91st Congress
1st Session } COMMITTEE PRINT

ANTIDUMPING

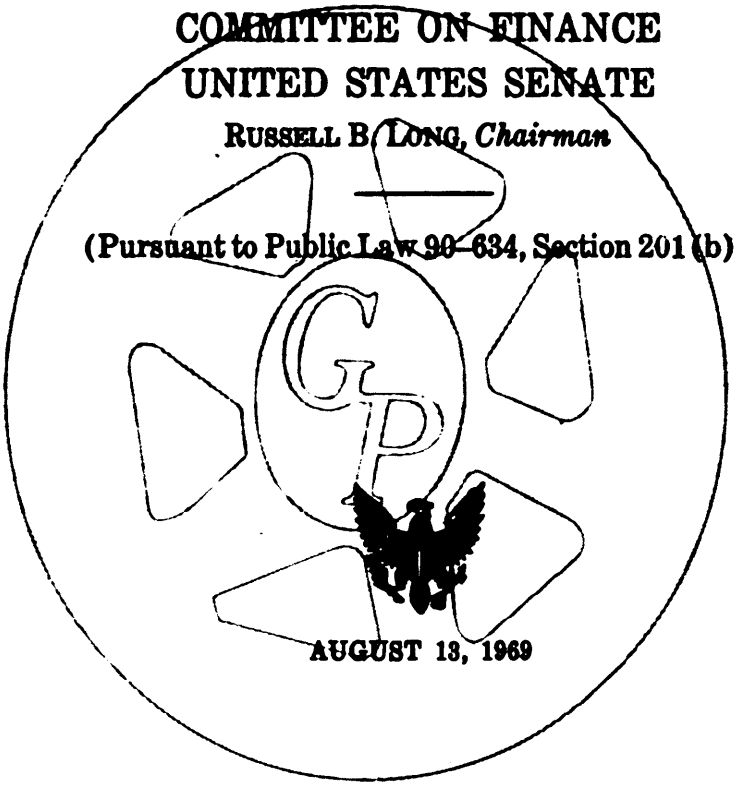
REPORT OF THE PRESIDENT OF THE UNITED STATES ON ANTIDUMPING

(For the Period July 1, 1968–June 30, 1969)

COMMITTEE ON FINANCE
UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

(Pursuant to Public Law 90–634, Section 201 (b))



AUGUST 13, 1969

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1969

33-262 O

COMMITTEE ON FINANCE

RUSSELL B. LONG, Louisiana, *Chairman*

CLINTON P. ANDERSON, New Mexico
ALBERT GORE, Tennessee
HERMAN E. TALMADGE, Georgia
EUGENE J. McCARTHY, Minnesota
VANCE HARTKE, Indiana
J. W. FULBRIGHT, Arkansas
ABRAHAM RIBICOFF, Connecticut
FRED R. HARRIS, Oklahoma
HARRY F. BYRD, Jr., Virginia

JOHN J. WILLIAMS, Delaware
WALLACE F. BENNETT, Utah
CARL T. CURTIS, Nebraska
EVERETT McKINLEY DIRKSEN, Illinois
JACK MILLER, Iowa
LEN B. JORDAN, Idaho
PAUL J. FANNIN, Arizona

TOM VAIL, *Chief Counsel*
EVELYN R. THOMPSON, *Assistant Chief Clerk*

LETTER OF TRANSMITTAL

THE WHITE HOUSE,
August 13, 1969.

To the Congress of the United States:

In accordance with title II, section 201(b) of Public Law 90–634, I am pleased to submit the enclosed report for the period beginning on July 1, 1968, and ending on June 30, 1969, setting forth: (1) the texts of all determinations made by the Secretary of the Treasury and the U.S. Tariff Commission under the Antidumping Act, 1921, as amended, in that period; (2) an analysis with respect to each determination in that period of the manner in which the Antidumping Act, 1921, as amended, was administered to take into account the provisions of the International Antidumping Code; and (3) a summary of antidumping actions taken by other countries in that period against U.S. exports, relating such actions to the provisions of the International Antidumping Code.

I have no recommendations to make at this time concerning the administration of the Antidumping Act, 1921.

There are differences in language between the Antidumping Act, 1921, and the International Antidumping Code. The differences in language, when applied to the cases contained in this report, have not affected the Treasury Department and the Tariff Commission in making their determinations under the act. Obviously, the domestic law would take precedence over the International Antidumping Code in the event of an actual conflict. If this question should present any problem in the future, I shall submit a supplemental report to the Congress covering this matter.

RICHARD NIXON.

AUTHORITY—PUBLIC LAW 90-634, SECTION 201(b)

No later than August 1, 1969, the President shall submit to the House of Representatives and U.S. Senate a report for the period beginning on July 1, 1968, and ending on June 30, 1969, which shall—

(1) set out the text of all determinations made by the Secretary of the Treasury and the U.S. Tariff Commission under the Antidumping Act, 1921, in such period;

(2) analyze with respect to each determination in such period the manner in which the Antidumping Act, 1921, has been administered to take into account the provisions of the International Antidumping Code;

(3) summarize antidumping actions taken by other countries in such period against U.S. exports and relate such actions to the provisions of the International Antidumping Code; and

(4) include such recommendations as the President determines appropriate concerning the administration of the Antidumping Act, 1921.

CONTENTS

ANTIDUMPING

I. Introduction and Summary

The Antidumping Act, 1921, as amended, imposes on the Secretary of the Treasury the responsibility for determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value. If the Secretary of the Treasury makes an affirmative determination, the case is forwarded to the U.S. Tariff Commission 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 such imports. In the event of affirmative determinations by both agencies, a finding of dumping is made by the Secretary of the Treasury and a special dumping duty is assessed on all imports into the United States covered by the finding to the extent any dumping margins are found to exist.

During the period July 1, 1968, to June 30, 1969, the Secretary of the Treasury made six determinations of sales at not less than fair value. The Secretary also made one determination of sales at less than fair value; this case was forwarded to the Tariff Commission which was considering the matter at the close of the above period.

The Tariff Commission, during the period July 1, 1968 to June 30, 1969, made five determinations of injury, and the Secretary of the Treasury consequently published antidumping findings. Previous Treasury determinations of sales at less than fair value in these cases were made before July 1, 1968, the effective date of the new Treasury regulations. The International Antidumping Code was not applicable to these cases.

II. Determinations Made by the Secretary of the Treasury Under the Antidumping Act, 1921, and Analyses

SUMMARY

The Secretary of the Treasury during the reporting period made six determinations of sales at not less than fair value. Four of the six cases were initiated prior to the new customs regulations which became effective on July 1, 1968. The Secretary also made one determination that the merchandise in question was being, and was likely to be, sold at less than fair value, and forwarded the case to the Tariff Commission.

In six of the seven cases, the provisions of the International Antidumping Code had no effect on the procedures for administering the cases, or on their final conclusions. In the seventh case, a transitional question was resolved to the satisfaction of all interested parties.

A. High-speed steel twist drills and sets from Japan

This case was initiated prior to the new customs regulations which became effective on July 1, 1968, simultaneously with the entrance

into force of the International Antidumping Code. To the extent that any actions on this matter were taken after the effective date of the new regulations, they applied to all such actions.

Provisions of the International Antidumping Code had no effect on the procedures for administering this case, or on its final conclusions. The conclusion reached and the procedures followed, would have been the same even if the code had never been effective or the new regulations had not been promulgated.

There follows a copy of the Treasury's determination of sales at not less than fair value in this case; also of the Treasury's notice of tentative negative determination.

DEPARTMENT OF THE TREASURY

NOTICE OF TENTATIVE NEGATIVE DETERMINATION

Information was received on June 8, 1967, that high-speed steel twist drills and twist drills sets, short length, straight shank, as follows:

Drills—

Type B, class 1, fractional sizes one-half inch and under.
Type C, wire gage sizes 1 through 20.
Type D, letter sizes J–T–X–Y–Z.

Drill Sets—

Type B, class 1, eight-piece set, one-sixteenth inch to one-half inch by 16ths.

Type B, class 1, 29-piece set, one-sixteenth inch to one-half inch by 64ths. manufactured by Sonoike Tool Manufacturing Co., Ltd., Tokyo, Japan, and Kobe Steel Ltd., Tokyo, Japan, were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the Federal Register of July 25, 1967, on page 10869.

I hereby make a tentative determination that high-speed steel twist drills and twist drill sets, short length, straight shank, as follows:

Drills—

Type B, class, fractional sizes one-half inch and under.
Type C, wire gage sizes 1 through 20.
Type D, letter sizes J–T–X–Y–Z.

Drill Sets—

Type B, class 1, eight-piece set, one-sixteenth inch to one-half inch by 16ths.

Type B, class 1, 29-piece set, one-sixteenth inch to one-half inch by 64ths. manufactured by Sonoike Tool Manufacturing Co., Ltd., Tokyo, Japan, and Kobe Steel Ltd., Tokyo, Japan, are not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)).

Statement of reasons on which this tentative determination is based

Based on the available information it was determined that for fair value purposes purchase price should be compared with the adjusted home market price of similar merchandise.

Purchase price was calculated by deducting from the f.o.b. price for exportation to the United States the included inland freight charges and packing.

Adjusted home market price was calculated by deducting inland freight and packing from the delivered price of similar merchandise to home market purchasers. Allowance was made as appropriate for differences in credit terms, a volume discount based on quantities purchased per month during each quarter, and selling commissions paid to a selling agent.

Purchase price was found not to be less than the adjusted home market price for similar merchandise.

In accordance with section 53.33(b), Customs Regulations (19 CFR 53.33(b)) interested parties may present written views or arguments, or request in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any such written views, arguments, or requests should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20226, in time to be

received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

This tentative determination and the statement of reasons therefor are published pursuant to section 53-33 of the Customs Regulations (19.CFR 53.33).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On September 14, 1968, there was published in the Federal Register a "Notice of Tentative Negative Determination" that high-speed steel twist drills and twist drill sets, short length, straight shank, as follows:

Drills—
Type B, class 1, fractional sizes one-half inch and under
Type C, wire-gage sizes 1 through 20
Type D, letter sizes J-T-X-Y-Z

Drill sets—
Type B, class 1, eight-piece set, one-sixteenth inch to one-half inch by 16ths
Type B, class 1, 29-piece set, one-sixteenth inch to one-half inch by 64ths

manufactured by Sonoike Tool Manufacturing Co., Ltd., Tokyo, Japan, and Kobe Steel Ltd., Tokyo, Japan, are not being sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the act).

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded until October 14, 1968, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No written submissions or requests having been received, I hereby determine that high speed steel twist drills and twist drill sets, short length, straight shank, as follows:

Drills—
Type B, class 1, fractional sizes one-half inch and under
Type C, wire-gage sizes 1 through 20
Type D, letter sizes J-T-X-Y-Z

Drill sets—
Type B, class 1, eight-piece set, one-sixteenth to one-half inch by 16ths
Type B, class 1, 29-piece set, one-sixteenth to one-half inch by 64ths

manufactured by Sonoike Tool Manufacturing Co., Ltd., Tokyo, Japan, and Kobe Steel Ltd., Tokyo, Japan, are not being, nor likely to be, sold at less than fair value (section 201(a) of the act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the act (19 U.S.C. 160(c)) and section 53.33(c), customs regulations (19 CFR 53.33(c)).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

B. Color television picture tubes from the Netherlands

This case was initiated prior to the new customs regulations which became effective on July 1, 1968, simultaneously with the entrance into force of the International Antidumping Code. To the extent that any actions on this matter were taken after the effective date of the new regulations, they applied to all such actions.

In this case, withholding of appraisement took place prior to July 1, 1968. In accordance with section 53.34(d) of the new customs regulations, the time limitations which are provided for in the International Antidumping Code were not applicable.

Provisions of the International Antidumping Code had no effect on the procedures for administering this case, or on its final conclusions. The conclusions reached, and the procedures followed, would have been the same even if the code had not been promulgated.

There follows a copy of the Treasury's determination of sales at not less than fair value in this case; also of the Treasury's notice of tentative negative determination.

DEPARTMENT OF THE TREASURY

NOTICE OF TENTATIVE NEGATIVE DETERMINATION

Information was received on September 26, 1967, that color television picture tubes manufactured by N. V. Philips Gloeilampenfabrieken, Inkoopcentrale, Eindhoven, Netherlands, were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.), (referred to in this notice as "the act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the Federal Register of December 23, 1967, on page 20783.

I hereby make a tentative determination that color television picture tubes manufactured by N. V. Philips Gloeilampenfabrieken, Inkoopcentrale, Eindhoven, Netherlands, are not being, nor likely to be, sold at less than fair value with the meaning of section 201(a) of the act (19 U.S.C. 160(a)).

Statement of reasons on which this tentative determination is based

Information gathered during the course of the investigation indicated that no relationship within the meaning of section 207 of the Antidumping Act (19 U.S.C. 166) existed between the exporter and the U.S. purchaser of the merchandise. Sales in the home market were insufficient to afford a proper basis of comparison. Comparison was therefore made between purchase price and weighted-average third country price of the merchandise. Purchase price was calculated by deducting ocean freight, insurance and inland charges incurred in the country of exportation from the c.i.f. price to the United States.

Weighted average third country price was based on the delivered prices to purchasers in third countries. From these prices were deducted freight and insurance from the manufacturer to the purchaser in the third countries. Adjustment to this price was made for differences in packing cost on sales to these countries as compared to the cost of packing on shipments to the United States.

Comparison of the purchase price and the weighted average third country price as calculated above revealed that prior to June 1, 1968, purchase price was less than the weighted average third country price. Subsequent to that time, adjustments have been made both in prices to the United States and to third countries which eliminated the margin which previously existed. The manufacturer has provided assurances that no future sales will be made to the United States which are at less than fair value within the meaning of the Antidumping Act (19 U.S.C. 160 et seq.).

In accordance with section 53.33(b), customs regulations (19 CFR 53.33(b)) interested parties may present written views or arguments, or request in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any such written views, arguments, or requests should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20226, in time to be received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

This tentative determination and the statement of reasons therefore are published pursuant to section 53.33 of the customs regulations (19 CFR 53.33).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On December 14, 1968, there was published in the Federal Register a "Notice of Tentative Negative Determination" that color television picture tubes manufactured by N. V. Philips Gloeilampenfabrieken, Inkoopcentrale, Eindhoven, Netherlands, are not being sold at less than fair value within the meaning of of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the "act").

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded until January 14, 1969, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No written submissions or requests having been received, I hereby determine that color television picture tubes manufactured by N. V. Philips Gloeilampenfabrieken, Inkoopcentrale, Eindhoven, Netherlands, are not being, nor likely to be, sold at less than fair value (section 201(a)) of the act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the act (19 U.S.C. 160(c)) and section 53.33(c), customs regulations (19 CFR 53.33(c)).

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

C. Haddock fillets from Canada

This case was initiated prior to the new customs regulations which became effective on July 1, 1968, simultaneously with the entrance into force of the International Antidumping Code. To the extent that any actions on this matter were taken after the effective date of the new regulations, they applied to such actions.

Provisions of the International Antidumping Code had no effect on the procedures for administering this case, or on its final conclusions. The conclusion reached, and the procedures followed, would have been the same even if the code had never been effective or the new regulations had not been promulgated.

There follows a copy of the Treasury's determination of sales at not less than fair value in this case; also of the Treasury's notice of tentative negative determination.

DEPARTMENT OF THE TREASURY

NOTICE OF TENTATIVE NEGATIVE DETERMINATION

Information was received on October 31, 1967, that frozen haddock fillets from eastern Canadian Provinces, were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the Federal Register of February 2, 1968, on page 2533.

I hereby make a tentative determination that frozen haddock fillets from eastern Canadian Provinces are not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)).

Statement of reasons on which this tentative determination is based

Sales to U.S. purchasers were made to both related and unrelated parties within the meaning of section 207 of the Antidumping Act, as amended (19 U.S.C. 166).

The quantities of this merchandise sold for home consumption were adequate to furnish a basis of comparison.

Accordingly, purchase price or exporter's sales price was compared with the adjusted home market price for such or similar merchandise as applicable.

Purchase price was computed by deducting inland freight, ocean freight and insurance, U.S. duty and brokerage fees, as applicable, from this gross selling price to unrelated purchasers in the United States.

