UNITED STATES TARIFF COMMISSION

ELEMENTAL SULFUR FROM CANADA

Determination of Likelihood of Injury in
Investigation No. AA1921-127
Under the Antidumping Act, 1921,
as Amended

TC Publication 617
Washington, D.C.
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UNITED STATES TARIFF COMMISSION

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[AA1921-127]

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Determination of Likelihood of Injury

On July 20, 1973, the Tariff Commission received advice from the Treasury Department that elemental sulphur (also spelled sulfur) from Canada is being, or is likely to be, sold in the United States at less than fair value witnin 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. AA1921-127 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 September 25-27 and October 1, 1973. Notice of the investigation and hearing was published in the Federal Register of July 31, 1973 (38 F.R. 20381).

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 by a vote of 3 to 2 1/ that an industry in the United States is likely to be injured by reason of the importation of elemental sulfur from Canada 2/ that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

1/ Chairman Bedell, Vice Chairman Parker, and Commissioner Moore determined in the affirmative; Commissioners Young and Ablondi determined in the negative. Commissioner Leonard did not participate in the decision.

2/ The finding of Chairman Bedell, Vice Chairman Parker, and Commissioner Moore does not apply to imports of sulfur produced and sold by Texasgulf, Inc. and Canadian Occidental Petroleum, Ltd., which were excluded by the Treasury Department from its determination of sales at less than fair value (38 F.R. 19844).

Statement of Reasons for Affirmative Determination of
Chairman Bedell, Vice Chairman Parker,
and Commissioner Moore

In our opinion, an industry in the United States is likely to be injured by reason of the importation of elemental sulfur from Canada which is being, or is likely to be, 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) is produced by five companies at 12 sites in Texas and Louisiana. Sulfur is recovered from natural gas and crude petroleum by about 55 companies at 115 plants in 25 States.

The Commission's investigation has revealed that the LTFV sales of Canadian sulfur and the likelihood of future LTFV sales have contributed to the general depression of prices and to market disruption in the U.S. regional market where such merchandise has been concentrated. This depression and disruption has generated a pronounced threat to the economic well-being of the U.S. sulfur-producing industry.

The state of the domestic industry

In their decision in an investigation regarding elemental sulfur from Mexico in May 1972, all Commissioners agreed that "the market for sulfur is currently glutted and prospects are for still additional amounts to enter the market." and that "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." 1/ Commissioners Leonard and Young, who commented in detail on the economic conditions confronting the U.S. industry, concluded as follows:

> 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. 2/

Generally we find that these conditions still prevail.

Production of Canadian recovered sulfur increased to 6.8 million tons in 1972 from 4.7 million tons the year before. Such sulfur is recovered in molten form and is ready to be shipped, but Canadian producers are unable to find markets for most of it. Almost any "net back," 3/ even one as low as 75 cents per ton (roughly one-seventh of the current f.o.b. Alberta price), then, is preferable to adding current production to the vast stockpiles already dotting western Canada. These stockpiles alone contain enough sulfur to supply U.S. consumption for an entire year.

The oversupply of sulfur and the mechanics of the Canadian sulfur-recovery operations foreshadow two adverse consequences for U.S. sulfur producers. First, in the short run, the incentive exists for the

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1/ Elemental Sulfur From Mexico, Investigation No. AA1921-92, TC Publication 484, pp. 4 and 10.

2/ Ibid., p. 11.

3/ In sulfur trade terminology, "net back" refers to the actual return accruing to a producer, at the point of production after all distribution and transportation costs have been deducted from the delivered price.

Canadian producer to dispose of his recovered sulfur while it is still in the molten form to nearby U.S. markets, and to accept virtually any price which exceeds transportation costs; second, in the long run, the Canadian stockpiles retard price increases since the stockpiles become economically available as soon as U.S. market prices offset the additional melting costs.

The primary marketplace considered

Because sulfur is a high-weight and low-value commodity, available transportation and freight-rate differentials tend to divide the United States into several regional market areas. Each region has certain unique characteristics but, to some extent, price activity in one domestic market area has an impact on prices in other domestic market areas. The Commission investigated each of the important areas and found that the bulk of Canadian sulfur enters the North Central States (known in the trade as the up-river market), penetrating as far south as rail rates permit, i.e., to St. Louis, Mo., and Cincinnati, Ohio. Our determination herein is based on a detailed examination of conditions prevailing in the up-river market, where some 10 to 15 percent of U.S. sulfur consumption occurs.

