

UNITED STATES TARIFF COMMISSION

TENNIS RACKETS AND FRAMES

**Report on Escape-Clause Investigation No. 7-96
Under Section 7 of the
Trade Agreements Extension Act of 1951, as Amended**



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UNITED STATES TARIFF COMMISSION

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Report Explaining the Reasons for Terminating, Without Findings on the Merits, Investigation No. 7-96 (Tennis Rackets and Frames) Under Section 7 of the Trade Agreements Extension Act of 1951, as Amended

On April 4, 1961, the U.S. Tariff Commission, by majority vote, ^{1/} dismissed without findings on the merits investigation No. 7-96 under section 7 of the Trade Agreements Extension Act of 1951, as amended, relating to tennis rackets and parts of tennis rackets. Investigation No. 7-96 was instituted on October 20, 1960, to determine whether tennis rackets and parts ^{2/} provided for in paragraphs 409, 412, and 1502 of the Tariff Act of 1930, are, as a result in whole or in part of the customs treatment reflecting the concessions thereon under the General Agreement on Tariffs and Trade (GATT), being imported in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products. The investigation was dismissed because of the failure of domestic producers to furnish adequate financial data in respect of their operations involving the production of tennis rackets and frames.

Tennis rackets and frames ^{3/} (hereinafter referred to as tennis rackets) were on the May 27, 1960, list of products (25 F.R. 4765) for consideration in proposed trade-agreement negotiations, and they were consequently the subject of a peril-point investigation by the Tariff Commission under section 3 of the Trade Agreements Extension Act of 1951, as amended (25 F.R. 4779). On the basis of the peril-point investigation

^{1/} Commissioners Schreiber and Sutton dissenting. The dissent of these Commissioners begins on page 10.

^{2/} As used in this report, "parts" refers to frames only.

^{3/} Frames dutiable under par. 409 and valued at \$1.75 or more each were not included in the list but were included in the escape-clause investigation.

the Commission determined that increased import restrictions on tennis rackets were necessary in order to prevent imports from causing serious injury to the domestic industry producing like or directly competitive products. In such circumstances a 1958 amendment to the peril-point provision (sec. 3(b)(1)) automatically requires the Commission to institute an escape-clause investigation, which, accordingly, was done (25 F.R. 10149).

Since the question may be raised as to why the Commission was able to arrive at a peril-point determination with respect to tennis rackets and is unable to make an escape-clause determination with respect to these products, an explanation is here in order.

The Commission construes the 1958 mandatory escape-clause amendment as indicating the intent of Congress to be that whenever in the course of a peril-point investigation the Commission has reason to believe that an industry is being seriously injured or threatened with serious injury in consequence of increased imports of products that are like or directly competitive with those made by the domestic industry it shall institute an escape-clause investigation. In other words, when a product is included in a list of items on which the granting of further concessions in trade-agreement negotiations may be considered, and it appears from the peril-point investigation that the domestic industry concerned is being seriously injured or threatened with serious injury, any doubt on this point is to be resolved in favor of the domestic industry in determining the peril-point and the Commission must promptly institute an escape-clause investigation. In every case in which the automatic clause of the peril-point statute has resulted in an escape-clause investigation, the Commission's peril-point determination was based on

the resolution of any doubt in favor of the domestic industry.

As Congress was made aware immediately prior to the 1958 amendment above referred to, a peril-point investigation and an escape-clause investigation involve consideration of similar criteria, except that in the former profit-and-loss data are not ordinarily requested of the domestic industry concerned, while in the latter such data is almost always requested. ^{1/} As the numerous escape-clause decisions of the Commission will show, in an escape-clause investigation the financial experience of the domestic producing organizations in respect of their operations involving the like or directly competitive product is almost always the key factor in determining whether there is serious injury or the threat thereof. Such data is essential where a multi-product industry is involved in order that the Commission may carry out the Congressional mandate in section 7(e) of the 1951 Extension Act to "distinguish or separate the operations of the producing organizations involving the like or directly competitive products or articles from the operations of such organizations involving other products or articles."

