or retail sale), the physical characteristics of the two articles shall be considered.

If the common end use of the two articles is processing, the representative samples of the two articles shall be examined in terms of processing quality, taking special note of processing yields. If the common end use of the two articles is retail sale, representative samples of the two articles shall be examined in terms of similarities of taste, texture, general appearance, quality, age, and packaging. Imported imitation quota cheese shall only be compared with imitation domestic cheese. If it is determined that the domestic cheese the price of which is claimed to be undercut is not similar to the quota cheese allegedly undercutting it, there shall be no finding of price-undercutting.

(b) *Reporting determinations.* Determinations by the Secretary as to the validity of allegations of price-undercutting made under this subpart shall be published in the FEDERAL REGISTER not later than 5 days after the date the determination is made.

§ 6.44 Delegation of authority.

The powers vested in the Administrator, FAS, insofar as such powers relate to the functions of the Investigating Authority by this regulation are hereby delegated to the Investigating Authority. This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." a determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Carol M. Harvey in room 6622, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250.

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