UNITED STATES TARIFF COMMISSION

ICE CREAM SANDWICH WAFERS FROM CANADA

Determination of Injury in
Investigation No. AA1921-83
Under the Antidumping Act, 1921, as Amended

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UNITED STATES TARIFF COMMISSION

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[AA1921-83]

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Determination of Injury

The Assistant Secretary of the Treasury advised the Tariff Commission on October 26, 1971, that ice cream sandwich wafers from Canada are being, or 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 Commission on November 8, 1971, instituted Investigation No. AA1921-83 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 December 14, 1971. 1/ Notices of the investigation and hearing were published in the Federal Register of November 12, 1971 (36 F.R. 21715) and December 3, 1971 (36 F.R. 23099).

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.

1/ A public hearing was originally scheduled for December 7, 1971.

On the basis of the investigation, the Commission determined by a vote of 4 to 2 1/ that an industry in the United States was being injured by reason of the importation of ice cream sandwich wafers from Canada sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

1/ Chairman Bedell, Vice Chairman Parker, and Commissioners Sutton, and Moore determined in the affirmative. Commissioners Leonard and Young determined in the negative.

Statement of Reasons for Affirmative Determinations of
Chairman Bedell, Vice Chairman Parker, and
Commissioners Sutton and Moore

In our opinion, an industry in the United States is being injured by reason of the importation of ice cream sandwich wafers from Canada which are being sold at less than fair value (LTFV) within the meaning of the Antidumping Act.

Ice cream sandwich wafers are a unique product. They are physically different from other forms of cookies and are used for distinct purposes. They are recognized by the trade as a specialty type product for use in making ice cream sandwiches.

The industry

In making our determination, we have considered the injured industry to consist of those facilities in the United States which engage in the production of ice cream sandwich wafers. Ice cream sandwich wafers currently are being produced domestically by two firms at four establishments.

Market penetration and lost sales

The Commission's investigation has revealed that the price advantage afforded the foreign supplier by the sales at LTFV has contributed to significant market penetration by the Canadian producer and lost sales by the domestic industry.

Ice cream sandwich wafers are a major cost item in the production of ice cream sandwiches. To the producers of such sandwiches, a small price advantage (one which might be unimportant for other products) can be decisive in determining who makes a sale. Hence, a price differential of less than one cent per pound can have an appreciable effect on sales. One of the principal purchasers of the Canadian product indicated that the LTFV price difference was substantial.

All imported ice cream sandwich wafers have been made by one Canadian firm. Imports first entered in April 1970; in the period April-September 1970, imports were used principally for testing product acceptability; entries were equivalent to less than one percent of U.S. consumption in that period. Once the testing period ended, however, the share of the market acquired by the Canadian producer increased to 2.4 percent, in October-December 1970, and to 3.6 percent in the first 10 months of 1971. Data available to the Commission show that all of the imports in the period April 1970-October 1971 were priced at LTFV.

Ice cream sandwich manufacturers using the LTFV wafers had previously used only domestically produced wafers. Thus, the sales of LTFV priced imported wafers, which displaced domestic wafers virtually on a pound-for-pound basis, resulted in significant lost sales for the domestic wafer producers.

The Commission's investigation revealed that the estimated LTFV margin generally accounted for a substantial part of the margin by which the LTFV wafers undersold domestic wafers. During most of the period when the LTFV wafers entered the United States, the margin of underselling exceeded 2 cents per pound, and the margin was possible in large measure because the Canadian wafers were sold at less than fair value. After August 16, 1971, when the United States imposed a 10-percent import surcharge on entries of goods, the Canadian wafers only slightly undersold domestic wafers, but this small price advantage would not have been possible were the Canadian supplier not selling at less than fair value. As a result of adjustments in its home market prices and commission schedules by the Canadian producer, it appears that sales at less than fair value ceased late in 1971. This circumstance, however, shoud not, in our view, affect our determination that a domestic industry is being injured by the LTFV sales that have occurred. The Canadian producer sold wafers at a considerable LTFV margin, thus pricing his product in the U.S. market materially below the domestic wafers and enabling him to gain a significant share of the market. The antidumping statute is intended to protect against circumstances such as these. Were there no action to levy antidumping duties, the Canadian producer would be free to reinstitute his previous pricing practices.

Conclusion

The LTFV price of the imported wafers has permitted the foreign producer to increase penetration of the U.S. market and has resulted in lost sales for the domestic producers. In our opinion, this constitutes injury to the domestic ice cream sandwich wafer industry.