The Commission did not, in the peril-point investigation, request profit-and-loss data from the domestic producers relating to their operations involving the production of tennis rackets. However, in the course of the subject escape-clause investigation, questionnaires requesting profit-and-loss data were sent to the

^{1/} See testimony of former Tariff Commission Chairman Brossard, Renewal of Trade Agreements Act: Hearings Before the Committee on Ways and Means, House of Representatives, (85th Cong., 2d sess.), pt. 1, p. 238-240.

six domestic concerns that produced tennis rackets during the years 1955-60, inclusive. The several producers were requested through the questionnaire, to furnish data that would show the actual profits or losses on their tennis-racket operations distinct from profits or losses on their other operations.

One of the six concerns produced only tennis rackets and therefore had no problem of "distinguishing or separating" its operations on tennis rackets. For another concern tennis rackets accounted for such a large part of its sales of all the products that it manufactures that the profit-and-loss experience of the concern on its total operations was indicative of its profit-and-loss experience on tennis rackets alone. This concern, therefore, also had no problem of "distinguishing or separating" its operations on tennis rackets. These two concerns accounted for such a small part of the domestic output of tennis rackets that their profit-and-loss experience on such articles would not be representative of the profit-or-loss experience on tennis rackets for the six producers considered as a group. It should also be noted that profit-and-loss data for 1960 for one of these two concerns were requested on February 27, 1961, and in spite of a telephone call urging prompt compliance with the request, the data have not been received. For a third concern tennis rackets accounted for a very large part of its total business but this concern refused to furnish any significant profit-and-loss data.

For the remaining three domestic producers of tennis rackets, such articles account for a comparatively small part of their total operations.

In order for these concerns to furnish meaningful profit-and-loss data, it would be necessary to "distinguish or separate" the profit-and-loss data on tennis rackets from the profit-and-loss data on their other operations. One of the three concerns stated that it was unable to furnish separate profit-and-loss data on tennis rackets, and one refused to furnish any significant profit-and-loss data.

The remaining company accounts for such an exceedingly large part of the domestic output of tennis rackets that its profits or losses on tennis rackets would have to be included in any aggregate of profit-and-loss data that would be indicative of the profit-and-loss experience of the domestic tennis-racket producers as a whole. Failure to obtain such data from that company would alone make it impracticable to distinguish or separate the operations of the domestic producers on tennis rackets from their operations involving other products.

The Commission's questionnaire requesting profit-and-loss and other pertinent data on tennis rackets was sent to the domestic producers on September 9, 1960, with the request that it be filled in and returned by September 30. The company mentioned in the preceding paragraph did not return the questionnaire on that date, but on October 11 requested an extension of time for its return, which was granted. On October 19 the questionnaire was received, but the section calling for profit-and-loss data for the plant in which the company produced tennis rackets and for tennis rackets alone was left completely blank. This company also failed to furnish certain internal management reports requested in the questionnaire, as well as certain other information requested therein. The company appended the following statement to the questionnaire:

It is not possible to develop profit and loss financial data as requested on Pages 9 - 14 for the years 1955 - 1960, inclusive. Specifically, our Manufacturing Departments are not set-up in a manner which breaks down individual manufacturing costs to classes of items.

- (1) In our Wood-Working Departments we manufacture items other than tennis and badminton.
- (2) There is no breakdown of overhead expenses between that performed on badminton and tennis items.
- (3) We operate on a standard-cost basis, plant wide and, therefore, the direct application of individual expenses, as requested, to badminton and tennis individually is neither possible nor practical. Any such attempt would be purely arbitrary and would not provide comparative figures which would have any material value or analytical purpose.

We do produce manufacturing accounting records for control of costs, expenses, etc., and our accounting system is developed for internal control and for tax-requirement purposes, but has not been established in a manner which will enable us to develop the data in the form or the detail requested in this survey.

- (4) As stated in reply to previous questions, our Manufacturing Department data is not retained for the period of time requested in this survey. Therefore, we do not have the manufacturing figures available to make even a reasonable allocation.

