

UNITED STATES TARIFF COMMISSION

REGENERATIVE BLOWER/PUMPS
FROM WEST GERMANY

Determination of No Injury or Likelihood Thereof or Prevention
of Establishment in Investigation No. AA1921-140
Under the Antidumping Act, 1921,
as Amended



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UNITED STATES TARIFF COMMISSION

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[AA1921-140]

May 22, 1974

REGENERATIVE BLOWER/PUMPS FROM
WEST GERMANY

Determination of No Injury or Likelihood Thereof or Prevention
of Establishment

The Treasury Department advised the Tariff Commission on February 22, 1974, that regenerative blower/pumps from West Germany are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act of 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 AA1921-140 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.

Notice of the institution of the investigation and of a public hearing to be held in connection therewith was published in the Federal Register of March 5, 1974 (39 F.R. 8393). The hearing was held on April 2, 1974.

In arriving at its determination, 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 1/ has determined that an industry in the United States is not being injured or is not likely to be injured, or is not prevented from being established, by reason of the importation of regenerative blower/pumps from West Germany that are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

1/ Vice Chairman Parker and Commissioners Leonard and Ablondi made negative determinations. Commissioner Moore determined that an industry in the United States is prevented from being established. Chairman Bedell and Commissioner Young did not participate in the decision.

Statement of Reasons for Negative Determination of Vice
Chairman Parker and Commissioners Leonard and Ablondi

In our opinion, an industry in the United States is not being injured or is not likely to be injured, or is not prevented from being established by reason of the importation of regenerative blower/pumps from West Germany that are being sold, or are likely to be sold at less than fair value (LTFV) within the meaning of the Antidumping Act.

The product

Regenerative blower/pumps of the type imported from West Germany at LTFV are sold principally to manufacturers of industrial machinery for installation in or for use with such diverse apparatus as plastics machinery, packaging machinery, textile machinery, printing machinery, pneumatic tube conveying systems, et al. In such machinery and equipment, these blower/pumps serve a variety of functions, i.e., the pressure/suction developed will hold, dry, carry, strip-clean, evacuate, transfer, filter, push, and ventilate.

Regenerative blower/pumps compete in the U.S. market to some extent with other air-moving machines such as centrifugal blowers and positive displacement blowers. However, regenerative blower/pumps offer certain advantages over other air-moving machines in the performance ranges of the LTFV imports. ^{1/} These advantages include lower costs, smaller size, and surgeless airflow.

^{1/} Maximum pressures of 0.75 to 4.0 pounds per square inch and air flow of 50 to 200 cubic feet per minute.

The industry

Three definitions of an industry have been raised in connection with this investigation. They are:

- (1) The industry consists of the facilities of all U.S. producers of air-moving machines.
- (2) The industry consists of the facilities of two U.S. firms (Rotron, Inc., Woodstock, N.Y., and Vacu-maid, Ponca City, Okla.) which manufacture regenerative blower/pumps for limited applications in electronic computers and vacuum cleaning systems.
- (3) The industry consists of the facilities of U.S. producers used in the production of regenerative blower/pumps of the types imported from West Germany and Japan. Since there is no U.S. production of these articles nor any completed facilities for producing them at this time there is no such industry.

We do not find it necessary to choose one of these three options as our definition of the industry because our determination in this proceeding would be negative for the reasons set forth below irrespective of which definition was selected.

No injury or likelihood of injury

It is evident from our investigation that there is no injury to U.S. producers of air-moving machines.

The market penetration of LTFV imports, that is the LTFV imports' share of domestic consumption, is an indication of possible injury when

it can be shown that absent such penetration domestic producers would have made the sales. In this investigation, however, such sales would not have been made by U.S. producers of air-moving machinery. Since domestic producers of specialized regenerative blower/pumps (i.e., Rotron's Spiral and Vacu-maid's regenerative blower/pumps) do not compete in the same markets with the LTFV imports, there could be no lost sales to these producers. Furthermore, three producers of other air-moving machines 1/ reported to the Commission that they had not lost sales to LTFV imports. The fourth producer indicated that although it had lost sales to industrialized regenerative blower/pumps, it could not identify whether such losses had been to LTFV imports or to imports by Rotron, Inc. from Japan. Furthermore, industrialized regenerative blower/pumps offer a number of technical and other advantages over other air-moving machines.

In addition, there is no evidence of price depression or suppression in the instant case. Prices of domestically produced air-moving machines and regenerative blower/pumps imported from Japan have increased rapidly since 1970, as have the prices of the LTFV imports from West Germany. Thus, there is no price depression; and likewise the investigation revealed no evidence of price suppression.

Many of the same conditions that lead to the conclusion that no U.S. industry is being injured by LTFV sales suggest that there is no

1/ The Commission surveyed 36 U.S. producers of other air-moving machines that were alleged by Rotron, Inc. and/or Siemens Corp. to be producers of air moving machines having the comparable performance characteristics of the imported regenerative blower/pumps sold at LTFV. All surveyed producers returned questionnaires, but only four such producers indicated that they produce air-moving machines with comparable performance characteristics to these LTFV imports. 5

likelihood of injury to a domestic industry. In addition, escalating production costs and a high rate of inflation in West Germany which will continue to cause the prices of the imported regenerative blower/pumps to rise to higher levels making domestically produced articles increasingly more competitive and changes in the LTFV importer's prices which have either eliminated or significantly reduced the margin of selling at less than fair value support the finding of no likelihood of injury.

