

Docket

UNITED STATES TARIFF COMMISSION

TC Publication 37

AA1921--22

October 20, 1961

PORTLAND GRAY CEMENT FROM PORTUGAL

Determination of Injury

On July 20, 1961, the United States Tariff Commission was advised by the Assistant Secretary of the Treasury that portland gray cement from Portugal 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.

A public hearing in connection with the investigation was held on September 14, 1961. Notices of the investigation and hearing were published in the Federal Register (26 F.R. 6792 and 26 F.R. 7026).

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

On the basis of the investigation, the Commission has determined (Commissioners Talbot and Overton dissenting) <sup>1/</sup> that an industry in the

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<sup>1/</sup> Because of a vacancy on the Commission, only five Commissioners participated in this determination. The views of dissenting Commissioners Talbot and Overton follow the statement of reasons of the majority.

(TC24318)

United States is being injured by reason of the importation of portland gray cement from Portugal at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

#### Majority Statement of Reasons

In this investigation, involving the sale of portland gray cement from Portugal in the United States at less than fair value, we are confronted with one of a series of investigations respecting imports of such cement under similar circumstances from a succession of foreign supplying countries. Three U.S. importers are currently involved. One of them handled transactions in 1958 for an importer of cement from Sweden that had been sold at less than fair value. In that investigation the Commission made a determination of injury and reported as follows:

As a result of the sale of portland cement . . . by Swedish exporters at less than fair value, substantial quantities of such cement have been sold and continue to be sold in the "competitive market area" at prices which forced the domestic producers to lower their prices of like domestic cement below those that prevailed prior to the sales of Swedish cement at less than fair value.

All three of these importers of Portuguese cement were responsible in 1959 for entries of portland cement from Belgium that had also been sold in the United States at less than fair value, and one of them sold such cement under circumstances that caused the Commission again--in language similar to that cited above--to make a determination of injury. In both cases the Commission concluded as follows:

The industry concerned has lost a substantial volume of sales of such cement in such areas, which loss is directly attributable to the price of the imported cement made possible by reason of its sale at less than fair value by the exporters.

However, with the termination of the two earlier investigations, plus the current one involving imports from Portugal, the end is not yet in sight. In recent months two of the same three importers have imported cement from one or more of the countries Poland, Israel, and Yugoslavia. The Treasury Department has already issued notices that it has "reason to believe or suspect" that sales of portland cement from these three countries have been made in the United States at less than fair value.

Spokesmen for the importers contended that although the imported cement from Portugal was sold at prices below fair value such sales had had no depressive impact on the prices then prevailing in the respective domestic marketing areas and therefore had occasioned no injury to domestic producers. Sellers of Portuguese cement, it was argued, merely "met" the prices already prevailing in the respective areas; they said, "There is no evidence in this case (unlike the Swedish case) that Portuguese cement was specifically responsible for any price break." This reasoning appears to us to be more ingenious than tenable. To embrace this conclusion, one must overlook the fact that the prices thus "met" in the region affected had already been depressed by earlier imports of dumped merchandise from countries other than Portugal. One must also disregard the hammering effect, and threat of additional sales thereafter below fair value of imports from new sources of supply--including those from Portugal--brought into play after avenues of dumping already utilized had been closed by enforcement of the antidumping statute. Depressed prices kept depressed by recourse to new forms of the old depressant constitutes, for the domestic producers, merely a prolongation of the very injury from which it was hoped they had already gained relief.

At the public hearing, representatives of the Portuguese exporter informed the Commission that future shipments to the United States would be made, if at all, at fair value, as determined by the Treasury Department. If, therefore, we were concerned only with one isolated case in which one or a few unsophisticated importers inadvertently brought in merchandise under conditions of sale that chanced to contravene the anti-dumping legislation, and if, after complaint, the domestic industry were assured that the importers involved did not and would not have recourse to dumped merchandise from successive sources of supply, conceivably a determination at this time of no likelihood of injury might be warranted. The series of transgressions brought to the attention of the Commission, however, suggests the futility of such an approach.

The statement by the importers that if further shipments should be imported from Portugal they would enter at prices which meet the requirements of the act would be commendable if market prices in the respective "competitive market areas" had not already been depressed by the importation of cement at dumping prices and, indeed, if the resultant depressed domestic prices--established and maintained earlier largely by the same importers by virtue of their ability to import cement at less than fair value--did not still prevail to the detriment of the domestic industry. We must conclude, therefore, that with the purpose of dumping already having been accomplished in the U.S. market, the resultant depressed prices leave little consolation to the domestic industry forced to meet such prices and thereby compelled to suffer continued injury if it wishes to compete. A denouement of such character was never the purpose of the Antidumping Act, and such procedure meets neither the letter nor the spirit of the act.

