UNITED STATES TARIFF COMMISSION

STEEL JACKS FROM CANADA

Determination of Likelihood of Injury
in Investigation No. AA1921-49
Under the Antidumping Act,
1921, As Amended

TC Publication 186
Washington, D.C.
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UNITED STATES TARIFF COMMISSION

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Washington

[AA1921-49]

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On May 19, 1966, the Tariff Commission received advice from the Treasury Department that steel jacks from Canada, manufactured by J. C. Hallman Manufacturing Co., Ltd., Kitchner (formerly Waterloo) Ontario, Canada 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. Accordingly, on May 19, 1966, the Commission instituted Investigation No. AA1921-49 under section 201(a) of that Act 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.

Notices of the institution of the investigation and of a public hearing to be held in connection therewith were published in the Federal Register (31 F.R. 7534 and 31 F.R. 8185). The hearing was held on July 6, 1966.

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

On the basis of the investigation, the Commission (Commissioners Fenn and Thunberg dissenting) 1/ has determined that an industry in the United States is likely to be injured by reason of the importation of steel jacks from J.C. Hallman Manufacturing Co., Ltd., Kitchner, Ontario, Canada, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Statement of Reasons

The imported steel jack that is made in Canada by J.C. Hallman Manufacturing Co., Ltd., Kitchner, Ontario, and sold in the United States at less than fair value, is virtually identical to the Hi-Lift jack and is quite similar to the Handyman jack, which jacks are produced in the United States by the Harrah Manufacturing Co. 2/ These jacks are designed for use not only as jacks, but as fence stretchers, and devices for performing a variety of lifting, pushing and pulling functions and may be described as unique multi-purpose tools. The Harrah Manufacturing Co. is the only domestic producer and is, therefore, considered the U.S. industry for the purpose of this case.

The ratio of the "less than fair value" (LTFV) imports to combined sales in the United States of the Hallman and Harrah jacks was

1/ The views of Commissioners Fenn and Thunberg follow the statement of reasons.

2/ The imported jacks and those produced by the complainant producer are made in several like sizes and are priced according to height and whether they are fitted with wheels. Virtually all the imported jacks were purchased at price levels which were the same percentage points lower than fair value. Therefore, for purposes of this statement of reasons no distinction between sizes or types of jacks and the several differences between purchase price and fair value are worthy of further comment.

large in 1962 and it increased annually during 1963-65 and again during the first six months of 1966. This increase occurred notwithstanding the suspension of appraisement in May 1965, and Treasury's subsequent determination of sales below fair value. The increase in LTFV shipments was attended by the Canadian manufacturer's move to a larger plant in 1965.

The gain in sales of the imported jack in the United States is attributable directly to its sale at a lower price than its domestic counterpart. The difference in price between the imported and domestic jacks was made possible by the margin of the difference between the "fair value" and the importer's purchase price, which was substantial.

On July 13, 1966, the Hallman Co. increased the price on jacks for export to the United States and on August 1, 1966, Hallman increased the home market price. These price adjustments reduced but did not remove the margin of difference between fair value and the lower price to the importer.

The LTFV sales were the major factor in causing a steady decline in the average return to the producer on sales of the domestically produced Hi-Lift jack during 1963-65 and the first six months of 1966. However, the demand for the jacks involved in this investigation has been increasing in recent years, and the domestic producer has been able to maintain his total net profits through increased sales, hence he is not now being materially injured within the meaning of the Antidumping Act.

Having found that the domestic industry concerned is not being materially injured by reason of the importation of the tools in question, it is necessary to determine whether the industry is likely to be injured by reason of their importation.

A determination that there is likelihood of material injury to an industry must not be based on pure conjecture nor be related to material injury that might occur at some remote future time. On the other hand, the "likelihood" clause must not be rendered ineffectual; to do so would be to negate the fact that the Antidumping Act is designed to be preventive as well as remedial. We recognize that the demand for the tools involved in this investigation has been increasing in recent years and that the domestic producer has increased his sales, so that he is not now being materially injured within the meaning of the Antidumping Act. We find, however, that the pattern of sales at less than fair value by the Canadian manufacturer and his attitude throughout the investigation under the Antidumping Act show a likelihood of continuation of sales at less than fair value at a rate and at prices that will culminate in the foreseeable future in material injury to the domestic industry.