No prevention of establishment

An issue in this case was the contention that LTFV sales have prevented the establishment of an industry. In accordance with the statute, therefore, we have considered the question whether an industry in the United States is prevented from being established by reason of the importation of regenerative blower/pumps from West Germany sold or likely to be sold at LTFV. In our view, the facts obtained by the Commission clearly show that an industry, however defined, is not prevented from being established.

We conclude that neither of the first two above-defined industries can be prevented from being established because there are already established U.S. producers of regenerative blower/pumps and other air-moving machines. With respect to the third definition, Rotron is the exclusive importer of industrial-type regenerative blower/pumps produced in Japan. The Japanese producer is a licensee of the West German producer of the LTFV imports. Testimony by Rotron indicated that in 1973, it planned the development and production of one particular model out of eight models which it now imports from Japan. Commitments toward production of this model were made during

the period in which LTFV imports were entered. Plans for such production, beginning in August 1974, have not been altered as a result of the LTFV imports.

Furthermore, the United States market for the subject industrial-type regenerative blower/pumps has rapidly expanded. Moreover, the evidence reveals that Rotron, as a result of rising importation costs, will be in a better competitive position as a producer than as an importer.

Conclusion

Accordingly, for the reasons indicated, we conclude that an industry in the United States is not being injured or is not likely to be injured, or is not prevented from being established, by reason of the importation of regenerative blower/pumps from West Germany that are being, or are likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

Statement of Reasons for Affirmative Determination
by Commissioner Moore

In my opinion, an industry in the United States is prevented from being established by reason of the imports of regenerative blower/pumps from West Germany which the Secretary of the Treasury has determined are being, or are likely to be, sold at less than fair value (LTFV).

The industry which I believe is prevented from being established consists of those facilities in the United States which are to be devoted to the production of industrial regenerative blower/pumps having a pressure and volume capacity of from approximately 0.75 to 4.0 p.s.i. and from approximately 50 to 200 c.f.m. This definition of an industry is consistent with the precedents established by the U.S. Tariff Commission in defining "an industry in the United States" in terms of the "class or kind of foreign merchandise" which "is being, or is likely to be sold in the United States or elsewhere at less than its fair value." In this case, all LTFV imports of regenerative blower/pumps from West Germany are industrial regenerative blower/pumps.

Products involved

Industrial regenerative blower/pumps are a recent development in United States air-moving technology. By means of a unique vaned impeller, these machines are able to provide low pressure and low-to-medium volume of air flows which can be channeled for industrial use. These innovative industrial regenerative blower/pumps are more efficient than conventional centrifugal-type blowers, and they are generally less expensive, smaller in size, quieter, and easier to maintain. They are expected

to replace conventional air moving equipment in old applications, and to be used in new ones (such as air pollution abatement systems) not yet fully developed.

The domestic industry

The industry prevented from being established is the U.S. industrial regenerative blower/pump industry, which is in an embryonic stage. ^{1/} As such, this embryo industry must be assessed in terms of its future prospects. Rotron Incorporated (the complainant), is currently in the process of establishing domestic facilities to produce certain of the types of industrial regenerative blower/pumps which it now imports from Japan, and which are almost identical to those imported from West Germany and sold at less than fair value.

In late 1972, prior to the massive entry of LTFV imports from West Germany, Rotron began planning to manufacture certain of the types of industrial regenerative blower/pumps in the United States which it imported from Japan. Rotron made a substantial commitment in engineering studies, new plant construction, and in machinery and tooling. It already possessed a knowledge of the technology involved, and its sale of the Japanese imports had provided it with an understanding of the domestic marketplace, a national distribution organization, and established customers. Hence, it has a potential and a capability of becoming established in the absence of LTFV sales. These factors, coupled with a growing demand for industrial

^{1/} Other regenerative blower/pumps produced in the United States are not competitive with industrial regenerative blower/pumps.

regenerative blower/pumps, provide a reasonable basis upon which an industry adapted to production under normal competitive conditions would be successful.

What constitutes "prevention"?

The dictionary definition and common usage given to the word "prevent" suggests impossibility, but other equally acceptable definitions include to hinder, delay, or impair. 1/ The dictionary definition of "establish" suggests a fixing, stability, or permanence. 2/ The common usage of the words and their use in the context of the statute in dealing with economic evaluations, however, does not require rigid interpretations. In my opinion, if an industry has made a commitment, and if it has the capability of becoming established, the requirement of the Antidumping Act is satisfied if LTFV sales frustrate or forestall the development of a stable and viable U.S. industry. In other words, an acceptable standard for preventing an industry from being established should be no more restrictive or severe than that used in determining injury or the likelihood of injury under the provisions of the Antidumping Act, 1921.

U.S. industry prevented from being established

It is clear that the LTFV sales have forestalled and frustrated the establishment of an industry in the United States.