When meeting its obligation under the Antidumping Act, the Commission gives consideration only to the criterion imposed upon it--viz, whether the imports identified by the Treasury Department as having been sold at less than fair value injure "an" industry, or prevent its establishment. In order to do this, the Commission must give cognizance to the spirit of the enactment and to the evil which it was intended to prevent. In the instant investigation, it is noted that the three importers of Portuguese cement also imported cement from other countries wherein the Treasury Department found the sales to have been made at less than fair value. Consequently, it must be obvious even to the most reluctant that such recurring imports at dumping prices were not accidental or technical in nature but on the contrary were designed to make the statute inoperative under the guise of merely "technical violation."

Portland cement is a standardized or fungible product the sale of which in a given market is generally contingent upon its cost not being higher than the cost of like competitive cement. It is a heavy, low-valued product which, by reason of transportation costs, can be sold economically only to users located within a relatively short distance from the cement plants (or port of entry for imported cement). The imports of Portuguese portland cement which are injuring the domestic industry concerned are entering at Bridgeport, Conn., Fall River, Mass., and Trenton, N.J., and are being sold in limited geographical areas that are supplied with domestic portland cement by plants adjacent to the same areas. These areas are referred to herein as the "competitive market areas." The domestic portland cement plants that have supplied such cement in these areas and have in recent years sold substantial quantities of such cement there

are considered to constitute "an industry" for the purposes of the Antidumping Act.

As a result of the sale of portland gray cement by Portuguese exporters at less than fair value, substantial quantities of such cement have been sold and are likely to be sold in the respective "competitive market areas" at prices which compel the domestic producers that historically supplied the pertinent market areas to maintain lower prices of like domestic cement than the prices that would prevail were there no sales of cement at less than fair value. Moreover, the industry concerned has lost a substantial volume of sales of such cement in these areas, a loss directly attributable to the price of the imported cement made possible by reason of its sale by the exporters at less than fair value.

#### Views of Commissioners Talbot and Overton

On the basis of the facts obtained in this investigation, Commissioners Talbot and Overton have determined that no industry in the United States is being or is likely to be injured or prevented from being established by reason of the importation of portland gray cement from Portugal sold for export to the United States at less than fair value.

The question before the Commission is whether injury or the likelihood thereof to a domestic industry exists by reason of the importation of portland gray cement from Portugal which has been or is likely to be sold for export to the United States at less than fair value. This involves evaluation of facts obtained in the investigation relating to imports of such cement from this source only and their economic impact upon a



domestic industry. Previous injury to domestic industry, or the possibility of future injury to domestic industry, by reason of imports of comparable cement from foreign countries other than Portugal is not determinative of the question with regard to imports from Portugal--indeed, such circumstances are not even probative in this case.

As far as the question of actual injury is concerned, the imports from Portugal were sold to the U.S. consumer at no less than the prices for comparable domestic cement. During the same period that the subject cement was being imported from Portugal, imports of cement from Norway, which the Treasury Department had determined were not being sold at less than fair value, were sold in the same market areas at the same prices as the Portuguese cement. The fact that there have been no imports of Portuguese cement for more than one year without any increase in the prices of domestic cement in the pertinent market areas is evidence that the Portuguese cement was not a causative factor in forcing the maintenance of lower prices for domestic cement than would have been the case if the Portuguese cement had not been imported.

With respect to the likelihood of injury by reason of the future importation of portland gray cement from Portugal sold for export to the United States below fair value, we are satisfied that there is no likelihood of such importation and therefore no likelihood of injury by reason thereof. As indicated above, there have been no imports of portland gray cement from Portugal for more than one year, and the Commission has received assurances from the foreign producer involved, as well as from the importers concerned, that further shipments of this product from Portugal to the United States would be made, if at all, only if they met the "fair

value" criteria of the Treasury Department. We perceive no reason to doubt these assurances simply because the importers concerned in this investigation were also importers of cement from certain other countries that have been or are currently the subject of dumping inquiries by the Treasury Department. Notwithstanding the "strong suspicion" expressed by the domestic producers, there was no evidence adduced or obtained in the investigation showing the existence of a foreign international cement cartel, or the equivalent thereof, or any design, plan, or calculated scheme joined in by these importers to appropriate the U.S. cement market or any segment thereof by destructive price cutting in small doses. The Commission, as a factfinding agency, cannot responsibly allow suspicion or conjecture to attain the status of a conclusive presumption in its proceedings.

It should be stressed that our rejection of the "combination of conspiracy" theory which the domestic industry has advanced does not leave domestic producers at the mercy of such collusive depredations if, in fact, they do exist. If there is any legal evidence that such is the case, there is a full and complete remedy in section 72, title 15, of the United States Code, which provides for criminal sanctions and civil damages in the case of combinations or conspiracies for the purpose of commonly and systematically importing products into the United States at a price substantially less than the foreign market value thereof with the intent of injuring a domestic industry.

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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:

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