Exporter's sales price was calculated by deducting from the resale price to U.S. purchasers by related firms, as appropriate, commissions, ocean freight and insurance, U.S. duty, brokerage fees, inland freight, storage, and discounts.

Adjusted home market price was calculated by deducting inland freight, insurance and storage as appropriate, from the gross sales prices to purchasers in Canada.

In all cases, the purchase prices or exporter's sales prices were found to be higher than the adjusted home market prices for such or similar merchandise.

In accordance with section 53.33(b), customs regulations (19 CFR 53.33(b)) interested parties may present written views or arguments, or request in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any such written views, arguments, or requests should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20226, in time to be received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

This tentative determination and the statement of reasons therefor are published pursuant to section 53.33 of the customs regulations (19 CFR 53.33).

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On January 10, 1969, there was published in the Federal Register a "Notice of Tentative Negative Determination" that frozen haddock fillets from eastern Canadian Provinces are not being sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the "act").

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded until February 10, 1969, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No written submissions or requests having been received, I hereby determine that frozen haddock filets from eastern Canadian Provinces are not being, nor likely to be, sold at less than fair value (section 201(a) of the act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the act (19 U.S.C. 160(c)) and section 53.33(c), customs regulations (19 CFR 53.33(c)).

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

D. Aminoacetic acid (glycine) from West Germany

This case was initiated subsequent to the new customs regulations which became effective on July 1, 1968, simultaneously with the entrance into force of the International Antidumping Code. All actions taken in this matter were under the rules set forth in these regulations.

Provisions of the International Antidumping Code had no effect on the procedures for administering this case, or on its final conclusions. The conclusions reached, and the procedures followed, would have been the same even if the code had never been effective or the new regulations had not been promulgated.

There follows a copy of the Treasury's determination of sales at not less than fair value in this case; also of the Treasury's notice of tentative negative determination.

DEPARTMENT OF THE TREASURY

NOTICE OF TENTATIVE NEGATIVE DETERMINATION

Information was received on March 1, 1968, that Aminoacetic Acid (Glycine) from West Germany, was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.), (referred to in this notice as "the act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the Federal Register of September 17, 1968, on page 14079.

I hereby make a tentative determination that aminoacetic acid (glycine) from West Germany, is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)).

Statement of reasons on which this tentative determination is based

The only known producer of aminoacetic acid (glycine) for exportation to the United States has discontinued production of the product and has given assurances that no further shipments will be made to the United States.

In accordance with section 53.33(b), customs regulations (19 CFR 53.33(b)), interested parties may present written views or arguments, or request in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any such written views, arguments, or requests should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20226, in time to be received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

This tentative determination and the statement of reasons therefor are published pursuant to section 53.33 of the customs regulations (19 CFR 53.33).

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On February 14, 1969, there was published in the Federal Register a "Notice of Tentative Negative Determination" that aminoacetic acid (glycine) from West Germany, is not being sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the "act").

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded until March 17, 1969, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No written submissions or requests having been received, I hereby determine that aminoacetic acid (glycine) from West Germany, is not being, nor likely to be, sold at less than fair value (sec. 201(a) of the act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the act (19 U.S.C. 160(c)) and section 53.33(c), customs regulations (19 CFR 53.33(c)).

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

E. Concord grapes from Canada

This case was initiated prior to the new customs regulations which became effective on July 1, 1968, simultaneously with the entrance into force of the International Antidumping Code. To the extent that any actions on this matter were taken after the effective date of the new regulations, they applied to all such actions.

In this case, withholding of appraisement took place prior to July 1, 1968. In accordance with section 53.34(d) of the new customs regulations, the time limitations which are provided for in the International Antidumping Code were not applicable.

The former customs regulations provided for a tentative affirmative determination of sales at less than fair value in section 14.8 Interested persons, if they disagreed with such a tentative determination, were afforded an opportunity to present their views orally to Treasury and Customs officials.

Section 53.37 of the new regulations provides that interested persons may present oral views to Treasury and Customs officials within 3 weeks of the date of publication of a notice of withholding of appraisement, unless for unusual reasons it is clearly impracticable to do so. There is a provision in the new regulations for issuing tentative negative determination of sales at less than fair value but no provision for tentative affirmative determinations.

Because withholding of appraisement was published in this case prior to July 1, 1968, there was technically no opportunity afforded under the new regulations for interested parties to present their views orally to Treasury and Customs officials. This situation is unusual in that it can arise only in situations such as this, where withholding of appraisement was published prior to July 1, 1968, and the Treasury is contemplating possible issuance of a final affirmative determination of sales at less than fair value after July 1, 1968.

In order to be scrupulously fair to all interested parties in this unusual situation, they were invited to attend a meeting before officials of the Bureau of Customs and Treasury Department to express their opinion with respect to the pending decision. Subsequent to this meeting a determination was made that the merchandise was being, and was likely to be, sold at less than fair value. The case was forwarded to the Tariff Commission which was considering the matter on June 30, 1969.

With the single exception just described, provisions of the International Antidumping Code had no effect on the procedures for administering this case. The code had no effect on the final conclusions. The conclusions reached, and the procedures followed (with the single exception just mentioned), would have been the same even if the code had never been effective or the new regulations had not been promulgated.

There follows a copy of the Treasury's determination of sales at less than fair value in this case.

DEPARTMENT OF THE TREASURY

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

Information was received on September 18, 1967, that Concord grapes from Canada were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

A "Withholding of Appraisement Notice" issued by the Commissioner of Customs was published in the Federal Register of October 25, 1967.

After consideration of all information received and views and argument presented, I hereby determine that for the reasons stated below Concord grapes from Canada are being, or likely to be, sold at less than fair value within the meaning of section 201(a) of the act.

Statement of reasons on which this determination is based

Importations to the United States were pursuant to arms-length transactions between firms not related within the meaning of section 207 of the Antidumping Act. Since two types of producers market the subject merchandise in Canada, producers selling to licensed processors under the Farm Products Marketing Act, and producers who sell on the open market, purchase price was compared with the applicable adjusted home market price for identical or similar merchandise, as appropriate.

Calculation of the adjusted home market price of both identical and similar merchandise was made on the basis of the delivered price to processors. With respect to identical merchandise, adjustment was made for a cost factor for rejected loads incurred in sales in Canada but not on sales to the United States. With respect to similar merchandise, in addition to the adjustment for rejected merchandise, allowance was also made for differences in the cost of producing the similar merchandise in Canada as compared with the cost of producing the merchandise exported to the United States.

Purchase price was computed on the basis of the f.o.b. U.S. destination per ton price, from which the applicable included U.S. duty was deducted.

This determination is published pursuant to section 201(c) of the act (19 U.S.C. 160(c)).

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

F. Aminoacetic acid (glycine) from the Netherlands

This case was initiated subsequent to the new customs regulations which became effective on July 1, 1968, simultaneously with the entrance into force of the International Antidumping Code. All actions taken in this matter were under the rules set forth in these regulations.

Provisions of the International Antidumping Code had no effect on the procedures for administering this case, or on its final conclusions. The conclusions reached, and the procedures followed, would have been the same even if the code had never been effective or the new regulations had not been promulgated.

There follows a copy of the Treasury's determination of sales at not less than fair value in this case; also of the Treasury's notice of tentative negative determination.

DEPARTMENT OF THE TREASURY

NOTICE OF TENTATIVE NEGATIVE DETERMINATION

Information was received on March 1, 1968, that aminoacetic acid (glycine) from the Netherlands, was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the act)." This information was the subject of an "Antidumping Proceeding Notice" which was published in the Federal Register of September 17, 1968, on page 14079.

I hereby make a tentative determination that aminoacetic acid (glycine) from the Netherlands is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)).

Statement of reasons on which this tentative determination is based

Based on the available information, it was determined that for fair value pur poses purchase price should be compared with third country price.

Purchase price was calculated by deducting the included inland freight, ocean freight, and insurance charges from the c.i.f. price for exportation to the United States to a nonrelated purchaser.

Third country price was calculated by deducting the included delivery costs, selling commission and insurance charges, from the weighted-average delivered price of identical merchandise to Italy, the third country buying in adequate quantities to provide for a proper comparison.

Purchase price was found not to be less than the adjusted third country price for identical merchandise.

In accordance with section 53.33(b), Customs Regulations (19 CFR 53.33(b)), interested parties may present written views or arguments, or request in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any such written views, arguments, or requests should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20226, in time to be received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

This tentative determination and the statement of reasons therefor are published pursuant to section 53.33 of the customs regulations (19 CFR 53.33).

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On May 6, 1969, there was published in the Federal Register a "Notice of Tentative Negative Determination" that aminoacetic acid (glycine) from the Netherlands is not being sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the "Act").

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded until June 5, 1969, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No written submissions or requests having been received, I hereby determine that aminoacetic acid (glycine) from the Netherlands is not being, nor likely to be, sold at less than fair value (section 201(a) of the act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the act (19 U.S.C. 160(c)) and section 53.33(c), customs regulations (19 CFR 53.33(c)).

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

G. Beta-oxy-naphthoic acid from Japan

This case was initiated prior to the new customs regulations which became effective on July 1, 1968, simultaneously with the entrance into force of the International Antidumping Code. To the extent that any actions on this matter were taken after the effective date of the new regulations, they applied to all such actions.

Provisions of the International Antidumping Code had no effect on the procedures for administering this case, or on its final conclusions. The conclusion reached, and the procedures followed, would have been the same even if the code had never been effective or the new regulations had not been promulgated.

There follows a copy of the Treasury's determination of sales at not less than fair value in this case; also of the Treasury's notice of tentative negative determination.

DEPARTMENT OF THE TREASURY

NOTICE OF TENTATIVE NEGATIVE DETERMINATION

Information was received on August 21, 1967, that beta-oxy-naphthoic acid from Japan, was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the act.") This information was the subject of an "Antidumping Proceeding Notice" which was published in the Federal Register of December 12, 1967, on page 17676.

I hereby make a tentative determination that beta-oxy-naphthoic acid from Japan is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)).

Statement of reasons on which this tentative determination is based

Sales to the United States were made to one purchaser. Sufficient quantities of the merchandise were sold in the home market to afford a proper basis for comparison. Purchase price was compared with adjusted home market price for fair value purposes.

Purchase price was calculated by deducting freight from the f.o.b. price for exportation to the United States, as provided for in section 203 of the Antidumping Act, 1921, as amended (19 U.S.C. 162).

Adjusted home market price was calculated by deducting from the gross price to purchasers in Japan an amount for freight, interest charges, and differences in packing.

Comparison of purchase price with adjusted home market price revealed that adjusted home market price was, in all cases, higher than purchase price. Upon being advised of this, both the exporter and manufacturer provided assurances that no future sales to the United States would be made at less than home market price. Importations of this merchandise from Japan ceased in November 1967, shortly before the investigation began.

In accordance with section 53.33(b), customs regulations (19 CFR 53.33(b)), interested parties may present written views or arguments, or request in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any such written views, arguments, or requests should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20226, in time to be received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

This tentative determination and the statement of reasons therefor are published pursuant to section 53.33 of the customs regulations (19 CFR 53.33).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On January 14, 1969, there was published in the Federal Register a "Notice of Tentative Negative Determination" that beta-oxy-naphthoic acid from Japan is not being sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as the "act").

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded until February 13, 1969, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No written submissions or requests having been received, I hereby determine that beta-oxy-naphthoic acid from Japan is not being, nor likely to be, sold at less than fair value (sec. 201(a) of the act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the act (19 U.S.C. 160(c)) and section 53.33(c), customs regulations (19 CFR 53.33(c)).

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

III. DETERMINATIONS MADE BY THE U.S. TARIFF COMMISSION UNDER THE ANTIDUMPING ACT, 1921, AND ANALYSES

A. Pig iron from East Germany, Czechoslovakia, Rumania and the U.S.S.R.

B. Titanium sponge from the U.S.S.R.

These cases were referred to the Tariff Commission before entry into force of the International Antidumping Code. Moreover, the U.S.S.R., East Germany and Rumania are not parties to the code; the United States is under no obligation to them thereunder. Although Czechoslovakia is a contracting party to the General Agreement on Tariffs and Trade (GATT) and a signatory of the code, the United States is under no obligation to it thereunder because the United States secured a waiver from the GATT contracting parties in 1951 authorizing it to suspend all its GATT obligations to Czechoslovakia, and it so exercised this authority. This suspension, complete in scope and indefinite in duration, applies to the code as well, it being an agreement "on implementation of article VI" of the GATT. Finally, the United States does not extend most-favored-nation treatment to imports from these four countries.

In both of these cases, Vice Chairman Sutton and Commissioner Clubb determined there was injury and Chairman Metzger and Commissioner Thunberg determined there was no injury. Pursuant to section 201(a) of the Antidumping Act, the Commission is deemed to have made an affirmative determination when the Commissioners voting are equally divided.

Since the International Antidumping Code was not applicable to these cases, there was no reason for the Commission to take the code into consideration in making its determinations. However, Chairman Metzger noted in his statement in the titanium sponge case that since the code does exist, and since it is desirable in the absence of a congressional purpose to the contrary, that the act be applied without discrimination as between code country imports and noncode country imports, he had examined the code provisions which might have been relevant had a code country been involved, and that he perceived no differences in the relevant provisions of the code and the act which might have led to different results had they been read together.

UNITED STATES TARIFF COMMISSION

PIG IRON FROM EAST GERMANY, CZECHOSLOVAKIA, ROMANIA, AND THE U.S.S.R.

Determination of Injury
in Investigation Nos. AA1921-52, 53, 54, and 55
Under the Antidumping Act, 1921,
As Amended

TC Publication 265
Washington, D.C.
September 1968

UNITED STATES TARIFF COMMISSION

Address all communications to

United States Tariff Commission

Washington, D.C. 20436

C O N T E N T S

UNITED STATES TARIFF COMMISSION
Washington

[AA1921-52/55]

September 25, 1968

PIG IRON FROM EAST GERMANY, CZECHOSLOVAKIA, ROMANIA, AND THE U.S.S.R.

Determinations of Injury

On June 25, 1968, the Tariff Commission received advice from the Treasury Department that pig iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R. 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. 1/ Accordingly, on that same date the Commission instituted Investigations No. AA1921-52 (with respect to imports from East Germany), No. AA1921-53 (Czechoslovakia), No. AA1921-54 (Romania) and No. AA1921-55 (the U.S.S.R.) 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.

Notice of the institution of the investigations and of a joint hearing to be held in connection therewith was published in the Federal Register of June 28, 1968 (33 F.R. 9516). The hearing was held on July 29 and 30, 1968.

1/ Treasury published a separate determination of sales at less than fair value for each country in the Federal Register of June 26, 1968 (33 F.R. 9375).

In arriving at its determinations the Commission gave due consideration 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 joint investigations, the Commission has determined that an industry in the United States is being injured by reason of the importation of pig iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R., sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. 1/

Statement of Reasons for Affirmative Determination of Vice Chairman Sutton

In my view, an industry in the United States is being injured by reason of the LTFV imports of pig iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R. In arriving at this determination of injury under section 201(a) of the Antidumping Act, 1921, as amended, I have considered the injured industry to be those facilities of domestic producers devoted to the production

1/ Vice Chairman Sutton and Commissioner Clubb determined there was injury and Chairman Metzger and Commissioner Thunberg determined there was no injury. Pursuant to section 201(a) of the Antidumping Act, the Commission is deemed to have made an affirmative determination when the Commissioners voting are equally divided.

of cold pig iron (hereinafter referred to as the cold pig iron industry), and have taken into account the combined impact on such industry of LTFV imports from all four countries collectively, rather than from each country individually. 1/

Inasmuch as the jurisdiction of the Tariff Commission arises under section 201(a) upon receipt of Treasury's determination of LTFV imports and as such agency has made separate determinations of LTFV sales of pig iron from each of the four countries, an effort is made below to explain why in my opinion the collective impact of such LTFV imports governs in the disposition of the matters before the Commission. Also, explanations are furnished for my view that the cold pig iron industry is the relevant industry in this case and that such industry is being injured by the LTFV imports in question.

1/ A more detailed study of the separate impact of the LTFV imports of pig iron from each country, particularly such imports from Czechoslovakia and Romania which are relatively small, might have resulted in a determination of de minimis injury for each country. However, I have not pursued this course of action for the reason that I believe the law contemplates that the Commission consider the combined impact of all LTFV imports of pig iron.

