

UNITED STATES TARIFF COMMISSION
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PORTLAND CEMENT FROM THE DOMINICAN REPUBLIC

Determination of Likelihood of Injury

On January 21, 1963, the U.S. Tariff Commission was advised by the Acting Assistant Secretary of the Treasury that portland cement, other than white, nonstaining portland cement, from the Dominican Republic is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted an investigation to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation was published in the Federal Register (28 F.R. 882). No public hearing in connection with the investigation was ordered by the Commission, but interested parties were referred to section 208.4 of the Commission's Rules of Practice and Procedure (27 F.R. 12117) which provides that interested parties may, within 15 days after the date of publication of the Commission's notice of investigation in the Federal Register, request that a public hearing be held, stating reasons for the request.

One request for a hearing was filed. However, the Commission noted that a good and sufficient reason for holding a hearing in connection with the investigation had not been advanced as required by section 208.4 of

its Rules, and, as adequate information was obtained from other sources, no hearing was held.

In arriving at a determination in this case, due consideration was given by the Commission to all written submissions from interested parties and all factual information obtained by the Commission's staff.

On the basis of the investigation, the Commission (Chairman Dorfman dissenting) 1/ has determined that an industry in the United States is likely to be injured by reason of the importation of portland cement, other than white, nonstaining portland cement, from the Dominican Republic, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

1/ The views of Chairman Dorfman follow the statement of reasons of the majority.

Majority Statement of Reasons

The imports of portland cement from the Dominican Republic sold at less than fair value were entered largely at the port of New York. The imports entered at that port were marketed almost exclusively in the metropolitan area of New York City. For purposes of this determination this area constitutes a "competitive market area." The domestic plants that have historically supplied portland cement in this competitive area and in recent years have sold substantial quantities of cement there are considered to constitute "an industry" for the purposes of the Antidumping Act.

The Antidumping Act is designed, not to restrict competition from imports as such, but, by providing appropriate control over sales of imported articles at less than fair value, to bolster the forces supporting a healthy competition within the domestic economy. Competition from abroad, as such, is countenanced under the antidumping legislation. Price competition reflecting improved technology, increased efficiency, and superior types of marketing--each redounding to the benefit of the consuming public and each contributing to the vigor of the national economy--is compatible with the legislation here concerned. None of these virtues, however, are reflected in the price of imports sold at less than fair value. When such imports cause, or are likely to cause, injury to a domestic industry, remedial action is mandatory.

The Dominican producer has the capacity to sell considerably increased quantities of portland cement in the United States and has sufficient motivation to do so. In recent years the Dominican market has provided an outlet sufficient to take only about half of the potential production of that country's cement plant. Even with substantial exports, it has generally operated with considerable excess capacity. Through a form of price discrimination--i.e., through sales at prices below those charged in the home market--but at prices sufficiently high to cover out-of-pocket costs and to make a positive contribution to net return, the Dominican producer can achieve more complete utilization of plant capacity and a lowering of average unit costs. His inducement to attain a level of output approaching full capacity therefore is strong. Consequently, the very substantial market in the New York metropolitan area constitutes a continuing and attractive lure for the Dominican management seeking to expand production and reduce costs. Indeed, the instant case represents the second occasion in which the Treasury Department has advised the Commission that portland cement from the Dominican Republic was being sold in the United States at less than fair value.

Somewhat comparable circumstances cause the domestic producers of cement which customarily supply the New York metropolitan market to be vulnerable to competition from imports sold in the

United States at less than fair value. In recent years producers supplying this market have generally operated at about 70 percent of capacity. Not only do sales of imported cement at less than fair value tend to repress prices in that marketing area but it is also difficult for domestic producers to compete therewith inasmuch as the price is based not on lower costs but on discrimination.

Domestic manufacturers, moreover, are precluded from making as complete use of their productive facilities as they would be able to do in the absence of such competition. The injury that is likely to be sustained thereby would be reflected in continuing market instability and higher production costs. Because of both legal and economic restraints, however, domestic producers would be unable to increase volume by resort to the same kind of price discrimination.

Little has occurred in recent months to alter the situation that has twice given rise to sales in the United States of Dominican portland cement at less than fair value. The capacity and incentive for making such shipments remain. Domestic producers will be no less vulnerable in the future than they have been to date. In the opinion of the Commission, therefore, the portland cement industry serving the New York metropolitan market is likely to be injured by reason of importation of such cement sold in the United States at less than fair value.

Views of Chairman Dorfman

Like the other Commissioners, I do not find that imports of Dominican cement are causing injury in either of the two major U.S. markets in which such cement has been sold, viz, Metropolitan New York City and Puerto Rico. Also, like them, I do not find that such imports are likely to cause injury to the cement producers in Puerto Rico. However, I do not agree with their conclusion that evidence now before the Commission justifies a finding that imports of Dominican cement "at less than fair value" are likely to cause injury to the domestic producers who sell cement in the Metropolitan New York City area.

It is my view, based on the facts obtained in this investigation, that no industry in the United States is being, or is likely to be injured, or is prevented from being established, by reason of the importation at less than fair value of portland cement from the Dominican Republic. I shall address myself, however, primarily to the issue on which I am in disagreement with the majority.

The sale of imported articles "at less than fair value" is not ipso facto injurious to a domestic industry. Indeed, the Commission only today reported its unanimous finding that such a sale of technical vanillin from Canada neither caused nor was likely to cause injury to an industry in the United States. The Antidumping Act was never intended to prevent, or even to deter, imports merely because they are sold at less than fair value. To hold otherwise would be

tantamount to contending that the Congress has imposed a useless function on the Commission.