The net back price for Canadian recovered sulfur has for some years been significantly less than the net back for U.S. Frasch sulfur producers. Not all Canadian sulfur was found to be sold at LTFV, but not every sale of imported sulfur was investigated. Eighty percent of the LTFV sales which occurred during the period of investigation, like imports of Canadian sulfur in general, were concentrated in the up river market.

Price depression and suppression

A comparison of net backs for U.S. Frasch sulfur sold in each of the major U.S. market areas indicates that net backs on sales in the up-river market have been lower than those in other market areas. In 1972, for example, net backs in the up-river market area were about $4 per ton less than in the western gulf market area. Since the largest shipments of U.S. recovered sulfur center in the western gulf area, we are of the opinion that it was not competition with U.S. recovered sulfur that depressed returns in the up-river market, but rather Canadian sulfur.

We believe, based on evidence available to the Commission, that during the last 4 years price leadership in the up-river market generally rested with one or more sellers of Canadian sulfur. For example, three of the sellers on which data were collected were later identified by the Department of the Treasury as having sold at LTFV during the period of fair value comparisons. Also, in 1971 the lowest price to an important buyer in the Detroit/Kalamazoo area, and in 1972 the lowest price to an important customer in Chicago, were quoted by a supplier with access to substantial quantities of Canadian recovered sulfur. In the first instance the price quoted was nearly $3 per ton less than that of U.S. Frasch sulfur sold to the same customer, and in the other, $1 per ton less than the price of U.S. recovered sulfur sold to the same customer. Furthermore, the Canadian sulfur, which was then imported and sold at less than fair value, permitted the seller to fulfill his contract. Without resort to the Canadian supply, the tonnage would have been furnished by a domestic sulfur producer.

Market penetration

Market penetration by the class or kind of merchandise determined by the Department of the Treasury to be sold at LTFV has traditionally been cited as evidence of injury in antidumping cases. In cases involving sulfur, however, the market penetration test is less significant since the "meet or release" clauses prevalent in sulfur purchase contracts may be triggered by competing offers, thereby depressing general price levels without excessive quantities of LTFV imports actually entering. But, in any case, since 1968 Canadian sulfur has supplied about 10 percent of total U.S. consumption. In the up-river market, it has accounted for about 50 percent of consumption. Assuming that the share of total sales made at LTFV disclosed by Treasury's sample is representative of recent sulfur imports from Canada, LTFV sales amount to almost 8 percent of sulfur consumed in the up-river area. Such market penetration, when viewed in the light of the special price sensitivity now characteristic of the sulfur market and the potential threat of the spread of LTFV sales, creates a posture of peril for U.S. producers. This threat has already been manifested in the closing of one of the largest barge terminals used to store and distribute sulfur to up-river customers.

Conclusion

The sale of LTFV sulfur from Canada is a significant factor contributing to price depression and market instability in the United States. The fact that the U.S. industry may be faced with difficulties apart from those associated with LTFV imports does not obscure the significant causal connection between the specific injury manifestations outlined above showing the likelihood of future injury, and the LTFV imports. Accordingly, we determine that, within the meaning of the Antidumping Act, 1921, as amended, an industry is likely to be injured by reason of the importation of sulfur from Canada that is being, or is likely to be, sold at less than fair value.

Statement of Reasons for Negative Determination of Commissioners Young and Ablondi

In our opinion no industry in the United States is being injured or is likely to be injured by reason of the importation of elemental sulfur from Canada which is being sold at less than fair value (LTFV) within the meaning of the Antidumping Act of 1921, as amended. Our negative opinion is based on the lack of the necessary causal connection between the continued depressed economic conditions existing in the U.S. sulfur industry and the inconsequential and isolated sales of Canadian sulfur at LTFV. Evidence developed in this investigation indicates that the world oversupply noted in Investigation No. AA1921-92, Elemental Sulfur From Mexico, continues.