Combined impact of LTFV imports governs

Section 201(a), as enacted, 1/ included language designed to establish an orderly procedure for identifying the "class or kind" of imports which customs officers were to scrutinize following the issuance of a public finding of dumping by the Secretary. Although the amendments of the Antidumping Act in 1954 2/ transferring the injury determination to the Tariff Commission introduced new preliminary procedures, they did not alter the foregoing procedure for identifying the "class or kind" of merchandise covered by the Secretary's finding issued in a given case following the respective affirmative determinations made by him and the Tariff Commission.

Treasury practice.--It has been the practice of the Treasury from the outset of its jurisdiction in 1921 to limit the class or kind of foreign merchandise by specifying its source. The most

---

1/ That whenever the Secretary of the Treasury * * * , after such investigation as he deems necessary, finds that 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 into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers. (Underscoring supplied.) 42 Stat. 11.

2/ P.L. 83-768, 68 Stat. 1136.

frequent limitation to the article description has been the specification of the country of origin. I know of no instance of a single finding involving more than one country of origin. On the other hand, it seems that when more than one country was involved the Secretary made simultaneous but separate findings with respect to each such country. See, for example, the 8 separate but simultaneous affirmative findings of dumping with respect to safety matches from 8 countries; 1/ also the 4 separate but simultaneous affirmative findings involving ribbon fly catchers from 4 countries. 2/ In subsequently revoking such findings, the Treasury issued a single T.D. terminating the findings with respect to safety matches from 7 of the countries 3/ and a single T.D. revoking several findings involving several classes of merchandise. 4/

Treasury, also, in treating with dumping findings, limited to a specified product from one country, has thereafter rescinded such findings piecemeal on a producer-by-producer basis. 5/

1/ T.D.s 44716 through 44723.
2/ T.D.s 50035 through 50038.
3/ T.D. 50026.
4/ T.D. 52370.
5/ See T.D.s 54168 and 54199 rescinding in part the Secretary's finding (T.D. 53567) with respect to hardboard from Sweden.

Treasury's practice has also included limitations of a dumping finding to products from a political subdivision of a country--such as from one of the provinces of Canada--and also to imports from one or more named foreign producers or sellers in a country.

Bearing in mind the nature of the Secretary's operations, and the fact that his dumping findings made prior to 1954 involving multi-country sources for LTFV imports of the same class or kind seem to have been simultaneously issued, I find no warrant in such actions of the Secretary for concluding that he regarded the imports from one country as having to be considered for injury purposes as separate and distinct from the same articles also being dumped by one or more other countries.

All things considered, it is my belief that, prior to 1954, the Secretary, in issuing the formal finding(s) of dumping at the conclusion of an investigation with respect to a particular product, was treating with the LTFV imports of that product in a collective sense from whatever source they came, i.e., whether from more than one foreign producer or from more than one country, for the reason that nothing in the statute or its legislative history remotely suggests that injury to an industry is to be condoned when combined sources are involved so long as the LTFV imports from each source when considered alone do not cause injury. It is not logical to treat the Secretary's practice of making a

separate finding for each country as anything other than a procedural or administrative convenience or expediency.

Tariff Commission practice.--On four occasions since 1954 the Tariff Commission has received from the Treasury Department simultaneous, but separate, determinations covering the same product from different countries. 1/ Each of these investigations resulted in unanimous negative determinations by the Commission. The statements of reasons indicated that the products had all been sold at prices equal to or higher than the comparable domestic product. For this reason, it was not necessary to resolve the issue of collective treatment of the dumped imports.

The issue has come up, however, in ways which illustrate the procedural difficulties introduced when Treasury staggers its determinations with respect to LTFV imports of the same products from more than one country. This type of problem is illustrated in the wire rod determinations, where Treasury made four separate determinations at different times with respect to such wire rods from Belgium, Luxembourg, Western Germany and France. In these investigations argument was made that each country's exports of LTFV wire rods had to be separately

1/ Hardboard from Canada and the Union of South Africa, tissue paper from Finland and Norway; rayon staple fiber from Belgium and France; and rayon staple fiber from Cuba and West Germany.

considered in terms of their impact on a domestic industry. The Commission, in four separate unanimous negative determinations, included statements recognizing the issue.

In each of the negative wire rod determinations the Commission stated that it had taken into account a number of factors, the first two of which seem to imply a consideration of the combined injurious effect of LTFV imports from the four countries. However, the Commission determinations seem to have straddled the precise issue now before us, for in each of the determinations, the Commission seems to be implying that no matter whether you consider the LTFV imports separately or collectively the results are still the same.

The investigation which most directly involves the issue now before the Commission is the one with respect to cement from Portugal. 1/ As a result of this investigation the Commission was divided; a majority in making the affirmative determination took into account that LTFV cement from Sweden had previously depressed the prices in the market areas in which the Portuguese cement was being sold. It noted that the latter cement was continuing such depressed prices and made an affirmative determination. The minority took the position that it was improper to consider the impact of any LTFV imports on an industry except those from Portugal.

1/ Investigation No. AA 1921-22, Portland Grey Cement from Portugal, October 20, 1961.

The Portuguese cement case is the first case which has afforded an opportunity for judicial review of the present issue. The U.S. Customs Court in a recent ruling 1/ on an appeal to reappraisement involving the assessment of dumping duties on cement from Portugal upheld the majority determination of the Commission. The court stated one of the importer's contentions in the case as being "that the Commission exceeded its statutory authority by predicating its finding of 'injury' almost entirely upon importations of cement from countries other than Portugal". In concluding that the Commission majority had acted properly in that case, the court said that under the extensive powers of the Commission--

> a consideration by them of the effect of prior determination of injury caused by sales of Belgium and Swedish cement at less than fair value, and their finding of injury herein, was an exercise of duly conferred authority, and is not ultra vires or null and void; does not result in exceeding its statutory authority; nor did the Commission predicate its finding of "injury" almost entirely upon importations of cement from countries other than Portugal.

The LTFV imports of cold pig iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R. were imported and sold in the

---

1/ City Lumber Co. v. United States, R.D. 11557, decided July 9, 1968, and now on appeal.

markets of the United States during the same period of time. The collective imports began in 1964, reached their peak in 1966, and ceased shortly after the beginning of 1967 when appraisements of such imports were withheld by customs officers. I must conclude, on the basis of the foregoing considerations, that the purposes and language of the statute require that the Commission's determination take into account the combined impact of LTFV imports of cold pig iron from all of the countries in question.

Description and Uses

Virtually all the pig iron from the four Eastern Europe countries on which the Treasury Department found sales at LTFV consisted of the basic and foundry grades. Almost all basic pig iron is used in the United States for the purpose of making steel. The great bulk of pig iron produced in the United States is of the basic grade and is transferred from the blast furnace to the steel making furnace in the molten state. Nonintegrated steelmaking concerns (i.e., those having no blast furnaces) whether they make steel ingots or steel for casting, must purchase their requirements of basic pig iron. The volume of their pig iron requirements varies, of course, depending on the process used for steelmaking. Virtually all of their pig iron is purchased in the form of cold pig that requires remelting in the steel furnace. Fully integrated

steel producers sometimes have occasion to buy basic cold pig iron, either domestic or imported, when needed to supplement their captive supply of hot metal; this need usually reflects the idling of one or more of their own blast furnaces for rebuilding, relining, or less extensive repairs.

Foundry pig iron is available in a wide variety of compositions and is used in the iron foundry industry for making iron castings such as pipe, automobile engine blocks and other automotive castings, and machinery parts. It normally has a higher silicon content (up to 3.5 percent or higher compared with a maximum of 1.5 percent in basic pig iron) and often contains less manganese. The foundry grades are usually shipped in the form of cold pig. Basic pig iron can be used for making iron castings but when so used the user incurs the further expense of additional ingredients (such as ferrosilicon) necessary to introduce elements not contained in the quantities required in basic pig iron.

Producers of cast-iron articles generally use a mixture of steel scrap, cast-iron scrap, and pig iron in their iron-making furnaces. The extent to which pig iron is used in the mix is dependent in part on the relative prices of pig iron and cast-iron scrap. By far the largest volume of cast-iron articles is made from a mixture containing pig iron which is usually 25 percent or more of the mix. However, there are situations in which

highly sophisticated equipment can be used to produce broad specification cast iron from mixes containing no pig iron. In such situations pig iron is nevertheless used where the prices of cast-iron scrap nears the higher price of pig iron.

The Injured Industry

Significant distinctions between molten pig iron and cold pig iron, and the inevitable resulting differences in their handling, distribution and sale, lead me to conclude that the injured industry in this case consists of and is confined to the domestic facilities devoted to the production of cold pig iron. Molten pig iron is generally produced at a constant specification, is sold on a long term price basis, is delivered in large bulk quantities on a reasonably continuous basis, can be shipped only very limited distances, does not involve casting into pigs and attendant handling problems, and must be used promptly if there is to be a utilization of its molten condition. On the other hand, cold pig iron is generally produced by a merchant pig iron producer in a wide range of specifications to meet the needs of various users. To meet these various needs it is necessary to stockpile a large inventory of each specification pig iron which in turn necessitates frequent and costly time consuming changes in the blast furnaces. These frequent changes generate off-specification pig iron which is difficult to sell at normal cold pig iron prices. Buyers of

cold pig iron are less constant in the quantities purchased and the frequency of their orders, demand various specifications in small lots, and tend to make shorter term purchase contracts.

The Competitive Impact

In recent years steel producers have been building new basic oxygen steel-making furnaces so as to materially reduce the melting time in making steel. For technical reasons, which need not be explained here, the basic oxygen process does not permit the use of as much scrap metal in a steel-making mix as can be used in most other steel-making furnaces. As a result of the technological improvement in steel furnaces, the conversion of the industry to the better process has created a greater supply of scrap metal in the United States which has resulted in lower prices for such scrap. In part because of the lower priced scrap, users of cold pig iron have sought technological improvements in their plants to better utilize more scrap which sells for less than domestic pig iron. As a result of these factors, the prices of domestic cold pig iron have been unstable and sales by domestic producers of cold pig iron have yielded less revenue. In such unstable market conditions, domestic cold pig iron producers have generally not been able to sell at their published prices nor to make long term sales. Indeed, they have had to negotiate many of their sales at prices lower than their published prices in

order to meet competitive conditions of the moment. With this highly price-sensitive market in mind one may readily weigh the impact of the entry of the LTFV imports into the domestic market.

Market penetration.--Imports of cold pig iron at less than fair value began in 1964 when they amounted to 1.6 percent of domestic shipments, including inter-company transfers of cold pig iron. In 1965 they amounted to 3.4 percent; in 1966 they amounted to about 12.4 percent. Thereafter, the growth in penetration ceased when imports stopped as a result of Treasury's order to withhold appraisement of future shipments, an action which could result in the assessment of special dumping duties with respect to subsequent shipments. During this period the domestic industry was operating at an average of 68 percent capacity (based on days of operation) and carried inventories of not less than 760,000 long tons of cold pig iron.

Price depressant effect.--Although the LTFV imports were sold to at least seventeen domestic users of pig iron located in various parts of the United States, about 70 percent of the imports was sold to four purchasers located in Alabama, Illinois, Indiana, and Pennsylvania. Detailed confidential data was obtained from these concerns. An analysis of the collective cold pig iron buying habits of these four purchasers is quite persuasive as to the price depressing effect of the presence of LTFV pig iron on the U.S. market.

Prior to 1963 at least three of the four companies used substantial quantities of domestic pig iron in their operations. In 1963, one year before the entry of LTFV imports into the market, they were using domestic and foreign pig iron 1/ at the ratio of 1 to 2, respectively. In 1964 the ratio became about 1 to 5. In 1965, when LTFV imports were first sold to the four concerns, the ratios became approximately 1 domestic to 2 foreign pig iron imports to 3 LTFV imports. In 1966, the ratios became 1 domestic to 6 foreign pig iron imports to 20 LTFV imports; in that year the domestic purchases consisted of off-grade cold pig iron.

In 1963, the four concerns bought foreign pig iron at about $18 less per long ton than the average price of their purchases of domestic pig. In 1964, the price differential narrowed to about $14.50, the adjustment being effected primarily by an increase in the average price of the foreign pig. In 1965, when the LTFV imports were first purchased by the four concerns at an average price almost $17 less than the 1964 price of domestic cold pig iron, the effect was immediate. The average price of the domestic pig purchased by these concerns dropped over $6 per long ton and the average price of foreign pig iron dropped 38 cents per long ton. Neither

1/ As used here the term "foreign pig iron" refers to cold pig iron of foreign origin other than from the four Eastern European countries named by Treasury.

the domestic producers nor the foreign pig iron producers met the prices of the LTFV imports in 1965. In 1966, the importers of LTFV pig iron again lowered their average price by $1.03 per ton. The sellers of foreign pig iron dropped their average price below the prices of the LTFV pig iron by 40 cents per ton in an unsuccessful attempt to retain their share of the sales to the four concerns, and with the exception of off-grade pig iron sales of domestic pig iron to the four concerns ceased. Upon the cessation of LTFV imports when customs officers withheld appraisement, the prices of domestic and foreign pig iron to the four concerns rose to appreciably higher levels.

In summary, the importers of LTFV pig iron from the four Eastern European countries are greatly underselling domestic producers of cold pig iron and are appreciably underselling importers of other foreign pig iron. This practice has caused a significant depression in prices of cold pig iron in the domestic market that was already price-sensitive when the LTFV pig iron entered it, and has resulted in an appreciably rapid market penetration. Such injury to the domestic cold pig iron industry is clearly more than de minimis.

There was some evidence that the low prices of the LTFV pig iron were also affecting the cast-iron scrap industry in the United States. However, in view of this determination of injury to the domestic cold pig iron producers, it is not necessary to pursue and weigh the degree of injury caused to the cast-iron scrap industry.

Statement of Reasons for Affirmative
Determination of Commissioner Clubb

I concur in Commissioner Sutton's finding of injury and the reasons given therefor.

The facts in this case are reasonably clear. Beginning in 1964 unfairly priced pig iron began to arrive from East Germany, in 1965 from the Soviet Union, and in 1966 from Romania and Czechoslovakia. As a result of the unfairly low prices, imports from these sources increased rapidly from 51,000 tons in 1964 to 349,000 tons in 1966. Overall imports increased during this same period from 658,000 tons to 1,060,000 tons.

The domestic producers of cold pig iron maintain that the unfair imports have injured them by taking sales, depressing prices, and causing potential purchasers to avoid long term contracts with domestic producers. The importers of LTFV cold pig iron argue that their imports did not injure the domestic cold pig iron industry because the LTFV imports competed only with other fairly priced imports and with scrap, but not with domestically produced cold pig.

There appears to be a direct and immediate competition between (1) fairly priced imported cold pig; (2) unfairly priced imported cold pig; (3) domestically produced cold pig; and (4) iron and steel scrap. For the most part these materials appear to be largely interchangeable, although this is not always true.

The mix of these materials used by the four firms which received a large portion of the unfairly priced imports varied as follows:

	Scrap	LTFV Imported Pig	FV Imported Pig	Domestic Pig
1963	86.5%	0%	8.6%	4.9%
1966	83.8%	12.4%	3.2%	.6%
Net Change	- 2.7%	+ 12.4%	- 5.4%	- 4.3%

It therefore seems clear that the unfairly priced imports displaced domestic pig iron as well as scrap and other imports in the case of these users, and there is reason to believe that this is true of other users as well. Moreover, the price depressing effects noted by Vice Chairman Sutton are indicative of a more general disruptive effect.

The importer of Czechoslovakian, East German, and Romanian pig iron concedes that under tests adopted in the recent Cast Iron Soil Pipe and Titanium Sponge cases, injury must be found here. But it strongly argues that the injury standard adopted in those cases was wrong, because the Commission there held that the "injury" requirement of the Antidumping Act of 1921 is satisfied by a showing of anything more than a trivial or inconsequential effect on a domestic industry. Respondent contends that the Act requires a greater degree of injury; that while the Act says "injured", it has always been interpreted to mean "materially injured", and that the term "materially injured" may mean a very small effect or very large effect depending on the case; that Congress has approved this interpretation; and that "it was left to this Commission to work out, on a case-by-case basis, in factual terms, the situations which would be considered to constitute material injury or the threat thereof, avoiding either extreme construction." If

respondent's view of the Act were to prevail, the Commission would be free to require a small injury in one case and a large injury in the next.

