

HARD-SMOKED HERRING FILETS FROM CANADA

Determinations of the
Commission in Investigation
No. 701-TA-82
(Preliminary) Under the
Tariff Act of 1930,
Together With the
Information Obtained
in the Investigation

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would disclose confidential operations of individual concerns may not be published and therefore has been deleted from this report. Deletions are indicated by asterisks. By consent of the petitioner and sole domestic producer in this case, information regarding production, capacity, shipments, inventories, and employment have not been deleted.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

Investigation No. 701-TA-82 (Preliminary)

HARD-SMOKED HERRING FILETS FROM CANADA

Determination

On the basis of the record developed in investigation No. 701-TA-82 (Preliminary), the Commission determines 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 from Canada of hard-smoked herring filets, provided for under item 111.80 of the Tariff Schedules of the United States, which are allegedly being subsidized by the Canadian Government. 1/

Background

On November 2, 1981, the McCurdy Fish Co., Lubec, Maine, filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce (Commerce) alleging that the Canadian Government is providing subsidies for the processing of hard-smoked herring filets and that, by reason of imports of this allegedly subsidized product, an industry in the United States is being materially injured or threatened with material injury. 2/ Accordingly, on November 17, 1981, the Commission instituted a preliminary countervailing duty investigation (No. 701-TA-82) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671t). Notice of the institution of the

1/ Commissioner Frank determines that there is a reasonable indication of threat of material injury to the domestic industry by reason of these imports.

2/ McCurdy Fish Co. had previously filed a petition with the Commission and Commerce on September 30, 1981. The Commission instituted a preliminary countervailing duty investigation on October 2, 1981. After Commerce found that the information furnished in support of the alleged subsidies was insufficient, the McCurdy Fish Co. withdrew its petition, and the Commission terminated that investigation (No. 701-TA-81).

Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on November 20, 1981 (46 F.R. 57144). A public conference was held in Washington, D.C., on November 30, 1981, at which all interested persons were afforded the opportunity to present information for consideration by the Commission.

VIEWS OF CHAIRMAN ALBERGER, VICE CHAIRMAN CALHOUN,
AND COMMISSIONERS STERN AND ECKES

Introduction

After considering all the available information, we conclude that there is no basis for continuing this investigation. Factors bearing on this decision include the current economic condition of the domestic hard-smoked herring filet industry, historic patterns of import penetration, and our assessment of recent marketing conditions.

Domestic industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 1/ "Like product" is defined as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article under investigation. 2/

The imported products which are the subject of this investigation are hard-smoked herring filets 3/ from Canada. Hard-smoking is a method of preserving and flavoring herring before consumption. The herring are immersed in a salt brine and then smoked for 4 to 6 weeks. The process gives the herring a distinct taste and reduces the need for refrigeration. After

1/ Section 771(4)(A) of the Tariff Act of 1930.

2/ Section 771(10).

3/ "Fillets" and "filets" are different terms for the same product. The domestic industry, however, calls its product "filets" and we have adopted its terminology.

hard-smoking, the fish's head, tail, vital organs, backbone, and skin can be removed. The remaining halves are called filets. Herring is the only type of hard-smoked fish imported or produced in the United States.

Only one company produces hard-smoked herring filets in the United States. U.S. companies also produce "smoked" fish, but "smoking" is a different process, producing a smoke-flavored rather than smoke-cured product. Smoked herring has a relatively short preparation time and is much more perishable than hard-smoked fish. 4/

Therefore, we conclude that the only product like the imported product is hard-smoked herring filets and that the domestic industry consists of the only U.S. producer--the petitioner, the McCurdy Fish Company.

No reasonable indication of material injury by reason of imports

Section 771(7) of the act directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on domestic prices, and (3) the consequent impact on the domestic industry. 5/

Imports

For many years the 40 Canadian producers of hard-smoked herring filets have been a dominant factor in the U.S. market. During the period of this investigation, the volume of imports from Canada varied from 594,644 lbs. in 1978 to 1,019,449 lbs. in 1979, 693,350 lbs. in 1980, and 622,212 lbs. in the

4/ Staff Report at A-3.

5/ Specific company-related data are confidential and cannot be discussed in this public document.

first nine months of 1981. 6/ Canadian import market penetration also has shown no particular trend since 1978, moving from 74.9 percent in that year to 84.5 percent in 1979, 77.9 percent in 1980, and 84.2 percent in January-September 1981. 7/

Effect on domestic prices

From January 1979 to January 1981, the price of hard-smoked herring filets rose steadily, primarily due to shortages of fresh herring. From January to September 1981, producers' prices declined by 12 percent. 8/ This decline was triggered by the buying practices of one large buyer in the New York area. 9/ Since July of 1981, prices have increased again.

No precise price comparisons can be made between the U.S. and Canadian-produced product because prices change frequently in this industry and price information provided to the Commission on U.S. prices by importers is not as complete as that provided by the petitioner. From 1978 to 1980 there were no reported incidents of price cutting attributable to imports from Canada. The 1981 buying practices of the New York purchaser, mentioned above, caused other New York area buyers to demand similar low prices for hard-smoked herring filets in order to remain competitive. This caused price reductions in the entire marketing area for both the domestic and Canadian producers. This situation appears to have reversed. 10/

6/ Staff Report at A-3.

7/ Id. at A-14.

8/ Id. at A-16.

9/ The petitioner, however, was able to maintain his profit margin during this decline because the price of fresh herring, which accounts for nearly a third of the cost of production of hard-smoked herring, also fell.

10/ Staff Report at A-12 and A-15 and A-16.

Condition of the industry

Economic data indicate that the domestic industry is currently in good health. The petitioner's net sales increased by almost 50 percent from 1978 to 1980, and net operating profits doubled during the same period. Although reported on a calendar year basis, McCurdy estimates that its profits will remain at its 1980 level at least through September 1981. 11/

Domestic shipments were equal to production during the investigation period, dropping about 5 percent in 1979 and then holding relatively steady. In terms of value, however, shipments increased by nearly half between 1978 and 1980, and rose again in January-September 1981. As a result of this value increase, the shipment decrease in 1979 was not reflected in the profitability figures, which showed a significant increase in the ratio of net operating profit to net sales for that year. 12/

The 1980 data are surprising in that production, shipments and profits remained at approximately 1979 levels, despite a 26 percent drop in apparent U.S. consumption. (Consumption rose again in the first nine months of 1981, 19 percent over the comparable 1980 period.) 13/

Slight declines in production and shipments in January-September 1981 were in part the result of a raw herring shortage in September. This also affected the otherwise high capacity utilization figures, which declined 1.5 percent in that period after a 5 percent drop from 1978 to 1980. 14/ Employment levels also were affected by the shortage. Prior to 1981, however,

11/ Id. at A-10.

12/ Id. at A-11.

13/ Id. at A-14.

14/ Id. at A-8.

the seasonal pattern of employment in the industry did not vary from year to year, and easing of the shortage has returned employment levels to normal. 15/

No reasonable indication of threat of material injury

Congress directs that a Commission determination that a domestic industry is threatened with material injury "shall be based upon evidence showing that the threat is real and imminent and not upon mere supposition or conjecture." 16/ The record in this investigation does not support such a determination.

