

UNITED STATES TARIFF COMMISSION

WHOLE DRIED EGGS FROM HOLLAND

Determination of Injury
in Investigation No. AA1921-63
Under the Antidumping Act, 1921,
As Amended



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UNITED STATES TARIFF COMMISSION

Glenn W. Sutton

Bruce E. Clubb

Will E. Leonard, Jr.

George M. Moore

Kenneth R. Mason, *Secretary*

**Address all communications to
United States Tariff Commission
Washington, D. C. 20436**

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UNITED STATES TARIFF COMMISSION
Washington

[AA1921-63]

WHOLE DRIED EGGS FROM HOLLAND

Determination of Injury

On May 1, 1970, the Tariff Commission was advised by the Assistant Secretary of the Treasury that whole dried eggs from Holland 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 on the same date instituted investigation No. AA1921-63 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 June 9, 1970. Notice of the investigation and hearing was published in the Federal Register of May 6, 1970 (35 F.R. 7156).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence 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 that an industry in the United States is being injured by reason of the importation of whole dried eggs from Holland sold, or likely to be sold, at less than fair value within the meaning of the Antidumping Act, 1921, as amended. 1/

Statement of Reasons for Affirmative
Determination by Commissioners Clubb and Moore

We find that a domestic industry is being injured and is threatened with future injury as a result of the importation of whole dried eggs from Holland at less than fair value, and accordingly, antidumping duties must be collected in the future. The reasons for this finding are set out below.

In order for dumping duties to be applied, the statute requires that there must be a finding of (1) sales at less than fair value and (2) resulting injury to an industry in the United States. 2/ The Secretary of the

1/ Commissioners Clubb and Moore determined there was injury and Commissioners Sutton and Leonard determined there was no injury. Pursuant to section 201(a) of the Antidumping Act, the Commission is deemed to have made an affirmative determination when the Commissioners voting are equally divided.

2/ The Antidumping Act provides in pertinent part as follows:

"Whenever the Secretary of the Treasury . . . determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured. . . by reason of the importation of such merchandise into the United States. * * *". 19 U.S.C. § 160(a)

Treasury has already found that whole dried eggs from Holland are being imported at less than fair value, and this finding is binding on us here. Accordingly, the only issue before us is whether the sales at less than fair value have caused injury, or are threatening injury, to an industry in the United States.

In earlier cases it has been pointed out that the injury requirement was included in the Antidumping Act for administrative reasons, and that the amount of injury required to trigger the statute in any case must be viewed with that purpose in mind. ^{3/} Accordingly, the Commission has ruled that the injury requirement of the Antidumping Act is satisfied by a showing of anything more than a trivial or inconsequential effect on the domestic industry: Cast Iron Soil Pipe from Poland (AA1921-50, Sept. 1967); Pig Iron from East Germany, Czechoslovakia, Romania and the U.S.S.R. (AA1921-52, 53, 54 and 55, Sept. 1968).

^{3/} For example, in Cast Iron Soil Pipe it was observed that,

In order to relieve the Customs Bureau of the necessity of examining every importation for possible violation, the injury test was included. Congress thus made clear that it did not intend that every import sold at less than fair value should be subjected to dumping duties. 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. Cast Iron Soil Pipe from Poland, AA 1921-50 (Sept. 1967), pp. 18-19, (concurring opinion).

The question before us in this case, therefore, is whether the imports of whole dried eggs from Holland at less than fair value are having more than a trivial or inconsequential effect on a domestic industry. It appears to us that they are.

Whole dried eggs are produced almost as a by-product of egg processing. When shell eggs arrive at a processing plant, other uses such as fresh shell eggs, liquid eggs, frozen eggs, dried egg albumen and yolks are filled first. Those eggs which are injured in such processing or which are left over are further processed into whole dried eggs. These whole dried eggs are used principally by bakeries in biscuits, rolls, cookies and candy and by the premix industry in cake, pie, pancake, waffle and doughnut mixes. They are also used by producers of noodles, mayonnaise and breadings such as those used for frying chickens.

The United States market for whole dried eggs is supplied by twenty domestic egg processing firms and by imports. Since there are differences between the high quality domestically-produced product and the somewhat lower quality Dutch whole dried eggs, they cannot always be used for the same purpose, but are interchangeable for many uses, notably noodles, bakery products and certain mixes. They are not interchangeable for certain other uses, for example, certain premixes. Nonetheless, there

is a substantial area of competition between the domestic product and whole dried eggs imported from Holland.

