UNITED STATES TARIFF COMMISSION

[AA1921-32]

TC Publication 121 February 26, 1964

CHROMIC ACID FROM AUSTRALIA

Determination of Injury

On November 26, 1963, the Tariff Commission was advised by the Assistant Secretary of the Treasury that CHROMIC ACID FROM AUSTRALIA is being, or is likely to be, sold in the United States at less than fair value as that term is used in the Antidumping Act. Accordingly, the Commission on November 26, 1963, instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended, 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 was published in the Federal Register (28 F.R. 12845). No public hearing in connection with the investigation was ordered by the Commission, but interested parties were referred to section 208.4 of the Commission's Rules of Practice and Procedure (19 CFR 208.4) which provides that interested parties may, within 15 days after the date of publication of the Commission's notice of investigation in the Federal Register, request that a public hearing be held, stating reasons for the request. No request for a hearing was made.

In arriving at a determination in this case, due consideration was given by the Tariff Commission to all written submissions from interested parties and all factual information obtained by the Commission's staff.

On the basis of the investigation, the Commission (Commissioners Dorfman and Talbot dissenting) 1/ has determined that an industry in the United States is being injured by reason of the importation of chromic acid from Australia, sold at less than fair value, within the meaning of the Antidumping Act, 1921, as amended.

Majority Statement of Reasons

For approximately one year (August 1962 to mid-July 1963) chromic acid from Australia was imported into the United States at less than fair value. Virtually all the chromic acid was sold on the West Coast, a market which accounts for about ten percent of the total domestic consumption. During this period, imports amounted to 14 percent of the chromic acid consumed on the West Coast and came in at an accelerated rate.

Shortly after the imports began, prices of some of the domestically produced chromic acid fell on the West Coast as a result of the impact of the low-priced foreign material on a highly cost-sensitive market. When the importer learned of the investigation of this case by the Treasury Department, he quickly ceased importing and completed the sale of his imports to distributors. However, sales of the low-priced imported chromic acid from two distributors' inventories have continued to date and, consequently, the price of chromic acid is still depressed.

The importer of the chromic acid, which was purchased at less than fair value, undersells every known domestic producer of chromic acid by a

1/ The views of Commissioners Dorfman and Talbot follow the statement of reasons of the majority. Commissioner Culliton was absent when the determination was made.

significant margin when the price comparison is made on a "delivered price basis" to any distributor on the West Coast. Even with the lowered prices of the domestic product , forced by the distributors' need to endeavor to maintain their customers, the price of the imported chromic acid has always been, and continues to be, significantly lower than the prices of the domestic product.

As a result of such underselling by the importer, that firm has experienced a rapid growth in sales during the 12 months that such imports entered the United States. For the total period of importation, the imports sold represented 14 percent of all chromic acid consumed on the West Coast during the period of importation; for the last three months of that 12-month period sales by the importer were equivalent to about 30 percent of the average quarterly consumption of chromic acid on the West Coast. During the last full month they were equal to about 47 percent of the average monthly consumption of chromic acid on the West Coast.

As a result of such underselling, the importer has triggered a price war at all levels of trade on the West Coast which continues today.

There is evidence that, had the importer not ceased importing in mid-July 1963, subsequent imports would have entered the West Coast in quantities to supply approximately 29 percent of the West Coast market based on the current consumption level in that market area. Further, there is ample reason to think that imports would be resumed and would be sold under like circumstances if there were to be a "no injury" determination in this case.

Consumers report that the preponderant reason they rejected the domestic chromic acid in favor of the imported product was the lower

price. Any claim that the imported product contained impurities rendering it less desirable for plating purposes and that the product consequently could not command a price closer to the prices of the domestic product is contrary to the weight of evidence obtained from a large segment of the consumers of chromic acid on the West Coast.

This Commission stated in its most recent determination under the Antidumping Act that it was evident that the Congress considered sales at less than fair value to be condemned under that Act "when they have an anti-competitive effect". (See "no injury" determination relating to titanium dioxide from France - 28 F.R. 10467.)