Canadian producers are, like McCurdy Fish Co., small operations. They too are vulnerable to forces outside their control such as weather and fish availability. They purchase their fish from many of the same sources as the petitioner and are subject to the same shifts in the price of fresh fish. Canadian producers have for many years prior to 1978 supplied the bulk of U.S. consumption of hard-smoked herring filets, and there is no indication of any move to capture the rest of the U.S. market.

In our view, it is particularly significant that the recent narrow fluctuations in import share and price pressures did not adversely affect the domestic industry. To the contrary, the petitioner indicated that domestic profits which doubled from 1978-80 have been maintained in 1981. Though inherently vulnerable, the petitioner's position does not appear to be so precarious as to be materially affected by small fluctuations in imports or short periods of price competition.

15/ Id. at A-9.

16/ House Rep. No. 96-317, 96th Cong., 1st Sess. at 47.

Conclusion

All of the information available to the Commission indicates that petitioner's profits have increased substantially during the period investigated, despite both a decline in production and shipments and a temporary decline in prices during 1981. Accordingly, there is no reasonable indication that the industry is materially injured. Moreover, there is no information to reasonably indicate that a threat of material injury is imminent.

VIEWS OF COMMISSIONER FRANK

On the basis of the record developed in Investigation No. 701-TA-82 (Preliminary), I determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Canada of hard-smoked herring filets, provided for in item 111.80 of the Tariff Schedules of the United States, which are allegedly being subsidized by Canada.

Domestic industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 1/ "Like product" is defined as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article under investigation. 2/

The imported products which are the subject of this investigation are hard-smoked herring filets 3/ from Canada.

Hard-smoking is a method of preserving and flavoring herring before consumption. In the process of hard-smoking, the herring are immersed for 4 to 6 days in a salt brine, after which they are smoked in an enclosure for 4 to 6 weeks at room temperature. The process gives the herring a distinct salt-smoked taste and also reduces the need for refrigeration.

1/ Section 771(4)(A) of the Tariff Act of 1930.

2/ Section 771(10).

3/ "Filletts" and "filets" are different terms for the same product. The domestic industry, however, calls its product "filets" and we have adopted its terminology.

After hard-smoking, the herring can be fileted, that is, the fish's head, tail, vital organs, backbone, and skin can be removed. The remaining two halves of the fish are the filets.

One company produces hard-smoked herring in the United States. U.S. companies also produce "smoked" fish, but "smoking" is a different process from "hard-smoking" because a smoked fish is smoke flavored as opposed to a hard-smoked fish which is smoke cured. Smoking is also secondary to the processing, not primary. Unlike a hard-smoked herring which has been immersed in salt brine for 4 to 6 days and then cured by smoking for 4 to 6 weeks, a smoked herring has been prepared for 4 to 6 hours in ovens at 250 degrees and subjected to smoke while heating. A hard-smoked herring is salted, dehydrated, tough in consistency, and can be preserved with little refrigeration. A smoked herring is unseasoned, moist, brittle and perishable. Smoked herring will not keep indefinitely unless sealed in airtight containers.

Because of these differences, a smoked herring is not like a hard-smoked herring. Herring, moreover, is the only type of fish produced or imported into the United States that is hard-smoked. We, therefore, conclude that the only product like the imported product is hard-smoked herring.

The domestic industry, therefore, consists of the only producer of hard-smoked herring in the United States--the petitioner, the McCurdy Fish Company.

Conditions of the U.S. industry

The petitioner, the McCurdy Fish company, Lubec, Maine, accounts for all the hard-smoked herring produced in the United States. Annual U.S. production

of hard-smoked herring filets declined by 5.2 percent from 1978 to 1980, and declined further in January-September 1981, relative to the comparable 1980 record by 1.7 percent, although the latter decline was attributed mainly to difficulties in obtaining fresh herring for processing. Inventories were negligible or shipments were approximately the same as production during the period. 1/ Likewise, industry capacity utilization showed substantial reduction during this period. These trends occurred during a period when apparent domestic consumption increased irregularly both in terms of quantity and value and from January-September 1980 to the comparable period of 1981 and apparent domestic consumption evidenced marked increases in quantity and value of 19 percent and 15 percent, respectively. 2/ This is reflective of increased import penetration discussed later herein.

Employment data from 1978 to July of 1981 showed little change and continued to reflect the seasonal nature of the industry, although there was a marked drop-off in the following two months, attributed to lack of fresh herring available. Employment has since returned to normal levels since the arrival of fresh herring in late October. Total hours worked followed a similar trend and the hours worked per employee showed no change during the period.

The financial performance of the industry from the standpoint of sales, gross and net operating profit, reflected steady improvement during the 1978 through 1980 period for which quantitative financial information was available, and it is estimated that in 1981, at least through September, the

1/ Staff Report at A-9.

2/ Id. at A-14.

industry was as profitable as in 1980. 1/ However, this financial picture should be viewed in a proper perspective. Due to the relatively low capital intensiveness and concomitant fixed costs, the nature of labor and other cost inputs such as recent lower costs for fresh herring affecting gross margins, the industry was able to adjust financially to reduced operating capacity rates and lower prices for hard-smoked herring in 1981. There is no assurance such a propitious scenario will reoccur in the future, however, should prices evidence a decline similar to 1981. Further, the industry's financial position should be viewed in the context of its relatively minor position in the U.S. market (it does not export) vis-a-vis particularly the Canadian imports and increased Canadian import penetration.

The domestic industry's condition, considering the size and scope of its operations relative to high levels of imports, and notwithstanding somewhat stable employment, trends, and slightly improved financial position, while not demonstrating reasonable indication of injury at present, causally linked to imports, shows, however, a reasonable indication of substantial susceptibility to import related injury.

Reasonable indication of threat of material injury

As the Senate Finance Committee report in the Trade Agreements Act of 1979 makes clear, an affirmative finding in the question of threat of material injury "must be based upon information showing that the threat is real and injury is imminent, not a mere supposition or conjecture." (S. Report 96-249, 96th Cong., 1st Session (1979) at 88-89.)

1/ Id. at A-10.

Since 1978, Canada has accounted for no less than 97 percent of U.S. imports of hard-smoked herring filets. U.S. imports from Canada increased irregularly over the period: over 70% from 1978 to 1979; down 32 percent in 1980; up 26 percent in the January-September 1981 period relative to the comparable 1980 period. 1/ Although imports from Canada increased in 1981 from 1980, average unit values declined somewhat. 2/ As a share of irregularly increasing domestic consumption, imports from Canada also registered substantial albeit irregular increases: increasing from 74.9 percent in 1978 to 84.5 percent in 1979; declining to 77.9 percent in 1980; increasing in the January-September 1980-January-September 1981 period from 79.9 percent to 84.2 percent. Imports from other sources were relatively negligible compared to Canadian levels of penetration. 3/

Although in the preliminary investigation data on shipments, exports, capacity, and planned changes in capacity for the Canadian producers was not available, information on import penetration obtained to date and overall shipments to the U.S. market show without a doubt an increasing dominance in market presence over the domestic industry even assuming 100 percent domestic capacity utilization--for 1980 for example reflecting over 3 times domestic capacity. 4/

Notwithstanding the industry's continued profitability through September 1981, there appear certain elements in the market which may adversely affect its future performance. In New York where traditionally much of the

1/ Id. at A-7.

