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UNITED STATES TARIFF COMMISSION  
// Washington

[ AA1921-45 ]

TC Publication 153

April 27, 1965

AZOBISFORMAMIDE FROM JAPAN  
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Determination of Injury

On January 27, 1965, the Tariff Commission was advised by the Assistant Secretary of the Treasury that AZOBISFORMAMIDE FROM 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. Accordingly, the Commission on January 28, 1965, 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.

Notice of the institution of the investigation was published in the Federal Register (30 F.R. 1132). No public hearing in connection with the investigation was ordered by the Commission, but interested parties were referred to section 208.4 of the Commission's Rules of Practice and Procedure (19 CFR 208.4) which provides that interested parties may, within 15 days after the date of publication of the Commission's notice of investigation in the Federal Register, request that a public hearing be

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held, stating reasons for the request. No request for a hearing was made.

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

On the basis of the investigation, the Commission (Commissioners Dorfman and Talbot dissenting) <sup>1/</sup> has determined that an industry in the United States is being injured by reason of the importation of azobisformamide from Japan, sold at less than fair value, within the meaning of the Antidumping Act, 1921, as amended.

#### Majority Statement of Reasons

Azobisformamide (AZ) is a chemical blowing agent used to create minute cellular structures within plastic sheetings so as to impart to the sheetings a number of characteristics such as softness, pliability, resiliency, and thermal insulation.

Measuring the impact of imported Japanese AZ purchased below fair value which, at best, is complicated by the normal interrelationships in business, is further complicated in this case because of an emergency condition resulting from the

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<sup>1/</sup> The views of Commissioners Dorfman and Talbot follow the statement of reasons of the majority.

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accidental destruction in 1962 of an important segment of domestic productive capacity. The emergency not only led to importation of substantial quantities of Japanese AZ by a domestic manufacturer but also affected prices, patterns of market development, and domestic competitive conditions in ways that cannot be entirely unscrambled from what might have happened had the emergency not occurred.

Nevertheless, certain characteristics of the non-emergency (hereinafter referred to as "the normal") situation can be observed. Azobisformamide is a relatively new chemical and its development has made possible new high-quality, low-cost consumer products. To take full advantage of these new opportunities producers undertook substantial research on improved and integrated production facilities and new processing techniques and applications. Decisions had to be made concerning business commitments of money, plant, labor, management, continued research, and cooperative development work with users. Quite typically of the successful developments of this kind, certain interrelated events which are both causes and effects took place: volume increased, further commitments and developments were made, costs and prices began to come down, capacity periodically exceeded concurrent demand, and estimates of future potential resulted in still further commitments.

In the midst of this normal pattern (1962), the emergency occurred. Imports from Japan, which had been negligible pre-

viously, peaked at a very high figure in 1963 and consisted largely of emergency material for the account of a large U.S. producer. Meanwhile, "normal" imports from Japan, not for producers, began and increased rapidly from about 10,000 pounds in 1962 to over 200,000 pounds in 1964, an amount equal to a substantial portion (confidential) of domestic consumption of AZ.

In 1963 and 1964 prices declined. Some of this decline was in accord with the normal pattern of the typical dynamic situation, but the portion so accounted for is roughly measurable and represents only a small part of the total decrease in the domestic price which amounted to as much as 42 percent.

The downward slide was so precipitate and so severe that the two major producers are now operating at a loss. Furthermore, two other companies which had invested in facilities with a view to entering the industry were virtually foreclosed from doing so. Price reductions by domestic producers followed reductions by importers. In addition, the injurious price depressing effect of sales at less than fair value was brought about not only by the quoted and actual sales price but also by the fact--amply demonstrated by the emergency imports--that tremendous amounts of AZ were available from Japan even on short notice.

It is true that the imported product at first encountered considerable resistance and some shipments required expensive regrinding in order to be used in the production of certain U.S.

vinyl products. However, the Japanese quickly adjusted the product to meet U.S. specifications and in a short period acquired a significant number of new customers who had formerly tested or used the domestic product. Technical differences between domestic and foreign supplies are becoming less and less important and the difference in price is becoming a determining factor for more sales. Although the needs of established customers for technical service such as offered by U.S. producers are diminishing, the needs for research and the development of new customers continue.