When chromic acid purchased from Australia at less than fair value is sold in the United States at a price significantly lower than all domestic manufacturers' wholesale prices of the like product in the United States, thereby greatly disrupting and depressing prices in a major United States market for such product, and where the evidence indicates that as a result of such underselling there is a rapid penetration of a major market area with a substantial capture of a major "share" of that market by the importer as of the time he ceased importing pending the outcome of this investigation, such sales of the imported product are anti-competitive. We think it clear that an industry in the United States is being materially injured by reason of the importation of the subject imports into the United States. It is also clear that the degree of injury in this case is likely to more than double if affirmative action is not taken under the Antidumping Act.

Views of Commissioners Dorfman and Talbot [1]

On the basis of all the information that has come to the attention of the Commission in the conduct of this investigation, we are of the opinion that the domestic chromic acid industry neither is being, nor is likely to be, injured by reason of the importation into the United States of chromic acid from Australia.

Most of the early U.S. consumers of Australian chromic acid no doubt purchased it because it was available at a lower price than the domestic product. By late 1963, however, the price differential had all but disappeared. Some consumers discontinued purchase of the Australian product because they were disappointed with its quality, and others did so because they felt that the price differential was too small to warrant doing so.

The aggregate volume of Australian chromic acid that was sold at "less than fair value" (LTFV) [2] was too inconsequential to have

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1/ It is not possible to document our position in full detail without disclosing operations of individual concerns, which disclosure is forbidden by law.

2/ Despite a widespread popular belief to the contrary, "Treasury's finding of sales below fair value," as the Tariff Commission has repeatedly observed, "does not establish even a presumption that any domestic industry is being, or is likely to be, injured." (U.S.T.C. Publication 109, Titanium Dioxide from France, Sept. 24, 1963.) Further, sales at LTFV are never on that account "illegal"; they merely expose the importer to payment of special dumping duties if--and only if--the Tariff Commission finds that the sales cause, or are likely to cause, injury to a domestic industry or that the sales prevent an industry from being established.

caused more than de minimis injury to the domestic industry. 1/ The imports from Australia, all of which entered in the 12-month period from August 1962 through July 1963, were equal to slightly more than 1 percent of the quantity sold in that period by the four producers comprising the domestic industry. The imports were sold principally in the Pacific Coast States (predominantly California), a sector of the country in which domestic producers market less than 10 percent of their aggregate sales. During the short interval when imports of chromic acid from Australia entered the United States, they were equal to about 14 percent of the domestic industry's sales in the Pacific Coast States.

If the imports from Australia had caused material injury to the domestic industry, the effect would have been manifest in deterioration of either the volume or the prices of domestic sales or both. During the period of entry of Australian chromic acid, however, aggregate U.S. output increased by about four times the total volume of the imports from Australia, which amounted to only 240 tons. Domestic production in 1963 reached a record level--more than 19,000 tons, or about 20 percent higher than in 1960 (16,000 tons). Sales of domestic chromic acid have risen so rapidly in recent years that some

1/ The Commission interprets the term "injury," as employed in the Antidumping Act, to mean "material injury," in accordance with the practice followed by the Treasury when it also had the responsibility (prior to Oct. 1, 1954) for making determinations of injury under the Antidumping Act. The antidumping provision in the General Agreement on Tariffs and Trade, art. VI, par. 1--which was designed to be in accord with U.S. practice under the Antidumping Act--employs the term "material injury" in the same context.

producers have found difficulty in filling orders from their own output; one producer is currently constructing a new plant for manufacturing chromic acid.

Prices charged by domestic producers for the preponderant share of their sales have not changed at all in recent years. Shortly after the initial trickle of imports from Australia (32 tons in 1962), domestic producers instituted a succession of irregular price reductions for sales in Pacific Coast States. In the course of the Commission's investigation, however, we were unable to find any basis for ascribing those price reductions, at least in any appreciable part, to the imports from Australia. Such imports in 1962 were insignificant, and in 1963 they were small. The price reductions for the domestic chromic acid sold in the Pacific Coast States appear to have stemmed from the attempt--successful as it turned out--by one producer to obtain a larger share of the expanding sales in the Pacific coast area. Competitors that were less enterprising lost sales volume in that area, but the industry's aggregate sales there rose despite the inroads of the imported product.