2/ Id.

3/ Id. at A-14.

4/ Id. at A-8 and A-14.

industry's product has been sold, the effect of imports from Canada purchased by one large importer was to reduce prices substantially between January and May of this year. Prices declined in other markets also, although less severely. 1/ As stated earlier, reduced average cost of fresh herring during this period mitigated this price decline and thus the industry's profitability was not adversely affected. However, fresh herring costs in October and November have risen substantially. In February of this year, at least one of petitioner's shipments (representing over 8% of its 1980 shipments) was rejected in favor of the Canadian product by a major purchaser for the sole reason of price. 2/ Although no precise price comparisons of Canadian-produced filets can be made with the domestic industry, pricing patterns show mixed results in comparability that call for further inquiry. Although Canadian producers' net prices were approximately consistent with the domestic industry from January 1979 to January 1981, after January 1981 prices for the Canadian product fell in line with the domestic industry except in New York where the price fell more rapidly and to a lower level. 3/ There appears to be indication of concentrated buying power exercised by a major import/buyer in the New York area, causing a general price decline throughout the Atlantic seaboard that is thought to explain this trend. Since July prices have again increased. 4/ Yet it must be stated the Canadians' apparent acquiescence to this import-buyer dominance evidently exacerbated the general price decline in view of their high penetration already obtained in the U.S.

1/ Id. at A-12.

2/ Id. at A-13.

3/ Id. at A-15.

4/ Id.

market. Although prices have again increased since July, many importers report that Canadian producers' prices are currently about 10 percent below McCurdy's. 1/

Thus, despite conflicting signals derived from the pricing data obtained to date in this preliminary investigation, I am of the view that there appears to be a reasonable indication of potential price depression and distortion due to Canadian imports which warrants further investigation, that is further underscored by the massive and increasing presence of such imports in the U.S. market today.

Conclusion

The domestic industry, despite certain modest indications of financial health and stable employment, is in a fragile position relative to Canadian imports. The size and scope of the domestic industry's operations make the sole U.S. producer particularly vulnerable to variations in income, notwithstanding relatively low fixed costs. Canadian imports, previously having captured a significant share of the U.S. market, have continued to increase their penetration into the U.S. market. The dynamics of pricing patterns between domestic and Canadian imported products show reasonable indication of a potential further price depressive effect of imports on the domestic product. With possible onset of further concentrated buying power exercised by dominant importers/buyers in the New York area as long as a competitive product from Canada is available, future price depressive and suppressive actions may ensue to the detriment of the sole domestic producer.

1/ Id.

There is also testimony of significant general overall underselling by Canadian imports which warrants further scrutiny. The industry's profitability in 1981 was not adversely affected due to such trends primarily because while prices for the finished product declined, the cost of fresh herring--a substantial production cost factor--also declined. It is not likely such a coincidence would continue to occur in the future.

Therefore, in view of the above, I have determined that there is a reasonable indication of threat of material injury to the domestic hard-smoked herring filet industry by reason of imports of Canadian hard-smoked herring filets.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On September 30, 1981, the McCurdy Fish Co., Lubec, Maine, filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce (Commerce) alleging that the Canadian Government is providing subsidies to firms processing hard-smoked herring filets, and that, by reason of imports of this allegedly subsidized product, an industry in the United States is being materially injured or threatened with material injury. Accordingly, on October 2, 1981, the Commission instituted a preliminary countervailing duty investigation (No. 701-TA-81) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b). Section 703(a) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation by the administering authority (Commerce).

Upon examining McCurdy's petition, Commerce found that the information furnished in support of the alleged Canadian subsidies was insufficient and requested that the company withdraw and resubmit its petition with additional data. In compliance with this request, McCurdy notified Commerce on October 22, 1981, that it was withdrawing its petition, and the Commission thereupon terminated investigation No. 701-TA-81 (Preliminary) pursuant to its authority under section 201.13 of the Commission's Rules of Practice and Procedure. 1/ McCurdy refiled its petition with Commerce and with the Commission on November 2, 1981. On November 17, 1981, after receiving assurances from Commerce that the information provided in the second petition was sufficient for their institution of the case, the Commission instituted the instant investigation and designated it investigation No. 701-TA-82 (Preliminary). Section 703(a) directs that the Commission make its determination within 45 days of its receipt of the petition, or in this case by December 17, 1981.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on November 20, 1981 (46 F.R. 57144). 2/ Although all interested parties were invited to attend and make statements at the public conference, held on November 30, 1981, none appeared. For lack of anyone offering testimony, either in support of or in opposition to the petition, the conference was adjourned.

1/ Copies of the Commission's notices concerning investigation No. 701-TA-81 (Preliminary) are presented in app. A.

2/ A copy of the Commission's notice of investigation and conference for investigation No. 701-TA-82 (Preliminary) is presented in app. B. The Department of Commerce's notice of initiation of countervailing duty investigation is presented in app. C.

The Product

Description and uses

The imported product complained of by the petitioner is hard-smoked herring filets from Canada. Herring is a type of fish approximately 9 to 12 inches long in the adult state that is abundant in the temperate and colder parts of the north Atlantic. Hard-smoking is a method of preserving and flavoring the fish before consumption, and fileting refers to the removal of certain parts. After a 4- to 6-day immersion in a salt brine, fresh sea herring are strung through their gills onto wooden or metal rods and are then smoked in an enclosure for 4 to 6 weeks at room temperature. Thus cured, the fish's head, tail, vital organs, backbone, and skin are removed, leaving two halves, or filets, of fish.

If hard-smoked herring are sold whole, or simply beheaded without further processing, they are referred to in the industry as bloaters. Bloaters are also imported into the United States from Canada. Bloaters and filets from Canada are manufactured by the same firms, are imported by the same firms, and are purchased by many of the same customers. Although whole fish are not as convenient to consume as filets, they are cheaper per pound. As a share of the total pounds of hard-smoked herring imported into the United States, bloaters declined from 61 percent in 1978 to about 44 percent in 1980. Virtually all of the hard-smoked herring produced in the United States is fileted.