I cannot agree. No criteria has been suggested for use in determining when the Commission should require a greater or lesser showing of injury, and respondent suggests none here. Under this interpretation a case which failed one day might, for no apparent reason, succeed the next. The Act does not give the Commission such a free hand.

The Act, unchanged in substance since 1921, states that

> "[T]he . . . Commission shall determine . . . whether an industry in the United States is being or is likely to be injured . . . by reason of the importation of . . . [LTFV products] into the United States." (Emphasis supplied.) 19 U.S.C. § 160(a) (1965).

The Act employs the bare term "injured", but here, as elsewhere, the law will not deal with trifles, and, accordingly, it was sometimes said that material (as opposed to immaterial) injury was required. Of course, "immaterial injury" is, in a sense, a contradiction in terms because if the effect is immaterial, it does not amount to "injury" under the Act. [1] But this small semantic difficulty could be tolerated as long as it did not affect the substance of the Act.

1/ Cf. Whitaker Cable Corporation v. F.T.C., 239 F.2d 253, 256 (7th Cir., 1956), where the Seventh Circuit applied the same reasoning to the Robinson-Patman Act:

> "We do not mean to suggest that the Act may be violated a little without fear of its sanctions but rather that insignificant 'violations' are not, in fact or in law, violations as defined by the Act. If the amount of the discrimination is inconsequential or if the size of the discriminator is such that it strains credulity to find the requisite adverse effect on competition, the Commission is powerless under the Act to prohibit such discriminations . . ."

In 1951 the Administration requested Congress to amend the Act to make it read "materially injured", rather than just "injured", and at this point the Ways and Means Committee detected what it thought was more than a semantic problem with the term. Although the amendment was presented as merely declarative of the de minimis rule, i.e., the law will not deal with trifles, 2/ the Committee refused to

2/ During Ways and Means Committee hearings on this proposal, the following exchange took place between a Committee member and a representative of the Treasury Department:

> "Mr. REED. . . . By section 2 of this bill there is inserted in this language the word 'materially' before the word 'injured.'
>
> ". . . [W]ould not this change, to all intents and purposes, nullify the Antidumping Act?
>
> * * *
>
> "Mr. NICHOLS. Mr. Chairman, as I understand Mr. Reed's question, he asks whether this bill would detract from the provisions of the antidumping law, which requires the Secretary to take action in the event that injury to an American industry is threatened.
>
> "The answer to that is that the bill would require him to take action in such a case, just as the present law does. There is no change effected in that respect.
>
> "Mr. REED. What about the word 'materially' there? That is not in the Dumping Act.
>
> "Mr. NICHOLS. If a material injury were threatened, he would take action, just as he would now. The only change in this language is to make it clear that he is not called on to take action in a case of an insubstantial injury or a de minimis injury.
>
> "Mr. REED. Then it does change the dumping law.
>
> "Mr. NICHOLS. We have never understood that the law required us to take action in the case of an insubstantial injury, and we have never done so. This is, in practical effect, declaratory of the existing law." Hearings on H.R. 1535 before Comm. on Ways and Means, 82nd Cong., 1st Sess. 53 (1951).

recommend it because

> "The Committee decided not to include this change in the pending bill in order to avoid the possibility that the addition of the word 'materially' might be interpreted to require proof of a greater degree of injury than is required under existing law for imposition of antidumping duties. The committee decision is not intended to require imposition of antidumping duties upon a showing of frivolous, inconsequential or immaterial injury." H.R. Rep. No. 1089, 82nd Cong., 1st Sess. 7 (1951).

Certainly it cannot be said that Congress had at that point approved the flexible standard urged by respondent.

In 1954 the Act was amended to transfer the injury determination function to the Commission, and in the hearings which preceded that amendment, the Commission's General Counsel appeared and stated that the Commission would interpret "injured" to mean "materially injured" unless Congress instructed otherwise. 3/ Here, again, however, the

---

3/ The Ways and Means Committee discussion on this subject with the Commission's General Counsel was as follows:

> "Mr. Kaplowitz. . . . It is our understanding that the Treasury in administering the dumping statute has interpreted the word 'injury' as meaning material injury. If the Congress desires that this term be given any different interpretation, it should clearly express its intent.
>
> * * *
>
> "Mr. Byrnes. Another question. Going into this dumping provision, in your statement here you suggest that the Treasury interprets the word 'injury' to mean material injury. You raise some question as to whether Congress should not take some action to tell whoever is administering this whether they mean injury or material injury.
>
> "What does the law say? The law says 'injury', doesn't it?
>
> "Mr. Kaplowitz. Yes, sir, the law says 'injury.'

(Continued on next page.)

term "materially injured" was presented as merely an expression of the de minimis rule.

In 1957 a representative of the Treasury Department finally brought out the flexible, sliding scale interpretation of "materially injured" which Congress feared would be adopted when it refused to write "materially" into the Act, and which respondent urges here. In this connection the Treasury representative said, 4/

> "The Treasury has in the past suggested the definition 'material' injury. In the meantime others have suggested that this adjective is so vague as to be of no help. For example, to say that 'material injury' must be experienced by a domestic industry before the antidumping duties are to be applied might mean no more than that the disadvantage to the domestic interests must be somewhat more than insignificant, since here, as elsewhere, the 'law does not take account of trifles.' On the other hand, the term

---

3/ Continued:

> "Mr. Byrnes. That is the way the law will read after this bill is passed, is it not? It will still be just 'injury?'
>
> "Mr. Kaplowitz. Yes, sir, if it is not amended.
>
> "Mr. Byrnes. Why would the Tariff Commission be wedded to any prior interpretation of 'injury' that had been given in the past by the Treasury Department?
>
> "Mr. Kaplowitz. I believe the answer to that is that in using such a term as 'injury', it would be assumed, I think normally, that Congress did not intend insignificant injury or very minor injury. Of course, it all depends on how you interpret the word 'material.'" Hearings on H.R. 9476, Ways and Means Committee, 83rd Cong., 2d Sess. 35-37 (1954).

4/ Hearings before the Committee on Ways and Means on Amendments to the Antidumping Act of 1921, as amended, 85th Cong., 1st Sess. 17-18 (July 1957).

> 'material injury' might be construed to mean that anti-dumping duties are to be applied only if the offending imports have a substantial, important, or possibly a serious effect on the economic status of the domestic industry involved.
>
> * * *
>
> "It is concluded that the particular facts of particular cases will justify in some instances a determination of injury where that injury is anything more than insignificant or insubstantial, and that in other instances the determination will require considerably more injury than that. To go to either of these extremes in defining the degree of injury required would be to take a rigid position on the side of the protectionists or the free traders which is not, it is believed, justified, either by the legislative history or by conditions as they exist today."

The Congress was then asked not to amend the injury language of the Act, and it did not. Respondent argues that it is therefore "a fair inference that the Congress accepted the Treasury construction of the word 'injury.' I disagree. Congress cannot be expected to refute every erroneous statutory interpretation suggested to it on pain of having the erroneous interpretation adopted if it does not legislate. This is especially true where, as here, the intent of Congress on this matter had already been made very clear.

It is clear that Congress has not ratified by implication the flexible, ambiguous meaning of "injured" suggested by the 1957 Treasury statement, and urged by respondent here. On the contrary, Congress appears to have resisted substantial administrative pressure over a period of years to engraft the flexible injury concept onto the statute. Under the circumstances any attempt on our part to impose on the Act an interpretation which requires anything more than de minimis injury is clearly unwarranted.

It is thus clear that in this case injury within the meaning of the statute has occurred as a result of the LTFV imports from Czechoslovakia, Romania, East Germany, and the U.S.S.R.

Counsel for the U.S.S.R. exporter argues, however, that the effect of the LTFV sales from each country should be considered separately. Presumably, under this theory if the unfairly priced imports from each country did not by themselves cause injury to a domestic industry, dumping duties should not be applied despite the fact that the combined effect of the unfairly priced imports clearly do cause injury. It is sufficient to note with respect to this contention that the statute was written to protect domestic industries against an unfair trade practice which Congress feared might injure them. An industry can be injured as much by a few LTFV imports from each of many countries as it can be by many unfair imports from each of a few. The question in each case, therefore, is whether a domestic industry is being or is likely to be injured by LTFV sales. If so, such sales from all sources must cease, if they are contributing to the injury.

I am satisfied that the domestic cold pig iron industry is being injured by LTFV sales, and that the unfairly priced imports from all four countries are contributing to the injury.

Statement of Reasons for Negative Findings
of Injury by Chairman Metzger

In my opinion, the evidence before the Commission in these four investigations requires a negative injury determination in each case. 1/ Whether the imports of pig iron at less than fair value (LTFV) from East Germany, Czechoslovakia, Romania, and the U.S.S.R. are considered separately or collectively, 2/ and whatever the scope of the domestic industry, the evidence demonstrates that "an industry" is not being and is not likely to be injured "by reason of" the LTFV imports within the meaning of the Antidumping Act, 1921.

1/ Like the Titanium Sponge From the U.S.S.R. case (TC Publication 255, July 1968, Inv. No. AA1921-51), these investigations raise no issues concerning the consistency of any of the provisions of the Antidumping Act, 1921, with the International Antidumping Code, which has been in effect as to the United States since July 1, 1968. The U.S.S.R., East Germany, and Romania not being parties to the Code, the United States is under no obligation to them thereunder. Although Czechoslovakia is a Contracting Party to the General Agreement on Tariffs and Trade (GATT) and a signatory of the Code, the United States is under no obligation to it thereunder because the United States secured a waiver from the GATT Contracting Parties in 1951, authorizing it to suspend all its GATT obligations to Czechoslovakia, and it so exercised this authority. This suspension, complete in scope and indefinite in duration, applies to the Code as well, it being an agreement "on implementation of Article VI of the General Agreement on Tariffs and Trade".

This statement is based upon the application of the Antidumping Act, 1921, to the facts of the cases, and would be the same were the Code nonexistent.

2/ Neither the statute, nor any court, nor the Commission has furnished a clear or general answer to the question whether LTFV imports from different countries, entering in the same period of time, must be cumulated or treated separately for the purpose of determining whether injury to an industry in the United States is "by reason of" such imports. Circumstances can be envisioned where on the one hand it would be appropriate to cumulate, and on the other hand, where it would be appropriate to treat separately, such imports. Since it makes no difference one way or the other in these cases, it is unnecessary to consider the question further.

The LTFV imports of pig iron began in 1964, reached a peak of 349,000 long tons in 1966, and ceased after receipt of 44,000 tons in the first quarter of 1967 (table 6 attached hereto). Throughout the period in which they were entered, the LTFV imports amounted to 548,000 tons, U.S. production of pig iron has exceeded 75 million tons annually in recent years, reaching a high of 81.5 million tons in 1966 (table 1).

If the domestic industry under examination is considered to be coextensive with the production of all pig iron, including "captive" production, there is no claim and no evidence of injury or likelihood of injury to such industry. There has been a marked increase in the U.S. output of pig iron during the past decade, the production having risen each year since 1958, except in 1961 and 1967. The moderate decline in 1967 took place after the LTFV imports had ceased and was not related to such imports; the upward trend in production was resumed in January-June 1968.

With this rise in the total production of pig iron, there has been a decline in the relative importance of "merchant" pig iron, i.e., "non-captive" pig iron--that produced for sale to others. The domestic producers base their claim of injury primarily on the decline in sales of merchant cold pig iron that has occurred since 1965 (table 3) and the alleged price depressing effects of the LTFV imports in connection with such sales. However, were the domestic industry to be defined in the narrowest sense--the production of merchant cold pig iron for sale--the evidence before the Commission with respect to employment, prices, and profits of the producers of merchant pig iron (all of which are of course among the factors to be

taken into account in determining whether material injury has occurred or is threatened) does not support a finding of injury or likelihood thereof within the meaning of the Antidumping Act. 3/ Rather, it demonstrates that

3/ The Antidumping Act, 1921, was designed to prevent the destruction of competition and the establishment of monopoly through price-cutting methods in international trade. Its injury provision originated in the Senate, and its sponsors made clear that the injury at which it was aimed was material or substantial--not trifling--injury. Senator McCumber of North Dakota (in charge of the bill) stated:

> ....it is so worded that there is no danger (of its application) unless it is sought by a foreign competitor to sell goods for less than cost or less than they can be sold for consumption in the home country for the purpose of destroying an industry in this country and, when the industry is destroyed, of then raising the price to an excessive amount; and that is all the old antidumping law was. (Congressional Record, 1921, p. 1021.)

As stated by Senator Watson of Indiana:

> The basis of the pending antidumping provision is that the Secretary of the Treasury must find that the dumping, whatever the article may be or in whatever quantities it may come, is not necessarily for the purpose of destroying an American industry, but that it may destroy an American industry or is likely to destroy it or to prevent the establishment of an American industry. (Idem. p. 1101.)

The injury provision has been so applied since that time by the Treasury Department until 1954 and since then by the Commission. As the Commission stated unanimously in Titanium Dioxide from France (TC Publication 109, Sept. 24, 1963):

> Prior to October 1, 1954, the Treasury Department was responsible for determining not only whether sales below fair value were being made but also whether such sales were causing or were likely to cause injury to an industry in the United States. On that date, Congress transferred the injury-determination function from the Treasury Department to the Tariff Commission. In the congressional hearings that took place before the transfer was made, representatives of Treasury reported that the term "injury," as employed in the act, had been interpreted to mean "material injury;" and the Tariff Commission indicated that it would continue to follow that

3/ Continued
interpretation unless Congress directed otherwise, which it has not done. Thus, an affirmative finding by the Commission under the Antidumping Act must be based upon material injury to a domestic industry resulting from sales at less than fair value. 1/

1/ 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 of 1921, as amended--uses the term "material injury."

Recently it has been suggested that slightly more than a trifling injury constitutes material injury. While the term "material injury" has not been defined doctrinally by the Commission or the Congress, it is clearly the obverse of immaterial or inconsequential injury. The test cannot be a mechanistic one analagous to adding one trifling scratch on a finger to another in order to find material injury to a person, but rather involves a commonsense judgment after analysis of all the factors affecting the health and well-being of an industry, with due regard to the balancing of interests which, as above noted, the Congress struck in its enactment. If there is to be an elimination of the injury requirement, the Congress, not this Commission, is the appropriate body to legislate such an amendment to the Antidumping Act.

the only negative factor, among the many positive factors, affecting the producers of merchant pig iron,--the declining sales of cold pig iron--has been caused overwhelmingly by developments in the trade other than the importation of pig iron at LTFV.

The dominant reason for the decline in sales of cold pig iron is the increasing tendency for users to substitute iron and steel scrap for pig iron on the basis of supply and price considerations, and for technical reasons, on a wide and growing scale. An additional important reason is the general trend toward integration of the production of iron and steel, which has resulted in increased captive production of pig iron in place of merchant production. That the LTFV imports have had at most only a minor influence on the sales of cold pig iron, is indicated by the fact that the downward trend of such pig iron sales continued throughout 1967 and the first half of 1968, well after the LTFV imports had ceased.

The LTFV imports during 1964-67 (548,000 tons) were virtually all either basic grade or foundry grade pig iron, about 60 percent of the total consisting of basic grade and 40 percent consisting of foundry grade. Basic grade pig iron is used in the manufacture of steel. Domestic production has increased substantially with that of steel, and has amounted to more than 70 million tons annually in recent years. About 99 percent of the total is used by the producers themselves for further manufacture. The small proportion of the domestic output that is sold by merchant producers goes to steel companies having no blast furnaces, and to those temporarily

short of supply during the shut-down of a furnace for rebuilding or repair. Nearly all of the LTFV imports of the basic grade of pig iron were purchased by three or four steel companies. The principal purchaser shifted to other sources late in 1966, before the Treasury Department made its announcement of suspected sales at LTFV; that purchaser is currently installing electric furnaces which utilize scrap, virtually dispensing with the need for pig iron.

