UNITED STATES INTERNATIONAL TRADE COMMISSION

VINYL CLAD FENCE FABRIC FROM CANADA

Determination of No Injury or Likelihood Thereof
in Investigation No. AA1921-148 Under the
Antidumping Act, 1921, as Amended

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Washington, D.C.

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[AA1921-148]

VINYL CLAD FENCE FABRIC FROM CANADA

Determination of No Injury or Likelihood Thereof

On July 24, 1975, the United States International Trade Commission received advice form the Department of the Treasury that vinyl clad fence fabric from Canada is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on July 29, 1975, the Commission instituted investigation No. AA1921-148 under section 201(a) of said 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 vinyl clad fence fabric 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 August 4, 1975 (40 F.R. 32796). The hearing was held on September 9, 1975.

In arriving at its determination, the Commission gave due consideration to 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 unanimously 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 vinyl clad fence fabric from Canada that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

1/ Commissioner Parker did not participate in the decision.

Statement of Reasons for Negative Determination of

Chairman Will E. Leonard and Commissioner Catherine Bedell[1/]

The Antidumping Act, 1921, as amended, requires that the U.S. International Trade Commission find two conditions satisfied before an affirmative determination shall be made. The first condition is that an industry in the United States is being, or is likely to be, injured, or an industry in the United States is prevented from being established.[2/] Second, the requisite injury must be "by reason of" the importation into the United States of the merchandise which the Department of the Treasury (Treasury) has determined is being, or is likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended.

On the basis of the subject investigation (Inv. No. AA1921-148), we have determined that an industry in the United States is not being nor is likely to be injured by reason of the importation of vinyl clad fence fabric from Canada sold or likely to be sold at LTFV. We have made a negative determination because we do not find the first condition referred to above -- an industry is being, or is likely to be, injured -- satisfied by the evidence obtained in this investigation.[3/]

Imported article and U.S. industry

The imported merchandise in this proceeding for which the Treasury

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1/ Vice Chairman Daniel Minchew concurs in the result.

2/ Prevention of the establishment of an industry is not an issue in the instant case, and it will not be discussed further.

3/ Failure of the first condition to be met makes consideration of the second condition unnecessary.

found sales at LTFV is vinyl clad fence fabric. Vinyl clad fence fabric competes with other types of fencing, particularly galvanized steel chain link fencing, although the vinyl clad product has special physical properties and esthetic appeal distinct from galvanized steel chain link fencing.

With respect to what industry is allegedly injured or likely to be injured the Commission said (at p.4) in Lock-In Amplifiers and Parts Thereof From the United Kingdom, Investigation No. AA1921-146, USITC Publication 736 (July 1975):

> The Antidumping Act states that there must be injury to, or likelihood of injury to, or the prevention of the establishment of, "an industry" in the United States in order for relief to be forthcoming. The use of the indefinite article "an," rather than the definite article "the," allows the Commission to examine the impact of the LTFV sales on more than one industry, if it deems such course of action is appropriate. If any industry is injured by LTFV imports, the statute is satisfied. Out of practical considerations and in its sound discretion, the Commission has usually looked at the industry in the United States that would most likely be impacted by LTFV imports to assess injury. If no injury were found to such an industry, and no evidence of injury to another possible industry has been obtained, the Commission has usually concluded that there was no injury to an industry. The industry most likely to be impacted has usually been defined in terms of the domestic facilities devoted to the production of the article most comparable to the LTFV article.

Without determining that it is properly a distinct industry,[1/] we have examined in this case the impact of LTFV sales on the domestic

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1/ See the discussion (at p.3) with respect to the injured industry in Electric Golf Cars From Poland, Investigation No. AA1921-147, USITC Publication 740 (September 1975).

facilities of the U.S. producers that are devoted to the production of vinyl clad fence fabric. We find that the facilities producing this article are not injured, nor are they likely to be injured, and, further, that there is no evidence of injury by reason of the LTFV sales to any other facilities which could be construed to comprise an industry.

