

UNITED STATES TARIFF COMMISSION

PLASTIC MATTRESS HANDLES FROM CANADA

Determination of No Injury or Likelihood Thereof
in Investigation No. AA1921-57
Under the Antidumping Act, 1921,
as Amended



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UNITED STATES TARIFF COMMISSION

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UNITED STATES TARIFF COMMISSION
Washington

October 17, 1969

[AA1921-57]

PLASTIC MATTRESS HANDLES

Determination of No Injury or Likelihood Thereof

On July 17, 1969, the Tariff Commission was advised by the Assistant Secretary of the Treasury that plastic mattress handles manufactured by Fibre Conversion Company, Ltd., Toronto, Canada, are being, and are likely to be, sold 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 investigation No. AA1921-57 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 was held on September 4, 1969. Notice of the investigation and hearing was published in the Federal Register (34 F.R. 12358).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, all testimony adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission has determined by a vote of 5 to 1 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 plastic mattress handles manufactured by Fibre Conversion Company, Ltd., Toronto, and sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Statement of Reasons

Views of Chairman Sutton and Commissioners Thunberg, Newsom and Moore

Our reasons for these negative determinations are premised upon the circumstances under which plastic mattress handles entered the market and the factors that influenced their utilization in that market.

Plastic handles were first introduced into the United States mattress trade in the late 1950's. The plastic handle was somewhat easier to manipulate during the fastening process and gained some acceptance in the mattress industry immediately. It was not, however, until the handle industry developed automatic fastening machines that the plastic handles gained wide acceptance. The use of such handles now exceeds the combined use of all other handles in the U.S. mattress industry. Such machines may now be loaded with bulk quantities of handles, will

affix the handles at designated positions on side-strip materials for the mattresses depending on their size, and will cut the strip material to appropriate lengths for incorporation into the mattress. Similar automatic machines have not been developed for use with handles of materials other than plastic.

There were three major producers of the plastic handles in the United States and one major producer in Canada--Fibre Conversion Company, Ltd., of Canada--when the handles at less than fair value began to enter the U.S. market in appreciable quantities. Two of the domestic manufacturers had developed automatic machines which they sold for the installation of such handles. One domestic company introduced the first automatic machine in 1959; another followed with an automatic machine in 1961. Both companies have been making technical improvements in their machines each year; however, the latter machine has been more rapid and efficient in operation and the latter company has the greater volume of sales of both machines and plastic handles. A third handle producer has made no machine and its sales of plastic handles have been much less than those of the first two producers mentioned above.

The Canadian producer of plastic handles first marketed its product in appreciable quantities in the United States in 1966 through a wholly-owned sales subsidiary known as Windham Industries, Inc. Its sales were made in conjunction with the introduction

in the U.S. market of a new automatic machine which is somewhat faster than any comparable U.S.-made machine. As a result of this machine, made by Fibre Conversion Co., Ltd., it has been able within 3 1/2 years to gain above 15 percent of the U.S. market for molded-plastic mattress handles.

Evidence before the Commission indicates that the major mattress manufacturers in the United States are influenced in their selection of molded-plastic handles primarily by the functional efficiency of the automatic machines which are available from the handle manufacturers for the installation of such handles and to some minor degree by the esthetic appearance of such handles. There has been no credible evidence that mattress manufacturers buy Canadian handles in deference to U.S. handles by reason of price differentials. The volume of sales of plastic handles bears a close correlation to the market-place acceptance of automatic machines made by such handle manufacturers and tends to follow the technical improvements being made in such machines each year.

The importer of the Canadian handles introduced them in the U.S. market in 1966 with the sales theme that he had the most efficient automatic machine available for installing molded-plastic mattress handles. The machine could only operate with his particular handle, a decided advantage in his favor in that

the sale of the machine gave him captive sales for his handles. No other handle could be substituted for it. No evidence was obtained from any domestic mattress handle manufacturer (none of whom made an appearance at our public hearing on the matter), that indicated that there was any price tie-in between the sales of machines and handles by the importer. The bulk of the imported handles were sold at prices f.o.b. Buffalo, New York, which were higher than the f.o.b. price at the Canadian plant for Canadian consumption. For two years the Canadian manufacturer and its subsidiary believed that the imports were being sold at or above fair value. The margins of dumping ^{1/} established by the Secretary of the Treasury for plain (the major imports) and printed (minor imports) plastic handles bear no relation to the differences between the weighted average prices for domestic plastic handles and the weighted average prices obtained for the imported plastic handles. The importer's sales in three out of four years (1966-69) were at lower average prices than the average prices for the domestic handles; however, when such differences in prices existed, they were always more than the dumping margin, being as much as five times as great. It is quite evident that the U.S. sales prices were not founded or dependent upon a dumping margin. Even if U.S. prices of the importer's plastic mattress handles were to be

^{1/} Essentially the difference between net sales price for consumption in Canada and net sales price for consumption in the United States.

considered as influencing sales or customers' preferences, the extent of injury to domestic producers caused by the dumping margin would be de minimis.