Foundry grade pig iron is used in making soil pipe, engine blocks, and a variety of cast iron articles. Domestic production has been relatively stable since 1960, notwithstanding an upward trend in the production of the articles in which it is used. An increase in the production of foundry grade pig iron has been prevented by the low price and the rising use of iron and steel scrap, which is mixed with pig iron in varying degree in most uses, and replaces it completely in some. The consumption of iron and steel scrap in iron foundry and miscellaneous uses was 11 million tons in 1963, when it was three times as large as the consumption of pig iron in those uses; by 1967 the consumption of scrap had grown to 13 million tons and was four times as large as the consumption of pig iron. Thus, there has been a substantial shift from pig iron to scrap in foundry and miscellaneous uses. The LTFV imports of foundry grade pig iron were purchased by a number of users, but principally by a firm engaged in the production of soil pipe. This firm shifted to other sources when the LTFV imports ceased and has indicated that it will discontinue the use of pig iron after 1968, in favor of scrap.

The Treasury findings of sales at LTFV of the pig iron from the four countries herein considered were based upon a comparison between the prices to U.S. importers and the ex-factory prices at which similar merchandise was sold for home consumption in Italy. If the price in Italy was representative of the world price, then pig iron from these four countries had to be sold to U.S. importers at less than the world price if it was to compete in the U.S. market with pig iron imported from other countries, 4/ inasmuch as imports from Communist countries were subject to a higher U.S. rate of duty than imports from other countries. Pig iron from the four countries was sold in the United States by the importers at prices little different from prices paid by the same buyers for comparable grades of imported pig iron from other sources.

Prices of merchant pig iron sold by the domestic producers have been well maintained during and since the entry of the LTFV imports. Occasionally sales by individual merchant producers were made at comparatively low prices, but these sales represented a very small proportion of total sales and were usually off-grade material. The price history of merchant pig iron since 1962 indicates that domestic merchant producers do not engage in competitive price cutting, but cut back production rather than reduce prices when sales are declining.

Employment in establishments producing merchant pig iron was higher in 1966, when the LTFV imports were at their peak, than at any time during the period from 1964 through January-June 1968 (table 5).

4/ There is no evidence that sales of pig iron by the four countries to U.S. buyers were made with predatory intent, i.e., for the purpose of injuring or exploiting American producers.

Net profits on sales of pig iron by the merchant producers were well maintained during the period 1964-67, despite declining sales after 1965 (table 9). During the 4-year period, the ratio of net operating profits to net sales ranged from 7.1 percent (for 8 producers) in 1967 to 9.7 percent (for 9 producers) in 1965. The tables referred to appear immediate following this Statement of Reasons and are incorporated herein by referenc

Accordingly, the evidence does not show injury to a domestic industry, however defined, and does not show that LTFV imports have been the cause of any dislocation falling far short of injury. Therefore, neither of the two elements required under the Act for affirmative determinations by the Commission is present. Nor does the evidence show any threat of injury from LTFV imports. For the foregoing reasons, as well as those adduced additionally by Commissioner Thunberg, I believe there must be a negative injury determination by the Commission in each case.

Table 1.--Pig iron: U.S. production, imports, exports, and consumption 1958, 1963-1967 and January-June 1967 and 1968

Year	Production 1/	Imports	Exports	Reported consumption
	Quantity (1,000 long tons)			
1958	51,031	187	92	51,127
1963	64,143	576	63	64,901
1964	76,367	658	157	77,127
1965	78,756	788	25	79,415
1966	81,506	1,060	11	81,937
1967	2/ 77,664	540	7	78,009
1967 (Jan.-June)	2/ 38,337	248	2	3/ 38,583
1968 (Jan.-June)	2/ 44,460	221	4	3/ 44,677
	Value (1,000 dollars)			
1958	3,406,330	12,040	6,725	4/
1963	4,200,462	28,940	4,479	4/
1964	4,982,156	31,591	10,275	4/
1965	5,028,590	38,438	1,665	4/
1966	5,152,809	45,914	731	4/
1967	4,974,379	27,599	319	4/
1967 (Jan.-June)	2,455,485	12,157	174	4/
1968 (Jan.-June)	4/	8,651	282	4/

1/ Value estimated on the basis of the average value of shipments as reported by the U.S. Department of Interior.
2/ American Iron and Steel Institute.
3/ Apparent consumption (production plus imports minus exports).
4/ Not available.

Source: Production and consumption compiled from official statistics of the U.S. Department of the Interior, except as noted; imports and exports compiled from official statistics of the U.S. Department of Commerce.

Table 2.--Merchant pig iron: Shipments by U.S. producers, imports, exports, and apparent consumption 1958, 1963-67 and January-June 1967 and 1968

Year	Shipments 1/	Imports	Exports	Apparent consumption	Ratio of imports to consumption
	1,000 long tons	1,000 long tons	1,000 long tons	1,000 long tons	Percent
1958	3,642	187	92	3,737	5.0
1963	2,841	576	63	3,354	17.2
1964	3,293	658	157	3,794	17.3
1965	3,476	788	25	4,239	18.6
1966	3,338	1,060	11	4,387	24.2
1967	2,821	540	7	3,354	16.1
1967 (Jan.-June)	1,357	248	2	1,603	15.5
1968 (Jan.-June)	1,569	221	4	1,786	12.4

1/ Includes hot metal as well as cold pig iron.

Source: Shipments, American Iron and Steel Institute; imports and exports compiled from official statistics of the U.S. Department of Commerce.

Table 3.--Pig iron: Total shipments to others by 9 U.S. producers, 1965-1967 and January-June 1968

Item and year	Quantity	Value	Average value
	Long tons	1,000 dollars	Dollars per ton
Cold pig iron:			
1965	2,292,474	139,593	60.89
1966	2,159,477	131,516	60.90
1967	1,800,409	108,308	60.16
1968 (Jan.-June)	867,393	52,593	60.63
Hot metal:			
1965	591,036	36,453	61.68
1966	607,621	36,999	60.89
1967	466,353	28,490	61.09
1968 (Jan.-June)	324,729	19,969	61.49
Total:			
1965	2,883,510	176,046	61.05
1966	2,767,098	168,515	60.90
1967	2,266,762	136,798	60.35
1968 (Jan.-June)	1,192,122	72,562	60.87

Source: Compiled from questionnaires submitted to the Tariff Commission by 9 producers; such producers accounted for 83 percent of total merchant shipments reported by the American Iron and Steel Institute in 1965 and 1966, 80 percent in 1967 and 76 percent in Jan.-June 1968; most of the data lacking would be hot metal.

Table 4.--Pig iron: Inventories held by merchant producers on specified dates, 1963-68

Date	Total inventories, 15 establishments	Inventories, 7 predominantly merchant establishments
	Long tons	Long tons
December 31, 1963	915,563	515,079
December 31, 1964	768,807	407,144
December 31, 1965	779,156	450,331
June 30, 1966	834,706	583,154
December 31, 1966	937,271	501,848
June 30, 1967	1,075,526	627,951
December 31, 1967	900,874	563,049
June 30, 1968	834,728	613,930

Source: Compiled from questionnaires submitted to the Tariff Commission by 9 domestic producers.

Table 5.--Employment and man-hours worked by production and related workers at 15 establishments (operated by 9 firms) producing merchant pig iron and at 7 of these establishments (operated by 5 firms) producing predominantly merchant pig iron, 1964-67 and January-June 1968

Item	1964	1965	1966	1967	1968 (Jan.-June)
	Number				
Employment					
All establishments: 1/					
All employees	8,256	8,675	8,752	8,015	8,058
Production and related workers, total	7,713	8,017	8,132	7,269	7,327
Pig iron	4,481	4,793	4,967	4,350	4,379
Coke	1,999	1,998	1,942	1,838	1,872
Other	1,233	1,226	1,223	1,081	1,076
Predominantly merchant establishments:					
All employees	2,052	2,322	2,375	1,997	2,009
Production and related workers	1,821	2,101	2,126	1,736	1,781
	(1,000 man-hours)				
Man-hours worked by production and related workers					
All establishments: 1/					
Pig iron	9,244	9,994	9,908	8,409	4,392
Coke	4,172	4,014	4,094	3,934	2,030
Other	2,428	1,908	2,046	2,148	1,079
Total	15,844	15,916	16,048	14,491	7,501
Predominantly merchant establishments	3,721	4,643	4,546	3,521	1,880

1/ Data include workers engaged and man-hours expended in the production of pig iron, coke, and other products for captive use at those establishments producing both captive and merchant pig iron.

Source: Compiled from questionnaires submitted to the Tariff Commission by 9 domestic producers.

Table 6.--Pig iron: U.S. imports for consumption, by principal sources, 1963-67 and January-June 1968

Source	1963	1964	1965	1966	1967	Jan.-June 1968
	Quantity (long tons)					
LTFV imports:						
U.S.S.R.	-	-	30,525	165,530	-	-
East Germany	-	51,055	73,472	93,653	44,375	-
Czechoslovakia	-	-	-	60,686	-	-
Romania	-	-	-	29,106	-	-
Sub-total	-	51,055	103,997	348,975	44,375	-
Other imports:						
Canada	345,937	352,859	433,115	351,422	364,345	89,076
West Germany	78,067	45,904	57,339	71,205	37,453	17,140
Finland	10,824	65,182	59,305	57,728	30,015	16,853
Rhodesia	-	-	-	1/ 85,237	20,000	-
Republic of South Africa	68,479	61,268	11,489	119,486	-	-
Spain	40,322	10,431	37,576	8,038	-	9,331
Brazil	-	60,621	65,658	-	-	29,679
United Kingdom	7	-	5,888	52	6,317	23,593
All other	32,555	10,244	13,218	17,446	37,883	35,730
Total	576,191	657,564	787,585	1,059,589	540,388	221,402
	Foreign value (1,000 dollars)					
LTFV imports:						
U.S.S.R.	-	-	1,039	5,567	-	-
East Germany	-	1,835	2,727	3,236	1,344	-
Czechoslovakia	-	-	-	2,218	-	-
Romania	-	-	-	956	-	-
Sub-total	-	1,835	3,766	11,977	1,344	-
Other imports:						
Canada	19,200	19,345	24,063	19,793	20,821	3,821
West Germany	3,280	1,919	2,465	3,023	1,646	678
Finland	427	2,713	2,423	2,293	1,244	714
Rhodesia	-	-	-	1/ 2,891	586	-
Republic of South Africa	2,870	2,684	489	4,723	-	-
Spain	1,782	438	1,601	272	-	346
Brazil	-	2,190	2,270	-	-	976
United Kingdom	3	-	270	6	335	798
All other	1,378	467	1,091	936	1,623	1,319
Total	28,940	31,591	38,438	45,914	27,599	8,652

1/ Includes 20,358 tons, valued at $572,000 reportedly imported from Mozambique. Mozambique has no known pig iron producing facilities. It is the concensus of staff personnel in several agencies (B.D.S.A., Census, Mines, and Tariff) that this material was actually produced in Rhodesia.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 7.--Pig iron: Average foreign unit value of imports for consumption, by principal sources, 1963-67 and January-June 1968

(Per long ton)

Source	1963	1964	1965	1966	1967	Jan.-June 1968
LTFV imports:						
U.S.S.R.	-	-	$34.04	$33.63	-	-
East Germany	-	$35.94	37.12	34.56	$30.28	-
Czechoslovakia	-	-	-	36.54	-	-
Romania	-	-	-	32.86	-	-
Average, LTFV imports	-	35.94	36.21	34.21	30.28	-
Other imports:						
Canada	$55.50	54.82	55.56	56.32	57.15	$42.90
West Germany	42.01	41.81	46.84	42.46	43.94	39.55
Finland	39.47	41.62	40.85	39.73	41.43	42.34
Rhodesia	-	-	-	1/ 33.92	29.32	-
Republic of South Africa	41.91	43.81	42.55	39.53	-	-
Spain	44.19	41.97	42.61	33.82	-	37.03
Brazil	-	36.12	34.58	-	-	32.88
United Kingdom	2/	-	45.89	2/	53.09	33.83
All other	42.32	45.59	48.36	53.56	42.83	36.95
Average, total imports	50.23	48.04	48.80	43.33	51.07	39.08
Average, total imports, except Canada	42.30	40.19	40.55	36.89	38.50	36.51

1/ Includes Mozambique (see footnote 1/, table 6).
2/ Not representative.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 8.--Pig iron: U.S. imports for consumption from Eastern Europe, by customs districts, 1964-67

(Long tons)

Year and customs districts	4-country total	East Germany	Czechoslovakia	U.S.S.R.	Rumania
1964 total	51,055	51,055	-	-	-
Philadelphia	4,595	4,595	-	-	-
Mobile	38,344	38,344	-	-	-
San Francisco	8,116	8,116	-	-	-
1965 total	103,997	73,472	-	-	-
Philadelphia	39,271	28,746	-	30,525	-
Mobile	33,042	33,042	-	-	-
New Orleans	11,684	11,684	-	-	-
1966 total	348,975	93,653	60,686	165,530	29,106
Philadelphia	153,495	20,500	-	113,867	19,128
Mobile	79,743	25,061	23,984	30,698	-
Honolulu, Hawaii	292	292	-	-	-
Milwaukee, Wisc	9,400	9,400	-	-	-
Chicago, Ill	41,308	31,330	-	-	9,978
Cleveland, Ohio	8,070	7,070	-	1,000	-
Buffalo, N.Y	9,767	-	9,767	-	-
Wilmington, N.C	6,999	-	6,999	-	-
Savannah, Ga	5,905	-	5,905	-	-
Port Arthur, Texas	6,532	-	6,532	-	-
San Francisco	7,499	-	7,499	-	-
Houston, Texas	19,965	-	-	19,965	-
1967 total	44,375	44,375	-	-	-
Philadelphia	24,112	24,112	-	-	-
New Orleans	20,243	20,243	-	-	-
Cleveland, Ohio	20	20	-	-	-

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 9.--Profit-and-loss experience before income taxes, reported for U.S. producers of merchant pig iron, 1964-67 1/

Item	1964	1965	1966	1967
Number of producers included	9	9	9	8
Percent of total U.S. sales of domestically produced merchant pig iron accounted for by reporting producers	81	83	83	2/
Net sales----------1,000 dollars	164,922	176,254	167,908	2/
Cost of goods sold----------do	143,602	150,564	144,767	2/
Gross profit or loss----------do	21,320	25,690	23,141	2/
Administrative & selling expense----do	7,834	8,540	9,193	2/
Net operating profit----------do	13,486	17,150	13,948	2/
Ratio (percent) of net operating profit to net sales	8.2	9.7	8.3	7.1

1/ Most of the producers, for which data are shown above, transfer some of the pig iron produced in their merchant pig iron furnaces to their affiliated operations. The data reported here cover their operations on merchant pig iron only.

2/ Data withheld to avoid disclosure of the operations of individual firms.

Source: Compiled from information supplied by domestic producers.

Statement of Reasons for Negative Findings
of Injury by Commissioner Thunberg

Although the pig iron produced and used by integrated producers of iron and steel products logically is part of the relevant industry in this case--i.e., the pig iron industry, 1/ changes in market forces are more readily observable through their impact on the price and volume of exchanges of merchant pig iron which is produced for sale. The existence of injury, and the cause of such injury once its existence is established, are difficult to determine under the best of circumstances. In the absence of arms' length transactions in a commodity, the existence of injury, except in the extreme, is almost impossible to document definitively--to say nothing of its causation. As a first step, therefore, an examination

1/ Of the ten U.S. firms that regularly produce pig iron for sale, four are integrated steel concerns and three are integrated producers of iron products. Three-fourths of the pig iron sold originates in establishments engaged primarily in production for their own use.

Grade by grade, pig iron is a standardized, fungible commodity, users of which have little reason, other than cost or price considerations, to prefer the product of one producer to that of another. Accordingly, type by type, the pig iron produced by integrated steel companies is the same commodity as the merchant and imported pig iron, the aggregate of which comprises the total supply in the U.S. market. The integrated steel companies as well as the producers of merchant pig iron could be injured by a very low market price for merchant pig because the value of their facilities for producing pig iron could be thereby depressed. An integrated steel company, of course, would not react immediately to the availability of merchant pig at a price considerably below its own cost of production by ceasing production. It would continue to produce pig iron at least to ascertain the permanence of the low price and the external source of supply. It would, moreover, continue to produce pig iron despite a market price below its estimated cost if this low price covered its out-of-the-pocket costs. Because its investment in pig iron facilities is an accomplished fact, these facilities would be used if a low market price covered all variable costs and at least part of overhead. Thus a very low price for merchant pig, if sustained, could injure integrated steel companies through its effect on the value of their investment in pig iron facilities without forcing them out of pig iron production.

of the impact of imports at less than fair value (LTFV) on the producers and users of merchant pig iron alone is appropriate in order to determine whether injury is observable in this small part of the pig iron market, and if so whether its cause can be found in the LTFV imports. 1/

Because declining sales and profits of merchant pig iron producers in 1966 and 1967 are clearly the result of factors other than LTFV imports, despite the fact that the relative importance of LTFV imports appears to be enhanced when measured against such a small segment of the total market, it is not necessary in this case to cope with the matter of injury to the producers of captive pig iron. (In 1966, the year when they were at a maximum, LTFV imports amounted to 0.4 percent of total U.S. production of pig iron, to 10 percent of shipments of merchant pig iron by U.S. producers. See tables 1, 2, and 6 preceding this statement.)

