UNITED STATES TARIFF COMMISSION

[AA1921-38]

TC Publication 129 July 9, 1964

WHITE PORTLAND CEMENT FROM JAPAN

Determination of No Injury or Likelihood Thereof

On April 9, 1964, the Tariff Commission was advised by the Assistant Secretary of the Treasury that WHITE PORTLAND CEMENT FROM JAPAN, manufactured by Nihon Cement Co., Ltd., Tokyo, Japan, is being, or is likely to be, sold in the United States at less than fair value as that term is used in the Antidumping Act, 1921, as amended. Accordingly, the Commission on April 10, 1964, instituted an investigation under section 201(a) of that Act, 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 and of a public hearing to be held in connection therewith was published in the Federal Register (29 F.R. 5253). The hearing was held on May 26, 1964.

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

On the basis of the investigation, the Commission (Commissioners Culliton and Sutton dissenting) has determined that an industry in the

United States is not being, and is not likely to be, injured, or prevented from being established, by reason of the importation of white portland cement from Japan, manufactured by Nihon Cement Co., Ltd., Tokyo, Japan, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Statement of Reasons for Negative Determination

Views of Commissioners Dorfman and Talbot

Before setting forth the considerations that support a negative finding in this case, we call attention to a general position that the Commission has repeatedly taken in past decisions under the Antidumping Act:

> Treasury's finding of sales below fair value does not establish even a presumption that any domestic industry is being, or is likely to be, injured. . . . The term "less than fair value" must be construed in the sense in which it is employed in antidumping procedures. . . . /_A_/ Treasury . . . determination of sales below fair value . . . carries no implication of "unfairness" in the sense of being illegal, let alone being presumptuous of causing injury. Otherwise, the injury-determination function of the Tariff Commission would be meaningless. . . . Sales at less than fair value are never "illegal" under the Antidumping Act; they merely expose the importer to payment of special dumping duties if the sales cause material injury. 1/

About 50 concerns in the United States produce gray cement in some 175 plants scattered throughout the country; 4 of the concerns

1/ U.S. Tariff Commission, Titanium Dioxide from France, Publication 109, 1963.

also produce white cement in 5 plants, 2 of which are located in Pennsylvania, and 1 each in Florida, Texas (Houston), and California (near Riverside). The plants in Florida and Texas are both owned by a single domestic concern. No U.S. concern produces white cement only.

Domestic consumption of white cement has risen sharply in recent years, principally for use in constructing swimming pools and in terrazo work and a broadening range of special concrete products. These developments reflect in large part the continued rise in consumers' disposable income and consequent increase in construction, particularly in such areas as southern California. In almost all of the uses into which white cement enters, it receives little or no competition from gray cement, notwithstanding that gray cement generally costs only half as much or even less.

Domestic producers' shipments of white cement rose from 1.4 million barrels in 1960 to 1.9 million in 1963, representing an increase of about 37 percent; shipments in 1963 were at the highest level ever attained. The particularly sharp rise in shipments to southern California during the first part of the 1960-63 period was a principal factor in the decision of the Riverside Cement Co. to construct a plant in that region in mid-1961 for the production of white cement.

Prior to 1961, the domestic white cement consumed in southern California was supplied principally from the plant located in Houston, Texas. Large quantities were also supplied by the two plants located in Pennsylvania. Since 1961, however, the plant in Houston and the Riverside plant in California have been virtually the only domestic suppliers of white cement to southern California.

Inasmuch as the four producers of white cement in the United States operate only five plants for manufacturing it, the product is shipped over long distances; much of the severest competition among the domestic producers of white cement is in the 46 States that have no white-cement plants. The Riverside plant, for example, ships the product to 12 western States (including Hawaii), and in most of those States it competes for sales with the Houston plant. In some States as many as three of the four producing concerns compete with one another.

In view of the vast areas over which all domestic producers ship white cement and the substantial degree to which they penetrate one another's principal markets, it is appropriate to evaluate the impact of imports om the entire domestic white-cement industry rather than on some segment of it. The domestic industry has in recent years clearly enjoyed a steadily rising demand for its product; it is prosperous, and it continues to expand its production. The imports that entered at "less than fair value" (LTFV) at no time amounted to as much as 1 percent of domestic consumption and could not in any circumstance have caused more than de minimis injury to the industry.

But even if the domestic industry were regarded as coextensive solely with the two plants 1/ that currently supply southern California with domestic white cement, there would still be no basis for finding that the LTFV imports--virtually all of which were imported into southern California--have caused or are likely to cause injury to such industry in the context of the Antidumping Act. The LTFV imports of white cement, during the 12-month period (ending September 1963) in which they entered southern California, amounted to less than 3 percent of the combined shipments by the Riverside and Houston plants, notwithstanding that those imports accounted for 7 percent of the white cement sold in the area during that period. Riverside's shipments into the area meanwhile continued to increase.