Not only is there direct competition between the Dutch and the domestically-produced whole dried egg for many purposes, but also it appears that imports of the Dutch whole dried eggs have been rapidly increasing primarily as a result of the unfairly low price at which they are sold. The Dutch share of the U. S. market rose from 0 percent in 1965 to 1 percent in 1966, to 3 percent in 1967 and 1968, and to 7 percent in 1969. ^{4/} Neither the rate of increase in the Dutch share of the domestic market nor the share attained in 1969 can be considered inconsequential.

Moreover, it seems clear that the increasing Dutch market share is directly attributable to the ability of the Dutch exporters to sell at less than fair value. Users of whole dried eggs have been able to purchase the Dutch product at prices as much as a third lower than the price of the

^{4/} The following table shows U.S. apparent consumption of whole dried eggs, imports from Holland, and the Dutch share of the U.S. market in recent years.

Year	U.S. Apparent Consumption (1,000 pounds)	Imports from Holland (1,000 pounds)	Dutch Share of U.S. Market (percent)
1965	9,806	0	0
1966	9,258	110	1
1967	14,249	368	3
1968	14,851	375	3
1969	9,909	712	7

domestic product. In many cases, both the domestic and imported products are used for the same purpose. 5/ This price difference has resulted in a loss of sales by domestic producers, and has depressed the price received by domestic producers below that which would have prevailed had the Dutch product not been available at less than fair value.

Under these circumstances, it seems clear to us that the United States industry producing whole dried eggs (1) has been injured by reason of the importation of whole dried eggs from Holland at less than fair value and (2) is threatened with future injury if such imports of whole dried eggs from Holland at less than fair value are permitted to continue.

5/ Six purchases of whole dried eggs from Holland imported during the period December 1968-March 1970 were made by users who also reported purchasing U.S. whole dried eggs within 7 days of purchasing the imports. In each case, the purchaser indicated that Dutch and U.S. whole dried eggs were being used for the same purpose. In the following table, prices paid for the Dutch and U.S. products are compared.

Month, Year of Purchases	Price Paid Per Pound (delivered)		Amount Price of Dutch Product below Price of U.S. Product
	Dutch Whole Dried Eggs	U.S. Whole Dried Eggs	
3-69	\$.95	\$1.105	\$.155
1-70	1.25	1.55	.30
2-70	1.15	1.40	.25
2-70	1.16	1.435	.275
3-70	1.19	1.19	.0
3-70	1.10	1.20	.10

Statement of Reasons for Negative Determination of
Commissioners Sutton and Leonard

In our opinion no industry is being, or is likely to be, injured, or prevented from being established, by reason of the imports of whole dried eggs 1/ from Holland sold, or likely to be sold, at less than fair value (LTFV). To understand our reasons for this opinion, it is necessary to view the overall competitive conditions in the domestic market for eggs in their various forms and then discuss how the whole dried eggs from Holland have been utilized in such market.

How eggs are merchandised

In today's merchandising methods virtually all poultry eggs are sold fresh in the shell, or are sold unshelled in liquid, frozen, or dried forms. From the standpoint of most consumers, the most desirable form of the eggs is fresh in the shell and the other forms in the order above described become progressively less desirable, yet progressively more economical to store and to transport. Moreover, unshelled eggs can be separated into albumen (egg whites), yolks, or made into blends thereof (which are also produced in liquid, frozen, or dried forms). These products have special attractions to certain consumers some of whom can only use the albumen or yolks, and some of whom want more or less yolk in their products. Of all the eggs, processed eggs, and egg products heretofore mentioned,

1/ The term "whole dried eggs" means eggs removed from the shell and subsequently dried without any separation of the yolks from the albumen.

dried whole eggs are considered to be the "last resort" product when made by most egg processors. They are generally produced in the largest quantity when fresh eggs are most plentiful in supply in relation to the demand for the other forms of eggs, processed eggs, and egg products.

Grades of processed eggs

Whole dried eggs and dried processed eggs are produced from varying qualities of eggs (the eggs may or may not be candled and their ages may vary) which are processed in differing ways so that the palatability and shelf life of the products are not the same. The palatability of dried eggs may score from 0 to 8. Eggs below score 5 are generally not acceptable in commercial transactions. The shelf life of dried eggs may vary from 3 weeks to 6 months or more depending on how carefully the eggs are selected, processed, and stabilized. The qualities of a high score and long shelf life necessarily increase production costs and command a higher price for such dried eggs than the prices for lower score, shorter shelf-life eggs.

Use of whole dried eggs - general

Whole dried eggs are used principally by bakeries in biscuits, rolls, and cookies; by confectioners in candies; by the premix industry in cake, pie, pancake, waffle, and doughnut mixes; and by producers of noodles and breadings such as are used in preparing

fried chicken. The need for a high-score palatability and long shelf life in dried eggs varies according to the product in which they are used and according to the standards of the manufacturers.

