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Compendium of Recent United States International Trade Commission Decisions

William Sabin

COMPENDIUM OF RECENT UNITED STATES INTERNATIONAL TRADE COMMISSION DECISIONS.

ANTIDUMPING INVESTIGATIONS

In 1976, the United States International Trade Commission (ITC) pursuant to Section 201(a) of the Antidumping Act of 1921,[1] as amended, investigated three allegations of injury to

1. Antidumping Act of 1921, § 201(a), 19 U.S.C. § 160(a) (1970 and Supp. IV 1974).

domestic industries resulting from the importation of goods at less than fair market value (LTFV). Sales of less than fair value are sales of items for export to the United States at prices less than the sales prices of articles in the United States' home market. The ITC made a positive finding of injury in only one out of three LTFV investigations. The conditions which must be met for a positive determination of injury under the Antidumping Act of 1921 are: 1) that a domestic industry is being or is likely to be injured or is prevented from being established; and 2) that the injury or likelihood of injury is by reason of LTFV imports.

Acrylic Sheet from Japan

The first investigation involved importation of acrylic sheet from Japan.[2] It was found that Mitsubishi Rayon Co., Ltd. and Kyowa Gas Chemical Industry Co. supplied over 70% of the total imports in this industry. The Treasury discontinued its investigation of Mitsubishi Rayon Co., Ltd. as it found the weighted average margin on this firm's sales was minimal, and the company satisfied Treasury requirements for a discontinuance. As to Kyowa Gas Chemical Industry Co., three of the six Commissioners found injury to the domestic industry and three did not.

The three Commissioners who found injury in this case based their determination on (a) an increase of United States consumption of acrylic sheet from 1% in 1974, a year of strong demand, to 5% in 1975, when demand was down significantly due to the recession; and (b) price depression, due to undercutting U.S. producers' prices by as much as 24%, resulting in lost domestic sales and decreased profits during the time in question. They concluded that these imports and offers to import aggravated the injury caused by the recession.

The three remaining Commissioners concluded that LTFV imports were not the cause of the injury being felt by the industry. They determined the import penetration was relatively small during this time of serious economic recession; few lost sales attributable to LTFV imports could be documented; price depression could be explained in part by factors other than LTFV imports; and the employment trend in the acrylic sheet industry paralleled that in other lines of production. These Commissioners

2. Acrylic Sheet from Japan, No. AA1921-154, Pub. No. 784 (U.S.I.T.C. July, 1976).

further determined that the trend in industry profit ratios did not belie injury to any domestic sector.

Significantly, Section 201(a) of the Act stipulates that a tie vote of the ITC will result in a positive determination of injury. Consequently, the Treasury Department will impose special dumping duties on acrylic sheet imports.

Hollow or Cored Ceramic Brick from Canada

Imports of hollow or cored ceramic brick and tile from Canada were also investigated by the Commission in 1976.[3] In a unanimous decision, the Commission based its negative determination of injury (or likelihood thereof) on the fact that LTFV import penetration did not increase during the time in question; that domestic prices were actually lower than LTFV prices; that other factors such as quality and architectural specifications were the dominant reasons for any preference for imported brick; that domestic net profit/sales ratios increased; and that the decreased employment reported for 1974 and 1975 was due to increased mechanization in domestic operations.

It should be noted that the determination in this instance was based on the impact of LTFV imports on the Pacific Northwest market. This is the principal consuming area in the United States for this product and is also supplied by regional producers. Since this area is most affected by LTFV imports, a negative finding of injury here was considered to be representative of conditions in the total industry. Also, since the specialized uses of such brick preclude competition by other ceramic brick, only hollow brick was taken as the appropriate market for investigation.

Alpine Ski Bindings from Austria, Switzerland and West Germany

The third investigation conducted under § 201(a) of the Antidumping Act of 1921[4] involved imports of Alpine ski bindings from Austria, Switzerland and West Germany.[5] The bindings are designed to hold a skier to his skis during downhill runs, but

3. Hollowed or Cored Ceramic Block and Tile from Canada, No. AA1921-155, Pub. No. 785 (U.S.I.T.C. July, 1976).

4. 19 U.S.C. § 160(a) (1970 and Supp. IV 1974).

5. Alpine Ski Bindings from Austria, Switzerland and West Germany, Nos. AA1921-156, 157 and 158, Pub. No. 786 (U.S.I.T.C. August, 1976).

release in case of a fall to prevent injury. In finding that LTFV imports were not injuring or likely to injure a domestic industry, nor preventing an industry from being established, the ITC based its decision on several facts. First, the decreased domestic share of the market during the period studied was due to increased imports of ski bindings from countries *other* than those named; the market share for the three named countries decreased during the period studied; and there were no documented examples of lost sales due to LTFV imports.

Secondly, wholesale price decreases took place before LTFV imports began. Decreases were due mainly to the recession, the OPEC oil embargo, and poor ski conditions in the northeast. The ITC found that the leading supplier of Alpine ski bindings, a French exporter, consistently *increased* his prices during that time, as well as his market share, indicating that demand was not dependent on price. Finally, the profitability of the industry increased during the period of LTFV imports. Any decrease in employment during 1975 was due to the closing of a major producer for reasons unrelated to LTFV imports.

The ITC felt that there was no reason to expect a reversal in the downward trend in LTFV imports. Two recently successful domestic entrants into the domestic market also signaled a positive economic outlook. Consequently, no additional duties allowable under the Antidumping Act will be added to the present 9% *ad valorem* tariff on such imports.

