

UNITED STATES TARIFF COMMISSION  
Washington

[AA1921-31]

TC Publication 109

September 24, 1963

TITANIUM DIOXIDE FROM FRANCE

Determination of No Injury or Likelihood Thereof

On June 24, 1963, the Tariff Commission was advised by the Assistant Secretary of the Treasury that TITANIUM DIOXIDE FROM FRANCE 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. Accordingly, the Commission on June 25, 1963, instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended, 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 (28 F.R. 6845 and 7047). The hearing was held on July 31, 1963.

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 unani-  
mously 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 titanium dioxide from France, sold at  
less than fair value within the meaning of the Antidumping Act, 1921,  
as amended.

#### Statement of Reasons

The Treasury Department's advice to the Tariff Commission that  
an import is being sold in the United States at "less than fair value"  
(LTFV) is the occasion for the Tariff Commission to initiate an  
investigation to determine whether an industry in the United States  
is being, or is likely to be, injured by reason of the sale of such  
import. Treasury's finding of sales below fair value does not estab-  
lish even a presumption that any domestic industry is being, or is  
likely to be, injured. Only after an affirmative finding of injury  
by the Commission, following Treasury's determination of sales below  
fair value, may any special dumping duties be levied. 1/

Prior to October 1, 1954, the Treasury Department was responsible  
for determining not only whether sales below fair value were being  
made but also whether such sales were causing or were likely to cause  
injury to an industry in the United States. On that date, Congress  
transferred the injury-determination function from the Treasury  
Department to the Tariff Commission. In the congressional hearings

---

1/ If upon investigation of "suspicion of selling below fair value"  
Treasury does not find such selling to be actual or likely, the case  
does not even come before the Commission.

that took place before the transfer was made, representatives of Treasury reported that the term "injury," as employed in the Act, had been interpreted to mean "material injury"; and the Tariff Commission indicated that it would continue to follow that interpretation unless Congress directed otherwise, which it has not done. Thus, an affirmative finding by the Commission under the Antidumping Act must be based upon material injury to a domestic industry resulting from sales at less than fair value. <sup>1/</sup>

The term "less than fair value," must be construed in the sense in which it is employed in antidumping procedures. Treasury makes its determination by comparing the purchase price (in general, the price received abroad by the foreign producer of the article to be exported to the United States) with the foreign market value (in general, the price received by the foreign producer for the article sold for use in the home market or, alternatively, the price for the article for sale in third market countries). If the "purchase price" is less than the "foreign market value," Treasury makes a determination of sales below fair value and so notifies the Tariff Commission. Such a determination carries no implication of "unfairness" in the sense of being illegal, let alone being presumptuous of causing injury. <sup>2/</sup> Otherwise, the injury-determination function of the Tariff Commission would be meaningless.

---

<sup>1/</sup> The antidumping provision in the General Agreement on Tariffs and Trade, art. VI, par. 1--which was designed to be in accord with U.S. practice under the Antidumping Act of 1921, as amended--uses the term "material injury."

<sup>2/</sup> 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.

It is evident that Congress did not consider sales "at less than fair value" as being *malum per se*; such sales are condemned in the act only when they have an anticompetitive effect; and it is only then that such sales may be equated with the concept of "unfair competition." As the Supreme Court states in Federal Trade Commission v. Gratz (253 U.S. 421) with reference to section 5 of the Federal Trade Commission Act, "The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade."

Titanium dioxide ( $TiO_2$ ) is the major white pigment in use today in the manufacture of a variety of products, principally paper and paint. It is produced in two basic types, anatase (used mainly in paper) and rutile (used mainly in paint); and each type is manufactured in a variety of grades. The grades differ with respect to their content of  $TiO_2$  and of additives introduced to modify specific physical properties. The type and grade employed in manufacturing a given end product depends primarily upon the specifications that must be met.

The imports covered by this investigation consist of both anatase and rutile types from France; but most of such imports (90 to 95 percent) have been of the rutile type, preponderantly in a single grade used primarily in making "second line" paints and certain specification paints. Competition in these paints is essentially on the basis of price. Little if any  $TiO_2$  from France, or from any other foreign country, is used in the domestic production of first-line paints or industrial coatings.

The domestic industry markets a wide range of grades of both anatase and rutile  $TiO_2$ ; and all domestic producers quote identical delivered prices, depending upon quantity, for each type, irrespective of grade, to all points in the United States (except those west of the Rocky Mountains where prices are uniformly higher). <sup>1/</sup> Domestic producers of  $TiO_2$ , unlike the importers, provide a wide range of services and benefits that are of great value to manufacturers of paints generally, but less so in their production of "second line" paints.

Typically, the United States user of French  $TiO_2$  concentrates on a single grade of  $TiO_2$ , necessarily places orders well in advance of need, risks uncertain and late deliveries, and obtains less generous credit terms than are offered by domestic suppliers. In the absence of a price inducement, he would not generally purchase the imported article at all.

In carload lots of 30 tons or more (for delivery east of the Rockies) domestic anatase type sells for 25 cents per pound and the rutile for 27 cents per pound. The corresponding price for French  $TiO_2$ , ex-dock, is approximately 2 cents per pound lower. The actual delivered cost of French  $TiO_2$  to the domestic purchaser, however, depends on transportation charges from the port of entry to the geographic area in which the purchaser's plant is located. The price spread between the LPPV imports from France and domestic  $TiO_2$  is not governed by the "margin of difference" determined by the Treasury for French  $TiO_2$ .

---

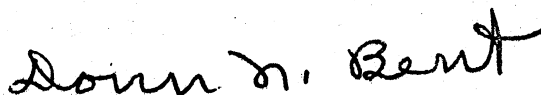
<sup>1/</sup> For sales made f.o.b. plant (usually to nearby consumers) allowance is made for minimum transportation costs.

In the Commission's view, the marketing practices (product development, sales engineering, pricing, et cetera) of the domestic industry, far more than the margin of difference involved in sales to the United States of foreign  $TiO_2$  at less than fair value, account for the increasing competition of imports. This competition, however, is neither anticompetitive in nature nor has it attained a level of significance that connotes material injury for the domestic industry. The ratio of annual imports of French  $TiO_2$  has been less than 1 percent of the U.S. annual consumption of  $TiO_2$ . During the past 3 years, the domestic industry has increased both its output and productive capacity, has not reduced prices, and has experienced a rising trend in the volume of sales.

\*\*\*\*\*

The Commission's 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.