Ideally, a hard-smoked fish has been dehydrated by salting and smoking to such an extent that it may be preserved indefinitely without putrefying if kept under refrigeration, but not so dehydrated as to crystallize the salt that the meat has absorbed. The fish's moisture content is the critical factor in determining its ability to retard putrefaction on the one hand and prevent the recrystallization of salt on the other. For hard-smoked herring this moisture content averages an estimated 40 percent by weight, which reduces the fish to a fairly rigid and tough consistency. ^{1/} This average, however, conceals a considerable amount of variation, mostly as a result of uncontrollable or semicontrollable variations in the production process. A multitude of variables such as wind, temperature, humidity, smoke intensity, and even the most recent diet of fresh herring will cause variations in moisture content from batch to batch and within batches. Because an under-cured herring will not remain intact during the fileting process, the range of variation is less for filets than for bloaters. The size of the herring in addition to moisture content, will also vary from shipment to shipment and within shipments. Both in regards to size and the degree of curing, the imported product varies more than the U.S.-produced product. Although most importers, producers, and customers admit to considerations of quality in these terms, variations in tastes and tolerances preclude universal standards, and judgments are wholly subjective. What is considered as over cured or under cured by one buyer may be considered as satisfactory by another, and disagreements between buyer and seller are not uncommon. The practical consequence of a substandard shipment

^{1/} The moisture content of fresh herring is approximately 60 percent by weight.

is possible rejection by the buyer, in which case the shipment is usually returned to the producer for resale or reprocessing. (On much rarer occasions, the shipment is accepted but at a lower price.) All hard-smoked herring, whether imported or U.S.-produced, is generally shipped under refrigeration and packaged in wooden crates in quantities of 10 pounds for filets or 18 pounds for bloaters.

No other fish produced or imported in the United States is hard-smoked; however, several species, including herring, are smoked. Smoking, in contrast to hard-smoking, is secondary to the processing, not primary. Such fish are smoke flavored but not smoke cured. Unlike a hard-smoked herring, which has been immersed in a salt brine for 4 to 6 days and then cured by smoking for 4 to 6 weeks in large smokehouses at room temperature, a smoked herring has been prepared by heating for 4 to 6 hours in ovens at 250 degrees and subjected to smoke while heating. The resultant product is moist, brittle, unseasoned and perishable--i.e., a cooked fish with a smoked flavor. This contrasts with hard-smoked herring, which is dehydrated, tough in consistency, salted, and preserved. Smoked herring will not keep indefinitely unless sealed in airtight containers; and, since the product fragments easily, airtight containers are standard packaging for filets or any pieces other than the whole fish. Herring so smoked in the United States is sold whole, is kept under constant refrigeration, and is consumed locally, usually within 15 days of manufacture. Most imports are fileted and canned.

Hard-smoking is a seasonal process. Most fresh herring are caught and delivered between June and November, most of the processing occurs in the fall and winter, and the last shipments of the processed fish are usually in May. The time between receipt of the fresh fish and shipment of the final product averages 2-1/2 months.

U.S. tariff treatment

Hard-smoked herring filets, i.e. hard-smoked herring other than that that is whole or merely beheaded, are provided for under item 111.80 of the Tariff Schedules of the United States (TSUS). Currently, this item is free of duty for most-favored nations. 1/ The column 2 rate of duty for this item is 3 cents per pound.

Nature and Extent of Alleged Subsidies

There is no information relating to the nature and extent of the alleged subsidies other than the allegations of the petitioner. As an exhibit to the petition, the petitioner submitted a copy of an article that appeared in the Canadian Fishing Report (February 1981), which states that the Canadian

1/ Smoked herring filets other than hard-smoked are also classifiable with the hard-smoked variety under TSUS item 111.80.

Department of Regional Economic Expansion (DREE) provides grants to fish-processing facilities through cost-sharing agreements with provincial governments. According to the article, DREE's grants in the 1970's to fisheries in New Brunswick, the source of the allegedly subsidized imports, totaled \$7 million. The petitioner also claims that the size of the hard-smoked herring processors in Canada he has observed would not be sufficient to generate the income necessary to provide them, in absence of the subsidies, with the plant and equipment they have.

U.S. Producer

The petitioner, the McCurdy Fish Co., accounts for all of the hard-smoked herring produced in the United States. The McCurdy Fish Co. is a small, undiversified proprietorship employing about 25 part-time workers at a single location in Lubec, Maine. Hard-smoked herring filets account for all of the company's sales. Net sales totaled about \$300,000 in 1980. The company purchases all of its raw materials, including fresh sea herring which are supplied by both Canadian and American fishermen, and relies on agents or brokers for much of its marketing. There is no managerial staff other than the proprietor.

Foreign Producers

According to most sources, there are at least 40 producers of hard-smoked herring in Canada, all in New Brunswick (N.B.). About 8 are located on Grand Manan Island, and the remainder are on the mainland between Cap Pele and Cap Tormantine. All appear to be similar to the petitioner in terms of volume of trade and scale and scope of operations. According to the petitioner, however, several in the Cap Pele area have more modern facilities, though this does not necessarily make them any more efficient. While filets from Grand Manan tend to be similar to the petitioner's filets in size and degree of curing, those from mainland New Brunswick tend to be larger and either milder or harder cured.

U.S. Importers

There are many--at least 10--importers of hard-smoked herring filets from Canada, most of which are located along the Atlantic seaboard. Among the largest are the Maritime Fish Co., Bronx, N.Y. (* * * percent of total imports from Canada in 1980); World Wide Fish Co., Bronx, N.Y. (* * * percent of total imports from Canada in 1980); the Look Canning Co., East Machias, Maine (* * * percent of total imports from Canada in 1980); and Canadian Fish Exporters, Inc., Watertown, Mass. (approximately * * * percent of total imports from Canada in 1980). None of the importers is related to any of the foreign manufacturers. Hard-smoked herring filets account for less than * * * percent of the known importers' total sales, and no value is added to the imported product. * * * .

U.S. Market and Channels of Distribution

The U.S. market for hard-smoked herring filets consists of two major segments: (1) supermarkets and grocery stores, particularly in areas where Hispanic and Korean populations are concentrated; and (2) bars, where the filets are either sold or freely provided as snacks. According to several importers, the share of hard-smoked herring filets sold to bars, now between 10 and 20 percent, declined in the last decade and is expected to decline further. Unlike the filets, the bloaters are not sold to bars. Otherwise they are sold to the same customers at similar establishments and through the same distribution network.

Traditionally, the only significant market for hard-smoked herring was Latin America and the Caribbean, particularly Puerto Rico. Importers report that it has only been in the last decade, when large segments of these populations immigrated to the United States, that increasing quantities of hard-smoked herring have been consumed domestically. That hard-smoked herring was consumed in Latin America did not prevent it from first being imported into the United States. According to most importers surveyed, about 5 percent of the hard-smoked herring filets exported to the United States from Canada is still reexported to Latin America. Since many of the importers are also the U.S. producer's largest customers, it is likely that some of the domestically produced product is also exported.

The Question of Material Injury

Summary

Data on the petitioner's operations are not extensive. McCurdy, for example, does not keep running inventory records, and summarizes income data only at the end of the calendar year for tax purposes. While employment records are kept, they are not so organized as to enable McCurdy to convert this information into the Commission's usual format in a reasonable period of time. Notwithstanding these and other limitations, data on domestic production, shipments, employment, and profitability are available and are reasonably accurate.

Although U.S. production and shipments of hard-smoked herring filets declined during January 1978-September 1981, the petitioner's financial performance continued to improve, despite a decline in prices in 1981. The petitioner's business, however, is a fragile one, and there are competitive conditions in the market which make his continuing profitability uncertain.

U.S. imports

Since 1978, Canada has accounted for at least 97 percent of U.S. imports of hard-smoked herring filets (table 1).