AGRICULTURAL ADJUSTMENT ACT

Dried Milk Mixtures

At the request of the President, the ITC recently investigated imports of certain dried milk mixtures[6] under Section 22, subsections (a) and (d), of the Agricultural Adjustment Act,[7] as amended. The purpose of the investigation was to determine whether such imports interfered with the milk price-support program being conducted by the Department of Agriculture. The President's request was largely a response to recent attempts to avoid existing quota restrictions by mixing nonfat dried milk with sugar.

The Commission made three recommendations to the President. First, they suggested the pertinent article description of

6. Dried Milk Mixtures, No. 22-40, Pub. No. 783 (U.S.I.T.C. July, 1976).
7. 7 U.S.C. § 624 (1970).

the Tariff Schedules of the United States should be expanded to include dry milk which does not contain over 5.5% by weight of butterfat, and over 16% milk solids. They determined that articles containing less than these standards do not interfere with the price-support program for milk within the meaning of Section 22. The ITC reasoned that the price-support program keeps domestic prices higher than world prices and therefore provides incentive for large foreign imports. These imports in turn increase the cost of the price-support program by displacing domestice products in the domestic market. Even though most importers have voluntarily agreed to stop importing dried milk, the Commission felt the need to modify the Tariff Schedules in accordance with the temporary emergency restriction previously proclaimed by the President.

Secondly, the Commission recommended that the present $10 limit on articles exempt from quota restrictions (such as samples, articles for personal use of the importer, or for research) be raised to $25. This increase was recommended in light of changed economic conditions since 1953, when the $10 limit was initially imposed.

Finally, the Commission felt that the authority for making further changes in the limit should not be turned over to the Secretary of Agriculture, as requested by the Secretary. They questioned the legality of such a delegation of authority.

The two dissenting Commissioners in this decision were not convinced that there was any correlation between the amount of imports before the emergency zero-quota imposition and the need for government purchases under the price-support program. Further, in light of the agreements by most importers to discontinue importing dried milk, they did not see any evidence that harmful imports were "practically certain" as required by the Act.

IMPORT RELIEF INVESTIGATIONS — § 201 — 1974 TRADE ACT

Honey

Under Section 201 of the 1974 Trade Act,[8] the President can grant import relief in the form of quotas or adjustment assistance to an industry injured or threatened with injury, if the imports in question are a *substantial* cause of the injury or threat. The

8. 19 U.S.C. § 2201 (Supp. IV 1974).

ITC recently investigated imports of honey in order to determine the need for import relief in this area.[9] In a 3 to 2 decision, the Commission found that honey is being imported in quantities sufficient to be a substantial threat of serious injury. Factors which contributed to the finding were erratically increasing imports which are expected to continue; increasing productive capacities of foreign producers; declining import prices; a strong correlation between import and domestic prices; increased market penetration by imports; growing domestic honey inventories; decreasing domestic net profit/sales ratios; and increasing domestic production costs. The majority concluded that injury is "imminent." As appropriate relief, it recommended a quota system beyond that already in effect, consisting of a gradually decreasing *ad valorem* duty (ending in 1980) applicable to imports exceeding a given amount.

The minority dissent was based on the conclusion that honey import levels are dependent on the ability of the domestic industry to meet domestic requirements, which they claim is evidenced by the erratic import levels over the last thirty years. The two dissenting Commissioners also interpreted the profit data differently. They attributed declining domestic production to such factors as adverse weather conditions and found no evidence of a trend toward decreasing profits, wages or employment, the indicators suggested in the Act for use in determining threat. Finally, they concluded that injury was not "imminent" in light of unfavorable crop predictions in four of the five largest honey-exporting countries.

UNFAIR TRADE PRACTICES — § 337 — 1930 TARIFF ACT

Electronic Audio and Related Equipment

A decision rendered by the ITC under Section 337 of the Tariff Act of 1930,[10] as amended, involved an importer of electronic audio and related equipment.[11] A U.S.-based subsidiary of a Japanese firm, JVC America, Inc., refused to enfranchise a local retailer, District Sound, and was accused of engaging in unfair

9. Honey, No. TA-201-14, Pub. No. 781 (U.S.I.T.C. June, 1976).

10. 19 U.S.C. § 1337 (1970 and Supp. IV 1974). For a detailed discussion of recent I.T.C. decisions under § 337 involving patent infringement, *see* Comment, *Patent Infringement Practice before the United States International Trade Commission*, 2 INT'L TRADE L.J. 190 (1976).

11. Certain Electronic Audio and Related Equipment, No. 337-TA-7, Pub. No. 768 (U.S.I.T.C. April, 1976).

methods of competition and unfair acts under the Act: specifically, establishing illegal territorial restraints on resale of merchandise, and illegally maintaining a fair trade pricing program in a nonfair trade jurisdiction. After determining that it had the authority to exercise jurisdiction in the matter, the Commission found that the importer was within his rights in refusing to enfranchise District Sound because of the latter's failure to meet the importer's standards, i.e. adequate sound facilities and sales personnel. The Commission further found that the importer did not have a policy of refusing franchises to discounters and transshippers who met the requirements; and that there was no conspiracy, combination or attempt to restrain trade or create or maintain a monopoly by the importer's single refusal to enfranchise this complainant.

William Sabin