Conditions of competition

The LTFV imports of whole dried eggs from Holland have had a lower palatability score than the score of most whole dried eggs sold in the domestic market and similarly have had a shorter shelf life. These circumstances warrant a price differential between the U.S. and Dutch dried eggs when weighing the impact of the LTFV imports on the whole dried egg industry in the United States. In this case, a precise determination of what constitutes an acceptable price differential cannot be expressed in terms of cents per pound for the product. Our determination has had to be based on the circumstantial factors which reflect the conditions of competition in the market place.

Available information indicates that about one half of the LTFV imports were purchased by four domestic egg processors to supplement their supplies of whole dried eggs. The other half of the imports were sold by distributors in competition with domestic egg processors. By far the preponderance of the domestic producers of all processed eggs, ^{1/} measured in terms of numbers of plants or in terms of volume of production, indicated that the LTFV imports

^{1/} There are about 20 firms in the United States which process eggs.

of whole dried eggs have not been sold at prices which have been in any way injurious to the prices of processed eggs in the market. Moreover, the preponderance of the domestic producers of whole dried eggs, measured in either terms, also indicated that the LTFV imports of whole dried eggs have not been sold at prices which have been in any way injurious to the prices of whole dried eggs in the market. 1/ There was no indication of a significant loss of sales of whole dried eggs as a result of the LTFV imports. On the other hand, there was evidence that domestic producers, including the complaining producer, 2/ on occasion were unable to supply whole dried eggs to would-be buyers.

About 42 percent of the LTFV imports were used in a limited category of bakery products, 33 percent in egg noodles, and 25 percent in pancake and waffle mixes. The evidence indicated that the palatability score of whole dried eggs was less important in these products than in some of the other consumer articles in which dried eggs are used. Further, the use of the imported LTFV eggs in bakery products and noodles could be immediate so that shelf life was not important. The use of whole dried eggs in premixes was said to extend the "shelf life" of the whole dried eggs beyond the

1/ The price trend in the last one and one-half years, when imports were at their peak, was sharply upward with the price of domestic dried eggs rising more rapidly than the price of the Dutch eggs.

2/ The complainant in this case did not respond to a Commission questionnaire designed to reveal information relevant to this matter.

time in which they would normally keep as dried eggs. Thus, we conclude that the quality of the LTFV imports limited their use, thereby limiting the price at which they might reasonably be sold.

Ultimate users of the LTFV imports were asked what they would have done if the Dutch dried eggs had not been available. Users of 31 percent of the eggs replied that they would have substituted other materials, in whole or in part, in their products, 52 percent would have obtained other imported dried eggs which cost only slightly more (but which would be of somewhat better quality), 12 percent said they would have used dried eggs from other sources, either domestic or foreign, 3 percent said they would have purchased domestic dried eggs, and 2 percent made no reply. A number of users reported that they purchased the Dutch dried eggs because they could not obtain an adequate supply of dried eggs from domestic producers. There was uncontroverted testimony that with respect to some users there is a ceiling price above which they cannot economically use whole dried eggs in their products. Thus, the imports undoubtedly prevented some market disruption that might have occurred had the consumers shifted to substitutes or leaner formulas, potential shifts from which they might never revert.

The average annual purchase price of Dutch dried eggs has been lower than the average annual price of all imported dried eggs in three out of the last four calendar years. However, the lower prices in the three years are attributable to the fact that

Danish dried eggs were the principal source of foreign dried eggs; these dried eggs were often of the best known quality in the trade thereby warranting much higher prices. These higher prices caused the average import price to be higher than that which might be reasonably expected for the Dutch dried eggs which were generally sold at or above prevailing world prices for eggs of like kind and quality. These factors indicate that the pricing practices of the Dutch whole dried egg producers have not been anticompetitive in nature nor unfair in principle.

The latest pricing data on whole dried eggs in the domestic market indicate that the Dutch eggs are being sold at prices somewhat below the prices of the domestic eggs, but that the price differentials merely compensate for the differences in quality and shelf-life of the two products.

Conclusion

In summary, the foregoing circumstances indicate that imports of the whole dried eggs from Holland, although sold at LTFV for export to the United States, are not being, and are not likely to be, resold in the domestic market in competition with domestic whole dried eggs at prices which are less than the price of the comparable domestic product. Moreover, the sales of the LTFV imports appear to have had no significant effect on prices, customer patterns, or the sales volume of domestic whole dried eggs or other domestic processed

eggs. Thus, there appears to be no basis for a determination that imports of whole dried eggs from Holland, sold at LTFV, are causing or are likely to cause, injury to an industry in the United States.