Although the importer, Windham Industries, has obtained its plastic handles from Canada for four years, it is now obtaining its handles from a new plant established in the United States which is being operated by a firm that is related to the Canadian firm. The new plant is now operating successfully and is expected to meet the U.S. needs for Windham Industries in the foreseeable future. Its production is much larger than the sales currently being made by Windham Industries and a sizeable inventory is being established. Accordingly, further imports at LTFV are not expected in any sizeable quantities.

The foregoing considerations ^{1/} form the basis for our determination that imports of plastic mattress handles from Fibre Conversion Company, Ltd., of Toronto, Canada, are not causing, or likely to cause, injury to an industry in the United States, nor are they preventing the establishment of an industry in the United States.

^{1/} Commissioner Thunberg notes that the profits of the two largest domestic producers of both automatic machines and handles were increased in 1968 over 1967 as a further indication that the domestic plastic mattress handle industry is not being injured by reason of the subject handles.

Views of Commissioner Clubb

In recent cases the Commission has consistently ruled that the injury test in the Antidumping Act is satisfied by anything more than a "de minimis" injury. In Cast Iron Soil Pipe from Poland, Inv. No. AA1921-50 (September 1967) I phrased the rule as follows:

Frivolous, inconsequential, or immaterial injury would not call for application of dumping duties, but anything greater would. [Footnote omitted.]

and

. . . If a competitive article is not produced in the United States, or if the imported article competes only peripherally in the same geographic or product market, Congress has provided for the consumer to benefit from the lower prices, rather than the domestic producer from peripheral protection. But where the competition is direct, and the price is unfair, Congress has insisted that the dumping duties be imposed.

This rule was followed in Titanium Sponge from the U.S.S.R., Inv. No. AA1921-51 (July 1968), and in Pig Iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R., Inv. Nos. AA1921-52, 53, 54, and 55 (September 1968). In these latter cases, the de minimis test was vigorously attacked, but was reaffirmed, the Commission holding that the injury requirement is met by a showing of anything more than a trivial or inconsequential effect on the domestic industry.

While employing the de minimis test the Commission has always been conscious of the fact that some cases might be presented where even that minimal standard would not be met and a negative determination would therefore be required. This is not because small violations

of the act will be permitted, but rather because insignificant deviations from the norm established in the Antidumping Act do not amount to "violations." ^{1/}

This is such a case. Evidence obtained in the investigation suggests that small changes in the price of handles are not a significant factor in the competition for mattress handle sales. Including the Canadian firm, the major handle manufacturers make both handles and the machines used to attach the handles to the mattress. The machines are constructed in such a way that usually only one brand of handle can be used with them, i.e., the handle produced by the company that makes the machine. Accordingly, the handle manufacturers compete vigorously to have a mattress manufacturer install their attaching machine, knowing that once the machine is installed the mattress manufacturer must normally use their handles, and continue to do so until their prices or service become so undesirable that he is willing to undertake the substantial inconvenience of changing machines. There is no evidence that the insignificant dumping margin in this case ever caused a mattress manufacturer to make such a change.

^{1/} Cf. Whitaker Cable Corporation v. F.T.C., 239 F.2d 253, 256 (7th Cir., 1956), where the Seventh Circuit applied the same reasoning to the Robinson-Patman Act:

We do not mean to suggest that the Act may be violated a little without fear of its sanctions but rather that insignificant "violations" are not, in fact or in law, violations as defined by the Act. If the amount of the discrimination is inconsequential or if the size of the discriminator is such that it strains credulity to find the requisite adverse effect on competition, the Commission is powerless under the Act to prohibit such discriminations . . .

Moreover, with the exception of one minor item, the Canadian producer would have been underselling the United States producers by a substantial margin even without the LTFV sales. The technically unfair price merely increased this margin by a very small amount. Thus, while the Canadian producer did acquire some new business during the period of LTFV sales, there is no evidence that he gained any cognizable competitive advantage as a result of his LTFV price.

Since the domestic producers neither lost sales as a result of the unfairly priced imports, nor were forced to reduce their prices in order to meet the unfair competition, it follows that any inconvenience realized by the domestic industry in this case falls well within the de minimis rule, and requires a determination of no injury.

Statement of Reasons for Affirmative
Determination by Commissioner Leonard

In my opinion, the domestic industry, comprised of the domestic facilities devoted to the production of plastic mattress handles, is being and is likely to be injured by reason of the importation of such handles into the United States from Convexco, Ltd. (formerly Fibre Conversion Co., Ltd.), Toronto, Canada, and their sale at less than fair value. Although the domestic plastic-mattress-handle industry is indeed a small one, it is nonetheless entitled to full consideration by the Commission in its disposition of this case.

The U.S. market for mattress handles is relatively static. The principal handles in use are those made of molded plastic and those made of rayon cord. Molded plastic handles were introduced in the late 1950's and have since made substantial inroads into the market previously supplied primarily by handles of rayon cord. The shift from rayon cord handles to molded plastic handles has been steady. Today, molded plastic handles comprise approximately 55 percent of the handles used by the U.S. producers of mattresses.