Inasmuch as it was essential to have adequate profit-and-loss data on tennis rackets from this company in order to complete the investigation and in view of the foregoing statement by the company, the Commission would probably have been warranted in dismissing the investigation on October 19. However, the Commission was anxious to afford the domestic industry every possible opportunity to furnish the necessary data. On October 31, therefore, the Commission wrote to the company pointing out the omissions and other deficiencies in the data it had furnished. Additional copies of the questionnaire were sent to the company with the request that it furnish the missing information, including separate profit-and-loss data on its tennis-racket operations. On December 1,

no word having been received from the company, the staff telephoned the president of the company, who gave assurance that the questionnaire would be completed and returned very soon. He also stated that he would have the secretary-treasurer of the company telephone the Commission on December 5 and make a progress report. As no word had been received by December 15, on that date the staff again telephoned the company and received assurance from the controller of the company that the questionnaire would be returned during the week of December 19. It was not until January 3, 1961, however, that the questionnaire was received. The questionnaire contained some but not all of the data that the company had failed to furnish before. It did include data purporting to show the company's profit-and-loss experience on tennis rackets but the data were not in the form requested and were inadequate. With respect to such data the company repeated on the questionnaire the statement (quoted above) that was appended to the first questionnaire. The company again failed to furnish copies of certain of its internal management reports which had been requested a second time.

The Commission would have been justified in dismissing the investigation at that point because of inadequate financial data. The Commission, however, decided to make one final effort to obtain such data and, on January 16, 1961, sent three of its staff experts to the plant in which the company produces tennis rackets. The staff members spent 2 days there and found that profit-and-loss data on tennis rackets in the form required by the Commission could not be obtained within the time that remained for completion of the investigation.

In view of the foregoing, the Commission found that it could not obtain adequate information in this investigation to enable it to distinguish or separate the operations of the producing concerns involving tennis rackets from the operations of such concerns involving other products and therefore could not treat the production of tennis rackets as a separate industry for the purposes of section 7. The Commission consequently dismissed the investigation.

It might be observed that in a previous investigation, which a majority of the participating Commissioners ^{1/} voted to terminate because it was not practicable to distinguish or separate the operations of the producing organizations involving the product under consideration, the Commission pointed out that most of the data required in an escape-clause investigation are in the possession of domestic producers. Limitations on the time within which the Commission must complete an investigation and the demands of other investigations upon the Commission, make it impracticable, except to a very limited extent, to send experts to the offices and plants of the producers to obtain the necessary data directly from their books. Much of the necessary information is therefore sought by the Commission through questionnaires sent to the various producers concerned, in the expectation that the domestic producers who are the interested parties seeking relief will cooperate fully by making every effort to furnish promptly data in the form requested and needed by the Commission in order for a determination on the merits to be made.

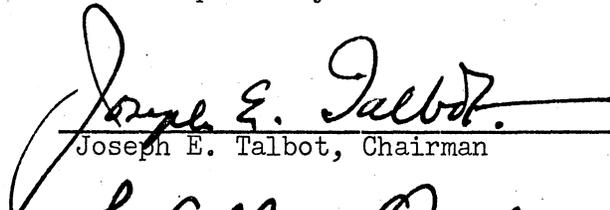
It should also be noted that in most cases the financial data that the Commission must obtain under the law in an escape-clause investigation

^{1/} Commissioners Sutton, Jones, and Dowling in escape-clause investigation No. 66 (Fine-Mesh Wire Cloth).

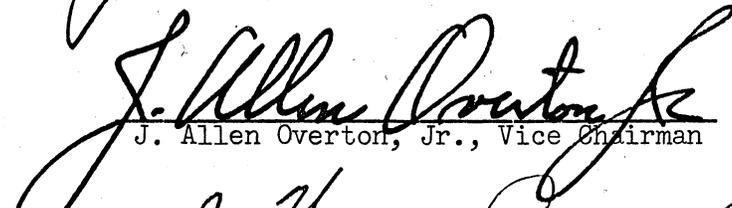
are not readily available from the books of account. This is particularly true where the investigation involves only one of a number of articles made by the producers concerned in the investigation. The cost of securing such data can be considerable both to the producers and the Commission.