If imports of Australian chromic acid had actually operated as a significant price depressant on the Pacific coast, one would expect that the pressure on prices would have subsided with the cessation of such imports. Notwithstanding that the imports ceased in July 1963, domestic producers further lowered their prices only on the Pacific coast, as they continued to vie for an increased share of sales in that area.

The Commission has on occasion in antidumping cases (viz, portland cement and cast iron soil pipe) identified a domestic industry as being coextensive with the producers who market their products in the "competitive market area" in which the LTFV imports are sold. The Commission has employed that practice, however, only in circumstances where the domestic suppliers (a) were located either in or near such an area, (b) relied wholly or in substantial measure on sales in the area, and (c) could not economically ship goods over long distances. None of these circumstances exist in the instant case.

All of the domestic producers are located in the Eastern United States (Ohio, New Jersey, and Maryland). No one of them enjoys any significant competitive advantage over the others with respect to transportation charges on shipments to the Pacific coast area. All domestic producers that market chromic acid in that area also distribute it nationally. Most of their sales, however, are made in industrial centers--largely in the Central and Eastern States. Thus, in the circumstances of this case, there is no warrant for identifying the Pacific Coast "competitive marketing area" as an "industry" for the purposes of the antidumping statute. A single domestic industry produces chromic acid and that industry is national in scope.

From the foregoing it is clear that imports of Australian chromic acid have not caused material injury to the domestic industry producing

chromic acid. Even if there were a basis for attributing to such imports loss of sales in some geographic sector of the domestic industry's market, that in itself would not constitute a basis for providing remedial measures under the Antidumping Act. That statute prescribes such measures only when imports that are sold at LTFV cause material injury to a domestic industry or make such injury likely.

We now set forth the reasons why we are of the opinion that imports of Australian chromic acid are not likely to cause material injury to the domestic industry.

Australia's export potential for chromic acid is limited by the output of a single plant whose total capacity is equal to only a small part of the U.S. industry's capacity. Indeed, the increase in U.S. output in the period 1960-63 was much larger than the total present capacity of the Australian plant. The Australian plant, moreover, has a substantial and rising domestic market to supply, as well as foreign markets other than the United States.

The price spread between the Australian and domestic chromic acid sold in the United States has generally been small, and for some sales made in 1963 the prices of the two were the same. The Australian chromic acid that has been sold in the United States has been less acceptable (because of quality and appearance) to U.S. users than has the domestic product. The small price differential

that has existed during recent months would not appear to have over-compensated for this factor. As evidence thereof, it may be noted that at least one-sixth of the total imports of Australian chromic acid that entered the United States in 1962-63 had not yet been sold to consumers by the first of this year--some 5 months after imports from Australia had ceased.

Even if the aforementioned price differential were permitted to continue, there is no warrant for assuming that imports of Australian chromic acid would rise to a level likely to cause material injury to the domestic industry.

The domestic industry's demonstrated ability to compete successfully in world markets indicates that it is not readily vulnerable to import competition in the U.S. market. The United States has for long been on a substantial export basis in chromic acid, and there have been no imports in recent years except those from Australia. Moreover, U.S. exports were far in excess of the imports from Australia during the period of their entry.

We conclude by observing that the practical effect of the majority's decision is to exclude imports into the United States of chromic acid from Australia for the foreseeable future. If chromic acid were offered in Australia for export to the United States at the home market price that prevails in Australia, there would be no buyers

for such export, because on that basis the cost of the Australian product delivered to users in the United States would far exceed the price at which the domestic product is offered.

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This determination and statement of reasons are published pursuant to 201(c) of the Antidumping Act, 1921, as amended.

By the Commission:

Donn N. Bent
Secretary