UNITED STATES TARIFF COMMISSION

[AA1921-37]

TC Publication 126 April 30, 1964

VITAL WHEAT GLUTEN FROM CANADA

Determination of No Injury or Likelihood Thereof

On January 31, 1964, the Tariff Commission was advised by the Assistant Secretary of the Treasury that vital wheat gluten from Canada, manufactured by The Ogilvie Flour Mills Co., Limited, or its subsidiary, Industrial Grain Products Limited, 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 February 3, 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.

Public notices of the institution of the investigation and of a public hearing to be held in connection therewith were published in the Federal Register (29 F.R. 1860 and 29 F.R. 2713). The hearing was held on March 31, 1964.

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

On the basis of the investigation, the Commission has unanimously 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 vital wheat gluten from Canada, manufactured by The Ogilvie Flour Mills Co., Limited, or its subsidiary, Industrial Grain Products Limited, which was sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Statement of Reasons 1/

The importer in this case is a distributor of various products used by bakeries. One of these is vital wheat gluten hereinafter referred to as "gluten".

In late 1961 and early 1962 the demand for gluten in the United States rose sharply and the product was in short supply. The distributor, unable to secure adequate supplies from his customary domestic source, contracted with Industrial Grain Products Limited in Canada. The average unit price he paid for the Canadian gluten was somewhat higher than that which he had been paying for the domestic product. Though he made some few sales which undersold the domestic gluten, he marketed his product at prices that averaged above those for the domestic article. Presumably, he was

1/ Commissioners Dorfman and Talbot subscribe to the Commission's finding but set forth their views in support thereof commencing on page 6.

able to sell the gluten despite this unfavorable differential for several reasons not solely related to price, such as effective salesmanship, established customer relationships, sales puffing of a somewhat higher protein content and the fact that he offered a broad line of products used by the bakery industry. The quantity of his sales of Canadian imports, all of which he bought at less than fair value, was substantial and growing. In the face of a levelling off of demand in 1963, increased capacity of the domestic producers, and growing imports from several sources, United States inventories climbed steeply. Unit prices of the domestic gluten which fluctuated considerably but had consistently risen between 1960 and 1962 began to fall off in the second quarter of 1963.

Imports of fairly large quantities - as in this case - may cause injury, especially when total supplies (i.e., from expanded domestic capacity and imports from all sources) are tending to outrun demand, even though the long range prospects for the industry are good. However, to bring the Antidumping Act into play, such injury must be caused by the "dumping" of the product, not merely by the imports per se. In the instant case, since neither the quantities nor the prices of imports would have been significantly different had the sales been at fair value, the total

competitive situation in which the industry found itself was unaffected by the less-than-fair-value sales as such.

The margin of difference was small and was not a significant factor in enabling the Canadian product to penetrate the domestic market. There were such strong pressures leading to increased imports that the domestic producers themselves imported at one time as much as one half of the gluten brought into the United States. The importer of the less-than-fair-value gluten simply turned to an additional supplier when his first source proved to be inadequate, and was even willing to pay a higher price to maintain his customers. If the Canadian producer had been fully aware of the exact calculations finally used by Treasury in determining sales at less than fair value, he might well have avoided such sales. The cost of adjusting his home market price was small, no significant changes in the volume or price of American sales would have been expected, and he might have side-stepped the antidumping investigation. Thus he was clearly not selling at less than fair value in order to market his product to American customers.

In the Commission's opinion, the predicament in which the domestic gluten industry finds itself stems from a complex of competitive circumstances in which imports have been a factor but not - in any significant degree - because they were sold at less than fair value.

The Canadian supplier of gluten is familiar with the provisions of the Antidumping Act and endeavored to escape making any less-than-fair-value sales to the United States. Upon notice of the Treasury determination, the concern reduced its price to Canadian customers sufficiently to eliminate sales at less than fair value. Evidence obtained by the Commission in the course of its investigation indicated that the Canadian producer is not likely to revert to selling at less than fair value as a consequence of the Commission's determination.

In the light of the overall competitive situation the Commission has determined that there is no injury or likelihood of injury in this case.

Views of Commissioners Dorfman and Talbot

In late 1961 and early 1962, the demand in the United States for vital wheat gluten (VWG) had risen so sharply that it was in short supply, with the result that U.S. producers themselves became large importers. Productive capacity in the United States was meanwhile being increased, but as a result of prior commitments, the producers continued substantial imports into 1963. Both the total U.S. imports and the producers' imports of VWG came principally from Canada in 1961, and principally from Australia in 1962 and 1963.

All the VWG that entered from Canada at "less than fair value" (LTFV) was imported by the Breddo Food Products Corp. of Kansas City, Kans., a domestic distributor of various products used by the bakery trade. This distributor, unable to secure adequate supplies from its customary domestic source, contracted for supplementary supplies from Industrial Grain Products Ltd. of Canada.

Breddo paid a somewhat higher average price for the Canadian product than it had been paying for the domestic product and, in turn, marketed the Canadian product at prices that were generally above those for domestic VWG. Prices for the domestic product, however, varied considerably from time to time, from producer to producer, and from place to place. In the circumstances, some of Breddo's sales of the Canadian product were made at prices below those at which some domestic VWG was sold, but the volume of such sales was small.

In entering into the sales contract with Breddo, the Canadian supplier was aware of the provisions of the U.S. Antidumping Act and endeavored to

avoid making any LTFV sales. Upon notice by the U.S. Treasury of such sales (by a small "margin of difference"), the Canadian supplier reduced its price to customers in Canada sufficiently to prevent further LTFV sales, but did not change its export price to the distributor in the United States.

The imports from Canada have been in competition both with the domestic VWG and with the somewhat larger imports from Australia. The VWG from Australia was imported principally by the domestic producers themselves. Those imports, although priced lower than the Canadian, were found by the Treasury not to have been sold at LTFV.

The market for VWG is expanding. The value of sales by U.S. producers in 1963, although less than in 1962, was larger than in any other year. Producers' inventories at the end of 1963 amounted to 2½ months' supply and, although larger than in 1962, were not excessive.

We recognize that imports from Canada afford significant competition for the domestic VWG industry. We do not find, however, that these imports are attributable in any significant degree to their having been sold at LTFV or that they have caused or are likely to cause injury to the domestic VWG industry in the context of the Antidumping Act.

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

By the Commission:

Donn N. Bent
Secretary