

UNITED STATES TARIFF COMMISSION

**CHICKEN EGGS IN THE SHELL
FROM MEXICO**

**Determination of No Injury
in Investigation No. AA1921-75
Under the Antidumping Act, 1921,
As Amended**



**TC Publication 400
Washington, D. C.
June 1971**

UNITED STATES TARIFF COMMISSION

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Washington

/AA1921-75/

CHICKEN EGGS IN THE SHELL FROM MEXICO

Determination of No Injury

The Assistant Secretary of the Treasury advised the Tariff Commission on March 22, 1971, that chicken eggs in the shell from Mexico are being, and are likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Anti-dumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted Investigation No. AA1921-75 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 on May 17, 1971.^{1/} Notices of the investigation and hearing were published in the Federal Registers of March 27, 1971 (36 F.R. 5821) and April 17, 1971 (36 F.R. 7330).

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 personal interviews and other sources.

^{1/} A public hearing was originally scheduled for May 3, 1971.

On the basis of the investigation, the Commission 1/ has unani-
mously determined that no 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 chicken eggs in the shell from Mexico sold at
less than fair value within the meaning of the Antidumping Act, 1921,
as amended.

Statement of Reasons

In our opinion no 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 chicken eggs in the shell from Mexico sold at
less than fair value (LTFV).

The industry

The interested industry claiming injury consisted of the domestic
producers of chicken eggs, most of whom were represented by the com-
plainant, the United Egg Producers, Atlanta, Georgia. No other indus-
try claimed to be injured and there appeared to be no other industry
likely to be adversely affected by such imports.

Sales of LTFV imports

In this case the Mexican exporters sold eggs for future delivery
under contracts on the Chicago Mercantile Exchange. The contracts
contemplated delivery of the eggs some two to six weeks subsequent to

1/ Commissioner Bruce E. Clubb, who was a member of the Commission
until June 16, 1971, did not participate in the Commission's decision.

the date of sale. The futures contracts were sold indiscriminately with all other futures contracts for domestic eggs and were sold at the highest obtainable prices on the market. No price discrimination was made because of the source of the eggs, all of which had, under the terms of the contract, to be fresh eggs and to meet specified U.S. Department of Agriculture standards respecting quality, size and color. In fact, buyers of such contracts generally know that delivery of eggs may be made from any source, foreign or domestic, but do not know the actual source until the eggs are delivered. Thus, there was no price discrimination in the market place when the Mexican eggs were sold in competition with domestic eggs. Moreover, no dumping margin existed at this time which could influence the market price of the futures contracts covering the Mexican eggs; fair value or foreign market value was not ascertainable under the provisions of the Anti-dumping Act until the dates on which the eggs were exported, dates which were two to six weeks later than the sale dates.

The futures market for shell eggs is a mechanism by which suppliers and users of eggs can reduce risks of losses due to subsequent price fluctuations in the cash market; many in the egg producing industry use futures sales in the normal course of business to hedge the price of future production. Prices on the futures market generally reflect traders' expectations of supply at some future time in conjunction with their expectations of demand at the same future time. In this case the Mexican exporters used the futures market to protect

against a risk of a price decline; they, like some of the domestic producers who sold futures, failed to anticipate the rise in prices which followed. The Mexicans would have received more than they did if they had sold their eggs later in the cash market. The sale of egg futures contracts on the Exchange is subject to strict regulation by the U.S. Department of Agriculture and is an accepted fair method of competition in the sale of eggs in the shell.

How dumping margin arose--technical dumping

As a result of a rise in the price of eggs in Mexico by the time the exporters' eggs were entered into the United States, the purchase prices (derived by construction from the sale prices of the futures contracts) were lower than the home market price for eggs in Mexico, and the U.S. Department of the Treasury appropriately determined that there were sales at LTFV. However, considered in light of the method by which these eggs were sold well in advance of importation under a fair method of competition, we characterize the sales at LTFV as technical sales at LTFV in harmony with well established precedents of this Commission. 1/ The margins of dumping in this case arise from the unusual effect of the time sequence between sale and importation rather than actual price discrimination or other anticompetitive practices.

1/ See, for example, Titanium Dioxide From France, AA1921-31, TC Publication 109, September 1963, and Rayon Staple Fiber From France, AA1921-17, TC Publication 18, May 1961.

No injury by reason of dumping

This Commission has unanimously held on a number of occasions that the mere presence or sale of "LTFV" goods in the U.S. market is not ipso facto evidence of injury to an industry as contemplated by the Antidumping Act. An injury to an industry must be caused by reason of the amount of price discrimination (the dumping margin). Without such causal connection, there can be no injury. In this case we found no causal connection for two reasons: (1) The imported eggs and the domestic eggs were sold in the futures market under identical conditions at the highest obtainable price, and (2) there was no dumping margin in existence at the time the futures contracts were sold and therefore the technical dumping could have no causal relation to the prices of those contracts. The sales of the futures contracts, moreover, had no evident adverse effect on futures prices on the days the contracts were sold. For these reasons we determine there is no injury to an industry in the United States nor is there any likelihood of such injury when Mexican eggs are sold on the Exchange under like circumstances. Further, we found no evidence that any prospective egg producer was prevented from entering the business by reason of such imported eggs.

Injury claimed by complainant

The complainant in this case relied heavily on a claim of injury by reason of the presence of the LTFV eggs in the domestic market

which is said to have depressed the prices of eggs in the cash market and prevented the prices of eggs from attaining the level they would have reached had such eggs not entered our market. Although we do not regard LTFV imports per se as a test of injury within the purview of the Antidumping Act, as indicated above, we would note that any injury from this factor was de minimis. 1/ During the brief period of technical dumping (38 days), imports amounted to about one-fourth of one percent of domestic production. Competition in this respect was not wide spread and we could find no demonstrable causal effect on the market prices of shell eggs.

1/ Commissioner Leonard found no evidence to indicate injury, de minimis or otherwise, by reason of the less-than-fair-value eggs imported from Mexico.