From 1978 to 1979, U.S. imports of hard-smoked herring filets from Canada increased from 595,000 pounds, valued at \$479,000, to over 1 million pounds, valued at over \$1 million, but declined by 32 percent in 1980 to 693,000 pounds, valued at over \$860,000. From January-September 1980 to January-September 1981, imports of filets from Canada increased by 26 percent.

Official statistics of the U.S. Department of Commerce, from which these data were compiled, indicate significant quantities of imports of smoked herring filets from the United Kingdom. According to the importer, these are not hard-smoked. The data, therefore, have been omitted from the above tables.

Although imports from Canada increased in 1981 from what they were in 1980, unit values declined. From an average of \$1.25 in January-September 1980, the value per pound of filet imports declined to \$1.22 per pound in January-September 1981.

Table 1.--Hard-smoked herring filets: U.S. imports for consumption, by principal sources, 1978-80, January-September 1980, and January-September 1981

Source	1978	1979	1980	January-September--	
				1980	1981
Quantity (pounds)					
Canada-----	594,644	1,019,449	693,350	495,291	622,212
Philippines-----	6,112	1,355	6,270	3,870	4,277
Iceland-----	-	-	8,995	8,995	-
Other-----	3,526	5,628	2,085	585	4,273
Total <u>1/</u> -----	604,282	1,026,432	710,700	508,741	630,762
Percent of total quantity					
Canada-----	98.4	99.3	97.5	97.3	98.6
Philippines-----	1.0	0.1	0.9	.8	.7
Iceland-----	-	-	1.3	1.8	-
Other-----	0.6	0.6	.3	.1	.7
Total-----	100.0	100.0	100.0	100.0	100.0
Value (1,000 dollars) <u>2/</u>					
Canada-----	479	1,010	860	618	758
Philippines-----	6	1	10	6	4
Iceland-----	-	-	23	23	-
Other-----	9	8	4	2	7
Total-----	494	1,019	897	649	769
Unit value (per pound)					
Canada-----	\$0.81	\$0.99	\$1.24	\$1.25	\$1.22
Philippines-----	1.05	.96	1.57	1.68	.94
Iceland-----	-	-	2.56	2.56	-
Other-----	2.36	1.51	2.18	4.02	1.74
Total-----	.82	.99	1.25	1.28	1.22

1/ Total imports in table 1 differ from total imports given in official statistics under item 111.80 by an amount equal to imports from Great Britain, which, according to the importer, are not hard-smoked.

2/ Customs import value.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note.--Because of rounding, calculations using tabled figures may not yield identical results.

U.S. production, capacity, and capacity utilization

Annual U.S. production of hard-smoked herring filets declined from 189,610 pounds to 179,660 pounds, or by 5.2 percent, from 1978 to 1980, and declined by 1.7 percent from January-September 1980 to the corresponding period in 1981 (table 2). All U.S. production of hard-smoked herring is fileted. The decline in January-September 1981 relative to the corresponding period in 1980 was largely due to difficulties encountered in obtaining fresh herring. For the entire month of September 1981, the petitioner received no fresh herring.

The petitioner's capacity for the production of hard-smoked herring filets, about 200,000 pounds annually, is based on his estimate of the maximum amount of herring that his smokehouses can cure in a calendar year. As a share of this capacity, the petitioner's production declined from 94.8 percent in 1978 to 89.8 percent in 1980. Capacity utilization declined again, by 1-1/2 percentage points, from January-September 1980 to January-September 1981, reflecting the lack of fresh herring in September. The petitioner is not scheduled to add, expand, or close production facilities in the near future.

Table 2.--Hard-smoked herring filets: U.S. production, capacity, and capacity utilization of the McCurdy Fish Co., 1978-80, January-September 1980, and January-September 1981

Item	:	1978	:	1979	:	1980	:	January-September--	
								1980	1981
Production-pounds--:	:	189,610	:	179,670	:	179,660	:	111,434	109,497
Capacity-----do----	:	200,000	:	200,000	:	200,000	:	126,000	126,000
Ratio of produc-	:		:		:		:		
tion to capacity :	:		:		:		:		
percent--:	:	94.8	:	89.8	:	89.8	:	88.4	86.9

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

U.S. producer's domestic shipments

For the years 1978, 1979, and 1980 and the partial years January-September 1980 and 1981, the petitioner's domestic shipments were approximately equivalent to his production. In terms of value, domestic shipments increased from \$199,122 to \$295,754, or by 48 percent, from 1978 to 1980, and increased by 1.5 percent from January-September 1980 to the corresponding period in 1981 (table 5). The petitioner does not export.

Table 3.--Hard-smoked herring filets: Domestic shipments of the McCurdy Fish Co., 1978-80, January-September 1980, and January-September 1981

Period	Quantity	Value
	<u>pounds</u>	
1978-----	189,610	\$199,122
1979-----	179,670	252,124
1980-----	179,660	295,754
January-September--		
1980-----	111,434	177,180
1981-----	109,497	179,834

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

Inventories

The petitioner keeps no inventory records. However, since shipments were approximately the same as production in January-1978-September 1981, inventories were negligible.

Employment

Employment in the petitioner's business varies during the season. From April through June, after the season's herring has been processed and while the initial shipments of fresh herring arrive, the number of employees is normally about 4. By the time smoking gets underway in July, the number has risen to 13 or 14, and, with the first fileting in September, rises to about 27, where it remains until April when the season starts anew. From January 1978 through July 1981, this pattern did not vary. The average number employed for August, however, dropped to 11 instead of the usual 14, and in September dropped to 19 from the usual 27, reflecting the lack of fresh herring. Since the arrival of fresh herring in late October, employment has returned to normal.

The petitioner was unable to provide the corresponding number of hours worked by these employees, but, since January 1978, maintains that there was no change until August-September 1981, when the total number of hours worked fell in proportion to the decline in workers. The number of hours worked per employee did not change.

Financial performance of the U.S. producer

Financial data for the McCurdy Fish Co. are presented in table 6. The petitioner's net sales of hard-smoked herring filets increased from \$199,000 in 1978 to \$296,000 in 1980, while net operating profit increased from * * * to * * *, or by more than * * * percent, in the same period. Net operating profit also increased as a percent of sales in this period, from * * * percent to * * * percent. Because the company's financial data is only summarized at the end of each calendar year, the petitioner was unable to provide quantitative information for January-September 1980 and January-September 1981; however, the petitioner estimates that 1981, at least through September, was as profitable as 1980. This is supported by a comparison of the petitioner's average unit sales values with his average unit production costs associated with the manufacture of filets, as shown in the following tabulation (per pound):

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>January-September 1981</u>
Average unit sales value--	\$1.05	\$1.40	\$1.65	\$1.64
Average unit production cost-----	* * *	* * *	* * *	* * *
Average gross profit per unit-----	* * *	* * *	* * *	* * *

Table 4.--Selected financial data for the McCurdy Fish Co. on its
U.S. hard-smoked herring filet operations, 1978-80