The Congress recognized, and the Commission's experience in this matter confirms, that these problems can be of such proportions as to make an escape clause determination "impracticable" within the meaning of the statute.

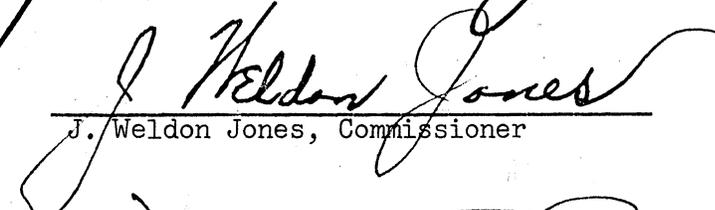
This dismissal is made without prejudice to the domestic producers coming before the Commission at any future time, upon application for relief under section 7, when the producers are in a position to furnish the profit-and-loss and other data in the detail requested by the Commission in this investigation and needed by the Commission in order for it to make an escape clause determination as required by law.



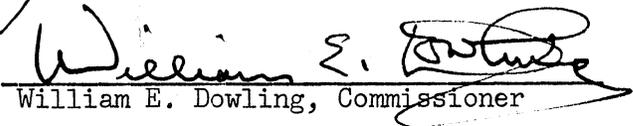
 Joseph E. Talbot, Chairman



 J. Allen Overton, Jr., Vice Chairman



 J. Weldon Jones, Commissioner



 William E. Dowling, Commissioner

DISSENT OF COMMISSIONERS SCHREIBER AND SUTTON

We, Commissioners Schreiber and Sutton, consider the action of the majority terminating the investigation without findings on the merits to be wholly unwarranted and without valid support in reason or law.

In our opinion, the facts obtained by the Commission are ample for purposes of making findings on the merits, and, accordingly, we find, on the basis of considerations hereinafter specified, that the tennis rackets and tennis-racket frames involved in this investigation are, as a result, in part, of the customs treatment reflecting the concessions granted thereon under the General Agreement on Tariffs and Trade, being imported into the United States in such increased quantities, both actually and relative to domestic production, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products.

There are no procedures for implementing minority findings in escape-clause cases. In this report, therefore, we, as the minority, are setting forth the factual and economic bases for our finding in summary form without elaboration and without specific recommendation or discussion of the import restrictions required to remedy the serious injury we find exists.

First, however, we wish to treat with another matter. The terminating action taken by the majority raises issues which are basic and fundamental to the Commission's discharge of its responsibilities under

the "peril-point" and the "escape-clause" provisions of section 3 and section 7, respectively, of the Trade Agreements Extension Act of 1951, as amended, and which, in our opinion, transcend in importance the specific findings with respect to injury or no injury in a particular case.

The escape-clause investigation on tennis rackets and tennis-racket frames is not in the usual run of investigations instituted under section 7. This investigation is one of a number of escape-clause investigations which were instituted by the Commission under section 7 pursuant to, and under the special circumstances specified in, section 3(b)(1), i.e., as the result of the Commission's having found in the course of peril-point investigation No. 3-9 that increases in duties or additional import restrictions on certain of the articles under investigation are required to avoid serious injury to each of the respective domestic industries producing like or directly competitive articles.

The majority predicates its action terminating the instant escape-clause investigation on the alleged failure of the principal domestic producer to supply the Commission with "meaningful" data that would show whether, and to what extent, that producer is operating at a profit or loss in the production of tennis rackets. Thus, the majority attributes to these data such relevancy and critical significance as to preclude, in their absence, the making of an escape-clause finding with respect to injury on the merits. In so doing, the majority casts doubt upon the Commission's original

peril-point finding of serious injury which was made without the precise data in question.

The amendment made to section 3 by the 1958 Extension Act providing for mandatory escape-clause investigations in the circumstances therein indicated was enacted for the specific purpose of facilitating relief for the injured domestic industries, and did not change in any way the character or substance of peril-point findings. Prior to the amendment, and subsequent thereto, the Commission has unanimously given to the Congress and to interested parties assurances that the peril-point provisions are susceptible of effective administration. The official actions of the Commission have, until now, consistently and uniformly asserted or necessarily assumed peril-point findings to be valid, definitive, and final. The majority action in the instant investigation contradicts this record.