The LTFV white cement sold in southern California was generally sold at prices below those at which the domestic cement was sold, albeit at the highest prices believed obtainable; 2/ these prices were approximately the same as those for which another brand of white cement from Japan was being sold in that market presumably at "fair value." Ostensibly to meet the competition of the LTFV imports (only about 3,200 barrels of which had entered southern California by the end of March 1963 and had gone to only three end users),

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1/ Counsel for the complainant so identify the domestic industry, i.e., they hold that it embraces the Houston plant (Texas) and the Riverside plant in southern California.

2/ If the imported cement were not offered at a price lower than that for the domestic, it is clear that little or none of it would be sold.

Riverside reduced its price in March 1963 by about 10 percent on all of its sales in southern California but not elsewhere. (Meanwhile, however, the other major supplier in that area did not reduce its price in that market.) In making this price cut, Riverside no doubt considered the likely effect on its competition, not only from the LTFV imports but also on all other competition both foreign and domestic.

Whatever may have been Riverside's intent, a significant result of its price cut was a reduction in the flow of shipments from the Houston plant into southern California that substantially exceeded the flow of LTFV imports from Japan during the period when they entered. Shipments from Houston into that area during the first quarter of 1964 were only about 40 percent as large as during the first quarter of 1963. Virtually all of the reduction in those shipments were replaced by increased shipments by Riverside. Moreover, Riverside--whose mill price was the highest in the United States--has not increased its prices since its March 1963 price reduction, even though imports of LTFV white cement from Japan ceased more than 9 months ago. Riverside's price cut has since enabled it to reduce its average unit cost of production by making fuller use of its plant capacity. Its shipments in 1963 were almost double those in the preceding year. There is no evidence before the Commission to indicate that Riverside's price cut resulted in lowering its aggregate profits. In the long run, Riverside's improved and entrenched position will better enable it to discourage future competition in southern California, whether from foreign or domestic sources.

It does not now appear likely that white cement from Japan manufactured by the Nihon Cement Co. will enter the United States in the forseeable future at LTFV. On the contrary, there is every indication that if Nihon should resume shipments they would be in only limited quantity and at "fair value." Since there is no indication that injury is imminent, we conclude that there is no likelihood of injury, in the context of the Antidumping Act.

Views of Commissioner Fenn

I agree with the Minority that the white cement industry is a national one and that it has identifiable market areas. Although I find that Southern California is such an area, I do not find that the producers have been materially injured in this market.

Virtually all the domestic white portland cement consumed in Southern California is produced by two companies, the Riverside Cement Corporation in Crestmore, California, and the Trinity Division of the General Portland Cement Company in Houston, Texas. Riverside was the only domestic producer that lowered its prices to meet the competition from imported Nihon cement sold at less than fair value. This price cut had the side effect of increasing Riverside's balance of sales, at the expense of Trinity, to the point that its sales, profits, and ratio of profits to sales and investment all climbed markedly between 1962 and 1963. Therefore, it cannot be said that Riverside has suffered material injury by the competitive developments in the Southern California area.

It is impossible to estimate the precise number of sales which Riverside took from Trinity as a result of the price cut, as opposed to those which they would have gained anyway, given the steady slippage of Trinity sales in Southern California after the establishment of the Riverside plant. It is clear, however, that

Trinity's losses occasioned solely by Riverside's price cut, as measured against their total sales, could not be considered material.

I see no impending developments which will change the situation significantly. Though shipments at less than fair value did markedly increase during each of the first three quarters of 1963, a fact of some concern, I see no reason for refusing to take at face value the Japanese assurances that any future sales will be made at fair value.

Consequently, I find no injury nor likelihood thereof in this case.

Dissenting Views

We believe that, for purposes of the Antidumping Act, the pertinent industry in this case is comprised of all domestic producers of white portland cement (hereinafter referred to as "cement"). The different facilities used in the production and sale of gray cement are not included. These producers, which are five in number, are strategically located in the United States primarily on the basis of geographical market demand, availability of raw materials, and freight distribution costs. The separate location of each producer coupled with the high freight distribution costs have had the effect of creating separate identifiable marketing areas each dominated by one of the five producers even though the outer limits of such market areas are fluid and inter-market shipments are not unusual.

