

UNITED STATES TARIFF COMMISSION

CANNED BARTLETT PEARS FROM AUSTRALIA

Determination of Likelihood of Injury in
Investigation No. AA1921-110
Under the Antidumping Act, 1921,
as Amended



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UNITED STATES TARIFF COMMISSION

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[AA1921-110]

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Determination of Likelihood of Injury

March 1, 1973

On November 30, 1972, the Tariff Commission received advice from the Treasury Department that canned Bartlett pears from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). In accordance with the requirement of Section 201 (a) of that Act, the Tariff Commission instituted investigation No. AA1921-110 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 January 9, 1973. 1/

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 Commission's investigation and hearing was published in the Federal Register of December 12, 1972 (37 F.R. 26475).

On the basis of its investigation, the Commission 1/ has determined, by a vote of 2 to 2, 2/ that an industry in the United States is likely to be injured by reason of the importation of canned Bartlett pears from Australia that are being, or are likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act of 1921, as amended.

1/ Vice Chairman Parker and Commissioner Young did not participate in the decision.

2/ Chairman Bedell and Commissioner Moore determined in the affirmative; Commissioners Leonard and Ablondi determined in the negative. Pursuant to section 201(a) of the Antidumping Act of 1921, as amended, the Commission is deemed to have made an affirmative decision when the Commissioners voting are equally divided.

Statement of Reasons for Affirmative Determination of
Chairman Bedell and Commissioner Moore

Under the Antidumping Act of 1921, an affirmative determination by the Tariff Commission requires satisfaction of two conditions: (1) that an industry in the United States is being injured, or is likely to be injured, or is prevented from being established; 1/ and (2) that such injury or likelihood of injury must be "by reason of" the importation into the United States of the class or kind of foreign merchandise the Secretary of Treasury has advised is being, or is likely to be, sold at less than fair value (LTFV).

Our determination is in the affirmative since, in our judgment, both of the required conditions are satisfied, i.e., an industry in the United States is likely to be injured, and such likelihood of injury is by reason of imports of Australian canned Bartlett pears sold at LTFV. The reasons for our determination are set forth below.

In this case, in our view, the domestic industry consists of those enterprises, proprietary and grower-owned cooperatives, engaged in the production of canned Bartlett pears.

Most of the LTFV canned pear imports are being sold in a marketing region encompassing the States in the Northeast and Mid-Atlantic Regions, i.e., Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey,

1/ Prevention from being established is not an issue in this case.

Delaware, and Maryland. In recent years, this region has accounted for about one-fourth of the total U.S. apparent consumption of domestic canned Bartlett pears, and an estimated three-fifths of U.S. consumption of canned Bartlett pears from Australia sold at LTFV prices.

Penetration of the domestic regional market of the Northeast and Mid-Atlantic States by LTFV imports of canned pears from Australia apparently was less than 1 percent of consumption in the marketing year ending May 1970, but grew to the significant level of 8.9 percent in the year ending May 1971. In the marketing year ending May 1972, such regional penetration by the LTFV imports decreased to about 5 percent, a lesser but still significant level. This reduced penetration in the year ending May 1972, however, reflected reduced imports coincident with Treasury's antidumping investigation; reductions in imports have been a typical reaction in antidumping cases. Treasury's investigation in this case was instituted in January 1972 and its determination was that all imports of Australian canned pears in calendar year 1971 were sold at LTFV prices.

The apparent suppression of levels of domestic producers' prices in the marketing year ending in May 1971, and the depression of such prices in the year ending May 1972 cannot be attributed solely to the LTFV imports of canned Bartlett pears from Australia. The fact remains, however, that it has been demonstrated that there have been substantial inroads into the U.S. market by imports of Australian canned pears when sold at LTFV, and below the U.S. price level. The cause of the price depression is difficult to determine because of

the inability to separate or to measure the impact of the LTFV sales apart from the impact of imports of Italian canned pears. Italian canned pear imports not only undersold domestic canned pears but also undersold LTFV imports of canned pears from Australia. Such underselling of Italian canned pears contributed substantially to the disruptive situation in the U.S. market.