The Commission, of course, should avail itself at all times of any timely opportunity it may have to set aside or modify previous findings which, by reason of error or subsequent developments, are no longer valid. An escape-clause investigation instituted in accordance with section 3(b)(1) might prove to be an appropriate vehicle for action by the Commission which, in practical effect, would result in setting aside or modifying earlier peril-point findings that ceased to be valid for one or both of the foregoing reasons. As, in our opinion, neither of the reasons obtains in the present investigation, we have no alternative but to reaffirm our peril-point finding of

serious injury notwithstanding the absence of the precise profit-and-loss data sought by the majority.

In this case, however, we hold that the profit-and-loss data supplied by the principal domestic producer are adequate, particularly when such data are considered in the light of the abundant evidence obtained in the investigation showing that most of the statutory criteria of injury are present. The company in question keeps its records on a standard cost basis but does not attempt to determine the extent to which the standard costs differ from, or are at variance with, the actual costs for any product line. However, for the purpose of this investigation, this company determined the variances for the plant as a whole--which were very minor in terms of total costs--and allocated a share of such variances to tennis rackets in the proportion that the value of sales of tennis rackets is to the total value of sales of all products of the plant. Moreover, in determining its standard costs, the company allocated a share of the estimated total factory burden of expenses for the entire plant to tennis rackets in the proportion that the estimated direct labor hours devoted to the production of tennis rackets was of the estimated total labor hours for the entire plant.

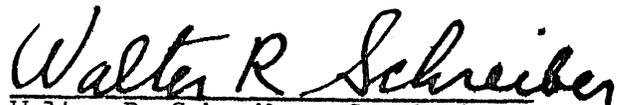
The domestic industry's financial record is a dismal one, showing continuous annual losses as imports have surged upward, and it is inconceivable that accounting legerdemain could convert the existing record to one showing a profit position of any significance.

Moreover, the criterion of a "downward trend of * * * profits" is only one of several indicia of injury which the statute directs the Commission to take into consideration in arriving at a determination in an escape-clause case. There is no warrant in law for considering any one of the various criteria as controlling on the question of whether there is serious injury or threat thereof. The statute prescribes no relative weights to be given to the specified injury factors. Accordingly, the relative weights that are to be given by the Commission to these factors, which may vary with individual cases, was left by the Congress to the judgment of the Commission. (See Opp Cotton Mills v. Administrator (1941) 312 U.S. 126). To adopt a hard-and-fast rule that no finding on the merits can be made in an escape-clause case, regardless of the overall evidence of serious injury, unless absolutely precise data on profit-and-loss can be obtained, is to read out of the statute the other criteria of injury which the Congress directs that the Commission "shall take into consideration" in arriving at a determination.

We now pass to consideration of the available information relevant to the other criteria of injury. Between 1956 and 1960 imports of tennis rackets and frames increased 127 percent whereas domestic production declined 21 percent and sales of domestic rackets fell 14 percent. In 1960 imports were equivalent to 204 percent of domestic production, compared with 71 percent of domestic output in 1956. In 1960 domestic producers supplied only 33 percent of total U. S. consumption compared with 57 percent in 1956. Producers' yearend

inventories in both 1959 and 1960 were substantially higher than in other recent years. The number of production workers at domestic plants was 38 percent less in 1960 than in 1956; over the same period man-hours declined 30 percent and total wages paid decreased 19 percent. A recent factor in the deteriorating position of the domestic industry has been the rapid growth in imports of high quality rackets which are being sold at destructively low prices in comparison with prices for comparable domestic rackets.

In view of the facts set forth above, we regard the failure to conclude the instant investigation, including a finding as to serious injury, as a failure to discharge the duty imposed on the Commission by statute.


Walter R. Schreiber, Commissioner


Glenn W. Sutton, Commissioner