1/ Webster's New International Dictionary (2d, edition) "Prevent"--
 2. to forestall; to frustrate; to deprive of hope or power of acting, operating, proceeding, etc.; . . . 3. to keep from happening, existing, succeeding, etc., esp. by precautionary measures; to hinder the progress, appearance, or fulfillment of; to render impossible by advance provisions

2/ Ibid; "Establish"--1. to make stable or firm; to fix immovably or advantageously in a fixed condition

The sales of imported industrial regenerative blower/pumps from West Germany were considerably larger in 1973--the year the Treasury Department made its fair value comparisons and found sales at LTFV--than they were in 1972. As a result, the LTFV imports significantly increased their share of the U.S. market. Such increased penetration, by pre-empting a major market share, provided the LTFV imports with a considerable advantage and greater opportunities for repeat sales in the future. This unfair competition has worked to the disadvantage of the U.S. industry seeking to become established. In 1972 Rotron realized that at some future point certain of its competitive models could be produced more economically and efficiently in the United States. However, the flood of LTFV imports from West Germany in 1973, in effect, were establishing a ceiling price above which Rotron could not expect to market its anticipated domestic industrial regenerative blower/pumps.

In planning to establish domestic production of industrial regenerative blower/pumps directly competitive with those imported from West Germany, Rotron considered estimated costs of production and its expectation of a reasonable margin of profit. It is clear that Rotron's steps to develop a domestic industry would be blocked by a competitor's price which would not at least permit a recovery of production costs and a reasonable return on investment. If the West German pumps were fairly priced, Rotron could profitably produce domestically. Put another way, the embryonic U.S. industry simply could not afford to undertake the serious risks involved in the manufacture of a new product in the face of suppressed price levels caused by sales at less than fair value.

Legislative history

This appears to be the first time a U.S. Tariff Commissioner has made a determination that "an industry in the United States . . . is prevented from being established" within the meaning of the Antidumping Act, 1921. There is no indication that this "prevention" clause was used even before 1954 when the Treasury Department had exclusive jurisdiction over antidumping actions. Lack of precedents, however, should not, in my opinion, result in the U.S. Tariff Commission ignoring this provision of the statute; particularly here, where the facts so convincingly demonstrate the reason for the language being included in the statute.

An examination of the legislative history of the Antidumping Act does not provide any precise guidance as to how Congress intended the term "prevented from being established" to be applied. The House version of the bill which ultimately became the Antidumping Act, 1921, made no reference to injury, to likelihood of injury, or to the prevention of establishment of a U.S. industry. 1/ These requirements were subsequently incorporated into the House-passed bill by the Senate Finance Committee to facilitate administration of the Act, but the Senate Committee Report, while referring to injury and the likelihood of injury, provides no explanation or interpretation of the "prevention" language. 2/

1/ H.R. 2435, 67th Cong., 1st Sess. (1921). The bill was said to be in accord with the Canadian Antidumping Law which did not require a showing of injury, likelihood, or prevention.

2/ Report No. 16, Senate Finance Committee, 67th Cong., 1st Sess. (1921).

Therefore, as I pointed out earlier, it is the clear meaning of the language of the statute which must be applied.

The Antidumping Act of 1921 was incorporated as Title II of the Emergency Tariff Act of 1921. ^{1/} Although the Congressional Committee Reports did not treat with the language: . . . an industry in the United States . . . is prevented from being established . . ." a Senate floor debate occurred on the legislation. In one colloquy, Senator Simmons, a member of the Senate Finance Committee, explained:

Mr. Hitchcock. Mr. President, under this bill it is not even necessary that there should be in existence an American industry competing with the foreign product.

Mr. Simmons. Under the House provision, the Senator means?

Mr. Hitchcock. No; even under the provision as reported by the Senate Committee.

Mr. Simmons. Oh, no; it is not necessary that the industry should be in existence. If importations are being brought in for the purpose of preventing the establishment of an industry, or of an industry that is likely to be established, the provision applies. (Emphasis added) ^{2/}

^{1/} The House Report was emphatic about the purposes of the Act, stating: ". . . . It protects our industries and labor against a new common species of commercial warfare of dumping goods on our markets at less than cost or home value if necessary until our industries are destroyed, whereupon the dumping ceases and prices are raised at above former levels to recoup dumping losses. By this process while temporarily cheaper prices are had our industries are destroyed after which we more than repay in the extraction of higher prices." (Report No. 1, Committee on Ways and Means, 67th Cong., 1st Sess. (1921), p. 23-24).

^{2/} Bound volume: Cong. Rec., Vol. 61 (1921), p. 1101.

Conclusion

Evidence developed during this investigation shows how, by the simple device of selling at considerably less than fair value, the economic power of a large multi-national corporation can be used to delay, forestall, check and restrain the development of a competitive U.S. industry and thereby sequester to itself a large share of the U.S. market for its imported merchandise.

Therefore, based on the foregoing, I conclude that an industry in the United States is being prevented from being established by reason of the importation of regenerative blower/pumps from West Germany and sold at LTFV and I have made an affirmative determination.