The Commission concluded a previous antidumping investigation concerning portland cement from the Dominican Republic on April 18, 1962. It then unanimously determined that "an industry in the United States is not being, and is not likely to be, injured . . . by reason of the importation of portland cement . . . from the Dominican Republic, sold at less than fair value". The Commission observed further: "The evidence does not indicate any predatory motivation on the part of the importers. Accordingly, there is no sufficient evidence to indicate that a domestic industry is likely to be injured by reason of the importation of portland cement from the Dominican Republic that is sold below its fair value." The Commission noted also that any injury to domestic portland cement plants that have historically supplied the so-called competitive market areas (Metropolitan New York City and Puerto Rico) was "inconsequential."

The sales below fair value of Dominican cement in the New York area that were under review in the aforementioned investigation were equivalent to only a small fraction of 1 percent of the total shipments of domestic mills (to all markets) that supplied the New York area in 1961. They were also equivalent to about 4 percent of the shipments by those mills solely to the New York area; and to about 10 percent of their shipments to the New York area during the period in 1961 when the Dominican cement was imported into that area.

The imports of Dominican cement into the New York area at less than fair value that are the subject of this investigation all entered in 1962. They were equivalent to less than one-third of 1 percent of the total shipments of mills (to all markets) that supplied the New York area in 1962; to less than three-fourths of 1 percent of the shipments of those mills solely to the New York area; and to less than $1\frac{1}{2}$ percent of their shipments to that area during the period in 1962 when the Dominican cement was imported into that area.

In view of the foregoing, it is significant that the Commission unanimously found neither injury, nor the likelihood thereof, arising out of the sales of Dominican cement in the New York area in 1961, whereas the majority now finds "likelihood" of injury in that area.

Following issuance of a Customs Bureau order, effective September 12, 1962, to withhold appraisement of portland cement from the Dominican Republic, there have been no imports of such cement into the New York area. Further, counsel for the New York importer (Triangle Cement Co.) advised the Commission that said "importer has no further interest in importing cement from the Dominican Republic or anywhere else, and the Dominican mill has averred that it has no cement to sell to continental United States and no plans to sell there."

There is no evidence in the Commission's possession to support the position that the most recent imports of Dominican cement into the New York area at less than fair value operated in any appreciable degree either (a) to depress the general price level of domestic cement sold in that area below the level that would have occurred in the absence of such sales or (b) to reduce appreciably the volume of sales of domestic cement in that area. The Triangle Cement Co. marketed the bulk of the cement imported into the Port of New York in 1962; and it sold all of its imported cement, whether from the Dominican Republic (at less than fair value) or from Belgium, West Germany, or Italy (at fair value) at the same price.

The Dominican cement plant which the Commission has had under consideration in the present antidumping investigation is physically the same plant that the Commission had under consideration in its earlier antidumping investigation. That plant, however, is now principally owned and controlled by the new Dominican Government--a government that has given no indication of intent to engage in predatory pricing practices in its sale of cement to the United States.

The Dominican plant is presently being operated below its full capacity, which is estimated at about 1.8 million barrels annually. ^{1/}

^{1/} Based on 3 kilns, 2 of which have an annual capacity of 0.45 million barrels each, and one of which has an annual capacity of 0.9 million barrels. This combination of units enables the plant to operate efficiently at several different levels of output; it is not obliged to operate at its peak capacity in order to maintain high efficiency.

Counsel who represents the Dominican cement company has submitted a statement from the firm to the effect that it anticipates that increased home consumption plus increased sales to other markets in the Caribbean area will utilize all of the plant's capacity in the foreseeable future. In any event, there is no basis for assuming that the Dominican plant, merely because it has unused capacity, will be under great pressure and temptation to export to the United States cement in such quantities, at prices less than fair value, as to cause injury to U.S. mills. The view that the most likely destination of such exports would be to the New York area is even a less plausible conjecture.

Since the last shipments of Dominican cement entered the Port of New York, that port has become one of the least attractive of the major U.S. markets for imported cement. Prices in that area declined sharply early this year, after a new cement plant came into operation in Ravena, New York. ^{1/} The price of domestic cement in the New York area is currently below the price at which Dominican cement was sold there last year when it entered at less than fair value. Dominican cement could not now be marketed there except at a still lower price. The price of domestic cement in bulk is now even lower in the New York area than in several other U.S. ports into which foreign cement has entered.


^{1/} It is a modern automated plant that serves not only the New York Metropolitan area but also other Atlantic coast ports from Boston to Fort Lauderdale. Its two giant kilns, with a total capacity of 10 million barrels annually, are the largest ever built in North America.

All of the Dominican cement that was imported into the New York area has been appraised and so may not be subjected to dumping duties. Therefore, the most direct consequence of the majority decision will be the imposition of a heavy dumping duty on the hapless Puerto Rican concern that imported Dominican cement at less than fair value. This assessment will occur notwithstanding that no cement producer in Puerto Rico pressed a claim of injury, or the likelihood thereof, arising out of the imports of the Dominican cement, and notwithstanding that no member of the Commission found in this investigation that such imports resulted in injury or the likelihood thereof to Puerto Rican cement producers. Penalizing the Puerto Rican importer will have no ascertainable effect in deterring future imports of Dominican cement into the New York Area.

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The foregoing determination and statement of reasons are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended.

By the Commission:



DONN N. BENT
Secretary