No injury

Evidence developed by the Commission in connection with this investigation clearly indicates that no domestic industry has been injured. U.S. producers' shipments of vinyl clad fence fabric increased annually during 1970-74, rising from 7,583 tons to 12,374 tons, an increase of 63 percent. During this same period, exports to the United States by the Canadian producer that supplied the preponderance of the LTFV imports declined from 20 percent of U.S. consumption in 1970 to 10.4 percent in 1974, the year in which Treasury found LTFV sales. It was demonstrated that certain established U.S. producers of this product lost part of their market share in 1974 as other, new and smaller U.S. producers increased their market share. This is evidenced by the fact that one producer which made its first shipments of vinyl clad fencing in 1973 increased its share of U.S. producers' total shipments from less than 2 percent in 1973 to about 12.5 percent in 1974. It is also noted that the U.S. producers were confronted with increased quantities of competitively priced fair value imports from Canada during each of the years 1972-74.

Individual U.S. producers' prices for an item of vinyl clad fence fabric (2 inch mesh x 9 gauge x 4 feet high x 50 foot rolls),

which is representative of the pricing for the great bulk of total industry shipments, increased during 1973-74 by amounts ranging from 60 percent to over 100 percent. Since late 1973 the prices charged by the principal supplier of the LTFV imports have been as high as or higher than those of any of the 6 domestic producers that supplied the Commission with pricing data. Such large price increases by domestic producers and the consistently higher or equal prices of the imported article establish that there has been no price depression and also refute any claim of price suppression.

Three firms which in the aggregate account for well over two-thirds of total U.S. producers' sales of vinyl clad fence fabric provided the Commission with financial information; two of these firms provided the information on the total operations of their establishments in which vinyl clad fence fabric is produced, and the other firm provided information on its total operations. The net operating profit to net sales ratio of these firms on their combined operations increased from 3.3 percent in 1972 to 10.6 percent in 1973 and to 13.5 percent in 1974, the year in which Treasury found LTFV sales.

Two firms provided the Commission separate data on the profitability of their vinyl clad fence fabric operations. One of these firms reported its net operating profit to net sales ratio on these operations declined slightly in 1973 as compared to 1972 and then increased sharply in 1974. The other firm reported its ratio of net profit to net sales increased in 1973 as compared to 1972 and then declined in 1974. Despite these fluctuations both producers reported substantial operating profits on their vinyl clad fence fabric operations in each of the years 1972-74.

No likelihood of injury

The Report of the Senate Committee on Finance (S.Rept. No. 93-1298) on the bill which became the Trade Act of 1974 remarked (at p.180) on Commission practice under the Antidumping Act, 1921, in the following manner:

> The Commission's affirmative determinations that an industry "is likely to be injured" by less-than-fair-value imports are based upon evidence showing that the likelihood is real and imminent and not on mere supposition, speculation, or conjecture.

There is no evidence in this investigation that shows any industry is likely to be injured in any real and imminent sense. There is evidence of a strong anticipated growth in the U.S. market for vinyl clad fence fabric, and it is anticipated that U.S. producers of vinyl clad fence fabric will have increased production and sales in view of such growth. The Canadian firm which has supplied the bulk of the LTFV imports has a limited capacity to increase its shipments to the United States. Further, as indicated above, the trend of LTFV imports of vinyl clad fence fabric has been downward over the last several years.

Conclusion

Accordingly, for the reasons indicated, we have determined that an industry is not being injured nor is likely to be injured by reason of imports of vinyl clad fence fabric from Canada that are being, or are likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

Concurring Statement of Reasons of Commissioners Moore and Ablondi

The facts in this case are not in dispute, and they present a classic example of what the Senate Committee on Finance, in its Report on the Trade Act of 1974, has described as "technical dumping." Therefore, we have made a negative determination.

In its Report on the Trade Act of 1974, the Senate Finance Committee provided a lengthy definition of "technical dumping" and described the circumstances under which the U.S. International Trade Commission should apply such definition.