Such evidence of injury as exists bears very little relation to LTFV imports. Shipments of merchant pig iron by U.S. producers have declined since 1965, the second year of LTFV imports. Employment and man-hours worked and profits declined in 1967 (tables 5 and 9). Total employment and man-hours worked were higher in 1966, the year of maximum LTFV imports, than in any year during which LTFV imports entered. In 1965, when LTFV imports amounted to 3 percent of shipments of merchant pig by U.S. producers, the profits of domestic producers were at a peak. In 1966, when LTFV imports were at a peak, profits were down but still substantially in the

1/ The fact that the Treasury has made four separate findings of less than fair value imports is a matter of administrative convenience. As Chairman Metzger observes, it is not significant one way or the other in the determination of injury and causation in this case.

black, and in fact higher than 1964 when LTFV imports were but 1.5 percent of shipments by U.S. producers. In 1967, when LTFV imports were negligible, profits declined much more both absolutely and relatively (table 9). In 1965, the year of highest profits, the merchant pig producers operated at 69 percent of capacity; capacity utilization rose to 72 percent in 1966, the year of peak LTFV imports, declined to 57 percent in 1967 when LTFV imports were negligible. 1/

In late 1966 and in 1967 the demand for merchant pig iron in the United States was depressed by both short-term and long-term domestic developments. Because scrap has become less expensive than pig iron, it has been increasingly substituted for it; and because the demand for cast iron products was reduced by short-run developments in the U.S. economy in late 1966 and 1967, the demand for merchant pig iron was further depressed in those years.

The market for merchant pig iron in the United States is contracting both absolutely and in relation to the total pig iron production and consumption. While the production of pig iron declined by 1.4 percent between 1965 and 1967, shipments of merchant pig iron declined by nearly 19 percent; and while total production increased by almost 23 percent from 1963 to 1965, shipments of merchant pig iron increased by 12 percent. The market for merchant pig iron is dominated by the demand for cast iron products. Roughly 80 percent of merchant pig iron shipments goes to iron foundries; 20 percent goes to steel mills. The demand for cast iron products, like

1/ Percent of capacity estimates are based on blast-furnaces' days of actual operations for all blast-furnaces at establishments that normally sell pig iron to others.

the demand for steel products, is strongly influenced by the demand of two consuming industries--the automobile industry and the construction industry--each of which accounts for about one-fifth of the total of cast iron consumption. (Each also accounts for about one-fifth of total steel consumption.) A decline in the demand for automobiles and the demand for housing, as in late 1966 and 1967, depresses the demand for pig iron although with a lag. 1/ In 1966 housing starts were 21 percent below 1965, while automobile and truck production was down by 7 percent. In 1967 housing starts were 11 percent below 1965 and cars and trucks assembled were down 19 percent. In addition, the output of another large consuming industry of both cast iron and steel products, the machinery industry, after rising rapidly through the third quarter of 1966, declined sharply in the first half of 1967 and then leveled off. The demand for merchant pig iron in 1966 and especially in 1967 was thus depressed because of short-run domestic economic conditions.

The demand for pig iron by both the iron foundries and non-integrated steel mills further is highly responsive to changes in the price of a close substitute for pig iron, scrap iron and steel. In contrast to highly volatile scrap prices, pig iron prices in the United States have remained almost unchanged since 1962. Technological developments in steelmaking in recent years have retarded the growth in the use of scrap, causing scrap consumption to lag behind increases in scrap accumulation. The price of

1/ Production of merchant pig iron is largely for inventory with producers of merchant pig iron typically holding inventories amounting to about 3 months' sales.

scrap has consequently been subject to a long-term decline, 1/ with a consequent increase in the proportion of scrap used in the foundry industry. Where in the late 1950's scrap accounted for 70 percent, pig iron for 30 percent of the combined consumption of both by foundries in the United States, by the mid-1960's the relative importance of each had shifted to 80 percent - 20 percent.

There is on the horizon no development, domestic or international, which is so imminent or so likely of occurrence that a finding of likelihood of injury can be substantiated. It is true that demand and supply conditions in other important producing countries are changing. The U.S.S.R. as part of its present five-year plan is in the course of expanding its steel industry. Although the necessary expansion of pig iron capacity has already been about completed, the expansion of steel capacity is still under way and is not expected to absorb completely all the Soviet pig iron output until approximately 1970. In the interim, however, its own requirements for pig iron will be expanding. The opposite staging of iron and steel capacity expansion has meanwhile been underway in Japan. The meteoric increase in the capacity of the Japanese steel industry accounts for the recent spurt in pig iron imports into that country. (Total imports of pig iron into Japan rose from 2.6 million tons in 1965 to 6.3 million tons in 1967.) Japan, too, is building sufficient new blast furnace capacity to eliminate the imbalance in the future. It is estimated that Japan will become self-sufficient in pig iron by 1970.

1/ The average price index for iron and steel scrap in 1967 was 72.5 compared with 100 for 1957-59.

The other countries of Eastern Europe are net importers of pig iron from the U.S.S.R. Exports by these countries probably reflect temporary surpluses in domestic industries. Growth of their own requirements, therefore, makes it likely that exports of pig iron from the U.S.S.R. and Eastern Europe will decline.

UNITED STATES TARIFF COMMISSION

TITANIUM SPONGE FROM THE U.S.S.R.

Determination of Injury
in Investigation No. AA1921-51
Under the Antidumping Act, 1921,
As Amended

TC Publication 255
Washington, D.C.
July 1968

UNITED STATES TARIFF COMMISSION

Address all communications to

United States Tariff Commission

Washington, D.C. 20436

C O N T E N T S

UNITED STATES TARIFF COMMISSION
Washington

[AA1921-51]

July 23, 1968

TITANIUM SPONGE FROM THE USSR

Determination of Injury

On April 23, 1968, the Tariff Commission received advice from the Treasury Department that titanium sponge from the U.S.S.R. 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. Accordingly, on April 24, 1968, the Commission instituted Investigation No. AA1921-51 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.

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 April 27, 1968 (33 F.R. 6495). The hearing was held on June 4 and 5, 1968.

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 has determined that an industry in the United States is being injured by reason of the importation of titanium sponge from the U.S.S.R., sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. 1/

Statement of Reasons for Affirmative Determination of Vice Chairman Sutton and Commissioner Clubb

Titanium is a metal having a high strength-to-weight ratio, particularly at temperatures ranging above 1000° F. Its production was begun and stimulated as a result of military requirements during the Korean war. Over 80 percent of all titanium metal is used in jet engines and airframes for aircraft. The remainder is used principally in missiles, space equipment, and chemical processing equipment where its corrosion-resistant characteristics are essential. World production has caught up with demand for the moment and projections of sales of the metal in the next

1/ Vice Chairman Sutton and Commissioner Clubb determined there was injury and Chairman Metzger and Commissioner Thunberg determined there was no injury. Pursuant to section 201(a) of the Antidumping Act, the Commission is deemed to have made an affirmative determination when the Commissioners voting are equally divided.

six years all indicate that the use of titanium will more than double.

At present all commercial production of titanium metal in the United States is dependent upon the use of titanium ore (usually the mineral rutile) from South Africa and Australia. The ore is chemically reduced to a highly porous, brittle mass known as titanium sponge. To create a usable metal the sponge must be compressed and is usually double-melted in an electric furnace. A small amount of clean scrap, and alloying elements as desired, are mixed with the compressed sponge before the melting process. The resulting ingot may be used in the process of making castings but for the most part at present is worked by various mill processes into wrought forms such as billet, plate, sheet, strip, rod, bar, wire, pipe, and tubes. Subsequent processing of the various products is required to complete them for their ultimate uses.

U.S. production and consumption of ingots and mill products have risen steadily since January 1, 1958 and were over five times as large in 1967 as in 1958, having reached an annual production of 52 million pounds of ingot and 27 million pounds of mill products (made from ingots). In the same period U.S. production of sponge more than tripled, starting with a production of 9 million

pounds in 1958. 1/ The domestic needs for additional supplies of sponge had to be supplied by imports which ranged from 843,000 pounds in 1959 to 13.8 million pounds in 1967. Imports of sponge are still necessary to meet our total domestic demands for titanium metal. Imports from the U.S.S.R. began in 1965. In the period 1965-66, such imports equalled 2 percent of all imports of sponge. In 1967 they equalled 19 percent of all such imports and attempts were made to sell 10 million pounds on an annual basis which would equal 68 percent of all imports of sponge in 1967 or nearly one-fourth of the amount of sponge consumed in the United States in 1967.

The commercial production of titanium metal in its various forms, ranging from the crude titanium sponge to finished mill products, whether in captive facilities or by independent producers, is now in its early formative stages of development and is a highly speculative undertaking having a fast growth potential. In the industrial complex of integrated and independent producers of titanium and its products, the sponge-producing level of production is not only the most speculative but also the one which experiences the principal impact of imports of sponge. Such sponge-producing facilities generally constitute an industry in the United

1/ The U.S.-produced sponge ranged from 990,000 pounds in 1951 to 34.5 million pounds in 1957. The production was made principally by government subsidized plants for stockpiling and military use. The government paid as high as $2.52 per pound for the sponge and the subsidized plants were shut down for economic reasons after the stockpile needs were met. Production in 1967 is confidential.

States within the meaning of the Antidumping Act. Several domestic firms have undertaken or are undertaking, the production of titanium products from titanium sponge or ingot [1/] but few desire to risk investment in plant facilities to make the sponge. Out of seven companies known to have produced sizable quantities of sponge, four which entered the field with Government assistance and incentives have closed down their operations, one has entered the sponge production field on a small scale, but not to the extent necessary to meet its own captive needs, preferring to use substantial quantities of imports, including U.S.S.R. sponge, to supplement its supply, and two have entered the field of production on a large scale with the end view of being able to sell the metal in its various forms, including sponge. Although these latter two companies have experienced rapid growth in production in recent years, their profit experience has been erratic with periods of losses as well as profits. For practical purposes, the sponge-producing facilities of these two producers may be characterized as the sponge industry in the United States.

Foreign titanium sponge is available from the U.S.S.R., the United Kingdom, and Japan. The erratic demand for titanium components

---

1/ There are six firms which process substantial amounts of sponge and at least twelve firms which make mill products from purchased ingot or billet.

for aerospace vehicles in the last decade has been the dominant factor affecting the ability of the domestic titanium sponge industry to meet the consumption needs of the United States. In order to maintain a balance between supply and demand, it has been necessary for the domestic sponge producers to import sponge to meet their needs for the basic metal in the production of mill products. Indeed, for the most part, they were unable to supply sponge to non-integrated producers of titanium mill products except on a limited basis. However, the two major domestic sponge producers were alert to the sponge supply problem, they planned incremental increases in their production capacities to the extent that it seemed economically sound, and now have sponge capacity in excess of their captive needs for sponge. It is clear from the record that the industry wants to sell sponge, is able to sell sponge, and plans to produce and sell sponge to all mill operators under conditions which are price competitive with imports of titanium sponge purchased at fair value.

The importer of the U.S.S.R. sponge claims that his sponge is superior in quality to domestic sponge for the reasons that it is purer, it may be processed by less expensive equipment, and has a lesser tendency to foul the processing equipment. The domestic buyers of the U.S.S.R. sponge affirm these claims. Thus, it would appear that the importer of U.S.S.R. sponge should be able to demand premium prices. However, the importer does not price his sponge according to its claimed virtues. The two major domestic

producers of sponge are offering their usual grade sponge at $1.32 per pound. Nominal amounts of scientific grades are being sold for much higher prices. However, the usual grade may be sold or offered at prices somewhat lower than $1.32 depending upon the quantity and the duration of the contract which factors would justify cost-saving reductions in price. Imports of U.K. and Japanese sponge have been sold under a similar competitive pricing system. However, the U.S.S.R. sponge, although allegedly of a better quality than the domestic sponge by reason of the different methods employed in its production, is sold or offered for sale at prices ranging up to 37 cents less than the prices obtained by all other sellers of sponge. The price differential for the greatest volume of sales is well above the mid-point of the 37-cent differential. Confidentiality laws preclude a detailed disclosure of the price competition but it is clear that the margin of dumping 1/ found by the Secretary of the Treasury is substantial and contributes the major part of the price differentials existing between U.S.S.R. sponge and all other sponge sold in the United States.

Domestic production of sponge has increased every calendar year since 1959, as has domestic consumption of sponge. However,

1/ The "margin of dumping" is the difference between the importer's actual purchase price and fair value. The amount is confidential.

at present the domestic sponge industry has idle capacity and is deferring further expansion of its capacity at a time when there is almost unanimity of opinion in the trade that future demands for titanium will more than double in the next six years. Negotiations for sales of titanium sponge to domestic processors are at a standstill pending the outcome of the Commission's determination in this case as the price differentials are critical. One industry representative says that if U.S.S.R. sponge continues to sell as low as 95 cents per pound the industry will find it necessary to buy such sponge rather than to pursue a further increase in its production capacity. Approximately 200 employees used directly in the production of sponge are idle. In addition to dumping, it is recognized that there are a number of factors causing the unemployment and cut-down in production in recent months. However, by reason of the dumped imports the domestic sponge industry is being adversely affected or injured to a substantial degree.

In summary, the presence of the less-than-fair-value (LTFV) U.S.S.R. sponge in the domestic market is having a significant depressing effect on sponge prices, and is to a substantial degree causing the idling of, and the loss of employment in, sponge-producing facilities, and the abandonment of plans to increase sponge capacity. We conclude, therefore, that the titanium sponge-producing industry in the United States is being injured within the meaning of the Antidumping Act.

The facts available to the Commission show that the impact of the LTFV imports also is experienced derivatively, but in lesser degree, by certain of the mill-product industries. In some instances, for example, it appears that the lower prices of domestic mill products made with the use of LTFV imports have caused the prices of like domestic products made without the use of such LTFV imports to be depressed or the sales of such latter products to be lost. However, in view of our determination that the sponge-producing industry in the United States is being injured by reason of the LTFV imports, it is not necessary for us to proceed with further analysis respecting the degree of the impact of such imports on domestic industries producing mill products.

Separate Statement of Commissioner Clubb

I concur with Vice Chairman Sutton that an industry in the United States has been injured by the LTFV sales involved, and that it is threatened with even greater injury in the future. Important to the determination is what constitutes the "industry" for purposes of this investigation. Thus, it may be worthwhile to set out my views on that question at greater length.

Complainants, stating their case in terms of the Act, 1/ allege that the LTFV sales of titanium sponge from the U.S.S.R. (1) have caused injury to a domestic industry, (2) are likely to cause further injury, and (3) are in effect preventing the industry from being established. Respondent contends that, if the "industry" involved is the titanium sponge industry, then no injury has been shown because the major domestic producers of titanium sponge are integrated companies which do not regularly sell sponge, but rather process almost all of their sponge output into mill products.

1/ The Antidumping Act reads in pertinent part as follows:

> Whenever the Secretary of the Treasury . . . determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter 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. * * *". 19 U. S. C. § 160(a) (1965).

Similarly, Respondent argues that if the "industry" involved is made up of the sponge producers, plus those who process sponge into ingots, and those who process ingots into mill products, then the value added by their aggregate operations is so large relative to the differential in sponge cost caused by dumping, that the latter is incapable of causing injury.

