UNITED STATES TARIFF COMMISSION

ELEMENTAL SULFUR FROM MEXICO

Determination of Injury in
Investigation No. AA1921-92
Under the Antidumping Act, 1921, as Amended

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UNITED STATES TARIFF COMMISSION

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Determination of Injury

On February 4, 1972, the Tariff Commission received advice from the Treasury Department that elemental sulphur (also spelled sulfur) from Mexico is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. 1/ 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. AA1921-92 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 March 28-30, 1972. Notice of the investigation and hearing was published in the Federal Register of February 12, 1972 (37 F.R. 3212).

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.

1/ Notice of the Treasury Department's determination of sales at less than fair value, and the reasons therefor, was published in the Federal Register of February 5, 1972 (37 F.R. 2793).

On the basis of the investigation, the Commission has unanimously determined that an industry in the United States is being injured by reason of the importation of elemental sulfur from Mexico that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Statement of Reasons for Affirmative Determination
of Chairman Bedell and Commissioners Sutton
and Moore 1/

In our opinion, an industry is being injured by reason of the importation of elemental sulfur from Mexico, that is being sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. In making our determination we have considered the industry to consist of those domestic facilities of U.S. producers devoted to the mining and recovery of sulfur. Sulfur mined by the Frasch hot-water mining process (Frasch sulfur), the method used to produced the sulfur entered at LTFV from Mexico, is produced by five companies at 12 sites in the United States.

The Commission's investigation has revealed that LTFV sales and offers of Mexican sulfur have contributed to the general depression of prices and to market disruption in Tampa (the principal U.S. sulfur-consuming area) and along the east coast of the United States. All that is required for an affirmative determination is that the LTFV imports be a cause of significant injury to an industry (i.e., an injury greater than de minimis). In this case, the facts show a part of the price depression undergone by the domestic sulfur industry since 1968 and part of the market disruption in Tampa can be directly tied to sales and offers of Mexican sulfur at less than fair value. The injury is especially serious occurring as it does while the industry is in a transitional state.

1/ Vice Chairman Parker concurs in the result.

Economic conditions in the domestic industry

The domestic sulfur industry is beset by especially low prices, which reflect a general world oversupply. World sulfur production increased from 16.4 million tons 1/ in 1967 to 21.7 million tons in 1970, and supplies seem destined to continue to increase. As a result, the market for sulfur is currently glutted and prospects are for still additional amounts to enter the market. Consequently, the Frasch-sulfur producers, with large investment in the production of sulfur, have been forced to curtail exploration, shut down facilities, lay off workers, and have found their before-tax profits on sulfur operations in 1971 reduced to one-seventh of their 1968 levels. In short, the U.S. sulfur industry is clearly undergoing a transition of far-reaching consequences, and one in which the Frasch-sulfur producers are the most vulnerable.

Since the fall of 1968, sulfur prices declined by about 50 percent in Tampa and along the western gulf, and by about 40 percent along the east coast and in the North Central States.

Sulfur is used in the production of literally hundreds of agricultural and industrial products. Despite its wide uses, there are only a small number of major buyers--nine sulfuric-acid producers consume at least 60 percent of the sulfur sold on the open market. Moreover, it is normally sold under tonnage contracts which require a seller to meet lower competitive offers or else release that quantity from the terms of the contract.

1/ All references in this statement are to long tons of 2,240 pounds.

Extent of LTFV sales and offers

During the dramatic price decline since 1968, Mexican Frasch-sulfur producers began to sell at less than fair value as defined in the Antidumping Act, 1921. Mexican home-market sulfur sales are traditionally made at the maximum prices permitted by Mexican law. These prices have remained unchanged since 1955. Consequently, as the oversupply developed and the U.S. price deteriorated, imports of Mexican sulfur began to enter at LTFV, so that by the period 1970-71 for which period Treasury made its fair-value comparisons, virtually all sulfur from Mexico was entering the United States at LTFV margins ranging up to 40 percent of the adjusted home-market price. When price sensitivity reaches the degree which characterized the U.S. sulfur market in and since 1969, LTFV sales and offers would almost inevitably cause an injurious impact.

Price depression and market disruption

The sales and offers of Mexican sulfur at LTFV prices caused additional price deterioration in the Tampa market and on the east coast and added confusion and instability to the market place. These markets have been largely isolated from other foreign competition, although to some extent, price activity in one domestic market area has an impact on prices in other domestic market areas. Injury (more than de minimis) is resulting both from specific instances where the LTFV margins permit underselling, which, in turn, precipitates general price reductions, and from the presence of additional supply in an already glutted market.