With these given circumstances, the Commission is called upon to determine whether imports of such cement, purchased at less than fair value from the Nihon Cement Company, Ltd., in Japan, are injuring or are likely to injure "an industry" in the United States when virtually all such imports are being sold in a single market area of the United States at a price considerably below the price of all domestic cement being sold in that area; where only the dominant domestic cement producer chooses to compete with the sales of the imported cement by lowering its price to the extent it feels necessary to be competitive; and where the nondominant producers choose to relinquish their sales in that area rather than to fight such competition by price cutting.

In the recent cast-iron soil pipe case 1/ the United States Court of Customs and Patent Appeals stated that the meaning of the words "an industry in the United States" is not clear. The Court stated that it would not attempt to lay down a broad definition of an industry that would be applicable in every situation the subject of an investigation under the Antidumping Act. In the circumstances of that case 84 percent of the domestic producers of cast-iron soil pipe experienced for all practical purposes no impact, directly or indirectly, from the imports sold at less than fair value because the entries of such imports were concentrated on the West Coast

1/ Ellis K. Orlowitz Co. v. United States, C.A.D. 816, 50 C.C.P.A. 36.

where the remaining 16 percent of the producers felt the predominant impact of such imports. Only one entry out of 70 shipments of such cast-iron soil pipe was made at a port other than on the West Coast. The Court commented that the facts in that case when taken as a whole lead to the conclusion that the Tariff Commission was entirely correct in considering, inter alia, the likely effects its determination would eventually have on the "West Coast producers of cast iron soil pipe," who would be forced to bear the primary economic effects of the subject cast iron soil pipe. It further said: "We think that the existence or nonexistence of competition, per se, between producers of a particular commodity in various geographic sections of the United States is not a <u>conclusive</u> factor in such determinations as this."

The Antidumping Act is an "unfair trade" law that has for its purpose the prevention of price-cutting with respect to articles exported to the United States when the sale, or offer of sale, of such articles in the United States is injurious, or likely to be injurious, to an industry. In assessing the extent of injury caused by imports at less than fair value, the impact is to be measured generally in terms of the effect on the producer or producers who meet in actual competition with the imported article and the extent of the injury is not to be diluted by considering the overall statistical health of the entire industry. If some domestic producer or producers are injured by imports at less than fair value, it follows that the national industry may be materially injured because such producers are a part of the national industry. An injury to a part is an injury to the whole.

In past "injury" investigations under the Antidumping Act, this Commission has often referred to the area in which the impact of imports at less than fair value has been felt as the "competitive market area," a concept which parallels domestic "unfair trade" law. In determining whether there was material injury, the Commission assessed the extent of the injury incurred by considering the impact that the imports had on those domestic producers who actually sold, or offered for sale, such products in the competitive market area. If such producers were injured, the Commission then found that an industry in the United States was being injured by reason of such imports. We apply the same criteria in this case.

In the instant case, there were until 3 years ago 4 plants which constituted the white cement industry in the United States. 1/ Domestic businessmen, viewing changing market conditions, investigated an opportunity to serve a growing market more effectively by building a new plant in California. They were faced with typical business problems such as capital investment, plant design, the risk of the markets not developing, the competitive reaction of existing suppliers, etc. It is our opinion that such domestic businessmen have the right to be able to make such commitments

1/ At an earlier date there were five establishments as there are now. One of these, however, subsequently closed, illustrating the competitive dynamics of the industry.

and assume such risks within the rules of the game and subject (a) to the usual unpredictable factors of any business venture, and (b) the laws of the locality, state, and nation, without being subject to additional risks caused by imports at less than fair value which call for sharp revision of their plans and produce serious adjustments in the reasonably expectable results.

To meet the sharply increasing trend of imports of Nihon cement which were being sold at a price considerably below the price of domestic cement, the domestic firm cut its price. It is only for the Commission to judge whether the management made an unreasonable cut in price to meet the unfair competition; we believe the cut was reasonable. There was injury to the California producer through its decrease in sales income on a given volume of sales. There is some evidence that additional volume was gained by it at the expense of another domestic firm. But this merely shifted part of the injury to another firm which was not in a position to take defensive action against the imports of cement sold below fair value and the latter firm was injured by the reasonable action of the management which was in a position to do something about it.

The arguments supporting a no injury finding, in our opinion, rest too heavily on macro economic and ceteris paribus assumptions and give too little attention to factors affecting business initiative, to realistic market conditions, and to the function of business decision-making in an uncertain world. Although the Antidumping Act was enacted in 1921, recent amendments thereto make it clear that the Congress considers the act to be applicable to current international trade. An injury need not be fatal, permanently crippling, or universal to be material.

Based on the foregoing considerations, we determine that an industry in the United States is being injured by reason of imports of white portland cement from the Nihon Cement Company, Ltd., Tokyo, Japan, sold at less than fair value.

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

By the Commission:

Donn N. Bent

Donn N. Bent
Secretary