A portion of the relevant language of the Finance Committee Report is as follows:

> . . . the Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price. Such so-called "technical dumping" is not anti-competitive, hence, not unfair; it is procompetitive in effect. 1/

Thus, technical dumping occurs when LTFV (less than fair value) imported products are sold in the U.S. market at prices equal to or higher than the prices paid for comparable domestic products. This absence of underselling by competitive LTFV imports has on numerous occasions been characterized by the Commission in antidumping investigations as "technical dumping."

1/ Senate Report No. 93-1298, 93d Cong., 2d sess., at p. 179.

The term "technical dumping" has appeared frequently in Commission determinations under the Antidumping Act, 1921, as amended. For example, in Rayon Staple Fiber from France the Commission stated, "Thus the case involved purely 'technical' dumping prices." 1/ The concept was further recognized and articulated in Technical Vanillin from Canada, in which the majority of Commissioners stated:

> The importation of an article sold "at less than fair value" is not ipso facto injurious. The sole exporter of Canadian technical vanillin has sold its product . . . to U.S. consumers at delivered prices equal to or higher than the delivered (or their equivalent) prices offered by the predominant U.S. producer of technical vanillin. . . . The importation of Canadian technical vanillin under such circumstances cannot be considered as injurious or likely to injure an industry in the United States. 2/

How the dumping margin arose

Sales of vinyl clad fence fabric in the Canadian market were made on an F.O.B. delivered basis to all Canadian customers in Canadian currency. At the time of exportation, the Canadian currency was converted to U.S. currency at exchange rates certified by the Federal Reserve Bank of New York. During the period of the Treasury Department's investigation (May through October 1974) the United States dollar was worth less than the Canadian dollar, i.e., one Canadian dollar was worth between $1.02 and $1.03. During this period, when the value of the Canadian dollar

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1/ Investigation No. AA1921-11, 1959.

2/ Technical Vanillin from Canada, Investigation No. AA1921-26, TC Publication 88, 1963. Also see, Pocket Pencil Sharpeners, Tariff Commission Investigation under the Antidumping Act, 1921, as amended, August 29, 1955; Brass Key Blanks from Canada, Investigation No. AA1921-71, TC Publication 392, 1971.

exceeded the value of the United States dollar, the sale price in the United States of vinyl clad fence fabric exported by the primary Canadian LTFV exporter was lower than its home market sale price when expressed in United States dollars. According to the Treasury Department file received by the Commission in this investigation, the small dumping margins (2.0 to 4.0 percent) resulted primarily from an unfavorable currency exchange rate which existed from May through October 1974.

Application of "technical dumping" to the facts in this case

The LTFV imports are made to the same specifications (e.g., wire and mesh size, thickness in vinyl coating) as the domestically produced vinyl clad fence fabric. In addition, the LTFV imports have been selling in the same market served by the domestic producers and, in some instances, sales have been made to the same domestic distributors. The imports, however, have not had an anticompetitive price advantage over the prices of articles sold by U.S. producers in the domestic market. In fact, during the period of the Treasury Department's investigation the LTFV imported vinyl clad fence fabric was sold consistently at delivered prices equal to or higher than comparable vinyl clad fence fabric sold by domestic producers. Such LTFV sales therefore do not fall within the ambit of discriminatory sales which might adversely affect domestic competition and thereby cause injury to an industry in the United States within the meaning of the Antidumping Act, 1921, as amended.

Conclusion

Based on the facts developed during this investigation, we have concluded this clearly is a case involving technical dumping; that is, the LTFV imports were sold in the U.S. market at prices equal to or exceeding prices paid for comparable domestic merchandise. Such sales are not anticompetitive, but, as the Senate Finance Committee has pointed out, they are "procompetitive in effect."

Therefore, we concur with our colleagues in the determination that there is no injury or likelihood of injury to an industry in the United States by reason of LTFV sales of vinyl clad fence fabric from Canada.