The scope of the term "industry" is flexible and depends heavily upon why the inquiry is being made. The industry itself has neither physical nor corporate existence; it is merely a convenient grouping of companies, usually done for statistical purposes with a particular end in mind. Thus, for some purposes a food distributing company may be described by its labor union as being in the "canning industry", by one of its suppliers as being in the "olive packing industry", and by its trade association as being in the "food distributing industry." All might well be correct because the labor union is defining "industry" in terms of the group of employers which uses the skills of its members; the supplier describes it in terms of the group of customers which buy his product; and the trade association in terms of the group of commercial interests which have a common enough goal to cause them to unite for some kind of action. The supplier's description of industry may be much too narrow for the labor union's purpose, however, and the labor union's description similarly too narrow for the trade association. In the present instance, the question of

what constitutes the industry is determined by the reason the investigation is being made, i.e., the purpose of Congress in enacting the Antidumping Act.

Dumping in the United States is specifically restricted by two laws: one criminal, the other civil. These two laws were enacted at different times but appear to have the same general purpose. The criminal law, enacted in 1916, provides criminal penalties for those who commonly and systematically import goods into the United States at a price substantially less than the home market value with intent to injure, destroy, or prevent the establishment of an industry in this country, or to monopolize trade or commerce in the imported articles. 2/ This provision appears to have been enacted with a view to preventing European industries from disrupting United States markets by price wars after World War I ended. 3/ The Act was not designed as a protectionist measure; Congress felt it was merely placing foreign producers on the same footing as domestic producers. 4/

2/ 15 U. S. C. § 72 (1963).

3/ 53 Cong. Rec., pt. 15, at 1911 (1915) (speech by Rep. Saunders).

4/ The House Ways and Means Committee reported this bill out with the following comment:

> "In order that persons, partnerships, corporations, and associations in foreign countries, whose goods are sold in this country, may be placed in the same position as our manufacturers with reference to unfair competition, your committee recommends:

(Continued on next page.)

In 1919 the Tariff Commission issued a report which noted that the 1916 criminal Act was ineffective because it could not be enforced. 5/ Unable to accomplish its objective by focusing on the specific predatory dumping which it wished to prevent,

4/ Cont'd.

> "(1) The adoption of a provision making it unlawful for a person, partnership, corporation, or association to import and systematically sell any article at a price substantially less than the actual market value or wholesale price of such article at the time of exportation, with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States; . . ." H. R. Rep. No. 922, 64th Cong., 1st Sess. 9-10 (1916). (Emphasis supplied.

5/ The difficulties of the 1916 Act were explained by the Tariff Commission as follows:

> "The anti-dumping law enacted by Congress on September 8, 1916, invites special comment. Some brief but substantial criticism of its effectiveness will be found among complaints presented to the commission and summarized in this report. As a criminal statute that act must be strictly construed. It is wanting in certainty in providing, as a condition precedent of the conviction of offenders, that the sale of articles in the United States must be at a price 'substantially less' than the actual market value or wholesale price abroad. It apparently fails, where the Canadian law succeeds, in not contemplating in reasonable cases the prohibition of sporadic dumping, since its penalties apply only to persons who 'commonly and systematically import' foreign articles, and in providing that such importation must be made with intent to injure, destroy, or prevent the establishment of an industry in this country, or to monopolize trade or commerce in the imported articles. Evidently, for the most part, the language of the act makes difficult, if not impossible, the conviction of offenders and, for that reason, the enforcement of its purpose." Tariff Commission, Information Concerning Dumping and Unfair Competition in the United States and Canada's Anti-Dumping Law, at 33 (1919).

Congress began to explore the possibility of prohibiting all competitive dumping. Thus, the House Ways and Means Committee reported out a bill which provided for the assessment of dumping duties on all dumped imports which were "comparable in material, quality, or use with a kind or class made or produced . . . in the United States." 6/ The Committee explained that this provision was necessary to prevent domestic industries from being destroyed in a price war, after which the foreign producer, then unopposed, would increase his prices and recoup losses. 7/ In order to accomplish this purpose it was felt necessary to prevent the process from getting started by preventing all dumping of goods comparable to those produced in the United States. The Senate Finance Committee, noting that the House bill would require that every importation be examined to determine whether it was comparable to a domestically produced product, decided that such an act would be impossible to administer. Accordingly, it recommended

6/ H. R. 2435, 67th Cong., 1st Sess. (1921), § 207.

7/ The House Committee explained the purpose of the Act as follows:

> "Other countries in the presence of the experience now being undergone by this country have enacted similar legislation. It protects our industries and labor against a now common species of commercial warfare of dumping goods on our markets at less than cost or home value if necessary until our industries are destroyed, whereupon the dumping ceases and prices are raised at above former levels to recoup dumping losses. By this process while temporarily cheaper prices are had our industries are destroyed after which we more than repay in the exaction of higher prices." H. R. Rep. No. 1, 67th Cong., 1st Sess. 23-24 (1921).

that dumping duties be assessed only where a domestic industry was being injured. Thus, those who were injured could complain, and the Customs Service could examine only those cases. It was in this form that the bill was finally enacted. 8/

It thus seems clear that in the Antidumping Act Congress was trying to prevent the possible destruction of domestic industries by foreign companies using dumping as a weapon. Accordingly, the term "industry" as used in that Act must be defined in terms of this purpose, i.e., it is that group of economic interests which might be destroyed by unabated dumping of the product involved. In this case it is the companies which must compete with the dumped imports. More specifically, it is the sponge producing portions of these companies which might be destroyed by unabated dumping.

Respondent asks that we define the "industry" as being either the sponge selling industry (in which case neither of the complainants have been injured, it is contended, because neither sells sponge to anyone but themselves), or as the "titanium industry" (in which case, it is contended, all sponge, ingot and mill products producers must be included and the amount of damage done is so small relative to the size of the industry that the injury is de minimis, and in any event is vastly outweighed by the benefit to the importing members of the industry). But to accept this approach would be to impose on the Antidumping Act concepts of "industry" which may have meaning for other purposes, but which

8/ See the discussion of the legislative history of this Act in Tariff Commission Publication 214, Cast Iron Soil Pipe from Poland at 12-16 (Sept. 1967).

would be no more appropriate here than it would be to use a concept of "industry" developed for labor purposes to test the effect of competition on a trade association or a supplier.

Such a course would disregard the congressional purpose in enacting the Antidumping Act. Unlike most quota and tariff legislation it is not protectionist in nature; it imposes no burden on the foreign producer merely because he is foreign. On the contrary, it is a regulatory statute which, like the Sherman Act, the Federal Trade Commission Act, and the Robinson-Patman Act, is designed to prevent certain trade practices which Congress has found to be unfair. Indeed, in this proceeding both complainants had exhibited confidence in their ability to compete successfully against fairly priced imports of titanium sponge. What they fear is a price war in which they must compete with the ability of the Soviet Union to absorb losses. It was this that the Antidumping Act was designed to prevent. Accordingly, the "industry" involved is that group of commercial interests which are adversely affected by the unfair trade practice. If the injury to them is more than de minimis 9/ then the requirements of the statute have been satisfied, as they have been here. It does not matter that other related commercial interests are not affected, or that some are actually benefitted. Congress obviously realized that in dumping cases, as in other

9/ For a discussion of the degree of injury required see: Tariff Commission Publication 214, Cast Iron Soil Pipe from Poland (Sept. 1967).

unfair trade cases, the buyer of the unfairly priced goods benefits in the short run, but it does not require that this factor be weighed against the injury to the domestic competitor.

Statement of Chairman Metzger

The function of the Tariff Commission in this investigation is 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" titanium sponge from the U.S.S.R. sold at less than fair value (LTFV)[1/], within the meaning of the Anti-Dumping Act, 1921, as amended. In my opinion, the evidence requires that the determination be in the negative.

This investigation does not raise any issues concerning the consistency or inconsistency of any of the provisions of the Anti-Dumping Act, 1921, with the International Antidumping Code, which has been in effect as to the United States since July 1, 1968. The U.S.S.R. not being a party to the Code, the United States is under no obligation to

---

1/ The basis upon which the Secretary of the Treasury found that the U.S.S.R. sponge was sold at less than fair value, was the price at which an English sponge producer sold sponge to an English consumer -- that is, upon a "constructed value" basis.

While U.S.S.R. sponge is sold in other countries foreign to it, such as the U.K., there is no indication that her sponge sales in those countries were at higher prices than she received for her U.S. sales. Nor is there any evidence that her U.S. sales have been "predatory" -- undertaken to injure or exploit American producers.

Under the law, the Treasury finding is binding upon, and in no sense is reviewable by, the Tariff Commission.

it thereunder. This statement is based upon the application of the Act to the facts of the case, and would be the same were the Code non-existent.[2/]

The varying types of operations of the domestic producers of titanium products and the interrelationship between such producers make it difficult to define with precision the scope of the industry to be examined in this case. Nonetheless, however defined, the evidence does not indicate that "an industry" in the United States is being or is likely to be injured "by reason of" the LTFV imports. Rather, the evidence demonstrates that the shifting requirements for titanium products on the part of the U.S. Government and industrial consumers, largely the aerospace industries, have been and will continue to be the overwhelmingly dominant reason both for the great expansion in recent years of titanium production and shipments, and the 1967-1968 downturn. Imports of sponge, including LTFV imports, have been largely an effect of these economic developments. Since the statute requires a

---

2/ Since the Code does exist, and since it is desirable in the absence of a Congressional purpose to the contrary, that the Act be applied without discrimination as between Code country imports and non-Code country imports, the Code provisions which might have been relevant had a Code country been involved have been examined. No differences in the relevant provisions of the Code and the Act, which might have led to different results had they been read together, were perceived.

finding that LTFV imports cause injury before an affirmative determination of injury can be made, I am unable to find that the statutory test has been met.

For the same reason, there is no basis for finding that an industry has been prevented from being established by reason for LTFV imports. Indeed, there are a number of well-established firms in the United States engaged in the manufacture of titanium products, including sponge; sponge producers are increasing their productive capacity and have plans for substantial additional expansion; and there are several firms making plans for entering the titanium products industry. Long-term prospects for the industry appear to be excellent, from all that the Commission has learned during the course of this investigation.

There are currently three producers of titanium sponge in the United States, all of whom retain most or all of the sponge they produce for further manufacture into ingot and mill products.[3/] Three other firms have commercial facilities to melt sponge into ingot and to fabricate

---

3/ These sponge producers are Titanium Metals Corporation of America (TMCA), jointly owned by National Lead Company and Allegheny-Ludlum Steel Corp.; Reactive Metals, Inc. (RMI), jointly owned by National Distillers and Chemicals Corp. and United Steel Corp.; and Oregon Metallurgical Co. (Oremet), partially owned (about 29 percent) by Armco Steel Corp. and Ladish Co. (about 23 percent). The first two are proponents of action to assess anti-dumping duties against U.S.S.R. sponge, while the third opposes such action.

ingot into mill products; these three firms, as well as one of the aforementioned domestic producers of sponge, rely largely on imported sponge for their requirements. In addition, at least a dozen concerns manufacture titanium mill products from ingot and billet purchased from domestic producers.

U.S. production of titanium sponge more than tripled from 1958 to 1967; output of titanium ingot increased from 11 million pounds to 52 million pounds during the same period; and reported shipments of titanium mill products rose from 5 million pounds in 1958 to 28 million pounds in 1966 and then declined slightly to 27 million pounds in 1967. Preliminary data for the first five months of 1968 indicate a continued decline in the production and shipments of most titanium products. It is undisputed that this decline, which began in late 1967 and continued into 1968, is accounted for almost entirely by a slowdown in Government orders for aircraft, space vehicles, and missiles, and delay of the SST (Supersonic transport) program.

U.S. imports of titanium sponge for commercial use (excluding imports for the U.S. Government) increased from less than 1 million pounds in 1958 to nearly 14 million pounds in 1967. Imports in January-April 1968 were 19 percent below the imports in the corresponding period of 1967, reflecting the general decline in the demand for titanium products

that began in late 1967. Most of the imports throughout the period were from Japan and the United Kingdom. Entries from the U.S.S.R. -- the LTFV imports -- began in 1965 and ceased on March 22, 1968, when withholding of appraisement was ordered; U.S.S.R. imports in March were very small. Imports from the U.S.S.R. accounted for 3.6 percent of the total imports in 1965, for 1.3 percent of the total in 1966, for 19.0 percent in 1967, and for 23.1 percent in January-April 1968. They amounted, however, to only 6.5 percent of domestic industrial consumption of sponge at their highest point, 1967. These increased U.S.S.R. imports largely replaced other imports from Japan and the United Kingdom.

Imported sponge has not competed directly with domestic sponge in the market place. Imported sponge, whether or not sold at LTFV, has been beneficial if not indispensable to some domestic producers, i.e., those that manufacture ingot and mill products but do not have their own sponge facilities. Until the decline in demand of the aerospace industries in 1967, sponge imports had no adverse effect whatever upon the producers of mill products with sponge manufacturing facilities. These sponge imports were helpful to them, since those producers found that they required, and purchased, substantial quantities of imported sponge in addition to that which they produced for their own use. Indeed, during the period when the great bulk of the LTFV imports were being sold in the United States, at least until late 1967, domestic producers of titanium sponge were not offering significant quantities of sponge for sale because

they needed all of their output for their own manufacture of ingot and mill products. During that period, the imports of sponge, including the LTFV imports, were not only not in direct competition with domestically produced sponge -- they were in fact essential to the domestic producers of ingot and mill products without sponge production facilities.

Since late 1967, but only after the aerospace industry demand declined, two of the domestic producers of sponge who produced mill products therefrom, having excess sponge capacity for the time being, have offered some sponge for sale at prices substantially higher than the prices at which the imported products, including Japanese and U.K. sponge, not found to have been sold at LTFV prices, have been selling. Since prices of Japanese sponge in the U.S. market have been slightly lower than those of British sponge, and prices of the U.S.S.R. sponge have been somewhat lower than those of the Japanese material, even during this extremely limited period when domestic sponge has been available for sale, it appears that the U.S.S.R. LTFV imports have been directly competitive with imports from Japan and the United Kingdom and only indirectly and partially competitive with domestic sponge. The two principal domestic producers of sponge, even under these circumstances, have not been and are not now selling significant quantities at competitive prices, and have not been prepared to commit themselves to supply sponge to domestic mill products producers on a long-term basis. This may be

understandable, since any such sales would be made to firms that compete with them in the sale of mill products, and, depending upon what happens in the future on the aerospace industry demand side, they may find that they will need all their sponge production for their own fabrication of mill products. The third producer of sponge does not offer the product for sale; this firm has plans for expansion of sponge capacity to meet a larger share of its own requirements for the manufacture of ingot and other titanium products.

Under all of the circumstances, I find that LTFV imports have not caused injury to an industry in the United States within the meaning of the Anti-Dumping Act. To the extent that there may have been any degree of adversity to two largest domestic producers of titanium sponge in the very recent past, it has been caused overwhelmingly by the recently declining demands of the U.S. Government and aerospace industries, not by LTFV imports.

X X X

As above indicated, there has been a rapid expansion of production and sales of titanium products in the United States in recent years, and a set-back beginning in 1967 and continuing through May 1968. The evidence before the Commission indicates that the titanium-products industry and all of its segments are currently undergoing a period of readjustment

after a decade of expansion, caused almost entirely by the slowdown in demand by aerospace industries and the SST program, but that production and sales will resume their upward trend in the 1970s. Substantial increases in demand are expected as a result of the manufacture of new aircraft, now in the planning stage, that will require large quantities of titanium products, and as a result of greater use of titanium products in the chemical industry, rapid transit and hydrospace industries.

Any finding that an industry is "likely" to be injured by reason of LTFV imports, when there is no finding that LTFV imports have caused present injury, should be based upon "changes in circumstances that are clearly foreseen, substantive, and imminent; the finding may not be based on allegation, conjecture, or possibility" (Steel Reinforcing Bars from Canada, T.C. Publ. 22, March 23, 1964, pp. 14-15, Statement of Chairman Dorfman and Commissioner Talbot).

The evidence before the Commission indicates that the near-term future is more likely to be the same as the very recent past than otherwise -- "the way 1968 is going, it is going to be below 1967" (Tr. 69, Mr. Ciborski for TMCA) -- and for the same reason -- the slowdown in U.S. Government and aerospace industry demand. That LTFV imports will no more cause injury in the near-term future than they have caused present injury, appears to be more "likely" than that they will cause injury. A dramatic turnabout in demand by the aerospace industry is a possibility, as is a dead-level flattening out, but these phenomena, with their individual

and very differing consequences, are not "clearly foreseen"; they are conjectural; they are possibilities.