Item	1978	1979	1980
Net sales-----1,000 dollars--:	199 :	252 :	296
Cost of goods sold-----do-----:	* * * :	* * * :	* * *
Gross profit-----do-----:	* * * :	* * * :	* * *
General, selling, and admini-:	:	:	:
strative expenses-----do-----:	* * * :	* * * :	* * *
Net operating profit-----do-----:	* * * :	* * * :	* * *
Ratio of net operating profit to :	:	:	:
net sales-----percent-----:	* * * :	* * * :	* * *
Funds from operations <u>1/</u> :	:	:	:
1,000 dollars--:	* * * :	* * * :	* * *
Total assets employed in the pro-:	:	:	:
duction of hard-smoked :	:	:	:
herring filets at yearend: :	:	:	:
Original cost---1,000 dollars--:	* * * :	* * * :	* * *
Book value-----do-----:	* * * :	* * * :	* * *
Ratio of net operating profit to--:	:	:	:
Original cost of fixed :	:	:	:
assets-----percent-----:	* * * :	* * * :	* * *
Book value of fixed :	:	:	:
assets-----do-----:	* * * :	* * * :	* * *

1/ Defined as net operating profit plus depreciation expense.

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

The average production cost for January-September 1981 was calculated by aggregating estimated labor, material, and overhead costs associated with 1981 production. While the average sales value of the petitioner's shipments of hard-smoked herring filets declined from \$1.65 per pound in 1980 to \$1.64 per pound in January-September 1981, average production costs declined from * * * per pound to * * * per pound, primarily as a result of lower prices for fresh herring. On the basis of these estimates, then, average gross profit in this period increased by * * * cents per pound. Fresh herring and labor accounted for at least * * * percent of the petitioner's production costs in January-September 1981. Fresh herring alone accounts for about * * * percent of production costs.

The Question of the Threat of Material Injury

Several factors related to the nature of the petitioner's business make it subject and highly vulnerable to swings in income. The scale of the petitioner's operations limit his ability to absorb losses and enter into alternative investments. Possibilities for the latter are further restricted by his location. The scope of the petitioner's operations is also limited. The petitioner's plant is designed to produce hard-smoked herring only, and there are many competitors. Crucial aspects of his operations, moreover, like marketing and raw materials, are not within the petitioner's control. Other variables, like weather, which affects the smoking process, and the availability of fresh herring are beyond anyone's ability to regulate.

Although the petitioner's business was profitable through September of this year, there are currently conditions in the market which may adversely affect his future performance. In New York, where much of the petitioner's product has traditionally been sold, the effect of imports from Canada purchased by one large importer was to reduce prices by more than 30 percent between January and May of this year. Prices in other markets also declined, though less severely. (There is evidence that the decline may be a temporary phenomenon--these and related data are presented in the price section of this report.) Because the cost of fresh herring averaged less in January-September 1981 than in the corresponding period of 1980, the price decline did not appear to have adversely affected the petitioner's profitability, as shown in the previous section. However, McCurdy's purchases of fresh herring in October and November were at a price that was more than ** percent above the price in September. Prices of the petitioner's hard-smoked filets also increased during this period but by only ** percent. Between January-September 1980 and January-September 1981, the petitioner's share of the market declined by more than 3 percentage points. Most of the penetration by imports from Canada during this period, however, appears to have been in the New York market, and the conditions which were largely responsible for that penetration--price cutting by one large importer--appear to be reversing. Data on shipments, exports, capacity, and planned changes in capacity for the Canadian producers are not available.

The Question of the Causal Relationship Between the Allegedly Subsidized Imports and the Alleged Material Injury

U.S. consumption and market penetration of imports

The figures reported for consumption (table 5) represent the U.S. producer's shipments plus imports. As indicated earlier, some of the filets that are imported into the United States--approximately 5 percent in 1980--are exported.

Apparent consumption of hard-smoked herring filets rose from 793,892 pounds in 1978 to more than 1.2 million pounds in 1979, and then fell by 26 percent to 890,360 pounds in 1980. From January-September 1980 to January-September 1981, consumption increased from 620,175 pounds to 739,259 pounds, or by 19 percent. In terms of value, apparent consumption of filets rose from \$693,000 in 1978 to \$1.2 million in 1980; from January-September 1980 to January-September 1981, consumption rose by 15 percent.

As a share of total U.S. consumption of hard-smoked herring filets, imports from Canada increased from 74.9 percent in 1978 to 84.5 percent in 1979, but declined to 77.9 percent in 1980. From January-September 1980 to January-September 1981, however, the ratio of imports from Canada to consumption rose from 79.9 percent to 84.2 percent. Imports from sources other than Canada accounted for no more than 2.2 percent of consumption in this period. For many years prior to 1978, Canadian-produced hard-smoked herring filets were a dominant factor in the U.S. market.

Lost sales

At least one of the petitioner's shipments--* * * pounds, valued at * * *--was rejected in favor of the Canadian product. The sole reason, according to the purchaser who had contracted for the fish (* * *) was price. This occurred in February of this year. To avoid further rejections, the petitioner has continued to meet the prevailing price, except in New York where in certain instances he has not been able to compete on a price basis. (Buyers in New York accounted for * * * percent of McCurdy's total shipments in January-September 1981, compared with * * * percent in the corresponding period of the previous year.) All of the purchasers contacted in the United States, including those in New York, consider the petitioner's product to be consistently of the highest quality.

Prices

Although data related to the cost of Canadian-produced hard-smoked herring filets were received from several importers, no precise price comparisons with the U.S. producer can be made. Prices have changed frequently since the beginning of 1979 and the information provided by importers is on a quarterly basis. The petitioner's price data, however, provided on a shipment by shipment basis, reflect discernable trends in the market place. These data, in conjunction with that provided by importers, provide a basis for analyzing price trends since early 1979.

Table 5.--Hard-smoked herring filets: Domestic shipments by the McCurdy Fish Co., U.S. imports for consumption, and apparent consumption, 1978-80, January-September 1980, and January-September 1981

(Quantity in pounds; value in thousands of dollars)									
Period	Shipments	U.S. imports--			Apparent consumption:	Ratio (percent) of imports to consumption--			
		From	From other	Total		From	From other	Total	
		Canada	countries			Canada	countries		
		Quantity							
1978-----	189,610	594,644	9,638	604,282	793,892	74.9	1.2	76.1	
1979-----	179,670	1,019,449	6,983	1,026,432	1,206,102	84.5	.6	85.1	
1980-----	179,660	693,350	17,350	710,700	890,360	77.9	1.9	79.8	
January-September--									
1980-----	111,434	495,291	13,450	508,741	620,175	79.9	2.2	82.1	
1981-----	109,497	622,212	8,550	630,762	740,259	84.2	1.2	85.4	
		Value							
1978-----	199	479	15	494	693	69.1	2.2	71.3	
1979-----	252	1,010	9	1,019	1,271	79.5	0.7	80.2	
1980-----	296	860	37	897	1,193	72.1	3.1	75.2	
January-September--									
1980-----	177	618	32	649	826	74.8	3.9	78.7	
1981-----	180	758	11	769	949	79.9	1.2	81.1	

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

From January 1979 to January 1981, the price of hard-smoked herring filets at the producer level (f.o.b. point of manufacture) rose steadily. Illustrative of this increase are purchases by * * * to whom the petitioner has supplied filets on a regular basis since 1978. From * * * per 10 pound box in January 1979, the net price of McCurdy's filets to this customer increased to * * * by January 1981. McCurdy's experience with this customer is typical. In January 1979 his net prices to other customers ranged from * * * to * * * (* * *) and in January 1981 ranged from * * * (* * *) to * * * (* * *). According to importers of the Canadian product, Canadian producers' net prices were approximately consistent with McCurdy's during this period.