Extent of LTFV sales

This case requires comparison with the Commission's 1972 investigation of elemental sulfur, previously cited. First, the tonnage found sold at LTFV was smaller (15 percent in this case contrasted with 98 percent in the Mexican case), both in absolute terms and as a percent of total imports of such merchandise from the country involved. On an average dollar-per-ton basis, the margins 1/ found in LTFV sales of Canadian sulfur were less than one-third of those found in the Mexican investigation. While Mexican sulfur was imported by ocean tankers and entered predominantly at Tampa, Fla., and a few east coast

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1/ The term "margin" connotes the difference between the Canadian market price (f.o.b. plant) and the price for which the imported product was sold (f.o.b. plant) to an arm's length buyer, or the equivalent, for export to the United States.

ports, Canadian sulfur is shipped to the United States by rail and over 70 percent is sold in a ten-State midwest area (referred to in the trade as the up-river market). Finally, in the Mexican case, the two exporters of sulfur to the United States could not have been unaware that the home market price, which in effect had been set by the Government, had been unchanged since 1955, while the price of sulfur exported to the United States varied extensively and trended down sharply during the period 1969-71. In the instant case the large number of sellers of Canadian sulfur were not guided by Government posted prices as were exporters in the Mexican case, and therefore, LTFV sales appear to have been largely unintentional, certainly not predatory.

If any injury to U.S. producers "by reason of" LTFV sales exists, it would logically be found in the up-river market. Similarly, if no injury "by reason of" LTFV sales exists in the up-river market, it is virtually certain that it would not be found in any other market or the national market as a whole. The Antidumping Act requires that causation between injury and sales at less than fair value must at least be identifiable. This causation is not present in this case.

Market penetration

During 1970-72, estimated sulfur consumption in the up-river market declined from 1,076 thousand tons in 1970 to 1,014 thousand tons in 1971, then rose to 1,202 thousand tons in 1972. During this period, Canadian sulfur's share of this market declined from about two-thirds in 1970 to one-half in 1972, whereas the share held by U.S. recovered sulfur rose from one-tenth in 1970 to one-fifth in 1972. Frasch sulfur maintained its one-quarter share of this market. Therefore, there was no overall displacement of domestic sulfur in the up-river market as the result of LTFV sales.

Price depression

The price depression which has occurred in the up-river market is caused by an oversupply, including a significant Canadian portion thereof, not by sales of Canadian sulfur at LTFV, which were limited and scattered. Only about 15 percent of the tonnage of Canadian sulfur sampled by Treasury was found to be sold at LTFV. Those margins which were found to exist averaged less than $2 per ton. In contrast, prices in the up-river market declined from about $50 in mid-1968 to about $28 in early 1970, then reached a low of $27 in January-June 1973. This decline is of the same magnitude as price declines in other regional markets (e.g., Tampa and the western gulf) where no Canadian sulfur was sold. Based on information obtained from the investigation, the LTFV sales of Canadian sulfur did not undersell domestic recovered sulfur in the up-river market during the period of Treasury's investigation, except in one peculiar instance. 1/ Since 1971, the evidence available to the Commission indicates that underselling "by reason of" LTFV sales has not occurred. Finally, it does not appear that the

1/ In one instance the price of Canadian sulfur quoted was nearly $1 per ton less than the price of U.S. recovered sulfur sold to the same customer. The Canadian sulfur, which was then imported and sold at less than fair value, enabled the seller to fulfill his contract.

small tonnage of LTFV imports in the already oversupplied up-river market has had a tendency to further depress prices.

Likelihood of injury

With regard to a likelihood of injury, as noted above only small quantities of LTFV sulfur were sold in the up-river market, and at least part of these sales were accidentally at LTFV. Moreover, there is an increasing tendency on the part of Canadian producers to quote sulfur prices "f.o.b. Alberta," both in the home market and the United States without discrimination. Selling on this basis to customers both in the home market and in the United States should eliminate sales at LTFV. Furthermore, sulfur is a high-weight low-value commodity and transportation cost accounts for a significant component of its delivered cost making it unlikely that Canadian sulfur will find additional markets in the United States.

Conclusion

All of the evidence secured in this investigation belies a finding that an industry is being or is likely to be injured by reason of the importation of sulfur from Canada at less than fair value.