The evidence in this investigation leads us to the conclusion that a U.S. industry is likely to be injured by reason of the importation of canned Bartlett pears from Australia at LTFV prices. Capacity of the Australian industry will increasingly exceed the levels of consumption of the Australian home market and its foreign markets outside the United States. Consumption in the Australian home market has been absorbing about one-fourth of the total canned pear production in recent years, and is not likely to expand substantially. The pressure to find export markets for the bulk of annual production of canned pears will therefore continue.

Australian Government efforts, such as the so-called "tree-pull" program, to restrict the supply of pears and thereby to reduce the supply of canned pears are judged unlikely to succeed. With respect to the "tree-pull" program, there is no definite assurance that the program will be continued. Furthermore, there is no known legal requirement, nor is there any agreement among the growers to comply with the "tree-pull" program. The industry's expectations of new and expanded markets probably will largely offset or nullify such Government efforts.

The pressures on the Australian industry to find new export markets and to expand existing markets for canned pears is expected to grow considerably during coming years. This expectation is based on the projected loss to Australia of its main export market--the United Kingdom, as a consequence of its membership in the European Economic Community (EEC). As a member of the EEC, the United Kingdom will impose a duty on various Australian goods, including canned pears. As now provided, with respect to non-EEC countries, the United Kingdom is scheduled to impose a duty of about 9.6 percent ad valorem on canned pears, effective January 1, 1974, and to increase that rate in several stages to the final level of 24 percent ad valorem, effective July 1, 1977, or January 1, 1978. The probabilities that Australia will obtain significant tariff concessions are minimal, as such concessions would be disadvantageous to other EEC members, especially Italy. Beginning in 1973, the United Kingdom will reduce its tariff on imports of canned Bartlett pears from other EEC members so that by 1977 such imports will be entered duty-free. These tariff reductions, together with Australia's burden of high export transportation costs, will gradually, but effectively, shut off any substantial exports of canned Bartlett pears from Australia to the United Kingdom in the coming years.

The Australian industry has argued that their market for canned Bartlett pears in Japan will expand considerably. This is speculation as there is no conclusive evidence of expanded demand for exports to that market in the foreseeable future.

Faced with the loss of its largest export market--the United Kingdom--and lacking other significant export outlets for its canned Bartlett pears, the Australian industry can be expected to earmark an increasing share of its output for the U.S. market, with the bulk of such exports destined for the populous regional market of the Northeast and Mid-Atlantic States. Indeed, we tend to view the recent rise of imports from Australia as the precursor of an effort to establish and to develop the U.S. market as a replacement for the United Kingdom market.

In this situation, as we see it, continued penetration of the Northeast and Mid-Atlantic regional market with LTFV imports from Australia is a prime likelihood. Continued penetration by LTFV imports from Australia would create abnormal pressures on the domestic industry, through losses of sales of canned Bartlett pears, suppression or depression of domestic producers' prices, and losses of revenue and profits stemming from both lost sales and reduced prices.

Sensitivity of the U.S. canned pear industry to the abnormal pressures from LTFV sales has been indicated in recent years. This sensitivity is based on certain conditions. Bartlett pears, in contrast with Winter pears (such as Anjou and Bosc), are highly perishable and have a limited storage span. Decisions concerning the disposal of pears, as fresh or canned fruit, must be made early in the season. If after marketing decisions are made, involving rather close limits, the producers are faced with large imports selling at LTFV prices,

their marketing plans are seriously disrupted. Subjected to such pressures continually, the domestic industry is likely to be injured.

Our conclusion is, therefore, that an industry in the United States is likely to be injured by reason of the importation of canned Bartlett pears from Australia which are being, or are likely to be, sold at less than fair value.