At least part of the price increase was due to an increase in the cost of fresh herring (the cost of fresh herring accounts for * * * percent of the cost of goods sold). In the mid-1970's Norway closed the North Sea to herring fishing in an effort to replenish the stock. Thenceforth, European buyers were supplied from catches off Nova Scotia. The increase in demand for herring in these waters is reflected in price. From 1977 to 1980, the average price per hogshead 1/ of fresh herring paid by McCurdy increased from * * * to * * *. Consequent to the lifting of the embargo in November 1980, the price of fresh herring fell. McCurdy's average cost per hogshead of fresh herring in January-November 1981 was * * *.

After January 1981, the price of hard-smoked herring filets began to decline. By July of this year McCurdy's average weighted price to all customers had fallen to * * *, compared with a high of * * * in September 1980 (table 6). These prices approximate Canadian producers' prices in the U.S. market, except in New York where the price fell more rapidly and to a lower level. Sales to * * * were responsible for the major part of this price decline. In January, * * * purchased for * * * per box a large shipment of over-cured filets which had been shipped to Europe by * * *, and was there rejected. In the same month * * * purchased for the same price a shipment from * * *. Although the shipment had been contracted for * * *, * * * alleged that the "prevailing market price" had fallen to * * * and refused to pay more than this level upon delivery. Within a month much of these fish had been sold in the U.S. market. Other Canadian producers, including * * *, continued to supply * * * at this price through June. In order to remain competitive, other importer/buyers in the New York area reduced their offering prices. The effect was a general price decline throughout the Atlantic seaboard. Since July, however, prices have again increased. From a low of * * * in July, McCurdy's average weighted price per 10 pound box increased to * * * in November. Many importers, however, report that Canadian producers' prices are currently about 10 percent below McCurdy's.

Average weighted delivered prices to New York for U.S.- and Canadian-produced hard-smoked herring filets, by quarters, for recent years, are shown in table 7. While the data for the Canadian-produced product is based only on the largest shipment received by certain importers during a quarter, that for the U.S.-produced product is based on all shipments to New York during the quarter. The listed importers, moreover, may not have

1/ One hogshead equals 1,240 pounds of fresh herring, which yields approximately 300 pounds of hard-smoked filets.

Table 6.--Hard-smoked herring filets: The McCurdy Fish Co.'s average weighted 1/ net prices, by months, January 1979-November 1981

Month	1979	1980	1981
	Per 10 pound box		
January-----	***	***	***
February-----	***	***	***
March-----	***	***	***
April-----	***	***	***
May-----	***	***	***
June-----	***	***	***
July-----	***	***	***
August-----	***	***	***
September-----	***	***	***
October-----	***	***	***
November-----	***	***	***
December-----	***	***	<u>2/</u>

1/ Weighted by quantity shipped.

2/ Not available.

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

purchased the U.S.-product in all periods shown, and there is at least one buyer of U.S.-produced herring filets in New York that does not import. Despite these limitations in comparability, the data are indicative of price trends in New York after 1978.

According to table 7, the prices for both the domestic and imported herring filets increased throughout 1979 and most of 1980. The average weighted delivered price to New York for a 10-pound box of the domestic product increased from *** for the first quarter of 1979 to *** for the last quarter of 1980. In the same period the price paid for the Canadian-produced product by ***, for example, increased from *** to ***. Also evident in table 7 is the price decline in 1981. From January-March to July-September of that year, the price for the U.S.-produced product declined from *** to ***. The price for the imported product, paid by the importers shown in table 7, was even lower during this period. Although price data for the last quarter of 1981 are not available for the Canadian-produced product, the data for the U.S.-produced product show a substantial increase. From *** in July-September 1981, the average weighted delivered price to New York for McCurdy's product rose to *** in October-December, an increase of *** percent.

Table 7.--Hard-smoked herring filets: Average weighted delivered prices to New York for the U.S.- and Canadian-produced products, by quarters, January 1979-December 1981

(Quantity in number of 10 lb. boxes; price in dollars per 10 lb. box)									
Period	U.S.-produced		Canadian-produced filets, purchased by--						
	filets' 1/		***		***		***		
	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	
1979:									
January-March-----	***	***	***	***	***	***	***	***	***
April-June-----	***	***	***	***	***	***	***	***	***
July-September----	***	***	***	***	***	***	***	***	***
October-December--	***	***	***	***	***	***	***	***	***
1980:									
January-March-----	***	***	***	***	***	***	***	***	***
April-June-----	***	***	***	***	***	***	***	***	***
July-September----	***	***	***	***	***	***	***	***	***
October-December--	***	***	***	***	***	***	***	***	***
1981:									
January-March-----	***	***	***	***	***	***	***	***	***
April-June-----	***	***	***	***	***	***	***	***	***
July-September----	***	***	***	***	***	***	***	***	***
October-December--	***	***	***	***	***	***	***	***	***

1/ All purchases in New York.

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

APPENDIX A
COMMISSION'S NOTICES
CONCERNING
INVESTIGATION NO. 701-TA-81

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 701-TA-81 (Preliminary)

HARD-SMOKED HERRING FILETS FROM CANADA

Notice of Institution of Preliminary Countervailing Duty
Investigation and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Canada of hard-smoked herring filets, classified under item 111.80 of the Tariff Schedules of the United States.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator (202-523-0439).

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted following receipt of a petition on September 30, 1981, filed by the McCurdy Fish Co., Lubec, Maine. The petition alleges that Canada provides subsidies to firms handling and processing fish, including those that smoke herring, and that, by reason of imports of this allegedly subsidized product, an industry in the United States is being materially injured or threatened with material injury.

Authority. Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of

the merchandise which is the subject of the investigation by the administering authority (Commerce). Such a determination must be made within 45 days after the date on which a petition is filed under section 702(b). Accordingly, the Commission, on October 2, 1981, instituted preliminary countervailing duty investigation No. 701-TA-81. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207) and particularly, subpart B thereof.

Written submissions. Any person may submit a written statement of information pertinent to the subject matter of this investigation to the Commission on or before November 2, 1981. A signed original and nineteen copies of such statement must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.d.t., on October 26, 1981, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact Mr. John MacHatton (202-523-0439) by 5:00 p.m., e.d.t., October 22, 1981. It is anticipated that parties in support of the petition for countervailing duties and parties opposed to such petition will

each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by Mr. John MacHatton.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: October , 1981

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 701-TA-81 (Preliminary)

HARD-SMOKED HERRING FILETS FROM CANADA

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On October 22, 1981, the McCurdy Fish Co., Lubec, Maine, notified the U.S. Department of Commerce and the U.S. International Trade Commission that it was withdrawing its countervailing-duty petition concerning hard-smoked herring filets in accordance with Commerce's recommendation (Commerce found that the data provided by the petitioner in support of the alleged Canadian subsidies was inadequate). Accordingly, the Commission terminates investigation No. 701-TA-81 (Preliminary) pursuant to its authority under section 207.13 of the Commission's Rules of Practice and Procedure.

