

UNITED STATES INTERNATIONAL TRADE COMMISSION

BUTADIENE ACRYLONITRILE RUBBER FROM JAPAN

Negative Determination of "No Reasonable Indication of
Injury" in Inquiry No. AA1921-Inq. -1
Under the Antidumping Act, 1921,
as Amended

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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[AA1921-Inq.-1]

April 23, 1975

BUTADIENE ACRYLONITRILE RUBBER FROM JAPAN

Commission Does Not Determine "No Reasonable Indication of Injury"

On March 24, 1975, the United States International Trade Commission received advice from the Department of the Treasury that, in accordance with section 201(b) of the Antidumping Act of 1921, as amended, an anti-dumping investigation was being initiated with respect to butadiene acrylonitrile rubber from Japan, and that, pursuant to section 201(c) of the Act, information developed during the summary investigation led to the conclusion that there is substantial doubt 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 butadiene acrylonitrile rubber from Japan into the United States. Accordingly, the Commission on March 28, 1975, instituted an inquiry, No. AA1921-Inq.-1, under section 201(c)(2) of the Act to determine whether there is no reasonable indication that 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 April 11, 1975. Public notice of the institution of the inquiry and hearing was duly given by posting copies of the notice at the Secretary's office in the Commission in Washington,

D.C., and at the Commission's office in New York City, and by publishing the original notice in the Federal Register of April 3, 1975 (40 F.R. 15012-15013).

The Treasury Department instituted its investigation after receiving a complaint on November 24, 1974, from Uniroyal, Inc., of Naugatuck, Conn. Treasury's notice of its antidumping proceeding was published in the Federal Register of March 27, 1975 (40 F.R. 13532).

On the basis of its inquiry with respect to imports of butadiene acrylonitrile rubber from Japan apparently sold at less than fair value, the Commission 1/ 2/ does not determine that there is no reasonable indication that 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.

1/ Chairman Bedell, Vice Chairman Parker and Commissioners Leonard and Moore constitute the majority in this determination. Commissioners Ablondi and Minchew dissent, determining there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established.

2/ Commissioner Moore determined that there is a reasonable indication that an industry in the United States is likely to be injured.

Statement of Reasons of Chairman Bedell, Vice Chairman
Parker and Commissioner Leonard 1/

Although the statute does not appear to require a statement of reasons for a negative determination, we believe it is appropriate to do so, particularly since this is the first proceeding under section 201(c)(2) of the Antidumping Act, 1921, as amended by section 321 of the Trade Act of 1974.

This inquiry is before the Commission at this time because the Secretary of the Treasury, acting pursuant to the provisions of aforesaid section 201(c)(2) of the Antidumping Act, as amended, advised the U.S. International Trade Commission on March 24, 1975, that on the basis of "summary investigation," he believes there is substantial doubt 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 butadiene acrylonitrile rubber from Japan into the United States.

Section 201(c)(2) of the Antidumping Act, under which the Commission's present inquiry is being made, provides as follows:

(2) If, in the course of making a determination under paragraph (1), the Secretary concludes, from the information available to him, that there is substantial doubt 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, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning possible sales at

1/ Commissioner Moore concurs in the result.

less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that 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, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated. [Emphasis supplied.]

The criteria established by the foregoing provision of law are expressed in the negative and in terms of a determination that, if made by the Commission, would result in the termination of the "investigation under subsection (b) then in progress" by the Secretary of the Treasury. It is also noted that, under these circumstances, an affirmative determination that there is "no reasonable indication" of injury under the act results in a termination of the proceedings before the Department of the Treasury, while a negative determination that there is not "no reasonable indication" of injury under the Act permits the Treasury proceeding to continue.

In approaching the Commission's responsibility under section 201(c)(2), we are cognizant of the statement contained in the Senate Committee Report 1/ which accompanied the legislation to the effect that the Committee desired to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade.

1/ Report No. 93-1298, 93rd Cong., 2d sess., p. 171, of the Committee on Finance of the United States Senate which accompanied H.R. 10710, the bill which became the Trade Act of 1974.

We do not believe, however, that by virtue of the amendment to the Antidumping Act there was any intent that the amendment be used to weaken--or to deny U.S. industry--the protection of the Antidumping Act, by aborting a full investigation in the absence of a clear and convincing showing that there is "no reasonable indication" that a full investigation might develop facts which could afford a basis for an affirmative injury determination under the Act.