In the latter part of 1970, Mexican Frasch sulfur was sold at a price of $2 per ton below the price of domestic Frasch sulfur to an important Tampa customer. A few months later, the customer requested a "meet or release" action from its domestic supplier, who was obliged to meet the lower price. About the same time, a large quantity of Mexican sulfur was offered to another large Tampa customer substantially below the price of domestic sulfur to the same buyer. The tonnage offered was of such magnitude that the domestic supplier elected to meet the price. In both instances sales of Mexican sulfur (on smaller tonnage) were being made at the offer prices. These sales and offers precipitated a general price reduction of $2 per ton, i.e., from $27 per ton to $25 per ton "ex-terminal" in the Tampa area. To still another Tampa customer buying Mexican sulfur under a minimum-maximum contract of multi-thousand-ton difference, the Mexican supplier maintained a price of more than $1 per ton lower than that of the domestic Frasch sulfur supplier. These instances of underselling could not have occurred if sales had been made at fair value. In each example the LTFV margin on Mexican sulfur exceeded the margin of underselling.

The injurious price depression from LTFV sales and offers does not end when domestic suppliers reestablish a price pattern based upon the unfair price. Unlike imported material that requires a price advantage to compete, Mexican sulfur has continued to enter the U.S. market at the prevailing domestic price. The supply effect of the LTFV imports, then, especially in an already oversupplied market, results in further price deterioration.

Conclusion

The sales and offers of LTFV sulfur from Mexico are significant factors contributing to price depression and market instability in the United States. The fact that the domestic industry is facing difficulties caused by other factors does not obscure the significant link between the specific injury manifestations existing and threatened, and the LTFV imports. Accordingly, we determine that, within the meaning of the Antidumping Act, 1921, an industry in the United States is being injured by reason of the importation of sulfur from Mexico that is being sold at less than fair value.

Statement of Reasons for Affirmative Determination of Commissioners Leonard and Young

Our determination is in the affirmative; however, we believe that, instead of the brief statement of our colleagues, the following comprehensive treatment of the investigation is needed to detail precisely the issues that had to be resolved and the rationale that led to our determination.

The Antidumping Act, 1921, as amended, requires that the Tariff Commission find two conditions satisfied before an affirmative determination can be made.

First, there must be injury, or likelihood of injury, to an industry in the United States, or an industry in the United States must be prevented from being established.

And second, such injury (or likelihood of injury or prevention of establishment) must be "by reason of" the importation into the United States of the class or kind of foreign merchandise the Secretary of the Treasury determined is being, or is likely to be, sold at less than fair value.

In our opinion, an industry in the United States is being injured by reason of the importation of elemental sulfur from Mexico, that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. In making our determination we have considered the industry to consist of those domestic facilities of U.S. producers devoted to the mining, recovery, and distribution of sulfur. Sulfur mined by the Frasch hot-water mining process (Frasch sulfur), the method used to produce the sulfur entered at less than fair value from Mexico, is produced by five companies at 12 sites in the United States, and we consider them to bear the brunt of the injury.

The Commission's investigation has revealed that sales and offers of Mexican sulfur at less than fair value have contributed to the general depression of prices and to market disruption in the Tampa, Fla., area (the principal U.S. sulfur-consuming area) and along the east coast of the United States. It follows that a national industry may be injured if injury is experienced in a portion of its market.

Besides less than fair value sales, other causes of injury are also present, but sales at less than fair value do not have to be the sole cause, the major cause, or greater than any other single cause of the injury. All that is required for an affirmative determination is that the less than fair value sales be a cause of injury to an industry. The causation between sales at less than fair value and injury must be identifiable, i.e., the injury must result from the less than fair value sales. In this case, the facts show a part of the price depression undergone by the domestic sulfur industry since 1969 and part of the market disruption in Tampa is directly tied to sales and offers of Mexican sulfur at less than fair value. The injury is especially serious occurring as it does while the industry is in a transitional state.