Statement of Reasons for Negative Determination
of Commissioner Leonard

The finding of a majority ^{1/} of the Commission in this investigation is that an industry in the United States is likely to be injured by reason of the importation of canned Bartlett pears sold, or likely to be sold, at less than fair value. The majority of the Commission did not find that an industry is being injured by reason of the less-than-fair-value (LTFV) canned Bartlett pears from Australia. I agree with the majority that there is no present injury due to the LTFV imports of Australian canned Bartlett pears. I cannot make the causal connection necessary between LTFV imports and any present injury to a domestic industry.

The penetration of the U.S. market by Australian canned pears has been relatively small and exhibited no particular upward trend. Downward fluctuations in the prices of domestic canned pears have not been correlated with increases in LTFV imports; indeed, the opposite is indicated--when prices of domestic pears were high (1970/71), the LTFV imports were at their peak, and when domestic prices were lower (1971/72), the LTFV imports were also lower. Any lost sales or decline in prices or reduction in profitability experienced by the domestic industry were caused by factors other than the sale of Australian canned pears at LTFV.

However, I cannot agree with the finding of the majority that there is a likelihood of injury due to the LTFV imports. Such a finding is predicated on two major assumptions. One of these is the

^{1/} Pursuant to section 201(a) of the Antidumping Act, 1921, as amended, the Commission is deemed to have made an affirmative determination when the Commissioners voting are equally divided.

projected lack of success of the Australian Government's recently initiated program to limit the supply of fresh pears. Some salient facts which discredit this assumption should be cited. During 1970-72, fresh pear production in Australia--although substantially larger than during the previous 3 years--varied little from year to year and averaged about 210,000 tons. Canned pear production, however, declined from 4.4 million equivalent cases ^{1/} in 1970 to an estimated 2.2 million cases in 1972. Such reduction in output of canned pears was achieved in the absence of the recently initiated program aimed at limiting the supply of fresh pears.

Both the Australian Government and the canners themselves are aware of the pear oversupply problem and both have addressed themselves to the solution of the problem. It appears unlikely that the Australian canners would seek that solution in the United States market.

The second assumption is that the joining of the European Community by the United Kingdom (currently the prime market for Australian canned pears ^{2/}) is forcing, and will force, the Australian producers to shift their exports from that market to the United States. It is claimed that Italy, a major European Community producer, will gain a substantially improved market position over Australia in the United Kingdom. This assumption appears also to be questionable. For one, the change in the dutiable status of the various imports (including canned pears) into the United Kingdom is scheduled to be implemented

^{1/} Cases equivalent to 24 size 2½ cans.

^{2/} Australian canned pears enter the United Kingdom duty free.

in four or five stages and is to reach its final stage in 1977 or 1978. Moreover, it is doubtful whether Italy could--even with a tariff advantage--supplant Australia as the major supplier of canned pears to the United Kingdom to a substantial degree. In recent years the United Kingdom has imported an average of 2.9 million cases of canned pears; nearly 50 percent (1.4 million cases) originated in Australia. The current production of canned pears in Italy is about 2.7 million cases annually; its major market, West Germany, takes half (1.3 million cases) and the Italian home market takes ~~from~~ 15 percent to 20 percent (0.4 to 0.5 million cases) of this production. Therefore, it does not seem likely that Italy would be able to supply much more than 0.5 million cases (20 percent of its output) to the U.K. market.

As a matter of fact, some degree of benefit may eventually (by 1977 or 1978) accrue to U.S. producers of canned pears from the elimination of the preferential treatment for Australian pears entering the United Kingdom. For the first time, as far as the applicable tariffs are concerned, U.S. canned pears would be able to compete with Australian canned pears on an equal footing in the U.K. market.

Thus, the bases for a finding of likelihood of injury to a domestic industry by reason of the importation of canned Bartlett pears from Australia sold, or likely to be sold, at less than fair value are unconvincing, and a negative determination in this investigation is required.

Statement for Negative Determination
of Commissioner Ablondi

I am of the opinion, that, under section 201(a) of the Antidumping Act, 1921, as amended, an industry in the United States is not being or is not likely to be injured, or is not prevented from being established, by reason of sales at less than fair value of Bartlett pears imported from Australia.