The inquiry made by the Commission, which under the statute is required to be completed within a period of 30 days, has not established evidence which, in our judgment, would warrant a determination that there is "no reasonable indication" of injury or likelihood of injury from possible less-than-fair-value imports that would result in the termination of the less-than-fair-value investigation being conducted by the Department of the Treasury. While there is some evidence which might tend to give rise to doubts as to possible injury or likelihood of injury, such as a low level of market penetration and price increases by domestic sellers, such information is far from conclusive. The inquiry by the Commission discloses the existence of evidence which indicates a possibility of injury or possibility of likelihood of injury. The evidence, in our judgment, is certainly sufficient to negate a determination at this time that "there is no reasonable indication" of injury or likelihood of injury from possible less-than-fair-value imports.

The record before the Commission indicates that virtually all the U.S. imports of butadiene acrylonitrile rubber from Japan in 1974 were

possibly sold at less than fair value and that the apparent less-than-fair-value margins were significant. There is also some evidence obtained from both domestic producers and importers which tends to show that Japanese imports undersell the comparable domestic product in the U.S. marketplace. There is also some evidence to indicate that imported Japanese products are being sold below cost and that sales have been lost to Japanese imports. The evidence, while not conclusive, certainly indicates the possibility of injury or likelihood of injury and, in our judgment, is sufficient to preclude a determination that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of imports from Japan possibly sold at less than fair value.

We have, therefore, made a negative determination.

Statement of Reasons for Affirmative Determination
of Commissioners Ablondi and Minchew

On March 24, 1975, the Assistant Secretary of the Department of the Treasury advised that information developed during a summary anti-dumping investigation with respect to butadiene acrylonitrile rubber from Japan "had led to the conclusion that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of importation of this merchandise into the United States." It is now the responsibility of the U.S. International Trade Commission under section 201(c) of the Antidumping Act of 1921 as amended by section 321 of the Trade Act of 1974 to determine whether "there is no reasonable indication that 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."

The relevant statutory language in section 321 of the Trade Act of 1974, which amends section 201(c) of the Antidumping Act of 1921, reads in part--

(2) If, in the course of making a determination under paragraph (1), the Secretary concludes, from the information available to him, that there is substantial doubt 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, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning possible sales at less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that 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, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated.

On the basis of the data available from the Department of the Treasury, the Commission hearing record, and data obtained by our staff, we have concluded that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of butadiene acrylonitrile rubber from Japan which allegedly has been sold at LTFV.

Section 201(c)(2) of the Antidumping Act of 1921 is new legislation as a result of amendments made by section 321 of the Trade Act of 1974. The instant case represents our first effort in discharging our responsibilities as set out in this new section.

The legislative intent in the enactment of section 201(c)(2) is clearly stated at page 171 of Senate Report No. 93-1298 as follows:

The amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade.

If we are to give meaningful effect to the expressed intent of the Congress, we should eliminate investigations under section 201(a) when such investigations appear to be unnecessary because there is no reasonable indication that a domestic industry is being or is likely to be injured.

In our opinion, the continued investigation of this case is, at this time, unnecessary.

Under section 201(c)(2) we must assume, for the purpose of making our determination, the existence of LTFV sales. Accordingly, our jurisdiction in this case is limited to a determination of whether there is⁸

no reasonable indication of an injury or likelihood thereof to a domestic industry by reason of such sales. As stated on page 179 of the Senate report, supra

. . . the Act is primarily concerned with the situation in which the margin of dumping contributes to underselling the U.S. product in the domestic market resulting in injury or likelihood of injury to a domestic industry.

In the instant case, while there is evidence of underselling, the margin of such underselling is apparently on the decline and does not appear to have had sufficient impact to cause an injury or the likelihood thereof. Some of the price margins were attributed to the discount sales made to small customers unable to obtain similar discounts from domestic producers owing to the small quantity of their purchases.

Evidence also indicates that market advances made by the importer occurred during a period of short supply. In any event, the market penetration of LTFV sales is not significant and is insufficient to indicate injury or the likelihood thereof at this time.

The domestic nitrile rubber industry is a concentrated industry in which four major producers are responsible for more than 90 percent of domestic production and two producers for the remainder. During the period of LTFV sales, the investigation revealed that prices among the domestic producers have been consistently the same and have, in fact, been rising.

We do not foreclose the possibility that an injury to this industry or the likelihood of such injury by reason of the importation of this merchandise might develop at some future date. Suffice to say that § section 201(c)(2) does not require the Commission to make a determination of this possibility.

While our determination, if it represented the majority vote in this case, would have resulted in a termination of this investigation, it should be noted that there is no statutory prohibition nor any regulation or proposed regulation of Treasury that would prevent the domestic industry from filing a new petition at any time in the future should evidence of injury or its likelihood be developed.