In this market, fast becoming price competitive, the importers shaved their prices in order to hold and attract customers. The fact that imports of AZ continued at less than fair value prices, together with the fact that the importers continue to sell the Japanese AZ at shaved prices, even after the Treasury initiated its investigation and later withheld appraisement, is indicative of the price depressant effect of the sales at less than fair value as distinct from the mere presence in the market of the imported product.

The fact that domestic producers are exporting AZ in greater quantities than U.S. imports of Japanese AZ has no bearing on whether imports of the Japanese AZ are materially injuring the domestic industry. We would observe that the domestic exports are being sold in foreign markets in which third country competition has not yet started.

It has been argued that foreign commodities (of almost any type) have to sell at a price below their domestic counterparts if they are to sell at all. This may be true but, in dumping cases, it is irrelevant; otherwise the antidumping law is meaningless. Foreign suppliers are not unconditionally authorized to sell at whatever price is necessary for them to capture sales. Once the fact of sales below fair value has been established by the Secretary of the Treasury, the test is injury.

## Views of Commissioners Dorfman and Talbot

On the basis of the information that has come to the attention of the Commission in the conduct of this investigation, we are of the opinion that imports of azobisformamide (AZ) at less than fair value neither are causing nor are likely to cause material injury to an industry in the United States. <sup>1/</sup>

The Antidumping Act was not designed either to weaken the competitive structure of the national economy or to foster dual standards of competition for domestic producers and importers. Before imports of AZ began to enter in significant quantity in 1962, two domestic producers supplied virtually all of the AZ consumed in the United States. For several years before 1962 the two producers charged an identical price for AZ, and that price remained unaltered until imports became a competitive factor in the domestic market.

Even after price competition became manifest in 1962, domestic producers continued to quote identical list prices, but the prices charged individual customers varied from these quotations by substantial margins, depending generally on the quantities purchased.

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<sup>1/</sup> Treasury's finding of sales at less than fair value, as the Commission has repeatedly observed, "does not establish even a presumption that any domestic industry is being, or is likely to be, injured" (U.S. Tariff Commission, Titanium Dioxide From France, TC Publication 109, 1963). Further, sales at less than fair value are never on that account "illegal"; they merely expose the importer to payment of special dumping duties if--and only if--the Tariff Commission finds that the sales cause or are likely to cause injury to a domestic industry, or prevent an industry from being established. The Antidumping Act was never intended to penalize imports merely because they are sold at less than fair value. Were it otherwise, Congress would have imposed a useless function on the Commission.

The difference between the price for shipments of AZ to the United States and the price received in the Japanese home market in the period under consideration was small. It was less than the difference between the U.S. producers' list prices for small shipments and those for shipments in ton lots and was equal to only a small part of the spread between the highest and lowest prices quoted by domestic producers of AZ in 1964. It cannot be equated with any difference between the price of Japanese AZ and domestic AZ in the United States market and is of so little consequence in relation to the price in this country that any injury arising from it can only be regarded as de minimis.

The minimal character of the injury sustained by domestic producers is evidenced by their record of production and exports in recent years. Notwithstanding the complained-of imports, the annual production of AZ by U.S. producers increased 35 percent between 1962 and 1964. Production was somewhat lower in 1963 than in 1962 primarily because the plant of the major supplier of an essential raw material was destroyed by an explosion in October of 1962. Nevertheless, domestic producers maintained their shipments at an increased annual rate by importing directly from Japan. Producers' shipments of AZ increased without interruption every year from 1959 through 1964. In 1964 they were 15 percent larger than in 1963 and almost 35 percent larger than in 1962. Except for purchases by the domestic producers themselves, imports every year have been smaller than the increase in U.S. producers' shipments.



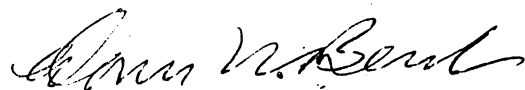
The domestic industry's strength in meeting import competition is further demonstrated by its ability to compete in foreign markets, where it does not have the protection, as in the domestic market, of duty (10½ percent) and ocean freight (7 percent). Exports accounted for about 20 percent of U.S. producers' shipments in 1962-64. During that period, they were much larger than the imports, other than those (in 1963) for use by the U.S. producers themselves.

With the heavy and growing investment in domestic plant for making AZ, and the accompanying reduction in unit costs, there is no likelihood that imports from Japan will cause injury to the domestic industry.

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

By the Commission:



Donn N. Bent  
Secretary