The Commission has insufficient evidence upon which to prognosticate their likelihood. Should they occur -- should there be a change in circumstances showing that LTFV imports are continuing and that they, and not shifting U.S. Government and aerospace industry demand, are causing injury, there is nothing to prevent a new submission to the Commission and a prompt consequential determination. On the present evidence, however, no finding that an industry in the United States is "likely" to be injured by reason of LTFV imports is warranted.

Statement of Commissioner Thunberg

I agree with Chairman Metzger that the evidence available does not support a finding of injury to a domestic industry "by reason of" less-than-fair-value imports. The change in the profit experience of domestic producers of titanium sponge--insofar as there proves to have been a change during 1968--is attributable almost entirely to the decline in demand which began in mid-1967.

The market for titanium sponge is composed of consumers, who are the manufacturers of titanium products, and suppliers, who are domestic producers and importers of sponge. From 1964 through the first half of 1967, the market for titanium sponge was buoyant and expanding with production increasing at an average annual rate of more than 20 percent, consumption increasing from 22 to 44 million pounds a year, imports from 4 to nearly 14 million pounds. At the end of this period consumption was growing at the average rate of about 10 percent annually.

In mid-1967 the complexion of the market changed abruptly because of a sharp decline in the demand for titanium products. The demand for titanium sponge is a derived demand, reflecting

the demand for titanium products which are used almost exclusively in the aerospace industry. A decline in the rate of military purchases occurring at the same time as a delay in the SST program caused consumption of sponge to drop by 12 million pounds, a decline of more than 25 percent. During the first half of 1968 monthly consumption of sponge appeared to have leveled off at about 2.6 million pounds.

In response to the foregoing cutback in demand, domestic output was contracted by 25 percent from the first half of 1967 to the first half of 1968. This cutback in sponge production was accompanied by declining imports of non-Soviet sponge from an annual level during the first half of 1967 of 13 million pounds to one of 8.4 million pounds during the first half of 1968, or a decline of 36 percent. The annual level of imports of Soviet sponge increased, in contrast, by 2 million pounds with the result that total imports declined from an annual rate of 13.7 to one of 10.9 million pounds. Meanwhile, because of the suddenness with which demand had declined, inventories of sponge in the hands of producers and importers accumulated rapidly. Inventories which had been less than 3 million pounds at the end of June 1967 were more than double that at the close of 1967 and even higher at the end of April 1968.

The continued accumulation during 1968 reflected increased inventories in the hands of importers, including the importer of Soviet sponge, which more than counterbalanced the contraction of inventories in the hands of producers and consumers from 5.7 million pounds at the end of 1967 to 4.9 million pounds at the start of May 1968.

Thus the second half of 1967 was a period of transition in the market for titanium sponge during which market forces were adjusting to the new lower level of demand. From the first half of 1967 to the first half of 1968, demand fell by 12 million pounds at an annual rate, domestic production by substantially less, non-Soviet imports by less than 5 million pounds. Imports of Soviet sponge increased by 2 million pounds. This increase in supply from Soviet sources between the first half of 1967 and the first half of 1968 exaggerated the problems of adjustment but did not cause them. The pressure on profits being experienced by domestic sponge producers is "by reason of" the decline in domestic demand.

I disagree with Chairman Metzger's outlook for the near-term, although I, too, agree that available evidence relevant to the likelihood of injury to the domestic industry by reason of less-than-fair-

value imports is not sufficiently unequivocal to warrant such a finding. In my view the evidence supporting a finding of likelihood of injury could be summarized as follows:

> The objective of national economic policy for the near-term is one of restraint. Increases in the level of aggregate demand--including Government expenditures--are to be constrained to those which the capacity of the economy can accommodate without inflationary price rises. The peak levels of production and consumption of titanium sponge achieved during the first half of 1967 occurred in the context of combined public and private demand which exceeded the flow of goods and services from current output. The markedly lower rate of growth of Government purchases of goods and services--including purchases of titanium products--that characterized the second half of 1967 seems likely to be sustained over the near-term future. This implies that the present level of demand for titanium sponge is likely to continue for the next several months. Consumption of titanium sponge during the first 5 months of 1968 appears to have leveled off at about 2.6 million pounds a month.
>
> Given this rate of consumption, an increase of less-than-fair-value imports to the level that prevailed during the second half of 1967--an annual rate of nearly 5 million pounds--would be likely to put serious pressure on the domestic industry. Such a rate of Soviet imports may be imminent for two reasons: First because it is the rate

that actually was achieved in a recent period, and second because there are in this country in the hands of importers substantial inventories of Soviet sponge which could be delivered immediately. Such an increase of supply would intensify the competitive pressures already existing in the titanium market and would result either in a general lowering of prices or a further accumulation of inventories or both.

Since it seems likely that demand for titanium products at prevailing price levels is relatively price-inelastic, revenues would decline with lower prices and if production should fall considerably below capacity output, unit costs would be likely to increase. While the long-term outlook for the demand for titanium is much more favorable than that prevailing at present, the new level of demand which appears to have been established since the first half of 1967 is one which could imply injury in the near-term if imports of less-than-fair-value sponge should return to their previously established peak rate.

I have stated earlier 1/ that a finding of likelihood of injury must be based on a foreseen change in market conditions which is specific, imminent, and predictable. For the foreseen change to be imminent its occurrence must be expected in the near future--the next few months. The hypothetical developments, described above, in the market for titanium sponge over the coming months

1/ Steel Jacks from Canada, T.C. Publication 196, p. 6.

are highly conjectural. They depend on a variety of factors, military and economic here and abroad--including the present and future level of demand, the nature of the responsiveness of demand to price, the pricing policies of the Japanese and U.K. producers as well as the domestic--which are not sufficiently predictable to make them "likely."

In fact, it seems unlikely that imports from the U.S.S.R. would approach their previously established peak at the current, new lower level of demand, because of certain processing disadvantages to users of Soviet sponge (which is composed of larger size pieces than sponge from other sources), because of its non-acceptance for the manufacture of rotating parts of jet engines, and because of general reluctance of users to rely on sponge from the U.S.S.R. when it is available from other sources even at higher prices. Further, although a new lower level of demand appears to have been established during the first half of 1968, the volatility of even aggregate defense expenditures since 1965 is pronounced. Demand for titanium could shift abruptly within the next 6 months, as it did in 1967, because of shifting defense requirements or falling or rising non-defense Federal and commercial demand. Or it may be, as Chairman Metzger opines, that demand is still declining and has

not yet leveled off, despite the evidence of consumption data for the past 5 months.

Should the hypothetical concatenation of events become actual, however, I would agree with the Chairman that the Tariff Commission could act with dispatch on an appeal for relief.

IV. Antidumping Findings Published by the Treasury Department

Product	Country	Date of finding
Pig iron	U.S.S.R.	Oct. 18, 1968 (T.D. 68-261).
Do	Czechoslovakia	Oct. 18, 1968 (T.D. 68-262).
Do	East Germany	Oct. 18, 1968 (T.D. 68-263).
Do	Rumania	Oct. 18, 1968 (T.D. 68-264).
Titanium sponge	U.S.S.R.	Aug. 21, 1968 (T.D. 68-212).

The determinations of sales at less than fair value in the above cases were all made prior to July 1, 1968. Accordingly, the provisions of the International Antidumping Code had no effect on the Treasury's procedures for administering these cases, or on the Department's final determinations. The procedures followed by the Treasury in these cases did not take into account the provisions of the code, since the cases all anteceded the code insofar as the Treasury was concerned. The determinations reached, however, would have all been the same.

There follow copies of the Treasury's affirmative determinations of sales at less than fair value in the above cases.

Department of the Treasury

PIG IRON FROM EAST GERMANY

Determination of sales at less than fair value

On March 28, 1968, there was published in the Federal Register a "Notice of Tentative Determination" that pig iron imported from East Germany is being or or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The statement of reasons for the tentative determination was published in the above-mentioned notice, and interested parties were afforded until April 29, 1968, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

An opportunity was afforded to the attorney of the importer of the East German pig iron to present views, and all interested parties of record were notified.

After consideration of all written submissions and oral argument, I hereby determine that for the reasons stated in the tentative determination pig iron imported from East Germany is being or is likely to be, sold at less than fair value within the meaning of scetion 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

Joseph M. Bowman,
Assistant Secretary of the Treasury.

PIG IRON FROM CZECHOSLOVAKIA

Determination of sales at less than fair value

On March 28, 1968, there was published in the Federal Register a "Notice of Tentative Determination" that pig iron from Czechoslovakia is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The statement of reasons for the tentative determination was published in the above-mentioned notice, and interested parties were afforded until April 29, 1968, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

An opportunity was afforded to the attorney for the importer of the Czechoslovakian pig iron to present views, and all interested parties of record were notified.

After consideration of all written submissions and oral argument, I hereby determine that for the reasons stated in the tentative determination pig iron

imported from Czechoslovakia is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

PIG IRON FROM RUMANIA

Determination of sales at less than fair value

On March 28, 1968, there was published in the Federal Register a "Notice of Tentative Determination" that pig iron imported from Rumania is being or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The statement of reasons for the tentative determination was published in the above-mentioned notice, and interested parties were afforded until April 29, 1968, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

An opportunity was afforded to the attorney of the importer of the Rumanian pig iron to present views, and all interested parties of record were notified.

After consideration of all written submissions and oral argument, I hereby determine than for the reasons stated in the tentative determination pig iron imported from Rumania is being or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

PIG IRON FROM THE U.S.S.R.

Determination of sales at less than fair value

On March 28, 1968, there was published in the Federal Register a "Notice of Tentative Determination" that pig iron imported from the U.S.S.R. is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The statement of reasons for the tentative determination was published in the above-mentioned notice, and interested parties were afforded until April 29, 1968, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

The attorney for the importer submitted a written request for an opportunity to present views in person in opposition to the tentative determination. The opportunity was afforded to the attorney, and all interested parties of record were notified.

After consideration of all written submissions and oral argument, I hereby determine that for the reasons stated in the tentative determination pig iron imported from the U.S.S.R. is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

TITANIUM SPONGE FROM THE U.S.S.R.

Determination of sales at less than fair value

On April 6, 1968, there was published in the Federal Register a "Notice of Tentative Determination" that titanium sponge imported from the U.S.S.R. is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The statement of reasons for the tentative determination was published in the above-mentioned notice, and interested parties were afforded until April 16, 1968, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No requests were received for an opportunity to present views orally in opposition to the tentative determination.

After consideration of all written submissions received, I hereby determine that for the reasons stated in the tentative determination titanium sponge imported from the U.S.S.R. is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

V. FOREIGN ANTIDUMPING ACTIONS AGAINST U.S. EXPORTS RELATED TO THE PROVISIONS OF THE INTERNATIONAL ANTIDUMPING CODE

SUMMARY

During the period beginning July 1, 1968, and ending June 30, 1969, antidumping complaints were raised in eight foreign countries concerning 14 export products from the United States. The complaints resulted in action taken (dumping duties imposed or cash securities required) against American products in seven instances; in the remaining seven cases investigation was suspended or a determination favorable to U.S. exports was reached.

To date the International Antidumping Code has been ratified and implemented by the following 16 countries in addition to the United States:

Belgium*	Italy*
Canada	Japan
Czechoslovakia	Luxembourg*
Denmark	Norway
Finland	Sweden
France*	Switzerland
Greece	United Kingdom
Germany*	Yugoslavia

* These countries are members of the European communities, which adopted communitywide antidumping regulations effective July 1, 1968.

In 12 of these countries no antidumping complaints arose affecting U.S. exports. In the other four countries (Canada, Italy, Japan, and the United Kingdom) a total of five complaints were raised concerning U.S. products; none of these resulted in action being taken against U.S. exports.

There were nine complaints raised in four countries which have not adhered to the code (Australia, Austria, South Africa and Spain); in seven cases, action was taken adverse to U.S. exports.

As of the time this report is submitted, it has not yet been possible to ascertain (with one exception, that is Canada—see isooctanal case which follows) whether the provisions of the code affected the disposition of dumping actions brought against U.S. companies in countries which are signatories of the code, and if so in what respect; and to what extent the disposition of dumping actions against U.S. companies might have been different in countries which are not signatories of the code had the code been implemented in those countries. A supplementary report furnishing this information, to the extent that it is available, will be furnished as soon as possible.

A. Actions taken in countries which have adhered to the international antidumping code

Canada

Canada ratified the International Antidumping Code and implemented its provisions with new antidumping legislation effective January 1, 1969. Substantial changes in Canadian law were required by Canada's adherence to the code, including the incorporation of an injury requirement and certain procedural safeguards before antidumping duties are imposed.

Actions taken.—Two antidumping complaints involving U.S. exports have been brought in Canada since the implementation of the International Antidumping Code:

(1) On a complaint concerning Isooctanol from the United States a preliminary determination of dumping was made by the Ministry of National Revenue. The case was then referred to the Antidumping Tribunal for a determination on the issue of injury. The Tribunal found that material injury had not been established and the case was dismissed.

(2) A complaint involving glass culture tubes from the United States was examined by the Ministry for National Revenue and dismissed for lack of evidence of dumping.

Relation to code.—Concerning Isooctanal, Canada's adherence to the code resulted in the dismissal of this complaint. This was in marked contrast to the treatment accorded the small quantities of this chemical entering Canada prior to January 1, 1969, on which antidumping duties were assessed. The difference in treatment was the result of Canada's adoption of an injury requirement in its new law and regulations.

Concerning glass culture tubes, this case was dismissed in the early stages of investigation because of lack of evidence of dumping. There is no clear indication of what the disposition of this case would have been in the absence of the code.

Italy

Italy ratified the International Antidumping Code and implemented its provisions by the adoption of the Antidumping Regulations of the European Communities effective July 5, 1968.

Action taken.—Kraft linerboard was the subject of the only antidumping investigation concerning U.S. exports to Italy during the reporting period. At the request of the Italian Government, the American Embassy in Rome supplied U.S. price information concerning kraft linerboard. The Italian Government subsequently suspended the investigation.

Japan

Japan ratified the International Antidumping Code and modified its antidumping legislation to conform to the code by amending article 9 of the customs tariff law effective July 1, 1968.

Action taken.—Integrated circuits were the subject of the only antidumping complaint concerning U.S. exports to Japan during the reporting period. The Ministry of International Trade and Industry (MITI) initiated an informal investigation into the prices of integrated circuits at the request of Japanese manufacturers. MITI has informed the American Embassy in Tokyo that it is continuing its informal

inquiry, but indicated it does not intend to institute a formal antidumping investigation.

United Kingdom

The United Kingdom ratified the International Antidumping Code and implemented its provisions effective July 1, 1968. Existing antidumping legislation was subsequently consolidated into the Customs Duties (Dumping and Subsidies) Act, 1969.

Action taken.—Low-density polyethylene was the subject of the only antidumping complaint affecting U.S. exports to the United Kingdom during the reporting period. The Board of Trade rejected the application by British producers that antidumping duties be imposed, stating that it was not satisfied that material injury to the British industry had taken place.

B. Actions taken in countries which have not adhered to the International Antidumping Code

Australia

Australia has not ratified the International Antidumping Code.

Actions taken.—During the reporting period, actions were taken affecting United States exports of three products to Australia:

(1) Possible dumping of aluminum powders, pastes and flakes was taken under investigation and a cash security was required.

(2) Possible dumping of choline chloride was referred to the Tariff Board for hearings and a cash security was required.

(3) The cash security requirement was lifted on epoxidized soybean oil.

Austria

Austria has not ratified the International Antidumping Code.

Action taken.—Trichlorethylene and perchlorate of ethylene were the subjects of antidumping action concerning United States exports to Austria during the reporting period. The Ministry of Trade informed the American Embassy in Vienna that action on this case was suspended because of insufficient evidence.

South Africa

South Africa has not ratified the International Antidumping Code.

Actions taken.—During the reporting period antidumping duties were imposed on four categories of goods which included United States exports to South Africa:

(1) Polyester fibers.

(2) Pistons for motor vehicle internal combustion engines.

(3) Chokes and ballasts for discharge lamps.

(4) Epoxidized vegetable oils.

Spain

Spain has not ratified the International Antidumping Code.

Actions taken.—Antidumping duties on iron and steel coils and galvanized sheets were extended during the reporting period by decree dated February 22, 1969. Previous antidumping duties on other U.S. steel export products were allowed to lapse as of that date. There were no actions affecting other U.S. exports.

O