The imports of mattress handles have consisted almost entirely of molded plastic handles from Fibre Conversion, Ltd. Imports from this company began in 1966 and in the relatively short time thereafter have increased to the point where they now supply more than 15 percent of U.S. consumption of plastic handles and approximately 8.5 percent of U.S. consumption of all mattress handles. In the

relatively static U.S. market for mattress handles, there is a consequent loss of sales to domestic producers.

All the U.S. sales of the imported plastic handles have been at less than fair value. The bulk of the imports have been plain handles for which the average margin of dumping, as determined by the Treasury Department, is relatively small. The average margin of dumping for the remaining imports of printed handles is much larger.

Others contend that, in terms of design and appearance, the imported handles are equal or, perhaps, even superior in quality to the domestic plastic handles with which they most directly compete; that the price advantage the Canadian producer has over domestic producers is substantially larger than the margins of dumping; and that the primary edge the Canadian producer has over the domestic producers is its automatic machine (highly regarded in general) which works with its handles only and thus assures it a captive market wherever it is used. At first blush, these advantages might lead one to conclude that the dumping practices are of no real consequence, i.e., that the aforementioned loss of sales by the domestic producers would have occurred in any event, and that the impact of the dumping practices is de minimis. I cannot agree with this conclusion. If the foregoing factors were of primary importance, there would have been no cause or justification for dumping; indeed, there would have been an economic incentive not to dump.

It is true that the Canadian producer was not able to compete in the U.S. market until it developed a satisfactory automatic machine for attaching its plastic handles to mattresses, but that is no warrant for ruling out what to my mind remains in the long run of prime importance in any handle transaction between the buyer and seller--i.e., the price of the handles without which the machine has no value. Even where a foreign producer has a substantial natural price advantage, the addition thereto of an increment--even though small--based upon dumping necessarily increases the tendency of the foreign import so endowed to affect and possibly depress the prices of the less-favored domestic products. In this case, the foreign producer has demonstrated aggressive price practices which include dumping in the United States and, according to its own testimony, dumping in virtually all of its other numerous export markets. Indeed, in its testimony before the Commission, the foreign producer stated that it felt there was little cause for complaint on the part of U.S. producers since its sales in most other major export markets were at prices substantially lower than those quoted in the United States.

In this connection, I submit that there is, to my mind, no convincing evidence, or any reasonable presumption, that the dumping margin respecting the complained of imports was consistently as small as is alleged. In its public testimony, for

example (Transcript of the Hearings, p. 24), the foreign producer testified that it had entered into an abortive agreement with one U.S. concern as early as 1965 (before he had successfully entered the U.S. market) to supply handles at "significantly below the figure of 14 to 15 cents a set" until such time as the firm in question was able to manufacture handles in bulk for the Canadian producer's machine. Had such an agreement entered into force, the price to the U.S. firm would have been significantly more than 25 percent below the going domestic prices for handles at that period--illustrative of the aggressive pricing practices of this concern in the United States and other markets.

From the information before the Commission, I am satisfied that the Canadian producer sold his goods in the domestic market for no less than was necessary for it to establish a foothold in the domestic market and that the dumping margins reflected in its prices have been and are sufficiently large to be significant in the consummation of sales.

The Canadian exporter has indicated that, in the future, its exports to the United States will cease because the company will supply the U.S. market with handles produced by its subsidiary in Jersey City, New Jersey, rather than with those produced in Canada. However, the company's larger Canadian facilities-- which in 1968 produced and sold more than five times as many handles as were exported to the United States in that year--

are not being shut down; they will continue to be available to produce handles as needed to meet the company's expanding sales in the United States. By operating two plants--one in Canada and one in the United States--the company will have greater flexibility in meeting the U.S. demand for its product. Whenever business conditions dictate, it is to be expected that the company will continue to export plastic handles to the United States, and that, as in the past and as determined by the Treasury Department, such exports are likely to be sold at less than their fair value in the U.S. market--or in any other market when there is a commercial advantage in so doing.

In summary, I am of the opinion that the dumping practices are an important part of a complex of factors by virtue of which the Canadian producer has been able to gain entry into, maintain, and constantly improve the company's position in, the domestic market--with a consequent loss of sales to domestic producers and with an adverse impact on their prices. It follows that the conditions for an affirmative determination under section 201(a) of the Antidumping Act, 1921, as amended, are met: i.e., the domestic plastic-mattress-handle industry is being injured and is likely to continue to be injured by reason of the importation of plastic mattress handles sold in the United States at less than fair value.

The public record is replete with indications that the firm in question has practiced dumping on a wide scale in exploiting export markets--a fact not given weight by the majority. It is to be hoped that the Canadian producer will not regard the negative determination of the Commission majority as a condonation of dumping practices and as an invitation to persist in them in the U.S. market.