Economic conditions in the domestic industry

The domestic sulfur industry has undergone periods of shortage and oversupply. Currently sulfur is in oversupply and the domestic sulfur industry is beset by especially low prices. World sulfur production increased from 16.4 million tons 1/ in 1967 to 21.7 million tons in 1970, and supplies seem destined to continue to increase. A large part of the increase is due to the recovery of sulfur from natural gas containing hydrogen sulfide and from refinery gases. Moreover, environmental considerations favor the desulfurization of fuel oil and the removal of sulfur compounds from the stack gases of industry and public utilities. As a result, the market for sulfur is currently glutted and prospects are for still additional amounts to enter the market. Consequently, the Frasch-sulfur producers, with large investment in the production of sulfur, have been forced to curtail exploration, shut down facilities, lay off workers, and have found their before-tax profits on sulfur operations substantially reduced. In short, the U.S. sulfur industry is clearly undergoing a transition of far-reaching consequences, and one in which the Frasch-sulfur producers are the most vulnerable.

In U.S. sulfur markets the oversupply brought about the textbook results. Since the autumn of 1968, prices have declined by about 50 percent in Tampa and along the western gulf, and by about 40 percent along the east coast and in the North Central States. Most of the decline occurred before February 1970, but a substantial part occurred after that date, by which time most sales and offers of Mexican sulfur were being made at less that fair value.

1/ All references in this statement are to tons of 2,240 pounds.

While sulfur is used in the production of literally hundreds of agricultural and industrial products, economists would term its demand inelastic, i.e., over most of its range the price exerts relatively little influence on the total quantity sold. Despite its wide uses, there are only a small number of major buyers--nine sulfuric-acid producers consume at least 60 percent of the sulfur sold on the open market. Moreover, it is normally sold under contracts which require a seller to meet lower competitive offers for significant tonnages or else release that quantity from the terms of the contract.

Thus, the stage is set for violent downward price competition: (1) a general oversupply; (2) the entry of a large number of sellers into the market place for whom sulfur is a coproduct, byproduct, or waste product; (3) a small number of sophisticated purchasers; (4) a homogeneous product; and (5) a general industry practice that each seller meet lower offers by competitors or forfeit the opportunity to sell the entire tonnage involved.

Extent of less than fair value sales and offers

During the shortage period, Mexican sulfur was being sold at fair value, appreciably above the prevailing price for domestic Frasch sulfur. Beginning in 1970, Mexican Frasch sulfur producers began to sell at less than fair values as defined in the U.S. Antidumping Act, 1921, which is designed to prevent a foreign producer from making injurious sales in the United States at lower prices than he charges in the home market. Mexican home-market-sulfur sales are traditionally made at the maximum prices permitted by Mexican law. These prices have remained unchanged since 1955. Consequently, as the oversupply developed and the U.S. price deteriorated, imports of Mexican sulfur began to enter at less than fair value, so that when the Treasury Department made its fair-value comparisons, virtually all sulfur from Mexico was entering the United States at less than fair value margins ranging up to 40 percent of the adjusted home-market price. The less than fair value margin essentially is the difference between the Mexican home market price and the price for which the imported sulfur was sold to arm's-length buyers.

Price depression and market disruption

The sales and offers of Mexican sulfur at less than fair value prices caused additional price deterioration in the Tampa market and on the east coast and added confusion and instability to the market place. These markets have been largely isolated from other foreign competition, although to some extent, price activity in one domestic market area has an impact on prices in other domestic market areas. Injury is resulting both from specific instances, some of which are cited below, where the less than fair value margins permit underselling, thereby precipitating general price reductions, and from the presence and threat of additional supply at less than fair value in an already glutted market.

In the latter part of 1970, Mexican-Frasch sulfur was sold at a price of $2 per ton below the price of domestic Frasch sulfur to an important Tampa customer. A few months later, the customer requested the domestic supplier to meet the lower offer or release the customer from the obligation to buy the sulfur involved. The domestic supplier met the lower price. About the same time, a large quantity of Mexican sulfur was offered to a different large Tampa customer substantially below the price of domestic sulfur to the same buyer. The offer was of such magnitude that the domestic supplier elected to meet the price rather than lose the sale. In both instances sales of Mexican sulfur (on smaller quantities) were being made at the offer prices. These sales and offers precipitated a general price reduction from $27 per ton to $25 per ton "ex-terminal" in the Tampa area. To still another Tampa customer buying Mexican sulfur under a minimum-maximum contract of multi-thousand-ton difference, the Mexican supplier maintained a price of more than $1 per ton lower than that of the domestic Frasch sulfur supplier. These instances of underselling could not have occurred if sales had been made at fair value. In each example the less than fair value margin on Mexican sulfur exceeded the margin of underselling. 1/

Less than fair value sales and offers bring with them market uncertainty. Buyers are anxious to take advantage of the lower prices, but they are uncertain as to how long they will last.