Statement of Reasons for the Negative Determination of Commissioners Leonard and Young

In our opinion no industry in the United States is being or is likely to be injured, or prevented from being established, by reason of the importation of ice cream sandwich wafers from Canada which the Assistant Secretary of the Treasury has determined to be, or likely to be, sold at less than fair value. The facts before us do not show any such injury. What the facts do show follows.

Market penetration

Penetration of the U.S. market for ice cream sandwich wafers by imports from Canada has been minimal. During the period used by Treasury for fair value comparison, October 1970-December 1970, the U.S. market share of Canadian imports amounted to 2.4 percent. Prior to this period, such market share was insignificant. During the more recent period January-October 1971, the U.S. market share of Canadian imports amounted to only 3.6 percent. There is a significant reason for the attainment of this minimal market share which we detail in the following section.

Total amount of underselling

Except during the 4-month period when the 10-percent import surcharge was in effect, imported wafers consistently and substantially sold for less than their domestically produced counterpart. The amount by which the price of the imported product was less than that of the domestic wafer ranged, for example, from 2 to about 3-3/4 cents per pound. These prices were in effect at Laurel, Md., the site of the principal importer's plant.

This competitive advantage enjoyed by the imported wafers reflected many factors, both those categorized as resulting from fair as well as from unfair price competition. In other words, the 2-to 3-3/4-cent price advantage is not composed exclusively of the difference in the price of the Canadian wafers sold for export to the United States and the price charged for their use in Canada by the same manufacturer (referred to as less-than-fair value pricing). Only during the period July 1970 to February 1971 was that part of the competitive price advantage attributed to the less-than-fair value pricing as much as 50 percent of the total price advantage enjoyed by the imported product over the domestic product. Since November 1971 there has not been any less-than-fair value pricing on the part of the Canadian exporter. Moreover, each month since Canadian imports first entered in April 1970 (except for the period when the import surcharge was in effect) the price advantage in favor of imported wafers, excluding the amount of less-than-fair value pricing, amounted to more than six-tenths cent per pound. It has ranged to well over 2 cents per pound, which is the current level.

At a hearing before the Tariff Commission on December 14, 1971, David O. Clark, President of Weston Ltd.'s three U.S. wafer producing subsidiaries, stated that ice cream sandwich wafers are "a fungible commodity and if our price was a quarter of a cent less than theirs, they would have to meet us <u>and vice versa</u> or they wouldn't get the business; and that is what we are complaining about here." 1/

Clearly, the amount by which the price of Canadian wafers was less than the price of domestic wafers over and above the less-than-fair value pricing was more than sufficient to cause domestic wafer users to buy the imported product. It is clear that the loss of sales by the domestic industry was not by reason of the less-than-fair value export pricing. Or, to put the matter in another way, even had a dumping duty been assessed to offset the less-than-fair value pricing by the Canadian exporter, the resulting competitive situation would have been such that the complained-of sales would have been consummated.

Price depression or suppression

The impact of Canadian imports on the prices of the two U.S. producers, if indeed there has been any impact at all, has been insignificant. In late April and early May 1970, when imports were just beginning to enter, both U.S. producers raised their truckload prices for wafers of the same size as those being imported from 23 to 24 cents per pound, or 4.3 percent. In late February and early March 1971, after imports had been entering for nearly a year and were still selling at their lowest price, the two U.S. producers again raised their

1/ Transcript, p. 31, underlining ours. David O. Clark is the President of Southern Biscuit Co., Weston Biscuit Co., and American Biscuit Co., all U.S. subsidiaries of Weston Ltd., a diversified Canadian firm and one of the two U.S. producers of ice cream sandwich wafers. Burry Division of Quaker Oats Co. is the other U.S. producer.

truckload prices, this time by 6.2 percent, from 24 to 25-1/2 cents per pound. Accordingly, no evidence of price depression seems to exist. The rate at which prices increased in 1971 compared with the rate of increase in 1970, 6.2 vs. 4.3 percent, controverts any claim of the existence of price suppression.

Conclusion

In view of

(a) the minimal penetration of the U.S. market for ice cream sandwich wafers by Canadian imports,

(b) the large size of the total amount by which the imported product undersold the domestic product in comparison with the much smaller extent of less-than-fair value sales,

(c) the effect of a price difference of only one-quarter of a cent on the consummation of sales, and

(d) the absence of price depression and of any evidence of price suppression,

we can only conclude that an industry in the United States is not being injured nor is likely to be injured nor is prevented from being established by reason of the importation of Canadian ice cream sandwich wafers sold in the United States at less than fair value.