EFFECTIVE DATE: October 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0296.

By order of the Commission.

Kenneth E. Mason
Secretary

Issued: October , 1981

APPENDIX B

COMMISSION'S NOTICE
OF INVESTIGATION AND CONFERENCE
FOR INVESTIGATION NO. 701-TA-82

A-26
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 701-TA-82 (Preliminary)

HARD-SMOKED HERRING FILETS FROM CANADA

Notice of Institution of Preliminary Countervailing Duty

Investigation and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Canada of hard-smoked herring filets, classified under item 111.80 of the Tariff Schedules of the United States.

EFFECTIVE DATE: November 17, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator (202-523-0439).

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted following receipt of a revised petition on November 2, 1981, from the McCurdy Fish Co., Lubec, Maine. Originally filed on September 30, 1981, McCurdy's petition was found by Commerce to have insufficient data in support of its subsidy allegations, and on October 22, 1981, the company withdrew its complaint to acquire additional information. Accordingly the U.S. International Trade Commission terminated its investigation (No. 701-TA-81 (Preliminary)) pending the petitioner's resubmission. Notice of the termination of investigation No. 701-TA-81 (Preliminary) and the cancellation of the public conference therefor was published in the Federal Register of October 29, 1981 (46 F.R. 53544).

Authority. Section 703(a) of the Tariff Act of 1930 (19 U.S.C. [§] 1673b) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United is materially retarded, by reason of imports of the merchandise which is the subject of the investigation by the administering authority (Commerce). Such a determination must be made within 45 days after the date on which a petition is filed under section 702(b). Accordingly, the Commission, on November 17, 1981, instituted preliminary countervailing duty investigation No. 701-TA-82. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and particularly, subpart B thereof.

Written submissions. Any person may submit a written statement of information pertinent to the subject matter of this investigation to the Commission on or before December 4, 1981. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submission must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR [§] 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.s.t., on November 30, 1981, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the

conference should contact Mr. John MacHatton (202-523-0439) by 5:00 p.m., e.s.t., November 25, 1981. It is anticipated that parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by Mr. MacHatton.

Inspection of the petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: November , 1981

APPENDIX C
COMMERCE'S NOTICE
OF INITIATION OF COUNTERVAILING DUTY INVESTIGATION

ADDRESS: Responses or additional data should be filed with Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A of Order 81-11-108.

FOR FURTHER INFORMATION CONTACT: Mr. J. Kevin Kennedy, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5918.

SUPPLEMENTARY INFORMATION: The complete text of Order 81-11-108 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81-11-108 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: November 17, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-33635 Filed 11-20-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Countervailing Duty Investigation; Hard-Smoked Herring Filets From Canada

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: We are initiating a countervailing duty investigation to determine whether Canada is subsidizing its producers and exporters of hard-smoked herring filets. We are notifying the U.S. International Trade Commission ("ITC") of this action so that it may determine whether imports of this merchandise are materially injuring, or threatening to materially injure, a U.S. industry. If both investigations proceed normally, the ITC will announce its preliminary determination by December 17, 1981, and we will announce ours by January 26, 1982.

EFFECTIVE DATE: November 23, 1981.

FOR FURTHER INFORMATION CONTACT: Alain Letort, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230 (202-377-1273).

SUPPLEMENTARY INFORMATION: On November 2, 1981, we received a

petition *pro se* from the McCurdy Fish Company, a small, independent producer in Lubec, Maine. Complying with the filing requirements of 19 CFR 355.26, the petition alleges that Canada is subsidizing its producers and exporters of hard-smoked herring filets, and that imports of this merchandise into the United States are materially injuring, or threatening to materially injure, a U.S. industry.

Petitioner alleges that Canadian producers and exporters of hard-smoked herring filets receive financial incentives from the Canadian government's Regional Development Incentives Program, administered by the Department of Regional Economic Expansion. We will also examine any additional programs that we might discover during the course of the investigation.

After conducting a summary review of the petition, as required by section 702(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1671a) ("the Act"), we have found that its information reasonably supports its allegations. Therefore, in accordance with section 702(c) of the Act, we are initiating a countervailing duty investigation to determine whether Canada is providing its producers and exporters of hard-smoked herring filets with certain benefits that are subsidies within the meaning of section 771(5) of the Act (19 U.S.C. 1303). If the investigation proceeds normally, we will announce our preliminary determination by January 26, 1982.

Scope of the Investigation

For purposes of this investigation, hard-smoked herring filets are fresh sea herring placed in brine for approximately five days and smoked for a period of four to six weeks, which are then beheaded, cleaned and filleted. This merchandise is currently classifiable under item 111.80 of the Tariff Schedules of the United States, which includes "fish, smoked or kippered, whether or not whole, but not otherwise prepared or preserved, and not in airtight containers; herring, otherwise processed (whether or not beheaded)."

ITC Notification and Preliminary Determination

Section 702(d) of the Act also requires us to notify the U.S. International Trade Commission ("ITC") and to give it the information we used to arrive at this decision. We will make available to the ITC all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information

in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine by December 17, 1981, whether the petition reasonably indicates that imports of hard-smoked herring filets from Canada are likely to materially injure a U.S. industry. If the ITC's determination is negative, we will terminate this investigation; otherwise, the investigation will proceed.

Leonard Shambon,

Acting Deputy Assistant Secretary for Import Administration.

November 16, 1981.

[FR Doc. 81-33635 Filed 11-20-81; 8:45 am]

BILLING CODE 3510-25-M

President's Export Council; Subcommittee Meetings

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that the following subcommittees of the President's Export Council will be meeting on the dates noted below. The President's Export Council was established by Executive Order 11753 of December 20, 1973. The Council was reconstituted by Executive Order 12131 of May 4, 1979, and continued by Executive Order 12258 of December 31, 1980. The Council's purpose is to advise the President on matters relating to United States export trade. The locations, agendas, and times of the subcommittee meetings are as follows:

Agriculture Subcommittee (Governor Thone)

Wednesday, December 2

9:30 a.m.-Noon, Room 104A, U.S.

Department of Agriculture, 14th and Independence, S.W., Washington, D.C.

Agenda items:

- I. Discussion of past recommendations
- II. Briefing on current issues
- III. Film, "We Can Turn the Tide"

Trade-in-Services Subcommittee (James Greene)

Wednesday, December 9

3:00 p.m.-6:00 p.m., Boardroom, 40th Floor, American Express Plaza, 125 Broad Street, New York City, NY

Agenda items:

- I. Aims of the subcommittee
- II. Current legislative initiatives
- III. GATT and OECD ministerial meetings