The evidence shows that the program of selling below fair value was deliberately undertaken and calculated to obtain by this means a substantial share of the U.S. market for the tools in question; that the LTFV sales were continued and indeed accelerated during the Treasury-Tariff Commission investigation; that opportunity to adjust prices to eliminate the margin of difference was given by the Treasury

Department and was ignored; that the LTFV sales are taking an increasing share of the domestic market; and that the margin of difference was substantial.

The last-minute grudging price adjustment by the Canadian exporter (which did not eliminate the margin of difference) was, according to his own statement "prompted by sheer economics" and evidences no assurance that the Canadian manufacturer will not resume his previous practice of pricing his sales to the United States at substantially less than fair value, in order to continue what he considers to be his "right" to obtain a substantial share of the U.S. market by this means.

Based on known price increases of materials purchased by the Harrah Manufacturing Co., and a wage increase that will become effective in September 1966, the firm is now confronted with an increase in manufacturing costs of substantial magnitude. This forthcoming increase in the U.S. producer's costs, together with the Canadian firm's increase in capacity, the sustained increase in its LTFV shipments to the United States, and the absence of any assurance that it will discontinue LTFV shipments or not increase the margin of difference, justify the conclusion that it is likely that the domestic industry will be materially injured by reason of the continued importation of the Canadian jacks at less than fair value.

Views of Commissioners Fenn and Thunberg

Like our colleagues, we do not find that the industry producing the particular type of jack, a unique multi-purpose tool, which is the subject of this investigation is being injured by the sale of LTFV imports from Canada. Further, we see no clear and imminent change in the competitive situation that will affect the domestic producer adversely. As a matter of fact, the one change that has occurred presages an easier time for the domestic manufacturer instead of a more difficult one.

The law provides that the same incremental duty be levied on imports sold at less than fair value that are likely to injure a domestic industry as that levied on LTFV imports that actually are presently injuring a domestic industry. This equivalence of incremental duty suggests that evidence of a likelihood of injury must be as direct, observable and clear as evidence of presently existing injury. For likelihood of injury to be evidenced in clearly observable facts, injury must be imminent and foreshadowed by perceptible shifts in the competitive situation. As has been written in another case, "To find likelihood, we must be able to point to an impending change in circumstances which is about to transform a non-injurious action into an injurious one. That change must be specific, imminent and predictable; the mere continuance of sales at less than fair value at the same level as in the past is not enough." 1/

1/ Steel Reinforcing Bars From Canada, Views of Commissioner Fenn-Tariff Commission Publication 122, March 23, 1964.

In this case, the increasing Canadian imports have been accompanied by an expansion of sales by the domestic producer and by growing profits. List prices have remained stable and, in one instance, increased. Although the average revenue per unit on one model declined, this drop was due at least as much to a necessary alignment of the prices of two similar models as it was to import competition. Under these circumstances the Commission found no present injury. We see nothing to support a presumption that the forces which stimulated the expansion of domestic demand for this tool during the past three years are going to weaken. On the contrary we do find evidence that they are going to continue. We can point to no change in the existing situation that will transform a non-injurious act into an injurious one. Without such a change, one must assume that the imports which have not caused injury in the past will not do so in the future.

But in our view the evidence against likelihood of injury is even stronger in this case because it points to an improvement rather than a deterioration in the competitive position of the domestic producer. In July 1966 the exporter raised his prices to the importer substantially. This increase will markedly reduce the importer's flexibility and may well reduce the price advantage which the imports have held, especially in view of the narrow margin on which the importer is operating. While the domestic producer has testified that full employment and tight supply conditions are going to raise his costs, his margin of choice in price and sales policy is wider than that of the importer because of the existence of a cushion of profits in a period of expanding demand. The imported product is now less competitive than previously, and the domestic manufacturer enjoys a stronger position than he has at any time since the imports first entered the market.

Under these circumstances, we do not see how the apparent determination of the Canadian producer to continue selling his product at less than fair value in the United States can be in itself a cause of injury; consequently, we can find no likelihood of injury in this case under the provisions of the Antidumping Act.