1/ The term "margin of underselling" is the difference between the delivered price of Mexican sulfur and the delivered price of domestic Frasch sulfur delivered to the U.S. customer.

They then attempt to secure the same price from other sources of supply and thus perpetuate the lower prices. Suppliers are whipsawed one against the other, setting off whirlwinds of price activity, so that even after both the sales and offers at less than fair value are withdrawn, price revision is difficult, if not impossible.

But injurious price depression from both sales and offers at less than fair value does not end when domestic suppliers reestablish a price pattern based upon the unfair price. Unlike other imported material that requires a price advantage to compete, Mexican sulfur has continued to enter the U.S. market at the prevailing domestic price. The supply effect of the less than fair value imports, then, especially in an already oversupplied market, results in further price deterioration. A respected authority in the field noted:

> ....dumping does not necessarily, and probably does not usually, involve selling in the foreign market at prices lower than those prevalent there ....even where the dumper does not accept lower prices than those currently demanded by his competitors in the market dumped on, his added competition in supplying the demand of that market will tend to force down the prices of his competitors and to necessitate a still further reduction of his own prices. 1/

This is precisely the case here; the less than fair value sales, even when made at the prevailing price levels, further contribute to the depressed prices and the declining revenues of domestic producers. The Antidumping Act cannot protect producers against

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1/ Jacob Viner, Dumping: A Problem in International Trade, University of Chicago Press, Chicago, Ill. (1923), p. 132.

oversupply situations; it can, however, protect them against the identifiable additional adverse impact of less than fair value imports.

Consideration of offers in ascribing injury

We have considered less than fair value offers in our determination. When the statute speaks of "by reason of the importation", no tense is implied--i.e., no actual entry of the merchandise need have occurred. The importation, therefore, can be a potential importation, of which offers in good faith are a clear indication. Congress was clearly aware in framing the act that offers can have the same injurious effects as transaction prices. As the Tariff Commission pointed out in its 1919 study of dumping:

> Moreover, even the quotation of dumping prices, though no sales in fact be made, may occasionally result in compelling merchants with established trade to cut their prices in order to hold their business against threats of dumping competition. 1/

It is not especially significant that imports of Mexican sulfur have declined both absolutely and as a percentage of domestic consumption. In any case, however, in 1971 sulfur imports from Mexico captured about 6 percent of the total U.S. market, clearly a large enough penetration to have had marked impact on the operation of the domestic industry. The capacity of the Mexican sulfur industry is such that it can supply both its home market and a much larger part of the

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1/ U.S. Tariff Commission, Information Concerning Dumping and Unfair Foreign Competition in the United States and Canada's Antidumping Law, p. 20.

U.S. market. Its offers at less than fair value prices cannot but elicit a response from domestic Frasch-sulfur producers, and it is only this response at lower prices which prevents the Mexican product from obtaining a larger share of the market.

All imports at less than fair value causing injury

A domestic sulfur producer who also imports sulfur from a related Mexican firm contended that the Commission, if it made an affirmative determination, should "carve out" any less than fair value imports from that firm which may not be causing injury. In the oversupplied markets that exist in the instant case, injurious price depression also occurred as a result of the additional supply contributed by the less than fair value imports. It was found in the 1969 "potash case" that the Antidumping Act continues to protect the U.S. portion of multinational companies from unfair competitive practices, including those undertaken by foreign branches of the same company. 1/ It is clear from information presented to the Commission that less than fair value sales of Mexican sulfur have displaced sales by the domestic portion of the related company, even if they have not displaced actual or potential sales on the part of other domestic producers. Had these less than fair value imports not occurred, the domestic facilities would have operated at a higher level of capacity. Hence, we conclude that all less than fair value imports have been injurious to the domestic sulfur industry.

1/ Potassium Chloride (Muriate of Potash) from Canada, France, and West Germany, U.S. Tariff Commission, Inv. Nos. AA1921-58, 59, and 60 (1969).

Conclusion

The sales and offers of sulfur from Mexico at less than fair value are significant factors contributing to price depression and market instability in the United States. The fact that the domestic industry is facing difficulties arising from other sources does not obscure the significant link between the specific injury manifestations existing and the less than fair value imports. Accordingly, we determine that, within the meaning of the act, an industry in the United States is being injured by reason of the importation of sulfur from Mexico that is being, or is likely to be, sold at less than fair value.